Chapter 40R:
An Initial Report for the Town of Ipswich

Prepared for the Town of Ipswich Planning and Development Department

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Team Ipswich would like to thank Glenn Gibbs and Kate Day of the Ipswich Planning and Development Department. They came to us with a great project, and we hope this document will be useful for other Chapter 40R endeavors they take on in the future.

We would also like to thank the people we interviewed as part of this research. The community planners and other experts provided excellent insight into the workings of the legislation. Without their valuable knowledge, we would not have been able to put together a thoughtful and comprehensive document.

Lastly, we also want to thank our Field Projects instructors, teaching assistants and classmates for their help in working through our thoughts on this project. We appreciate it immensely.
ABSTRACT

The town of Ipswich, Massachusetts, located on the north shore, has been able to retain much of its historic New England town character even while faced with regional housing and land development pressures. Always striving to build upon its progressive and deliberate local policies, which encourage such preservation, the town’s Planning and Development Department, in cooperation with this Field Projects group, embarked on an exploration of Massachusetts’ newest housing legislation. Specifically, Ipswich wanted to know whether Chapter 40R, the Smart Growth Zoning and Housing Production Statute, could represent a useful tool for adding to and diversifying housing options in their downtown center. Our interviews of town planners and Chapter 40R policy originators, as well as detailed analyses of 11 downtown parcels, allowed us to make initial recommendations for how the town could successfully utilize this new housing statute. Specifically, we propose four properties as being most suited to the dense residential development 40R offers. Additionally, we illustrate that the town could increase their options under the statute by combining several of the evaluated properties, thereby creating a larger overlay zoning district. While we were able to make these recommendations based on thorough knowledge of the statutory requirements and current town experiences with Chapter 40R, our analysis is limited by partial insight into potential social and political barriers as well as an incomplete investigation into site-specific development constraints. Therefore, we conclude our report with further guidance on how Ipswich can proceed to form a 40R district that is consistent with the original intent of the legislation.
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The need for additional affordable housing for all members of the community has led Ipswich to investigate the usefulness of Massachusetts General Law Chapter 40R, the Smart Growth Zoning and Housing Production Act, in creating more affordable housing opportunities. To accomplish increased housing production, the statute calls for the creation of a smart growth overlay district in, as the name implies, smart growth locations with high-density residential developments. Additionally, addressing a common concern of many municipalities when considering high-density residential areas, the Commonwealth enacted Massachusetts General Law Chapter 40S, the Smart Growth School Cost Insurance Supplement, which compensates municipalities for the cost of additional school aged children living in the new smart growth overlay districts. Together, these two statutes create an incentive for communities to zone for so-called smart growth districts that allow high-concentration residential uses while offsetting any additional municipal costs that may occur.

Our team worked in collaboration with the Ipswich Planning and Development Department to assess Chapter 40R’s ability to create more housing opportunities in the downtown core. The town outlined two main objectives that we have addressed within this document:

- Assess Chapter 40R and Chapter 40S to encourage and facilitate the production of affordable housing in the downtown core; and
- Based on this assessment, identify the potential boundaries of a 40R district within the community.

In order to make this assessment, we performed three critical steps to gather information that informed our recommendations. The first step was to conduct a regulatory review where we gained working knowledge of the 40R statute and regulations as well as 40S. Second, we conducted interviews with communities and experts working with 40R. The interviews were an important source of information, as there is very limited literature available on Chapter 40R. Thus, these interviews provided us with critical insight into the 40R process, including the benefits and the criticisms of the statutes. Finally, we conducted site evaluations within Ipswich’s downtown core to determine where and what sites could make up a 40R district.
A key finding of our work is that Ipswich should utilize Chapter 40R in the community in a very different way than many of the communities that we interviewed. However, this fact does not preclude Ipswich from using Chapter 40R to create more housing opportunities within the community. Therefore, we have put forth two recommendations for Ipswich to establish a 40R district. The two recommendations are:

- Create a 40R district that includes specific parcels that are prime for establishing high-density residential uses; and
- Create a 40R district that includes the specific parcels of the first recommendation but also adjacent land areas where the option of utilizing Chapter 40R could be realized in the future.

At the end of this document, we also outlined next steps for Ipswich to take if they determine that Chapter 40R is indeed right for the community. Based on the findings in this report, we conclude that Chapter 40R could be a useful and appropriate tool for Ipswich, and the community should further explore its ability to create affordable housing in the downtown core.
1. **INTRODUCTION**

The vibrant small town of Ipswich, Massachusetts experiences the same development pressures facing other parts of the Commonwealth. It is in this atmosphere that Ipswich strives to maintain its rich, historic character through the proactive implementation of forward-looking and innovative community development plans and policies. Historically, the town “supports a diverse economic base that still includes farming and fishing industries as well as manufacturing, office, and locally-owned businesses” (Ipswich Community Development Plan, 1). While residents, planners, and local policy-makers recognize the need to ensure that Ipswich continues on its current path of deliberative innovative local policies, all agree that “the challenge now is to decide how best to accomplish this—what combination of policies will be most effective, what tradeoffs are necessary, and how the town should prioritize its efforts” (Ipswich CDP, 1). Along with other concerns, housing availability and affordability are on the top of this list, and represent a growing concern for Ipswich.

Although the currently has various tools for housing development and funding, the Ipswich Planning and Development Department wanted to explore the possibility of utilizing one of the newest housing development statutes in the State, Chapter 40R, Smart Growth Zoning and Housing Production Statute of the Massachusetts General Laws. Chapter 40R has been called a *carrot approach* to achieving the 10% housing affordability mandate of Chapter 40B. Passed in March 2005, the Smart Growth Zoning Statute is still being tested and its deficiencies debated. However, its basic stated principles of strengthening and diversifying housing and transportation options while preserving critical open space and encouraging community involvement in development decisions, correspond closely to Ipswich’s own priorities for fostering Smart Growth (M.G.L. c. 40R, § 1). Specifically, section 1.3 of the town’s Community Development Plan outlines some of the main growth objectives. These include:

- Provide a range of housing opportunities for residents of all income levels and abilities.
- Reduce sprawl by limiting excess roadways and by evaluating and controlling the growth impacts associated with sewer extensions.
- Provide a variety of transportation choices.
- Protect the village character and strong “sense of place” of downtown Ipswich, with its...mix of uses, healthy economy, pedestrian-friendly environment, historic resources, multi-modal transportation, and prominent role in community life.
Increase the town’s ability to influence and direct development consistent with these smart growth principles by strengthening the planning and review processes, particularly through the use of incentives. Make development decisions predictable, fair, and cost-effective.

The overlap between these two sets of principles is important to consider given the purpose of this project.

Our task was to research and analyze Massachusetts’ newest housing development legislation to determine if and how it could be applied to Ipswich. Specifically, we focused our investigation of affordable residential development on 11 parcels in the downtown core. Appendix E provides a detailed build-out report of our findings for each of these properties along with a per parcel recommendation of development potential under Chapter 40R. Figure 1-1 shows the zoning districts of the town center. Each of the properties we examined is located in one of three distinct zones: Central Business, General Business, and In-town Residential (refer to Glossary section for detailed definitions). Figure 1-1 provides a clear picture of our area of focus in their downtown.

It is important to note our area of study and its relation to the goals of both Chapter 40R and Ipswich. Through our interviews with town planners, we found that the form of most current 40R projects indicates the usefulness of 40R on large abandoned commercial and industrial sites. However, we also learned that another original intent of the legislation was to provide municipalities with a tool that would enable them to redevelop their downtown areas, reduce sprawl, and diversify their housing options. Given this dual opportunity for development under Chapter 40R, our project’s focus on these small, yet underutilized downtown parcels makes sense. Indeed, through detailed site analyses of these parcels as well as a comparison of Chapter 40R to the town’s currently available housing tools, we are able to present specific recommendations to help guide the town in their future considerations of utilizing Chapter 40R.

1.1 Current State of Housing in Ipswich

In order to further understand Ipswich’s desire to add to their affordable housing stock, it is important to understand current residential opportunities and challenges in the town. Section 3 of Ipswich’s Community Development Plan outlines the characteristics of the town’s current housing stock. Table 1-1 shows the predominance of single-family detached home units in both
Figure 1-1
Ipswich Downtown Area
Zoning Districts
Chapter 40R: An Initial Report

5 Introduction

1990 and 2000. In fact, the percentage of this unit type increased by 12.2% during this 10 year period.

Table 1-1: Types of Units in Ipswich, 1990 and 2000.

<table>
<thead>
<tr>
<th>Type of Units</th>
<th>1990 Units</th>
<th>1990 %</th>
<th>2000 Units</th>
<th>2000 %</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single-family (detached)</td>
<td>3,318</td>
<td>64.3</td>
<td>3,723</td>
<td>66.5</td>
<td>12.2</td>
</tr>
<tr>
<td>Single-family (attached)</td>
<td>166</td>
<td>3.2</td>
<td>315</td>
<td>5.6</td>
<td>89.8</td>
</tr>
<tr>
<td>Two-family units</td>
<td>388</td>
<td>7.5</td>
<td>374</td>
<td>6.7</td>
<td>-3.6</td>
</tr>
<tr>
<td>Three or four units</td>
<td>402</td>
<td>7.8</td>
<td>409</td>
<td>7.3</td>
<td>1.7</td>
</tr>
<tr>
<td>Five to nine units</td>
<td>340</td>
<td>6.6</td>
<td>316</td>
<td>5.6</td>
<td>-7.1</td>
</tr>
<tr>
<td>Ten to nineteen units</td>
<td>142</td>
<td>2.8</td>
<td>143</td>
<td>2.6</td>
<td>0.7</td>
</tr>
<tr>
<td>Twenty or more units</td>
<td>326</td>
<td>6.3</td>
<td>303</td>
<td>5.4</td>
<td>-7.1</td>
</tr>
<tr>
<td>Mobile Home*</td>
<td>13</td>
<td>0.3</td>
<td>18</td>
<td>0.3</td>
<td>38.5</td>
</tr>
<tr>
<td>Other</td>
<td>67</td>
<td>1.3</td>
<td>--</td>
<td>0.0</td>
<td>-100.0</td>
</tr>
<tr>
<td><strong>Total Units</strong></td>
<td><strong>5,162</strong></td>
<td><strong>100.0</strong></td>
<td><strong>5,601</strong></td>
<td><strong>100.0</strong></td>
<td><strong>8.5</strong></td>
</tr>
</tbody>
</table>

Source: Ipswich Community Development Plan, 67.

Additionally, the town’s Community Development Plan describes a problem in that “the 2001 median single-family home price in Ipswich—$325,000—was $106,665 (49%) more than what the median Ipswich household could afford” (88). Therefore, residents who have not purchased homes in town yet must look elsewhere for more affordable ownership options. Data like these, combined with rising home prices and foreclosure rates throughout the state, support the need to reach the town’s goals of maintaining the diversity of its economic base as well as expanding the availability of different housing types. Specifically, Ipswich is concerned with providing viable housing investment opportunities for local government employees and residents working in lower-paying service and retail jobs in the downtown. In order to address its current planning and housing development challenges, it is necessary for Ipswich to continue to develop new policies focused on fostering affordable housing development. Indeed, this is the path Ipswich is following, both in their own practice of developing forward-thinking planning and zoning policies, and in their pursuit of new housing policies at the state level.
1.2 Ipswich’s Smart Growth and Affordable Housing Goals

The town’s 2003 Community Development Plan lays out its smart growth principles and outlines their purpose in guiding development throughout Ipswich. Faced with the above mentioned challenges related to rapidly increasing land and housing costs as well as recent trends of sprawling development, Ipswich drafted four innovative housing policies directed not only at increasing housing opportunities to residents of various incomes, but also to give the town the ability to guide new housing development in ways that reduce sprawl. Much of the town center and all of the downtown, where our housing analysis is focused allows for a broad mix of building types and encourages more mixed-use and multi-family buildings through special permit. The Central Business and General Business zones within the downtown core are vital components design to help accomplish Ipswich’s goal of encouraging “a compact, vibrant, and aesthetically appealing mixed-use center” in the downtown area (Community Development Plan, 7). Although residential uses are allowed in these zones only by special permit, the densities come out to be roughly equal to those mandated under Chapter 40R. As will be described more in the technical section of 40R regulations, the statute requires 20 multi-family units per acre, while the Ipswich Bylaw, by special permit, currently allows the development of mixed-use residential units at a density of approximately 21 units per acre maximum (Affordable Housing Planned Production Plan, 2006). In thinking about how Ipswich could utilize Chapter 40R to expand affordable housing opportunities, it is important to understand these details about the town’s current goals as well as its forward-thinking policies.

