February 8, 2022
Medway Planning & Economic Development Board Meeting

Housing Choice Multi-family Guidelines

- DRAFT joint letter from Select Board and PEDB to MA DHCD

NOTE – The draft letter is being reviewed at the 2-7-22 Select Board Meeting.

DRAFT Letter to DHCD on Multi-Family Housing Guidelines
sac comments – 2-2-22

LETTERHEAD

The Hon. Michael Kennealy, Secretary
Executive Office of Housing and Economic Development
1 Ashburton Place, Room 2101
Boston, MA 02108

Dear Secretary Kennealy;

On behalf of the Town of Medway, the Medway Select Board and the Medway Planning and Economic Development Board submit these comments with respect to DHCD's "DRAFT Compliance Guidelines for Multi-family Districts Under Section 3A of the Zoning Act", intended to implement Chapter 40A, §3A. Medway has a number of concerns respecting the Draft Guidelines. In summary, the main areas of concern are:

- The definition of "reasonable size" as requiring a minimum of 50 acres of land and 25 contiguous acres is inflexible and not appropriate to Medway and similarly situated small, "adjacent" MBTA communities. This size would serve to promote large multi-family developments which may not be suitable to all communities.
- The requirements for determining the amount of developable land in the district are unduly onerous and beyond the requirements of the statute.
- Impacts on infrastructure, including public water and sewer capacity and facilities; public ways; stormwater management; emergency services; groundwater and wetlands; and other public facilities are not adequately considered.
- Requirements regulating the location of the multi-family zoning districts for adjacent communities, which is not regulated by the statute.
- The Guidelines should provide for advance review of proposed zoning amendments by DHCD to ensure compliance before the amendments are enacted.
- The statement that DHCD may, in its discretion, take noncompliance into account for other discretionary grant awards is beyond the authority of the statute.
- Whether the requirements of chapter 40A, §3 constitute an unfunded mandate in violation of Proposition 2 ½.
- The conflict with other state public policy to preserve agricultural land

The Town's comments and recommendations on each of these items is detailed below.

A. "Reasonable Size": Specific recommendation ~~comment~~: In Section 2, Definitions, change the definition of "reasonable size" to read: "'Reasonable size' means not less than 50 contiguous acres of land**, or land** with a unit capacity equal to or greater than the unit capacity specified in section 5 below". With this change, "reasonable size" can be met either based on the minimum unit capacity, or with a minimum of 50 acres.

The definition of "reasonable size" does not provide sufficient flexibility to the 175 MBTA communities, which have diverse and unique housing and infrastructure needs, and is particularly ill-suited in adjacent communities that are not within one-half mile of a transit or bus station. The requirement of 50 acres for all MBTA communities, coupled with the required density of 15 units per acre, results in an unrealistic minimum unit capacity of 750 multi-family units within the required multi-family zoning district for all communities. It fails to take into account the actual housing needs of each community, infrastructure burdens, level of transit service, existing multi-family housing that may or may not fit the requirements of the statute and Draft Guidelines, and the unique location, topography, development patterns, and constraints of each community. The requirement that at least one area of the multi-family housing district include a minimum of 25 contiguous acres only exacerbates this by discouraging smaller developments that would have less impact while still providing a multi-family housing option.

Medway is an "adjacent community", which has no transit or bus service from the MBTA. Under the formula for determining the minimum multi-family unit capacity, as an adjacent community, the minimum unit capacity would be 10% of its total housing stock. With 4,826 total housing units in town according the census, that would equal 483 multi-family units. Instead, because of the unyielding definition of "reasonable area", Medway is required to have the capacity for 750 multi-family units in the district.