The town’s four housing policies are written to help them realize their smart growth principles by promoting the goals of:

- developing both ownership and rental units in the downtown and in areas with existing infrastructure,
- expanding the areas throughout town where multi-family residential housing is allowed by special permit,
- ensuring environmental and aesthetic compatibility with the town’s existing landscape,
- and increasing the availability of affordable housing in town (CDP, 8).

Throughout our analysis in this report, we refer back to these goals in order to guide our determination of how best Ipswich should proceed with affordable housing development in their downtown.
1.3 The Focus of this Project

While the main focus of our investigation for Ipswich was to determine the benefits the town would gain through applying for the Massachusetts Smart Growth Housing Statute, we also delve more deeply into an analysis of the best approach for Ipswich to increase the mix of housing opportunities in their downtown core. In the following chapter, we do this through a comparison of the benefits, costs, and regulations of various affordable housing tools available to the town. Additionally, throughout our analysis, we refer to experiences other towns and cities have had thus far utilizing Chapter 40R. We will relate these to our knowledge of Ipswich’s housing and development goals as well as current barriers to developing affordable housing in the town center. Finally, we will make preliminary recommendations for the town and suggest several further avenues that the Planning and Development Department may pursue in order to reach the 10% affordability requirement of Chapter 40B.
2. **HOW DOES 40R MEASURE UP?**

2.1 **A Statewide Picture of Affordable Housing Tools**

In order to assess whether 40R is the appropriate tool for Ipswich to use to meet its affordable housing goals, it is important to examine existing state and local tools already available, and compare the benefits. Due to the variety of affordable housing needs throughout the Commonwealth, a successful tool needs to be adaptable to differing market conditions, residential patterns, and regulations. The most commonly used of these controls have been the Comprehensive Permit, Chapter 40B, and Inclusionary Zoning under Chapter 40A. Chapter 40B is a state statute that was enacted in 1969 to help address the shortage of affordable housing by reducing barriers created by local zoning and approval processes. Through this statute, the state mandated that all communities provide a minimum of ten percent of their housing inventory as affordable. The Department of Housing and Community Development reassesses the affordable unit counts on an annual basis. “While 48 communities have reached this goal, the remaining 303 communities throughout the Commonwealth still fall short. (CHAPA, 2007)

Inclusionary Zoning bylaws often require a minimum percentage of affordable housing in new developments, have mandatory requirements or development incentives, such as density bonuses, and offer a payment in lieu of creating the affordable units. As municipal bylaws vary in language, the Inclusionary Zoning provisions enumerated in them also can vary. Depending on the language of the Inclusionary provisions, Inclusionary Zoning has the potential to be an effective tool to ensure the inclusion of adequate affordable housing in the normal course of real estate development. A simplified explanation of the main benefits, costs, and regulations of Chapters 40A and 40B as well as the newer Chapter 40R can be found in Appendix B.

2.2 **How Has Ipswich Developed Affordable Housing?**

Ipswich’s goal to increase the availability of affordable housing in town dictates that the town should take certain actions to move towards 10% affordability. These actions include “strengthening the town’s Inclusionary housing requirements, providing municipal funding and land for affordable housing, providing support to local housing organizations, and conducting outreach to qualified candidates regarding the various housing programs available” (CDP, 8). Before explaining the tools in place to achieve affordable housing, it is important to first identify
the existing zoning districts in which housing is allowed in the town center and downtown core. These districts include the In-town Residence (IR) and the town’s two commercial districts, the General Business (GB) district and the Central Business (CB) district (Ipswich Affordable Housing Plan, 2006).

### Table 2-1: Downtown Zoning Districts

<table>
<thead>
<tr>
<th>District</th>
<th>Provisions</th>
<th>Use allowed by</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>In-town Residence</strong> (IR)</td>
<td>Allows a combination of single-family and two family houses. Multi-family housing and small businesses are also allowed</td>
<td>Special permit for multi-family uses; one and two family houses by-right.</td>
</tr>
<tr>
<td><strong>Central Business</strong> (CB)</td>
<td>Intended for a composite of uses comprising the town’s core, including business and retail uses, multi-family residential uses, and office and institutional uses. Multi-family housing is allowed.</td>
<td>Special permit required for multi-family uses; most commercial uses allowed by-right, with site plan review.</td>
</tr>
<tr>
<td><strong>General Business</strong> (GB)</td>
<td>Intended for retail, trade, service, and other commercial uses with some compatible light industrial uses, but some multi-family residential uses may be permitted. Multi-family and mixed-use developments are allowed.</td>
<td>Special permit required for multi-family uses; most commercial uses allowed by-right, with site plan review.</td>
</tr>
</tbody>
</table>

The zoning provisions shown in Table 2-1, allow for a mix of commercial and residential uses within the core of the downtown. It should also be noted that the creation of these mixed-use districts in the downtown is consistent with the states smart growth principles of compact development, mixed land uses and the provision of a range of housing opportunities and choices (Massachusetts Smart Growth Principles, 1). As seen in the 2006 and 2007 Smart Growth Technical Assistance Grant Awards, many communities are now looking to mixed-use development as a potential way to enliven their downtown areas, in similar fashion to what Ipswich has already begun doing.

As stated before, the densities allowed in these downtown zoning districts come out to be roughly equal to those required under Chapter 40R; however, in order to actually create high-density mixed-use and multi-family buildings, special permits issued by the Planning Board are required (Table 2-1). The requirement of a special permit means that residential development
has to go through an extra step before town approval. This can make building projects more difficult for developers. By contrast, after a town passes a smart growth district under Chapter 40R, residential units are zoned for and allowed without further town approval. Despite the requirement of a special permit, Ipswich’s residential zoning in the town center creates realistic tools that help it face the affordable housing challenges experienced throughout the Commonwealth.

In recent years, Ipswich has taken measures to add to the affordable housing stock in the community. Through these actions, along with the creation of 40B developments, Ipswich has been successful in creating new affordable housing within their community. With 8.2% of the town’s housing stock affordable, the town is still short of reaching the mandated 10% goal. In order to reach this goal, Ipswich must create 143 additional units of affordable housing by 2008 (Ipswich Affordable Housing Plan, 3).

According to the Ipswich Planning Department, the two most successful tools in creating affordable housing have been Chapter 40B and the town’s Inclusionary Zoning Bylaw. These tools have resulted in five Comprehensive Permit, Chapter 40B, applications since 2000 (Ipswich Affordable Housing Plan, 4) and five units under the Inclusionary Housing Bylaw. In addition to the Inclusionary Bylaw, Ipswich has local affordable housing organizations and programs that foster the diversification of the town’s housing stock. Some local non-profits that the town has worked with in the past include, Cape Ann Habitat for Humanity and the North Shore Housing Trust (NSHT). Ipswich partnered with NSHT to build ten units of elderly affordable rental housing in an unused school building. Another resource for developing affordable housing is the North Shore HOME Consortium. Funded by the federal government, “the HOME program can be used for rental housing production and rehabilitation; first-time homebuyer assistance…and tenant-based rental assistance” among other things (CDP, 92).

Finally, the town’s Housing Partnership plays an important role in the planning and building of more affordable housing in town. Revived in 2002, the Partnership receives staff support from the Planning Department, and operates with the goal of continuing “the town’s activity of subsidizing property owners to lower rents for income-eligible households” (CDP, 93). The Partnership also aims to use funds from the town’s Affordable Housing Trust Fund (funded by developer payments under the Inclusionary Housing Bylaw) to “preserve the affordability of existing rental units through the acquisition of additional price restrictions”
(CDP, 93). Overall, while Ipswich already has these useful tools, there is still a need for a higher level of affordability; therefore, the town continues to explore all available opportunities.

In addition to the above, Ipswich developed an Inclusionary Bylaw with the intent to increase the supply of permanent affordable housing and to encourage a greater diversity of housing accommodations to meet the needs of families and other Ipswich residents. The Inclusionary Housing provisions are similar to those previously mentioned and are applicable to many of the potential housing developments across the town’s zoning districts.\footnote{1}

Specifically, the Ipswich Inclusionary Bylaw provisions require a minimum percentage of units be set aside as affordable, 10% for developments with ten or more units, offers the ability to pay in lieu of creating the units for smaller projects, and provides for the ability to locate the affordable unit off-site. The Bylaw requires the units be dispersed evenly throughout the project and be virtually indistinguishable from the market rate units. In addition, the units created under this Bylaw are subject to long-term use restrictions to ensure that they remain affordable to low- and moderate-income households for the longest period allowed by law. The Planning Board, at its discretion, may reduce the required percentage of affordable housing units to five percent if the developer restricts affordable units to a person or household at or below 50 percent of the Median Regional Household Income. Likewise, the Planning Board may increase the required percentage of affordable housing units from ten percent to not more than 15 percent if they determine that subsidies are available to defray the cost to the applicant of providing any affordable units in excess of 10 percent.

\footnote{1 Applicability: The requirements of this subsection I. apply to: a. Any multi-family residential development subject to approval by special permit; and b. Any proposed residential development in the RRA, RRB, and RRC Districts that would create two or more single-family detached or attached dwellings for which compliance with this subsection I. is required in the Table of Dimensional and Density Regulations (Section VI.). Developments that create only one single-family detached or attached dwelling are exempt from the provisions of subsection I. so that the minimum lot sizes of the new lot and the remaining parcel are 43,560 square feet each, or for large lot exceptions, three acres, provided that a suitable restriction is recorded at the Essex South Registry of Deeds prohibiting the creation of additional units on the property. Inclusionary Housing options, Town of Ipswich Protective Zoning Bylaw, 75.}
Table 2-2: Summary of Zoning Provisions Encouraging Affordable Housing

**Development Source:** Ipswich Zoning Bylaw updated October 2004; amended 2006. Definitions are included in the glossary.

<table>
<thead>
<tr>
<th>Purpose</th>
<th>Bylaw</th>
<th>Adopted/Amended</th>
<th>Housing Policy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Infill development</td>
<td>Section VI, Table of Dimensional and Density Regulations, Footnote 28</td>
<td>2003</td>
<td>H1-1</td>
</tr>
<tr>
<td>Adaptive Reuse of accessory buildings</td>
<td>Section V, Table of Use Regulations, Footnote 23</td>
<td>2001</td>
<td>H1-3</td>
</tr>
<tr>
<td>Density bonus for public benefit</td>
<td>Section VI, Table of Dimensional and Density Regulations, Footnote 11</td>
<td>2003</td>
<td></td>
</tr>
<tr>
<td>Inclusion of affordable units</td>
<td>Section IX, Section I</td>
<td>adopted 1997; amended 2001</td>
<td>H4-1</td>
</tr>
<tr>
<td>Accessory apartments</td>
<td>Section IX, Section J</td>
<td>adopted 1999; amended in 2003</td>
<td>H4-2</td>
</tr>
</tbody>
</table>

Along with Inclusionary Zoning, Ipswich has adopted a series of zoning provisions to achieve affordable housing in the normal course of development, several of which are shown in Table 2-2. These provisions include the great estates zoning bylaw, accessory buildings bylaw, infill housing zoning provision, accessory apartment bylaw and approval of various mixed-use zoning in and around the town center. As can be seen in the table, these tools are relatively new although the development community has already utilized them. The largest new multi-family project, Turner Hill, includes 182 housing units, permitted under the Great Estate Preservation Development (GEPD) bylaw. Turner Hill includes 10% affordable units, the majority of which will be located off-site as part of the Powderhouse Village (YMCA) project. Infill or adaptive reuse projects with a housing component have been proposed or constructed in several downtown locations, including Depot Square, Hammatt Street, Central Street, Green Street, Market Street, and Brownville Avenue. Because of these initiatives, 54 new units have been created, 22 of which are affordable (Ipswich Affordable Housing Plan, 18).

There are benefits to all of these tools depending on the specific goals of a community. Although some of these tools have been successful, Ipswich currently has only a little over eight percent affordable housing that counts towards the DHCD mandate. In all of the provisions within Ipswich’s Protective Zoning Bylaw, multi-family housing is by special permit. In
addition, many of the existing affordable units in Ipswich have been developed using a comprehensive permit under Chapter 40B. This has produced housing, but not always in the areas identified by the town as most appropriate for housing development. The introduction of the accessory units provisions and Footnote 11 as shown in Table 2-2, are valuable tools, although according to the Ipswich Planning Department, developers, for the most part, have not been able to make the bottom line work for affordable housing in the downtown due to the small size and limited availability of parcels. The most important aspect of the mechanisms under local zoning, such as the Inclusionary Bylaw and Footnote 11, is that they are completely under the control of the municipality. Like Inclusionary Zoning, 40R projects can go through the traditional project approval processes, allowing for mitigation discussions. 40R seems to have the potential to fill the gap between these extremes – between local control and no control – offered by Inclusionary Zoning and the Comprehensive Permit.