The determination that 50 acres is a "reasonable area" is based on the finding that 50 acres is approximately one-tenth of the land area within .5 miles of a transit station. It is not clear why this particular measure was deemed to be "reasonable" for all MBTA communities, including "adjacent communities" with no transit (or even bus) station. Whether or not basing a "reasonable area" on a percentage of the land area within .5 miles of a transit station makes sense for communities that have a transit station, it is not a logical measure for "adjacent communities." As you pointed out in the January 12th webinar, the focus of this new law is to encourage increased development of multi-family housing within walking distance of transit stations. See, e.g., slide 4 of the PpowerPpoint presentation. As an "adjacent community", Medway is not within walking distance of a transit station;, Medway Town Hall is 5.1 miles away from the Norfolk MBTA train station and 3.9 miles away from the downtown Franklin MBTA station and the goals of the statute will not be achieved by requiring the Town to allow an unrealistic number of multi-family units. The 50 acre requirement, and the 25 acre contiguous requirement, are not well suited to adjacent communities.

B. Determination of Developable land: Specific recommendation comment: Definition of "developable land", delete everything after the first sentence. Under Section 5, Determining Reasonable Size, subsection a, delete the last sentence in the first paragraph, and the second sentence in the second paragraph; in subsection b, delete the third and fourth paragraphs.

In addition to requiring a minimum of 50 acres in the multi-family district, the Draft Guidelines also require each community to estimate how many units of multi-family housing could be constructed on each parcel of developable land in the district. This requirement (1) imposes a significant burden on each community, and (2) seems contrary to and not required by the legislation. Nowhere in G.L. c. 40A, §3A is there a mention of such a requirement.

First, the requirements for providing the estimate are onerous and contradictory. It requires that the Town estimate the amount of multi-family units that can be constructed on each parcel of developable land. This estimate must take into account height limitations, lot coverage, FAR, set back and parking requirements, as well as any limitations in other applicable by-laws. Then it has to take into account limitations on development from inadequate water or wastewater infrastructure, Title 5 limitations in areas not served by municipal sewer, known title restrictions, and any other "physical restrictions" such as wetlands. This essentially requires the town to undertake expensive, time-consuming, and unnecessary design for each parcel in the district. This contradicts the statement in the Draft Guidelines that there is no requirement nor expectation that a multi-family district will be built out to its full unit capacity. All land, in every zoning district in every municipality, has limitations based on dimensional provisions, topography, and other factors. Expecting the town to ensure that each individual parcel can be developed at 15 units per acre is unreasonable and unduly burdensome.

Further, this additional mandate is beyond the authority of DHCD to include in guidelines under Section 3A because it is inconsistent with the language of the statute, which defines only two requirements for an area to be considered a district of reasonable size: (1) a "minimum gross density of 15 units per acre, subject to any further limitations imposed by [c. 131 §40] and title 5 of the state environmental code"; and (2) located within "0.5 miles of a commuter rail station, subway station, ferry terminal or bus station, if applicable". There is no requirement that the actual density, based on a very involved estimation process, must be a minimum of 15 units per acre. There is also no requirement to make a calculation for development of each parcel in the district. The statute only requires a gross density of 15 units per acre, while actual developments might be less than that density due to limitations imposed by wetlands and Title 5 constraints.

Finally, the Draft Guidelines fail to elucidate the requirement of the statute regarding limitations imposed by G.L. c. 131, §40, and Title 5. The Draft Guidelines simply repeat the language of the statute. The Draft Guidelines should provide clear guidance on the meaning of this provision and how to comply with it.

C. Infrastructure Impacts: The Draft Guidelines do not take into account the lack of infrastructure in many communities to support such significant and concentrated multi-family units. In particular, municipal water and sewer in Medway and other towns have limited capacity; for example, the state sets limits on the amount of water each community can withdraw for its public water supply. The requirement to provide municipal water to 750 potential multi-family units will outstrip the Town's water withdrawal permit. In addition, the Town is part of the Charles River Regional Pollution Control District for its municipal sewage disposal system, and is subject to limitations on its ~~sewer~~ sewage treatment capacity.

Other municipal infrastructure will be impacted, including public ways and stormwater management facilities in the multi-family housing area. Emergency services such as fire, police, and ambulance will all have additional workloads. Groundwater and wetlands located near new developments will potentially be impacted by additional impervious surfaces, construction impacts, and related matters. Although any development will be reviewed for compliance with the Wetlands Protection Act, and other federal, state and local environmental requirements, these

protections are not absolute, and any large developments have impacts on the environment and wildlife habitat.