2.3 Chapter 40R Enters the Affordable Housing Development Scene

Given the existence of Massachusetts’ housing statutes Chapter 40A and 40B along with the other tools described above, one might wonder: why is this new smart growth housing legislation even necessary? According to Don Schmidt of the Department of Housing and Community Development, 40B’s mandate for towns to develop affordable housing serves as the main driving force behind current projects under the Smart Growth statute. He sees the 10% affordability requirement of the Comprehensive Permit legislation as “bringing communities to the table for 40R projects” (Schmidt, Don, 2007). However, what is the real a need for this new legislation, and will it be worth the time and money for Ipswich to pursue affordable housing using this new 40R approach?

The originators of the statute, including Barry Bluestone, Director of the Center for Urban and Regional Policy and one of the main authors of the legislation, answered this question succinctly by pointing out that Chapter 40R offers something new when compared to the state’s other affordable housing tools in that it “aligns the economic development interests and housing needs of the Commonwealth with the fiscal needs and local concerns of individual municipalities” (Carmen et al., 2003). Indeed, while many state and local traditional housing development tools suffer from the drawbacks described previously, Chapter 40R promises to
overcome many of these. In this section of our report, we describe the insights into the 40R process that we gained from some of the originators and main implementers of the new statute.

2.4 **Is there a need for 40R?**

As stated in Section 1 of the statute, part of the purpose behind the new legislation is to make “development decisions predictable, fair and cost effective” (M.G.L. c. 40R, § 1). This predictability can be difficult to achieve through the use of the Commonwealth’s traditional housing tools. Indeed, a common impediment to housing development under special permit “is the uncertainty of costs associated with the permitting process” and with abutter or competitor appeals (Scott and Hartmann, 2007). These costs can pose an even greater challenge to projects with affordability components (and thus lower margins). In their recent article in Commonwealth Newsletter, Scott and Hartmann further describe the fact that “this uncertainty can be insurmountable, leading most developers to place the surer bet of a less-dense development with higher-profit-margin houses” (2007). In contrast, Lee Hartman, Director of Planning and Development for the town of Plymouth, describes that, in his experience with 40R both “the cost and uncertainty of proceeding with a project are significantly reduced” (2007). Compared to the often-lengthy special permit process that towns require in order to build similarly high densities as required under Chapter 40R, certain elements of the new statute increase its affordability and ease the process from application to approval.

These elements include the fact that there is a specified period for the multiple application approval steps (outlined in the following chapter) as well as a demanding appeals process. The fact that would-be challengers to a smart growth district “must allege specific facts of how they are aggrieved by the approval and must post a bond sufficient to cover twice the sum of both the annual carrying costs of the property owner or applicant and the defendant’s attorney fees,” make the prospect of a lengthy appeal unlikely (Scott and Hartmann, 2007). As the state’s Smart Growth Statute is still so new, questions have arisen concerning the legality of this financially intensive appeal process; however, currently this regulation is seen as adding to the predictability of development projects under the statute. Another important factor about 40R that Scott and Hartmann point out as being different from more common housing development tools is the “distinctly different dynamic than that of a special-permit proceeding” (2007). As opposed to the process under Chapter 40A, where the authors describe the common presence of “three
opposing agendas at play — the developer, the municipality, and opponents of the project,” 40R allows for the formation of more collaborative partnerships to form. Indeed, Don Schmidt expressed that he sees landowners and developers wanting to build partnerships with the community, and the Chapter 40R process eases the way for this type of cooperation. The fact that the state’s newest statute better allows for this more constructive sharing of interests is expected to result in fewer projects being held up in litigation, and therefore, a greater amount of predictability for all parties and community control.

While the predictability and cost effectiveness experienced so far with Chapter 40R projects appeals to town planners and developers alike, these aspects of the legislation specifically align with several of Ipswich’s main housing goals. Generally stated, these include the town’s objectives to encourage the development of affordable housing and to “pro-actively guide growth…while maintaining the town’s pastoral character” (Milder et al., 2003). Specifically, the ability of communities to draft and include specific design guidelines in their Smart Growth zoning bylaw ensures the predictable development and design of projects in the 40R district.

To again contrast this new legislation with more traditional affordable housing tools, it is important to note that housing development under Massachusetts’ Comprehensive Permit Law, although not always the case, can severely limit a community’s ability “to impose reasonable restrictions on…development regarding height, bulk…or other traditional health, safety and/or aesthetic concerns” (Witten, 2002). In addition, towns are limited by the “uneconomic” provision within the 40B statute. This limits their ability to require developers to mitigate impacts resulting from their projects such as increased traffic on roads, fiscal stress to schools, and increased utility usage. During the approval process, the Board of Appeals can impose certain conditions on the projects; however, if these conditions render the project “uneconomic” or if the project is denied, the developer may appeal to the Housing Appeals Committee (HAC). As Jon Witten notes, the HAC repeatedly upholds and strengthens the 40B statute, in many

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2 Chapter 40B: Section 20. Definitions “Uneconomic”, any condition brought about by any single factor or combination of factors to the extent that it makes it impossible for a public agency or nonprofit organization to proceed in building or operating low or moderate income housing without financial loss, or for a limited dividend organization to proceed and still realize a reasonable return in building or operating such housing within the limitations set by the subsidizing agency of government on the size or character of the development or on the amount or nature of the subsidy or on the tenants, rentals and income permissible, and without substantially changing the rent levels and units sizes proposed by the public, nonprofit or limited dividend organizations.
cases, leaving little opportunity for towns to dictate the terms of housing development (2002). While the exact level of control that towns can exercise under Chapter 40B is debated, one of the main strengths of the new Smart Growth Statute is its clear directive for towns to design and guide new development. Specifically, Kathleen O’Donnell pointed out the fact that design guidelines under Chapter 40R go so far as to provide towns with the ability to direct the exact types of material out of which buildings are constructed. Given this heightened level of municipal control, reinforced in each of the interviews we conducted, it is clear that development under Chapter 40R takes away many of the possible limits that communities contend with under Chapter 40B.

Since one of the main questions our team is attempting to answer through this investigation is whether Chapter 40R the right tool for Ipswich; it was important for us to examine and compare how, if at all, the regulations of the statute could help the town to achieve its housing goals. Prior to doing this, however, we wanted to be able to clearly represent the state’s new statute to our client; therefore, it was necessary for us to gain a better understanding of the actual process that towns go through when considering and applying for 40R, as well as other major considerations Ipswich would have to take into account before proceeding with the application process.

2.5 Application Process

One of the most important aspects to understand of any housing development regulation is the application process. Don Schmidt, the main administrator of Chapter 40R at the Department of Housing and Community Development (DHCD), described each step that towns complete on their way to developing a 40R overlay district. The first, and most important, factor in the 40R process is the identification of an eligible location. This location must comply with any one or combination of the standards set forth in the statute’s regulations. Briefly, these include areas near mass transit or areas where development and infrastructure already exist. The significance of these requirements is that the new development is planned in a location that will minimize the negative impacts of sprawl. What is important to note in this initial stage of the process is that the Don Schmidt encourages municipal representatives to schedule a meeting with the DHCD in order to work collaboratively on the designation of an eligible location. Additionally, cities and towns, prior to the official eligible location designation, hold a
preliminary public hearing at which town members comment on the provisions of the Smart Growth statute. Schmidt stressed that while the legal description of the process is written with one application procedure following the next, the actual process towns experience is fluid and flexible (2007).

Once the location for the proposed 40R district is decided upon, the town must create two plans that determine the bonus incentive payment. These are the existing zoned units plan and the smart growth residential density plan. The existing zoned units plan calculates the number of residential units that can be built as-of-right under the current zoning, while the smart growth plan identifies the number of residential units that can be built in accordance with the Smart Growth Zoning requirements. The creation of these plans and the determination of the difference in allowable residential units between the two plans is the driving factor for the monetary incentive under the new legislation. Schmidt explained that one way a town would decide if 40R is a useful tool is based on whether or not residential development is allowed as-of-right under the existing zoning. In the case that it is allowed, he described that development under 40R would not result in a large monetary incentive and a town may conclude that the allowances under 40R do not, alone, offer enough reason to apply. This is an important point to consider as we analyze the applicability of 40R to Ipswich, since as-of-right housing is not allowed under their existing downtown zoning.

While the requirements of Ipswich’s existing zoning indicate that rezoning under Chapter 40R would streamline the process for residential development in the downtown (by allowing it as-of-right) as well as provide at least some monetary incentive, there are additional considerations in order to determine whether the statute is right for Ipswich. Don explained that at least 50% of the work involved in the 40R application process stems from creating the zoning and design plan review. In addition to comprising a significant amount of time, this part of the application process, in combination with the two plans mentioned above, also requires a considerable monetary investment.

2.6 Financial Considerations

Through our research, we also attempted to gain an understanding of the financial commitment Ipswich could face in their application for 40R. We got several answers from our key interview contacts providing us with insight into the costs required in the application
Kathleen O’Donnell explained that fees incurred during the project depend in large part on the complexity of the project. This complexity is dictated by numerous conditions, including the difficulty in assembling the materials required for the application, the amount of time that goes into meeting with town groups to conduct public hearings and develop design standards, and the meetings with DHCD to get the approval. Further, she described that out of the projects that have been approved so far; the application process for a midsize project (defined as roughly 250 residential units) could range in cost from $30,000 to $35,000. As projects get more complicated based on size and impact assessment work, the legal fees alone can be in the range of $25,000 and the consultant fees, $50,000. Another consultant we spoke with, as well as Dartmouth’s Planning Director, gave similar numbers for cost.

The above numbers bring up an important point, which is the need for many towns to hire a team of people to work on the 40R process. Given the work and time involved, it is difficult, if not impossible, for town planning offices of two and three staff to undertake this work on their own. With these costs in mind, there are two main options that towns have pursued thus far. The first of these is through applying for funds from the state’s Priority Development Fund (PDF) grant. Money from this fund are awarded from MASS Housing in amounts of up to $50,000 on a first come first served basis. The second important way that towns have defrayed the costs associated with 40R is in situations where the developer covers the majority of the costs. Don Schmidt explained that while this relationship between the town and developer is vital to managing the pressure of the funds required for the 40R process, it is also important to have the state money. Financial aid in the form of a PDF grant is particularly important in cases like Brockton’s where the town pursued an overlay district zoning without first establishing a formal relationship with a developer.

As adequate state funding is often viewed as questionable, Schmidt also relayed the importance he sees in ensuring the availability of funds for pursuing 40R. Along the same lines, land use attorney Mark Bobrowski believes there needs to be increased funding for the process. He commented that most towns that he has counseled through the 40R application would not have been able to complete it without a PDF. While the future of this funding source remains unknown, Bobrowski speculated that the election of the new senate president might bring a line item funding bill for the statutes.
Although these financial considerations are large, we do not think they should be a
deterrent for Ipswich in their consideration of Smart Growth Zoning. We were not able to
counter a thorough analysis of either the budget availability in town or the various costs Ipswich
may face in the way of impact assessments or other expenses. However, we do go so far as to
suggest future steps for the town to pursue in order to think more critically about how they can
accomplish 40R financially.

2.7 Role of DHCD

We were also interested in determining the level of input the DHCD has on the
application and specifically the drafting of design standards. We wanted to know, to what
extent, if at all, could the state limit municipalities’ power over Chapter 40R developments?
When responding to this question, Don Schmidt stressed the fact that the state wants to work
with towns to accomplish the overlay districts and more importantly, to expand affordable
housing. While the DHCD provides the final “okay” for municipally drafted design standards,
Schmidt explained that these are rarely overturned. Kathleen O’Donnell made the same point
when she told us that in her experience, the department has only rejected design standards for
being too vague or unclear. Further, she commented that design standards might be rejected if
the Authority deems that they would make development unnecessarily difficult. Given these
responses from the people most involved in the administration of Chapter 40R, towns
considering 40R should be confident in their ability to dictate such aspects of development as
setbacks, building materials, and access to and placement of alleyways. Additionally, in the case
that the DHCD requires a town to revise its design standards, this does not halt the town’s 40R
application; rather, Don Schmidt explained the DHCD would work with local planning officials
as necessary to rework design guidelines.

In addition to the above role played by the Department of Housing and Community
Development, the authority retains supervision of communities’ 40R districts after design review
and application approval. The first way this oversight is exercised is through the statutory
regulation that a municipality must commence construction in the 40R district within three years
of receiving the Letter of Approval (760 CMR 59.07(1)). This timeframe is not quite as
restrictive as it may seem since it only applies to communities once they accept the zoning
incentive payment from the state. Additionally, in the case where a community does accept the
payment and is bound by the construction timeframe, the DHCD allows for infrastructure enhancements undertaken by the town to count as the “start of construction” (O’Donnell, interview, 3/14/07). Secondly, after a community has approved, adopted, and constructed a 40R development, it is responsible for submitting annual updates to the DHCD. The purpose of these updates is to ensure that the planned or developed 40R district continues to comply with the statute’s regulations.

2.8 Ipswich in Comparison with Current 40R Projects

A final issue we had to address in our determination of the applicability of the State’s Smart Growth Statute to Ipswich was the fact that the projects that could be developed on the parcels we were looking at differ significantly from the municipal 40R applications currently approved by the state. Indeed, as we learned through the town interviews we conducted, the majority of the projects currently approved for development under 40R are large commercial or industrial sites. However, as is clearly illustrated in our site analyses, the average acreage of the properties that Ipswich is looking to develop is only 0.65 acres. Along the same lines, seven of the eight towns we interviewed with current 40R projects have been rezoned to create hundreds of new housing units and result in incentive payments for the towns of over $500,000. In contrast, the average number of units per site that Ipswich can create on their downtown parcels is 13 resulting in density incentive payments of around $60,000. Initial examination of these differences signaled to us that Ipswich might not be a good candidate to make use of the state’s new affordable housing legislation. However, quite the contrary to this, both originators of the policy (Angus Jennings and Kathleen O’Donnell) as well a consultant to many projects (Mark Bobrowski) encouraged Ipswich’s interest in Chapter 40R. Indeed, they each remarked that an original intent of the legislation was that it would be used by municipalities to enliven and reinvigorate their downtowns in ways consistent with compact smart growth development.
3. **40R: NUTS AND BOLTS**

Massachusetts has been experiencing a significant shortage in affordable housing, particularly for low- to moderate-income families. Restrictive zoning complicates the problem of unaffordable home prices. In many built up and urban areas, there is little developable land available to construct moderately sized homes on small lots. Therefore, new residential development is generally forced to locate on the outskirts of communities where the zoning allows for large homes on large parcels of land and drives up the cost of homes. The restrictive zoning does not allow for the construction of single-family homes on small lots and the construction of apartments.

In response to this, the Smart Growth Zoning and Housing Production Statute was created to provide cities and towns with a new tool that would enable them to work around existing, restrictive zoning and allow for the creation of additional affordable housing within their communities. At the same time, the creators acknowledged the most commonly cited reason that communities have for opposing the production of modestly priced housing: the fear of rising school costs. They addressed this concern by including a provision that municipalities would be compensated for additional costs incurred by educating children who move into the new housing creating under the statute. This was originally proposed as part of Chapter 40R Smart Growth Zoning and Housing Production legislation but was approved separately as Chapter 40S Smart Growth School Cost Reimbursement. Table 3-1 provides a brief overview of the history, timeline, and people involved in creating 40R and 40S.
Table 3-1: Chapter 40R/40S Timeline

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>January 2003</td>
<td>Ted Carmen presents white paper outlining Massachusetts's housing supply problem and proposes a change in legislation to address the situation.</td>
</tr>
<tr>
<td>Ted Carmen, The Commonwealth Housing Task Force (CHTF), Eleanor White of Housing Partners, Inc., and Barry Bluestone with the Center for Urban and Regional Policy of Northeastern University work to expand the original white paper.</td>
<td></td>
</tr>
<tr>
<td>January-March 2004</td>
<td>Lawrence DiCara, a partner at the law firm Nixon Peabody, leads the Legislative Advisory Committee through a review of the report and drafting of the proposed legislation.</td>
</tr>
<tr>
<td>June 2004</td>
<td>Former Governor Mitt Romney approves and signs the provisions of Chapter 40R Smart Growth Zoning and Housing Production Statute into the Fiscal Year 2005 Budget. At this time, however, the provisions currently known as 40S are dropped.</td>
</tr>
<tr>
<td>March 2005</td>
<td>The final regulations for 40R are released.</td>
</tr>
<tr>
<td>May 2005</td>
<td>An additional report by Ted Carmen, CHTF, Eleanor White, and Barry Bluestone, Chapter 40R School Cost Analysis and Proposed Smart Growth School Cost Insurance Supplement, is published.</td>
</tr>
<tr>
<td>November 2005</td>
<td>Chapter 40S The School Cost Insurance Supplement is signed into legislation</td>
</tr>
<tr>
<td>May 2006</td>
<td>Norwood, North Reading, and Plymouth are the first towns to approve 40R districts.</td>
</tr>
<tr>
<td>March 2007</td>
<td>To-date, ten 40R district have been approved. See Figure 1, pg. 42</td>
</tr>
</tbody>
</table>

Chapter 40R was established to increase housing production in Massachusetts and at the same time, encourage the use of smart growth principles. The following section explains the statute regulations by defining its key provisions: smart growth, eligible locations, density and zoning requirements, 20% affordable requirement, and bylaw and design standards.
3.1 Smart Growth

One of the key points of Chapter 40R is the encouragement of Smart Growth planning principals. Smart growth is defined in the statute as:

The principle of land development that increases the availability of affordable housing by creating a range of housing opportunities in neighborhoods; emphasizes mixing land uses; takes advantage of compact design; fosters distinctive and attractive communities; preserves open space, farmland, natural beauty and critical environmental areas; strengthens existing communities; provides a variety of transportation choices; makes development decisions predictable, far and cost effective; and, encourage community and stakeholder collaboration in development decisions. (760 Code of Massachusetts Regulations 59.01)

The definition of smart growth within the 40R statute promotes high-density housing production within areas that can support increased development, such as downtowns and other transit-oriented locations. By focusing 40R districts in developed locations, the statute safeguards environmentally sensitive areas and prevents out-of-character high-density development within rural locations. Further, by requiring that development within 40R districts follow smart growth principles, the statute is also able to prevent restrictive zoning and reduce sprawl.

3.2 Eligible Locations

The location of a Smart Growth Zoning Overlay District must be in accordance with the smart growth parameters defined above and meet at least one of the following criteria:

- Areas near transit stations, including rapid transit, commuter rail and bus and ferry terminals;
- Areas of concentrated development, including town and city centers, historic town center, other existing commercial districts in cities and towns, and existing rural village districts; or,
- Areas that by virtue of their infrastructure, transportation access, existing underutilized facilities, and/or location make highly suitable locations for residential or mixed-use smart growth zoning districts (760 CMR 59.02).

Proposed districts cannot exceed 15% of the total land area within a municipality. In certain cases, the DHCD will allow a district larger than 15%; however, the municipality must demonstrate to the DHCD the following:
• The larger district is consistent with the municipality’s Comprehensive Housing Plan;
• The larger district will help meet anticipated regional demand for housing; and,
• The larger district is consistent with smart growth goals as defined in the previous section (760 CMR 59.04(2)).

Additionally, if a municipality creates more than one overlay district, the total land area of all districts cannot exceed 25% of the municipality’s total land area. The DHCD will not waive the 25% restriction.

### 3.3 Density and Zoning Requirements

Chapter 40R requires certain minimum densities within overlay districts. The minimum densities include:

• 20 units per acre for multi-family housing;
• 8 units per acre for single-family homes; and,
• 12 units per acre for 2 and 3 family buildings.

The residential density must be allowed as-of-right, thereby achieving the second goal of the statute of increased housing production. Sub-districts can be used to zone particular areas of an overlay district for different residential uses or other uses as long as each sub-district also meets the density requirements.

Municipalities with less than 10,000 people can apply for a hardship waiver of the minimum densities. The DHCD will lower the densities if the municipality can prove that the density would either:

• “Be inconsistent with the existing physical environment of the community;
• Create significant risks for water pollution due to poor soils, or create other health and safety risks; or
• Cannot feasibly be served by a piped water supply system” (760 CMR 59.04(3)).

The hardship waiver is particularly important as it provides small communities the ability to still utilize Chapter 40R but at a level that is consistent with the existing community.

### 3.4 Affordability Requirement

Proposed housing for a 40R district must be compliant with federal, state and local fair housing laws, and must provide for a mix of people including families, individuals, and persons with special needs or the elderly. It must also be available for a mix of income levels. The affordability component is aimed at combating the lack of affordable housing throughout the Commonwealth.
Chapter 40R requires a minimum of 20% of all housing units in a district be “affordable to those earning less than 80% of the median income of the municipality, and subject to an affordability restriction lasting for at least 30 years” (760 CMR 59.02). Units created within a district meeting the affordable housing standards set out in 760 CMR 45.03 shall count as affordable units on the Subsidized Housing Inventory in accordance with the rules established by the DHCD. Further, if a project within a district is rental only and contains 25% affordable housing, the DHCD will count all units within the project toward the Subsidized Housing Inventory (Schmidt, interview, 4/10/07).

3.5 Bylaw and Design Standards

The municipality must create an overlay zoning bylaw and optional design standards that will govern the future development allowed within the 40R district. The Chapter 40R regulations suggest that the bylaws be consistent with the Comprehensive Housing Plan, an applicable master plan, any area specific plan, or any other plan document adopted by the municipality. Through the individual development of bylaws and design standards, municipalities retain the control of project approval.

The bylaw written by the municipality must include all of the criteria laid out in this chapter and is granted final approval by the DHCD. A plan review provision should also be included in the overlay district zoning bylaw to allow the municipality the ability to review and approve any proposed project within a district. Additionally, the bylaw can include any additional requirements the municipality feels is necessary such as standard density and dimensional requirements including height, setbacks, parking ratios. The bylaw must also be approved by 2/3 vote of the local approving authority, which in the case of Ipswich is the Board of Selectmen.

Design standards govern the physical character of all proposed projects within a 40R district to ensure that they are in keeping with the character of the community. Typical items that design standards may address include:

- “The scale, proportions, and exterior appearance of buildings;
- Placement, alignment, width, and grade of streets and sidewalks;
- The type and location of infrastructure; the location of building and garage entrances;
- Off-street parking;
- The protection of significant natural site features;
• The location and design of on-site open spaces;
• Landscaping;
• Exterior signs; and,
• Buffering in relation to adjacent properties” (760 CMR 59.04).

The municipality must also approve design standards with the zoning bylaw. However, the
design standards can be separate document with specific references to the zoning bylaw. The
DHCD reviews all design standards and will not approve them if they are found to be restrictive
and prohibitive of development.

3.6 Incentive Payments

Municipalities that establish a 40R district are entitled to a one-time incentive payment
for housing creation. The amount of payment is based on the number of units of new
construction projected in the smart growth district above what the underlying district allows. For
instance, if the underlying zoning allowed for 4 units, and the 40R overlay provided for 20 units,
the incentive payment would be based on the 16 additional units possible in the district. Table 3-2
shows the payment structure.

### Table 3-2: Zoning Incentive Payments

<table>
<thead>
<tr>
<th>Number of Units</th>
<th>Payment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to 20 units</td>
<td>$10,000</td>
</tr>
<tr>
<td>21 to 100 units</td>
<td>$75,000</td>
</tr>
<tr>
<td>101 to 200 units</td>
<td>$200,000</td>
</tr>
<tr>
<td>201 to 500 units</td>
<td>$325,000</td>
</tr>
<tr>
<td>501 or more units</td>
<td>$600,000</td>
</tr>
</tbody>
</table>

Additionally, a one-time payment of $3,000 is made to the municipality for each unit for which a
building permit has been issued. These units in the statute are referred to as “bonus units”, and
the payment is called a Density Bonus Payment.
3.7 Chapter 40R Application Steps

Table 3-3 outlines the process for submitting a Smart Growth Overlay District application to the DHCD.

Table 3-3: Application Steps

<table>
<thead>
<tr>
<th>Application Steps</th>
<th>Tasks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Step 1 – Consider establishing a 40R district</td>
<td>Hold a public hearing to gather comments and concerns from the community.</td>
</tr>
<tr>
<td>Step 2 – Apply for a Letter of Eligibility</td>
<td>The Letter of Eligibility must include the details of the district as outlined in 760 CMR 59.03.</td>
</tr>
<tr>
<td>Step 3 – Issuance of a Letter of Eligibility or Letter of Denial</td>
<td>The DHCD makes a decision of the Letter of Eligibility within 60 days of the submittal. At this time, the DHCD can require revisions to the application or deny the application completely. If the DHCD issues a Letter of Denial, the municipality can reapply, and it will be considered as a new application.</td>
</tr>
<tr>
<td>Step 4 – Municipal adoption of Smart Growth Zoning</td>
<td>The municipality must formally adopt the Smart Growth Zoning Bylaw through typical procedures within 3 years of the issuance of the Letter of Eligibility.</td>
</tr>
<tr>
<td>Step 5 – Final Approval of Application</td>
<td>Following formal local approval, the municipality submits to the DHCD proof of the local adoption. The Letter of Approval will be provided from the DHCD. Any conditions attached to the Letter of Eligibility must be addressed at this time.</td>
</tr>
<tr>
<td>Step 6 – Zoning Incentive Payment</td>
<td>The Letter of Approval will outline the amount of the Zoning Incentive Payment and the timeframe for payment.</td>
</tr>
<tr>
<td>Step 7 – Start of Construction</td>
<td>Construction must begin within 3 years of the Letter of Approval or the monies paid must be returned to the DHCD. With every construction permit issued, the municipality receives the $3,000 Density Bonus Payment.</td>
</tr>
<tr>
<td>Step 8 – Annual Report</td>
<td>Each year the municipality must provide to the DHCD an annual report that outlines the progress of the district in achieving the goals of the statute.</td>
</tr>
</tbody>
</table>
While the regulations set forth specific timeframes, in actuality, the process can take on a more fluid timeframe allowing municipalities to submit documents as they complete them or allowing the DHCD to increase the amount of time necessary for a comprehensive review of the application.