Medway is also somewhat unique in that most of its undeveloped land is agricultural land devoted to active horticulture and agriculture. Preserving farm land is an important state priority, and sacrificing farm land for multi-family housing that is not near a transit station seems contrary to state policy.

D. Location of Districts: Specific recommendation ~~comment~~: delete Section 8.c.

As noted above, the statute is quite clear as to the requirements for the multi-family housing district. The only requirement as to location is that it be located within "0.5 miles of a commuter rail station, subway station, ferry terminal or bus station, if applicable". For towns like Medway, that are not within .5 miles of any of the above, the statute does not impose any limitations on where the multi-family housing district should be located. This is another example of the DHCD imposing additional requirements beyond what the legislature enacted. The legislation does not grant DHCD license to impose, under the guise of guidelines, its own set of requirements.

E. Advance Review of Zoning Amendments: Specific comment: Allow communities to submit proposed zoning amendments to DHCD for review prior to enactment, similar to the provision on page 10 for informal review during an action plan.

As written, the Draft Guidelines require DHCD to review zoning amendments for compliance with chapter 40A, §3A, but such review is available only after the amendments are enacted. Given the significant effort that preparing such zoning amendments will entail, as well as potential difficulties in obtaining local support from residents at town meeting, it would be beneficial to have an informal review by DHCD prior to the town meeting vote. It would not advance the need for housing for a community to spend the time, money, and effort to draft new zoning, comply with all the requirements of chapter 40A for enactment, obtain a favorable vote, and then be told that the zoning does not comply with the requirements despite the town's best efforts. Prior, informal review would help identify any problem areas before it is too late.

F. Effect of Noncompliance: Specific recommendation ~~comment~~: Delete the last sentence in the Draft Guidelines.

The statement that DHCD may, in its discretion, take noncompliance into account for other discretionary grant awards should be deleted as this statement is inconsistent with the legislation and unduly punitive. The legislature listed three specific grant programs that would be affected by a municipality's inability to comply with the requirements, and limited the scope of DHCD's authority to "guidelines to determine if an MBTA community is in compliance with this section"; there was no grant of authority for DHCD to countermand the legislature's determination as to the penalty for noncompliance by adding more penalties. Leaving it up to DHCD's "discretion" as to whether to deny funding for additional grant programs does not solve the problem. This is even more troubling, because it leaves it up to DHCD's unfettered discretion, with no guidelines for municipalities. The legislature in Section 3A provided MBTA

communities a clear statement as to the consequences for failure to comply, which each community should be able to rely upon when making decisions regarding this mandate and not have to consider the what if prospects of other grant programs being withheld. ~~.~~

G. Unfunded Local Mandate: There is a serious question as to whether G.L. c. 40A, §3A and the Draft Guidelines constitute an unfunded state mandate under G.L. c. 29, §27C. The law and the Draft Guidelines impose direct service and cost obligations on MBTA communities without state legislative appropriation of funding for these costs. The costs of determining "developable land", preparing zoning amendments and zoning map changes, and additional infrastructure costs for water, sewer, stormwater, public way maintenance, and other costs will be significant for many MBTA communities.

H. Determination of Compliance: Specific ~~comment~~ recommendation: Section 9.a, delete subsection iii under "General district information"; subsection v. under "Location of districts"; subsection vii under "Reasonable size metrics". Under Section 10, delete subsection a.

The items listed under Section 9.a should be deleted for the reasons explained above; these subsections require information that is not required by the statute.

Section 10.a should be deleted because there is no provision in the legislation for a "term" of compliance, or that DHCD require a report on production of new housing units within the multi-family district. This last requirement, in fact, is contrary to DHCD's own assertion that the statute does not require any specific production targets.

In summary, the laudable goal of encouraging multi-family housing near public transit has morphed into an ungainly attempt to create vast swaths of multi-family housing districts simply for the sake of creating them, without input from the communities involved or taking into account the significant challenges that this will bring to smaller communities with no MBTA services. We trust that you will consider these comments carefully and would appreciate your earliest response.

Signatures