Following the approval and establishment of a smart growth zoning district, municipalities are now ready to request the additional incentive monies provided through 40S, Smart Growth School Cost Insurance Supplement: the companion legislation created to cover the costs of additional school aged children in smart growth zoning districts.

3.8 Chapter 40S

Beginning in 2008, municipalities that have established a smart growth zoning district are eligible to receive money from the Commonwealth to offset the costs of any new school aged children living within new units constructed through the Smart Growth Zoning. This reimbursement is equal to the positive difference, if any, between: (a) total education cost for eligible students, and (b) the sum of local smart growth revenues for education plus additional Chapter 70 aid. Put more simply, the municipality will receive the difference between the average spending per student living in housing units constructed through the Smart Growth Zoning and the revenues such as property tax and excise tax generated through the new housing units constructed through the Smart Growth Zoning.

Figure 3-1: 40S Reimbursement Equation

\[
\text{Reimbursement} = \text{School costs for each new student} - \text{Revenues generated from property and excise tax}
\]
Following the approval of a smart growth zoning district under Chapter 40R, DHCD provides the municipality, the Department of Education (DOE), the division of local services within the Department of Revenue (DOR), and the Registry of Motor Vehicles (RMV) with an address list of all new development within each smart growth zoning district. The municipality then provides a list of eligible students from the local schools to the DOE. The DOE then certifies that all students listed are living in new smart growth districts and calculates the 40S formula to determine the actual payment. Finally, the Commissioner of Revenue will make a single payment to each municipality for the amount of its smart growth school cost reimbursement.
Chapter 40R: Current Town Experiences

4.1 Interview Methodology

After completing an initial phase of document and internet research, we wanted to gain a first-hand understanding of the process towns have been going through in order to plan and apply for Chapter 40R Smart Growth Zoning Districts. In our Memorandum of Understanding, which we drafted with the town of Ipswich, one of our main tasks was to interview planners from the towns and cities that have undertaken 40R developments. As of February 2007, research prepared by the Commonwealth Housing Task Force found that there are 10 communities with approved 40R districts, eight who have filed with the Department of Housing and Community Development (DHCD) for Letters of Eligibility, and 18 that qualify as meaningfully considering 40R (Figure 4-1). We planned to interview a total of 13 towns; however, due to difficulties in contacting busy planning professionals, we completed our interviews with eight cities and towns. Each of the towns interviewed is in various stages of Smart Growth overlay district approval (see Table 4-1).

The range of stages in the process represented in our interviews allowed us to gain a well-rounded understanding of how cities and towns approach the 40R application process and changes that have occurred as this young statute matures. We developed a comprehensive list of interview questions to guide our meetings with town planners that included input from our clients. From these, we condensed the interview findings into six main points encompassing and summarizing the most useful and important information gained through this phase of research. Briefly, these topic areas are the initiation of the 40R application process; the resources used by towns and cities; planners’ views of the funding source of 40R; some comment on the planned 40R development’s fulfillment of Smart Growth principles; and, how planners dealt with town opposition to dense development or the addition of affordable housing to town. Our findings from each of these categories are presented in detail below.
Figure 4-1: Cities and Towns in the Commonwealth currently in different stages of Chapter 40R consideration and approval. (Commonwealth Housing Task Force, March, 2007)
<table>
<thead>
<tr>
<th>Town</th>
<th>Planner/ Contact</th>
<th>Town/City Information</th>
<th>40R Project Information</th>
<th>40B Changed to 40R? (a)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brockton</td>
<td>Nancy Stack-Savoie, Director of Planning</td>
<td>Total Area: 21.60 sq. miles, Population: 92,788, Density: 4,322 per sq. mile, Median Age: 34</td>
<td>Development proposal for 5 subdistricts</td>
<td>No</td>
</tr>
<tr>
<td>Chelsea</td>
<td>John DePriest, Director of Planning and Development</td>
<td>Total Area: 2.48 sq. miles, Population: 28,710, Density: 13,110 per sq. mile, Median Age: 31.3</td>
<td>Redevelopment of 2 factory buildings in center of town, 2.7 acres, 125 units</td>
<td>Yes</td>
</tr>
<tr>
<td>Dartmouth</td>
<td>Donald Perry, Planning Director</td>
<td>Total Area: 63.95 sq. miles, Population: 27,244, Density: 443 per sq. mile, Median Age: 38.2</td>
<td>Revitalization of abandoned amusement park</td>
<td>Yes</td>
</tr>
<tr>
<td>Gardner</td>
<td>Robert Hubbard, Director of Community Planning and Development</td>
<td>Total Area: 23 sq. miles, Population: 20,125, Density: 907 per sq. mile, Median Age: 37.5</td>
<td>650 unit mixed-use development, infill of underutilized land</td>
<td>No</td>
</tr>
<tr>
<td>Kingston</td>
<td>Thomas Bott, Town Planner</td>
<td>Total Area: 20.39 sq. miles, Population:</td>
<td>Former gravel pit near train station, 110 acres, 730</td>
<td>Yes</td>
</tr>
<tr>
<td>Town</td>
<td>Planner/Contact</td>
<td>Town/City Information</td>
<td>40R Project Information</td>
<td>40B Changed to 40R?((a))</td>
</tr>
<tr>
<td>--------------</td>
<td>----------------------------------</td>
<td>-----------------------</td>
<td>-------------------------</td>
<td>-----------------------------</td>
</tr>
</tbody>
</table>
| Natick       | Patrick Reffett, Director of Community Development | Total Area: 16.06 sq. miles  
Population: 30,510  
Density: 2,022 per sq. miles  
Median Age: 38.2 | 150 units on 6.3 acres, infill on underutilized land close to downtown | Yes |
| North Reading| Heidi Griffin, Administrator, Office of Community Development | Total Area: 13.51 sq. miles  
Population: 12,002  
Density: 905 per sq. miles  
Median Age: 37.8 | Redevelopment of former mental rehab. clinic, 80-acre project with 406 units planned on 40 acres. | Yes |
| Norwood      | Stephen Costello, Town Planner   | Total Area: 10.55 per sq. miles  
Population: 28,700  
Density: 2,739  
Median Age: 38.6 | Redevelopment of church property, 2 rectory buildings and 15 new homes | No |

\(a\) Project initially considered for 40B Comprehensive Permit; developer and community mutually agreed to use 40R instead.
### Table 4-2: Chapter 40R Policy Drafters and Project Consultants

<table>
<thead>
<tr>
<th>Contact</th>
<th>Position</th>
<th>Project Involvement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mark Bobrowski</td>
<td>Land Use Attorney, Blatman, Bobrowski &amp; Mead, LLC</td>
<td>Chapter 40R project consultant, has worked on both private and public 40R developments</td>
</tr>
<tr>
<td>Angus Jennings</td>
<td>Principal Planner, Concord Square Development Company</td>
<td>Consultant on numerous Chapter 40R development projects</td>
</tr>
<tr>
<td>Kathleen O’Donnell</td>
<td>Attorney, Kopelman and Paige, P.C.</td>
<td>Serves as Ipswich town counsel, has performed legal consultation on several 40R projects. Collaborated on drafting 40R regulations</td>
</tr>
<tr>
<td>Don Schmidt</td>
<td>Principal Land Use Planner, Massachusetts Department of Housing and Community Development</td>
<td>Main administrator of Chapter 40R, works with communities to draft and complete applications</td>
</tr>
</tbody>
</table>

#### 4.2 Project initiation and exploration of 40R

As we learned from our interviews with “key players,” when Ch. 40R was first written, it was anticipated that the first towns to utilize the statute would be towns with developers initiating the process, as 40R projects would require a lot of time and resources. One of the long-term intents for the legislation, however, was to provide municipalities with the tools and capacity necessary to address the needs of their downtowns.

Our interviews with eight town planners actively engaged in the 40R process confirm these expectations, as six out of the eight towns interviewed for this project were already in various stages of 40B development projects when the new legislation, Ch. 40R Smart Growth Zoning and Housing Production, was passed. For Natick and Norwood, the planning departments were the initiators for exploring 40R. For North Reading both the planning department and the town’s Community Planning Commission were instrumental in pursuing 40R. The projects in Gardner and Kingston were both developer-initiated. In Gardner, however, there was no project in the works for the undeveloped, forested property. In Dartmouth, the town planning office was working with an outside consulting firm on their 40B project and they
suggested using 40R instead. In the city of Chelsea, both the town planner and the developers pushed the process.

As the numbers demonstrate, the majority of the towns we interviewed have projects that were initiated by developers. Thomas Bott, of Kingston, commented that it is common for developers to drive the projects “because it takes a lot of work and money that most small towns couldn’t afford on their own” (Bott, interview, 2/28/07). However, in Brockton, the most recently initiated project, their approach to 40R has been unique. The planning department’s goal was to use the new zoning put forth by 40R as a mechanism to encourage both mixed-use and higher-density housing, and the overall redevelopment of their downtown core. This reflects the long-term goals set for 40R by its creators and will provide a model to other communities interested in alternative approaches to utilizing what 40R has to offer.

All of the towns cited increased control over project development as key drivers for selecting 40R; specifically, the power to write design standards into the bylaws of their 40R districts. As put by North Reading’s town planner, Heidi Griffin, “the overriding reason and/or motivation for 40R was being able to (a) implement design standards above and beyond what 40B would really allow; and (b) to receive funds for this type of development totaling 1.2 million dollars” (Griffin, interview, 3/9/07). Further, incentive payments were important to all of the towns, and for most of the towns, the opportunity to apply for the priority development fund grant (PDF) was a big selling point, too. For Norwood, where they were faced with rezoning obstacles, 40R was actually a better fit for them to accomplish their development goal of creating multi-family housing, as it provides the ability to single out a parcel of land, or “spot” zone when appropriate. For Brockton, in addition to introducing more housing, they saw the design standards as a way to ensure the preservation of existing architecture and the historical character of their town.

4.3 Assembling a Planning Team to complete the 40R Process: Advice and Challenges

When we asked town planners about their 40R district, they underlined two points that relate to the application process. First, all agreed that the process is extremely time consuming, which can be a major problem for many of the one- and two-person planning offices in Massachusetts municipalities. This will be important for Ipswich to consider in their 40R
decision-making process, and there are several useful resources cited by the planners we spoke to. Several of the towns worked very closely with consultants and legal experts who guided them through the application process, while others were supported both financially and in the planning stages by the developers of the project. Still others sought input from the state through the Department of Housing and Community Development (DHCD). A second considerable challenge for towns is the financial commitment required to apply for a 40R district. As mentioned in chapter two of this report, these costs are generated through the analysis and plan development necessary for filing the application correctly as well as carrying out necessary impact studies. Overall, the information we gained from town planners provides a clear picture of useful strategies to overcome these challenges.

In Dartmouth’s case, while town planner Donald Perry worked hard on generating community involvement, he had little direct work with the application process as Mark Bobrowski, Esq. both initiated 40R and worked heavily on completing the application. Gardner also worked with Bobrowski and planner Robert Hubbard remarked that his town would not have been able to accomplish the application without this partnership and without similarly important input from Don Schmidt at DHCD. North Reading hired attorney Kathleen O’Donnell from Kopelman & Paige, P.C. to serve as their main contact and liaison with Don Schmidt at DHCD. Chelsea’s consultant conducted research with DHCD and about the time they were putting together their plan, the town worked with the Boston based urban design firm, Crosby, Schlessinger, and Smallridge. Thomas Bott from Kingston referred to the APA’s Planning Advisory Service as a resource tool. Additionally, Bott sought out reactions from the development community in the beginning stages of the 40R process. This information from town planners illuminates three main relationships that are vital to planning and applying for a 40R district. These include relationships with the developer, consultants, and the DHCD.

Several of the towns and cities we interviewed explained these relationships and how they have the potential to ease the 40R process. Heidi Griffin, North Reading’s principal planner, commented that the town was fortunate to be able to work in conjunction with their developer, Lincoln Properties, and that they also hired their own attorney to guide them through the 40R process as well. Griffin described her community’s relationship with Lincoln Properties as “one of the few communities who worked cooperatively with a developer in the 40R process” (Griffin, interview, 3/9/07) Indeed, she reports that the process in other communities has the
potential to be combative. Quite the contrary, in North Reading’s case the developer agreed that both he and the town would benefit from developing under 40R and decided to work with the town, rather than against them, to obtain the 40R approvals. Similarly, Norwood’s 40R experience confirms the importance of forming collaborative groups to accomplish the challenging application and town acceptance processes. Planning Director Steve Costello was instrumental in bringing a consultant team together to initiate his town’s inquiry into 40R. Costello also reported that an essential part of the planning process also involved working with the consultant and attorney hired by the developer. Together, the group drafted the 40R documents and bylaws.

The town of Kingston also illustrates the positive outcome that can result from a productive developer-town relationship. An important element of the 40R statute, and the reason why it appeals to towns, is the increased level of control it gives the town as compared with 40B developments. One way this control is secured is through predevelopment agreements such as the one Bott agreed on with Thorndike Development. Thorndike and Kingston had an agreeable working relationship and the existence of the predevelopment agreement only made the 40R development more attractive to the town. Once created, predevelopment become part of the zoning requirements meaning that even if the developer leaves a project before the start of construction, a new developer would be held to the same agreements. In Kingston, one of the predevelopment agreements included the creation of a southbound ramp providing access to Route 3 near existing transit stations. It is important to note one of the meaningful differences here that can exist between 40B and 40R developments. The town bargained for this infrastructure improvement due to the increased negotiating power granted to towns under 40R.

Design standards represent a similar mechanism, providing towns with increased control over the building project in their 40R district. Several of the town planners we spoke with were very satisfied with the level of command the design standards provide them over the development. Dartmouth specifically feels confident in the comprehensive nature of their standards. From our interviews, we overwhelmingly found towns to be content with the level of power they were able to dictate through the design criteria.

Another important resource in the 40R process is the Department of Housing and Community Development (DHCD). Several of the towns we spoke to interacted with Don Schmidt and others from the DHCD at several various stages of the project. North Reading’s
planner, Heidi Griffin, reported that her office had several meetings with DHCD, including direct conversations with Don Schmidt, to address questions about writing bylaws and provisions for adequate infrastructure (i.e. figuring gallons/day of sewer usage). One issue of particular importance to North Reading involved determining the number of bedrooms that would be in each unit. Griffin emphasized that the town’s close interaction with DHCD resulted in a favorable resolution. The town’s 40R development is composed of all multi-family units, which are defined under the 40R regulations as containing three or more bedrooms. However, North Reading wanted to counter this requirement due to findings in the developer’s market study that found that three bedroom units did not meet the community’s needs. Through $30,000 in funds given to the town by the developer, they hired their own consultant to complete a fiscal impact report. This report concluded with similar findings, showing that one and two bedroom units would sufficiently meet town demand. Through negotiations with DHCD, North Reading was able to bypass the strict definition of “multi-family”, resulting in plans for a development that will truly fulfill the town’s housing needs. Local examples such as North Reading’s illustrate the important role the DHCD can play in working out many of the nuances in applying the statute.

Kingston’s experience is another good example of the importance of having a strong partnership with DHCD. Mr. Bott reported that working with Don Schmidt was a great experience. Particularly in Kingston’s case, because 40R was so new, they were part of the initial debates involved in clarifying the statute’s regulations. This work involved a large amount of interaction with Kathleen O’Donnell and Angus Jennings, who is from Concord Square Development. They worked as a team to interpret 40R and elucidate the intent of the legislation. They were fortunate to have help along the way, with many drafts and discussions before formal 40R application documents for the town’s project were submitted.

Natick’s experience in applying for 40R was somewhat different from the previously mentioned towns. Town Planner, Patrick Reffett, explained that the application process took a lot of work and was difficult to complete. Unlike most of the other planners we spoke with, who received support from consultant and legal teams, Reffett was frustrated by the lack of help he received in the application process. The developer he was working with was not in favor of turning the development into a 40R, and therefore offered little help in the process. Although Reffett had a positive working experience with Don Schmidt through the DHCD, overall, he
thought that the state expected the developer to compensate the town for needed consulting work during the process, while state support and funding were difficult to come by.

As is evidenced from our interviews with planners, the current 40R process is challenging. The original intent of the legislation was to allow municipalities to take the lead in guiding the development of affordable housing, resulting in growth patterns aligned with town goals. Currently, however, the majority of the towns we interviewed have projects that were initiated by developers. Indeed, Kingston’s Thomas Bott commented that it is common for developers to be the driving force, “because it takes a lot of work and money that most small towns couldn’t afford on their own” (Bott, interview, 3/14/07). Ipswich is one of the first towns to explore the possibility of 40R without a developer relationship. As we found from our interviews, both the lengthy application process and the financial impact of 40R can represent challenges to towns initiating the process on their own.

There are funding sources available to towns and our interview findings illuminate how some have been successfully utilized. However, just as towns reported varying (and sometimes difficult) interactions with developers in drafting 40R proposals, towns also report differences in the availability of state funding sources for the application process. While many of these findings most likely point to the relative newness of the 40R process, it is important to illuminate the available resources and possible challenges Ipswich could face.

### 4.4 Views of 40R & 40S Funding Sources

The two funding sources for 40R are the Reimbursement Zoning Incentive Payments and the Density Bonus Payments, both of which are granted through the state and administered by DHCD. The town planners expressed several different views regarding the funding sources for 40R. One town is completely skeptical that they will ever see funds from DHCD, and therefore they negotiated payments to the town by the developer while another town has already found the state to be quite prompt in their promise to pay and has already received their zoning incentive payment. One town planner who found the funding a definite enticement for selecting 40R over 40B, raised an interesting question that reflects a concern regarding the stability of 40R monies: while 40R funding provides a good carrot, or incentive, now, if the supply of affordable housing was greater, would the carrot be as big?
Between these two diverging views, other towns find themselves with mixed feelings regarding the funding sources for 40R. Robert Hubbard, the town planner for Gardner, thinks the availability of funding depends on decisions made by the legislature, but knows that his city can support the project even if the funding does not come through. One town that does not yet have a developer for its project expressed moderate concern over the fact that, if no construction has been started in a 40R district within three years of its establishment, the municipality is required to pay DHCD back for the full amount of any monies they have received under 40R. Still, other towns touted the funding sources as an integral tool for receiving local buy-in and approval for these districts, as they help to answer the question “what’s in it for us”?

Three towns interviewed benefited from a third source of funding: Priority Development Fund (PDF) grants, administered by DHCD on behalf of MassHousing. MassHousing created this fund to provide planning assistance to communities in meeting the following goal: “to increase the supply of housing in the Commonwealth by encouraging community-based planning that will lead directly to housing production” (DHCD). Within the PDF, $1 million was designated for cities and towns interested in creating 40R districts, to provide them with financial support for their 40R planning efforts, such as hiring of consultants for assistance with the application process, conducting impact analyses, and market studies. Funding is subject to an application approval process and then awarded on a first-come, first-serve basis.

The City of Brockton could not have begun their 40R process without the funds awarded to them from the Priority Development Fund grant. Similarly, North Reading applied for a Priority Development Fund Grant and was awarded $30,000 through the fund to hire a legal consultant to guide them through the process. The town of Kingston was also awarded $30,000. With that money the town was able to pay for fiscal and traffic analyses. Additionally, they hired The Concord Square Development Company (the only firm to have taken a 40R project completely through the application process at that time) to write their 40R bylaws and district standard. Unfortunately, not every town that we interviewed benefited from a PDF grant. The town of Natick, which has a one- person planning office run by planner Patrick Reffett, was not able to get a PDF grant because the money was not available, and therefore faced a greater burden during the application process.

Funding for 40S was created to cover the costs of educating any school-age children who move into 40R district. As such, it would be reasonable to conclude that 40S is a big factor in
determining whether communities chose to create 40R districts. Interestingly, however, from our interviews we found that 40S was more effective as a marketing tool then as an impetus for creating a 40R district. 40S is helpful in the marketing of 40R districts to gain community buy-in and to dispel any misperceptions about educational cost burdens. This is very important because affordable housing is a very sensitive subject for most communities and the adoption of 40R districts requires a two-thirds majority in a local municipal vote. However, none of the towns interviewed considered 40S as a selling point in their decision process to apply for 40R, and many said it was not a factor at all. Echoing this sentiment, John DePriest, the town planner for the city of Chelsea, said that, although their city would definitely benefit from 40S funds, it was non-factor in their decision to move ahead with the 40R application process.

4.5 Development Fulfillment of Smart Growth Principles

Since Massachusetts Statute Chapter 40R is also known by the name “Smart Growth Zoning and Housing Production,” we thought it was important to consider whether the planned developments, in the cities and towns that have applied so far, actually fulfilled certain Smart Growth principles.

While there are numerous definitions of smart growth, the 40R regulations start out by defining a list of general aims that smart growth projects should foster. Section 1 of the statute identifies the goal of smart growth as a guiding influence for development under Chapter 40R. The concept of smart growth as defined in the housing statute focuses on the “principle of land development that emphasizes the mixing of land uses, [and] increases the availability of affordable housing by creating a range of housing opportunities in neighborhoods” (M.G.L. c. 40R, § 1). In order for towns and cities to be approved by the DHCD, the proposed development must meet the more specific site guidelines described in the previous chapter. Our goal here is not to analyze whether or not the 40R projects being developed actually achieve smart growth for the Commonwealth; rather, we were interested in determining planners’ views on how their 40R projects aligned with smart growth principles as described by the state and as pursued in their communities.

As noted in our discussion of 40R regulations, districts and developments must be in certain “eligible locations.” While the definition of such approved locations is not overly explicit, approved locations tend to be near transit stations, in areas of already dense
development, or contain existing infrastructure. Included in this smart growth definition are underutilized areas “that have the potential to be recycled or converted into residential or mixed use developments” (M.G.L. c. 40R § 2). Out of the eight communities we interviewed, seven have developments that closely fulfill the statute’s smart growth guidelines. Additionally, we found that the goal of fulfilling smart growth principles through 40R building was a motivating factor for some towns. Specifically, Kingston sees 40R as a helpful smart growth tool and Thomas Bott referred to the town’s project as a poster-child for smart growth in Massachusetts. Similarly, Chelsea confirmed that smart growth is very important to their town. They utilized the 40R development project to apply smart growth to the neighborhood and improve infrastructure in an already developed area.

While all of the projects in the towns we interviewed incorporate some aspect of the smart growth definition, some fit the guiding principles more than others. For example, the development projects set to take place in Natick, Dartmouth, Chelsea, North Reading, and Norwood all achieve the revitalization or infill of underutilized land. North Reading’s project is planned on the site of a former mental rehabilitation center, while Chelsea is able to rebuild two former factory buildings in the town center. Natick’s planned development also qualifies as infill and is conveniently located a third of a mile from its downtown core. Along the same lines, Norwood’s development achieves smart growth due to its proximity to downtown shopping districts as well as town schools and transit stops. The aforementioned towns bring to light some of the most current uses of 40R to develop smart growth areas.

Somewhat in contrast to these examples is the development that is taking place in Brockton. Overseen by planner Nancy Stack-Savoie, the city’s project more closely resembles the intent with which the legislation was written. Instead of focusing on a single parcel for redevelopment, Brockton has been approved to rezone several districts in its downtown area. Within the districts, there are several properties that are prime land for revitalization and infill development. By using the statute in this way, the city is able to secure a large portion of the center of town for redevelopment. This approach aligns with the state’s principle to redevelop areas first before expanding into open territory. Additionally, their district is served by multiple commuter rail stations and will be a center of public transportation.

One city, Gardner, differs from the others we have highlighted in that their 40R development is taking place on undeveloped land. Although the parcel was a forested piece of
property, it will have a bus line running through it, which fulfills the state’s requirement of being located near public transit. Additionally, the district is set to include needed retail stores that are currently missing from Gardner’s downtown core. The anticipated outcome is that these mixed-use areas will add to and strengthen the city’s existing town center. When asked whether 40R fosters smart growth in Massachusetts, planner Robert Hubbard explained that he views the statute as a housing production law that is sensitive to smart growth principles.

Along similar lines, Donald Perry, Dartmouth’s planner, expressed criticism of the state’s smart growth characterization. Specifically, he said that he does not view the state’s description as all encompassing. While density is touted as the road to smart growth, Perry faulted the state’s principles as not being specific to the core area of towns and not offering enough useful tools for open space protection. Perhaps such criticism calls for the expansion of the state’s definition of smart growth. Indeed, when we ask John DePriest, of Chelsea, he explained that he defines smart growth more in terms of development that utilizes exiting infrastructure and takes the environment into consideration.

Although fulfilling smart growth principles is an attractive planning idea for city and town officials, for some it was not the driving force behind their decision to pursue 40R. In North Reading’s case, the town was excited to meet the definition of smart growth and it did influence their decision to use 40R. However, the overriding motivation for 40R was to (a) implement design standards above and beyond what 40B would allow; and (b) to receive funds for this type of development totaling 1.2 million dollars. Additionally, while the majority of current 40R projects achieve useful infill and redevelopment, have the potential to revitalize town centers, and have the potential to serve as examples to other towns about practical ways to concentrate development in attractive and livable areas, it is clear from our findings that these smart growth outcomes are not guaranteed through the statute and for some towns, are not the agreed-upon method for growth. Growth in general is difficult to achieve in cities and towns around the state. Many town centers are already very dense, and often residents do not welcome more growth in these areas. The next section explores town reactions to density and how opposition was handled in the planning process.
4.6 Reactions to Density

Density is a topic with the potential to spark controversy. Some opposition to density has historical roots, such as tenement houses in the late 19th century and early part of the 20th century and the use of housing projects to perpetuate segregation. However, when density is combined with strong design standards, it can achieve many great things, including: reducing infrastructure burdens, managing sprawl, increasing transportation choices, improving security, and protecting the environment. While we recognized the potential for density to be a controversial issue facing town planners during the 40R process, this was not always the case. Through our interviews with town planners, it is clear that each town will have different challenges dealing with the density requirement of 40R, and we think Ipswich can learn from each of their experiences.

In the town of Kingston, town planner Thomas Bott has found that for the most part, people are really scared of high-density development because of perceptions that it will effect property values and be disruptive to existing communities. Conversely, in the city of Chelsea that is already very dense, with a total land area of 2.19 square miles and density at 13,110 per square mile, density was a non-issue. Similarly, in Natick, though significantly less dense than Chelsea, there was overall strong support for this development. For Dartmouth density was not an issue, but for a different reason: their development is in such a remote area that the only abutters are in a neighboring town. Brockton already has a dense downtown and does not anticipate that density will become a big issue; however, their local approval process had not formally begun.

In Gardner, they dealt with some opposition from immediate abutters and environmental groups in town. Overall, however, the town was in favor of the 40R development because it will include mixed-use buildings that will provide stores that are in high-demand within their town. In Norwood, the high number of housing units generated concern; however, they were eventually able to mitigate concerns through the benefits of 40S and through the preservation of an existing church structure on the land.

The town of North Reading had a very thorough plan for preemptively dealing with potential oppositions from members of the community. They had bi-weekly meetings and formed a committee consisting of every single department head in town hall, and one or two board members from each land use board (selectmen, planning, conservation, zoning, board of health, etc.). Through this approach, all issues that arose were addressed early on. Further, one
month prior to their town meeting, the committee worked with the local newspaper and received a three-part series that detailed the project for the JT Berry Site and demonstrated all the benefits it would provide for the town. By the time they had their town meeting, the vote was unanimous in favor for the project. In addition to being prepared, Heidi Griffin, town planner, says, in the end, the choice was very obvious to everyone: on one hand a 40B had already been filed and the town was nowhere near their 10% goal, or with 40R they would receive $1.5 million and they would fulfill their 10%. Further, since many people in North Reading feel like the community has been subjected to too many undesirable 40B projects, Heidi was able to use that as a selling point for 40R and created visual tool that illustrates how much 40B development has dominated their town: a map charting all the locations of 40B projects throughout the town, along with a slide of picturing the 40B developments they had been subjected to.

### 4.7 Conclusion

After gaining knowledge of Ipswich, learning about existing affordable housing tools, and new Smart Growth Zoning and Housing Production legislation, we wanted to learn more about how this new tool, 40R, was currently being used. Because this is new legislation, there was not an existing body of literature to which we could turn; therefore, we determined that our strongest resources would be experience. In speaking with planners from cities and towns that have already begun the 40R application process, we were able to tap into their experiences and use this to inform our clients what they might expect if they decide to go forward with a 40R project. Therefore, we must give credit to all of the planners that participated and enabled us to relay all of the information that we have provided in this chapter.
5. **40R: How Does it Work?**

5.1 **Introduction and Methodology**

The Massachusetts Department of Housing and Community Development approved the town of Ipswich’s Affordable Housing Planned Production Plan in December 2006. Within that document, Ipswich presented a list of parcels that it considers suitable for affordable housing development. The Ipswich Affordable Housing Partnership and the Department of Planning and Development jointly developed the initial list. The Board of Selectmen and the Open Space Committee, as well as other entities within Ipswich, provided input to further refine the original list. Many of the identified sites are located in close proximity to the town center, within walking distance to shops, schools and the commuter rail station.

As part of this project, we refined the list a step further when considering the goals and objectives of Chapter 40R by focusing on the downtown core, as it is considered a smart growth area under the district. In discussions with Glenn Gibbs and Kate Day of the Department of Planning and Development, we narrowed the list to those sites within ¼ mile from the commuter rail station as well as two additional parcels not identified in the original list but are, due to current site conditions, suitable for high-density development. The sites are in smart growth locations in that they are located within areas of concentrated development and transit oriented. Table 5-1 shows the complete list of the sites we evaluated. Figure 5-1 is a map of the downtown illustrating the location of the sites evaluated.
Figure 5-1
Study Parcels for 40R Suitability

- White-hatched areas are identified as sites suitable for affordable housing in 2007 Affordable Housing Plan.

- Yellow-hatched areas were included in this study at the request of the Planning Dept.

Legend:
- ZONING DISTRICTS
  - GENERAL BUSINESS (GB)
  - CENTRAL BUSINESS (CB)
  - HIGHWAY BUSINESS (HB)
  - INDUSTRIAL (I)
  - LIMITED INDUSTRIAL (U)
  - PLANNED COMMERCIAL (PC)
  - RURAL RESIDENCE A (RRA)
  - RURAL RESIDENCE B (RRB)
  - RURAL RESIDENCE C (RRC)
  - INTOWN RESIDENTIAL (IR)
Table 5-1: Downtown Sites Evaluated for 40R Development

<table>
<thead>
<tr>
<th>Address</th>
<th>Acreage</th>
<th>Square Footage</th>
<th>Preferred Use (a, b)</th>
</tr>
</thead>
<tbody>
<tr>
<td>44 Market Street</td>
<td>0.25</td>
<td>10,890</td>
<td>Mixed-use development</td>
</tr>
<tr>
<td>1 Union Street</td>
<td>0.2</td>
<td>8,712</td>
<td></td>
</tr>
<tr>
<td>3 Topsfield Road</td>
<td>0.64</td>
<td>27,878.4</td>
<td>Multi-family or mixed-use</td>
</tr>
<tr>
<td>6 Topsfield Road</td>
<td>0.76</td>
<td>33,105.6</td>
<td>Multi-family or mixed-use</td>
</tr>
<tr>
<td>14 Topsfield Road</td>
<td>0.25</td>
<td>10,890</td>
<td></td>
</tr>
<tr>
<td>16 Hammatt Street</td>
<td>0.37</td>
<td>16,117.2</td>
<td>Mixed-use</td>
</tr>
<tr>
<td>18 Hammatt Street</td>
<td>0.13</td>
<td>5,662.8</td>
<td></td>
</tr>
<tr>
<td>5 Washington Street</td>
<td>0.14</td>
<td>6,098.4</td>
<td>Multi-family</td>
</tr>
<tr>
<td>11 Washington Street</td>
<td>0.67</td>
<td>29,185.2</td>
<td></td>
</tr>
<tr>
<td>31 Washington Street</td>
<td>0.27</td>
<td>11,761.2</td>
<td></td>
</tr>
<tr>
<td>20 South Main Street</td>
<td>0.3</td>
<td>13,068</td>
<td>Mixed-use</td>
</tr>
<tr>
<td>24 South Main Street</td>
<td>0.11</td>
<td>4,791.6</td>
<td></td>
</tr>
<tr>
<td>22 Brown Square</td>
<td>0.31</td>
<td>13,503.6</td>
<td>Multi-family or mixed-use</td>
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<tr>
<td>2 Soffron Lane</td>
<td>0.88</td>
<td>38,332.8</td>
<td>Mixed-use</td>
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<tr>
<td>28 Topsfield Road</td>
<td>0.37</td>
<td>16,117.2</td>
<td>Multi-family</td>
</tr>
<tr>
<td>2 Washington Street</td>
<td>2.09</td>
<td>91,040.4</td>
<td>n/a</td>
</tr>
<tr>
<td>17-25 South Main Street</td>
<td>0.09</td>
<td>3,920.4</td>
<td>n/a</td>
</tr>
</tbody>
</table>

(a) As identified in the Affordable Housing Plan, both multi-family and mixed-use require a special permit.
(b) Mixed-use development requires a special permit for the residential portion.

We looked at some of the sites together since they are adjacent. Those parcels include:

- 44 Market Street and 1 Union Street;
- 6 and 14 Topsfield Road;
- 16 and 18 Hammatt Street;
- 5 and 11 Washington Street; and,
- 20 and 24 South Main Street.

Each evaluation was completed using a common template. At the top of each is a picture of the property and information regarding its current use, lot size, zoning, and the assessed value. Each evaluation also contains the following subheadings: Land Uses and Adjacent Land uses; Relationship to and Development Potential under Current Zoning; Development Potential under Chapter 40R; Financial Incentive under Chapter 40R; and, Overall Recommendation. An
explanation of the subheadings is in the following section. The site evaluations are included as Appendix E.

5.2 Key Definitions and Terms

The following outlines some key definitions that are useful for understanding the site evaluations.

Zoning

The parcels fall into three zoning districts within the downtown core: the Central Business (CB) district, the General Business (GB) district and the In-town Residence (IR) district. Definitions and the primary uses of these districts are included in the Glossary. Only the In-town Residence District permits residential development as-of-right. A special permit is required to develop residential uses within the Commercial Business or General Business districts.

Within these three districts, the required minimum square footage for residential uses can be reduced (thereby increasing the density) for both multi-family housing and mixed-use development by the granting of a special permit by the Planning Board. Footnote 11 allows the density increase. The particulars of Footnote 11 are defined in the Glossary.

Lot Size

The lot size, expressed as acreage and square footage, was available from the Ipswich Assessor’s Property Assessment Data.

Assessed Value

The assessed value per site, as of fiscal year 2007, was available from the Ipswich Assessor’s Property Assessment Data. We present the assessed value of the land and the buildings on the parcel as well as the total assessed value. The total assessed value is not necessarily the total of the land and building value as some sites have “extras” (i.e. outbuildings and other accessory structures) that are not detailed on the site evaluations.
Land Use and Adjacent Land Uses

This section details each site in terms of the specifics of its current use, its physical characteristics, its relationship to surrounding properties and its distance from the commuter rail station. We completed two field visits in January and February 2007 during which we recorded and photographed the current land use on each site and the adjacent land uses. All of the sites are located in Ipswich’s downtown core, in an area of high-density development and within ¼ mile radius from the Ipswich commuter rail station.

Relationship to Current Zoning

This section presents the current zoning for each site. The number of developable units on each site is the as-of-right development potential, or the existing zoned unit counts. For most of the sites evaluated, the as-of-right unit count is zero, as multi-family residential uses are only allowed in the three districts by special permit approval.

The development potential is presented for both multi-family residential uses and mixed-use development allowed by special permit and the provisions under Footnote 11, which allows an increased density. As requested by the Ipswich Planning and Development Department, we determined the total unit counts by taking the square footage of the site and subtracting the required minimum square footage per unit as detailed in the Zoning Bylaw. Even though these uses are only allowed by special permit, it is important to understand what residential uses could be developed onsite through the underlying zoning in comparison to the residential mandates of Chapter 40R.

We considered site conditions such as whether the site is irregularly shaped, if there is infrastructure underlying the site and whether there is available parking space for future development in the evaluations. Additional site conditions were considered as necessary.

The potential development is expressed as a number of units. We chose to represent the development potential as a unit count, as it is comparable to what must be developed under Chapter 40R. Further, the financial incentives under Chapter 40R are determined by the unit count. Therefore, it is the most applicable way to express possible development.
Development Potential under Chapter 40R

In order to utilize Chapter 40R, the following numbers of units are required per acre on any site analyzed as part of a 40R district:

- 20 units in a multi-family building(s) per acre;
- 12 two or three family building(s) per acre; or,
- 8 single-family residences per acre.

The above listed numbers of units are required on any parcel that a community designates as developable land within a district. For each site, the Chapter 40R required densities multiplied by the total acreage provided a development potential expressed as a unit count, or future zoned units as defined in the Chapter 40R regulations. The sites that are less than an acre will require a lower number of units than what is detailed above. It should be noted that while the abovementioned densities are specifically put forth in the statute and regulations, and the town must zone to allow the specific densities as-of-right, the developer has the right to build less than the stipulated densities based on market conditions.

Financial Incentive under Chapter 40R

Chapter 40R has two financial incentives built into the regulations: Zoning Incentive Payment and Density Bonus Payment. Both payments are based on the difference between the number of units to be constructed under Chapter 40R and the number of units that could be constructed as-of-right under the underlying zoning. For each parcel analyzed in a 40R application, the DHCD assesses the incentive payment for all parcels a municipality includes per application. Separate applications are assessed separately for any payment. As Ipswich is still considering whether Chapter 40R is right for the community, the incentive payments are assessed per site for this document. The town only receives the Density Bonus Payment when a building permit is issued; therefore, if the developer builds less than the stipulated densities projected in the 40R district, the town will receive a smaller payment.
Overall Recommendation

We conclude each site evaluation with a discussion of four items: current land use, site constraints, monetary incentives and future land uses. While many of these items must be investigated further, there are general considerations that we took into account when formulating our recommendations for creating a 40R district within the downtown core of Ipswich.
6. **40R: Is It Right for Ipswich?**

### 6.1 Recommendations

The two main objectives for our project were to assess the ability of Chapters 40R and 40S to encourage and facilitate the production of affordable housing in the downtown core, and based on this assessment to identify the potential boundaries of a 40R district within the downtown. Very simply, the Ipswich Planning and Development Department asked us to assess whether Chapter 40R is right for Ipswich. Based on all the information we gathered from our regulatory review, interviews with communities and experts and a detailed evaluation of specific downtown sites, we determined that 40R is an appropriate tool for Ipswich to use to meet their affordable housing production goals.

We determined that 40R is right for Ipswich because the tenets of 40R align directly with the town’s goals. The Affordable Housing Plan outlined five main growth goals for Ipswich to achieve including:

- Provide a range of housing opportunities for residents of all income levels;
- Reduce sprawl by controlling growth impacts;
- Provide a variety of transportation choices;
- Protect the village character and strong sense of place of downtown; and,
- Increase the town’s ability to influence and direct development consistent with smart growth.

These goals are all addressed by one or many of the tools that 40R provides to communities should they choose to create a Smart Growth District. The first goal is addressed through the 20% affordability component of Chapter 40R: that all new projects require at least 20% of the total units be available to those families with an income below 80% of the community’s median income. The affordability component allows Ipswich to require all new projects within the Smart Growth District to provide at least 20% of its units as affordable.

Second, 40R requires Smart Growth Districts to be located within areas of concentrated development. In Ipswich’s case, 40R would allow the town to develop more affordable housing in its downtown. Actively guiding new residential development through the creation of smart growth zoning districts will allow Ipswich to manage future growth and combat the negative impacts associated with sprawl.
Ipswich’s third goal is to provide a variety of transportation choices. 40R achieves this, as districts must be located to take advantage of existing transportation choices, and the logical location for a 40R district is within walking distance of the downtown conveniences and the commuter rail station.

Protecting the village character and strong sense of place is Ipswich’s fourth main growth goal. Ipswich can protect the community character through the development of a specific Smart Growth Zoning Bylaw and design standards that spell out the requirements for any new development within a Smart Growth Zoning District down to the façade material that must be used. The Smart Growth Zoning Bylaw and design standards should be written in a way that will let the developer know exactly what a proposed project should look like.

Lastly, the fifth goal is to increase the town’s ability to influence and direct development consistent with smart growth principles. One of the most basic requirements of the Smart Growth Zoning and Housing Production statute, as the name implies, is to encourage the use of smart growth principles in the way new development is accomplished in Smart Growth Districts. The definition of smart growth in the statute speaks to the way 40R works to locate any new high-density housing development in areas that are already developed thereby reducing impacts to undeveloped land. Further, as 40R allows towns to retain local control, the local authority has the right to accept or reject a project that is inconsistent with the Smart Growth Zoning Bylaw and design standards.
Based on the determination that 40R is indeed right for Ipswich, we identified two specific recommendations for districts within the downtown core. Briefly stated, the two recommendations we make are: the town can create 1) a site-specific non-contiguous district or 2) a larger non-contiguous district. We based the first recommendation on our analysis of the individual parcels and we point out the specific properties that make the most sense for development under 40R. Through our second recommendation, we demonstrate an additional and more expansive way that the town could rezone using the statute.

The site-specific non-contiguous district would be comprised of four specific sites that were evaluated as part of the site evaluations: 6 and 14 Topsfield Road, 2 Washington Street, 16 and 18 Hammatt Street and 2 Soffron Lane. These four sites received the highest recommendation as well as provided Ipswich with the greatest monetary incentive. The district would follow the property lines of each of the sites creating sub-districts at each property where the sites’ specific characteristics could be zoned for through how the town uses the Chapter 40R land designations. The proposed district is shown on the illustration below.
The establishment of site-specific districts is not illegal spot zoning. As learned through the interviews with experts, because affordable housing is a compelling public reason, spot zoning is legal when creating a site-specific 40R district. Further, if there is any public accusation of illegal spot zoning, conversations with the Ipswich Planning Department provided two arguments against any accusation. The first would be that Ipswich has already identified three of these sites as appropriate locations for affordable housing in the Affordable Housing Plan and 40R is the tool that Ipswich chooses to use to create affordable housing. Second, Footnote 11 of the Ipswich Zoning Bylaw achieves a similar density to what is required under Chapter 40R, and therefore, any resident of Ipswich could achieve the same results that Chapter 40R requires.

The second recommendation for how Ipswich can utilize 40R involves creating one or several larger non-contiguous districts. The district would include larger land areas within the community that would be available for development under 40R. Because the 40R district acts as a zoning overlay district, when a new owner buys any parcel or the current owner chooses to redevelop their property, they have the right to choose between the underlying zoning and the...
Smart Growth District Zoning. Allowing more land areas in the district opens more opportunities to create affordable housing within the downtown should the property owner or developer choose the Smart Growth Zoning. Instead of recommending one large district covering the entire area within a ¼ mile radius from the train station, our original study area, we recommend a number of these larger districts that could address the characteristics of each specific area within the downtown core. The following illustration gives an idea of how the larger districts would look.

**Figure 6-3  Proposed 40R district locations: Larger non-contiguous district**

The two recommendations are starting points for Ipswich. The first recommendation could stand on its own and Ipswich could move forward with the steps necessary to prepare a 40R application and submit it to the DHCD. If the first recommendation were fully realized under the Chapter 40R potential, 88 total units would be built resulting in a maximum incentive payment of approximately $340,000 paid to the town of Ipswich. The second recommendation would require some additional collaboration with the community. The circles on the second
illustration are for illustrative purposes only and are not the boundaries of the district. Ipswich should contemplate where the boundaries of the district should be drawn, and public comment should be considered in the district boundary lines. If the second recommendation is pursued, the maximum incentive payment could greatly exceed the $340,000 of the first recommendation, but would likely take more time to fully realize.

6.2 Next Steps

There are several future steps that we recommend to our clients that will further inform and more fully prepare them for making a final determination of whether 40R is the right tool for their town. First, although we have made two strong recommendations for establishing a Smart Growth Zoning District within the downtown core, other areas of potential for 40R development within the town of Ipswich should not be overlooked. We learned through our interviews with city and town planners that many of the current 40R projects began as 40B project proposals. An easy first-step, then, for considering other possibilities is to reconsider existing and future 40B project proposals within the scope of creating a 40R project instead. As we have relayed throughout our report, there are multiple benefits to using Chapter 40R—for both the local community and developers. For the community, these include: retaining local control, optional local adoption, increased zoning capabilities, and incentive funding. For the developer, these include: an as-of-right development process, predictability, no abutter-appeals, and greater profitability potential.

A second important step for the town planning office to take is building connections with developers that are interested in working on 40R projects. Again, we learned of the importance for this through the interviews we conducted. These relationships may be cultivated with developers new to 40R, or with developers that are currently involved in 40R projects in other towns. There are benefits to both approaches. Creating a relationship with a trusted developer that knows the town of Ipswich would enable both the town and the developer to embark on something new and beneficial for their community. Again, this could also be a developer that has come to the town with a 40B project, as mentioned above.

If the town would prefer more guidance, working with a developer that has 40R experience would be a good choice. Thorndike Development, a real estate development and construction company, has been working with the town of Kingston, MA, to create a 40R district
that has recently received town approval. The project will consist of 730 new homes, approximately 146 of which will be affordable, retail and commercial space, and community infrastructure improvements. In addition to working on 40R, Thorndike Development is known for working with natural settings, creating walk-able streetscapes, and providing open green spaces within their developments (Thorndike Development). These components not only align with the smart growth principles relayed in 40R, but also with Ipswich’s Community Development Plan. It is our recommendation that both approaches with developers should be explored so the town can determine what type of relationship will fit in best with their development-support needs.

A third step we are recommending is for the town planning office to learn more about the benefits of hiring a consultant to work with on creating a 40R district. Consultants can offer a range of services to municipal clients that pertain to zoning and regulatory amendments, such as:

- “Grant writing and administration;
- research and coordination as necessary to document legal and policy basis for zoning amendments;
- authoring zoning amendments including smart growth zoning overlay districts and accompanying regulations under MGL Ch. 40R;
- coordinating infrastructure capacity assessment and development mitigation costs associated with smart growth zoning;
- public presentations, community visioning and facilitation of municipal forums.”

(Concord Square Development)

One strong example is the Concord Square Development Company, Incorporated. They have consulted on several 40R projects and its founder and president, Ted Carmen, was instrumental in the creation of 40R, as recommendations he made in two reports served as the basis for the statute.

As we learned from our interviews with planners, all municipalities that have submitted 40R applications to-date have established a planning team that consists of outside assistance including some combination of hired consultants, developers, and legal counsel. Therefore, we are also recommending a fourth step for the town that takes advantage of an existing town relationship. Currently, Kopelman and Paige, P.C provides legal counsel for the town of Ipswich. An attorney with this firm, Kathleen O’Donnell has been providing legal counsel for several 40R projects and was also one of the key experts that we interviewed for this study. Additionally, we have further consulted Kathleen O’Donnell on several follow-up issues that
have arisen throughout the course of our research. Her familiarity of Ipswich, along with an in-depth knowledge and experience with 40R, make Kathleen O’Donnell a logical contact for the town.

The final step we are recommending to our clients also stems from an interview we conducted with a key expert, attorney Mark Bobrowski of Blatman, Bobrowski, and Mead. He suggested that a good way to learn more about the 40R process is to watch it unfold first-hand. This is best achieved by attending town meetings and events within communities that are in varying stages of the 40R process. This is a good way to learn more about many aspects of the process, such as community and landowner reactions, development plans, and objections.

6.3 Final Remarks

We began our project by examining the Smart Growth Zoning and Housing Production statute, learning that its main objective is to address the need for affordable housing while complying with smart growth development standards. Chapter 40R is intended to accomplish this by establishing special zoning overlay districts that permit greater density, higher percentages of affordable homes, and a mixed-use development approach. Through our research, interviews, and analysis, we learned that there are several potential uses for 40R, which include redeveloping existing, abandoned commercial or industrial areas, and to provide municipalities with a tool that would enable them to redevelop their downtown areas, reduce sprawl and diversity their housing options.

Once we established a strong understanding of the statute, we turned our attention to how 40R could be applied to Ipswich’s downtown core. We analyzed numerous sites identified in the town’s Affordable Housing Plan as appropriate locations for affordable housing. Based on our analysis we recommend two distinct approaches for establishing a 40R district within this area: a site-specific non-contiguous district, or a larger non-contiguous district. We have also provided our clients with specific recommendations to assist them as they move forward in their exploration of 40R. Lastly, it is the recommendation of our team that 40R is right for the town of Ipswich.
7. REFERENCES

Documents and Reports


Statutes and Regulations

Commonwealth of Massachusetts. School Finance and Accountability. 603 Code of Massachusetts Regulations 10.00.


Commonwealth of Massachusetts. Smart Growth Zoning and Housing Production. Massachusetts General Law Chapter 40R.

Commonwealth of Massachusetts. Smart Growth Zoning Overlay District. 760 Code of Massachusetts Regulations 59.00.
Websites


Interviews – Town Planners


John DePreist, City of Chelsea, March 5, 2007.

Heidi Griffin, Town of North Reading, March 9, 2007.


Nancy Stack-Savoie, City of Brockton, March 14, 2007.

Interviews – Experts


Donald Schmidt, Principle Land Use Planner, Department of Housing and Community Development, April 10, 2007.
APPENDIX A: CHAPTER 40R STATUTE AND REGULATIONS

The Chapter 40R statute and regulations can be found on the Department of Housing and Community Development website: www.ma.gov/dhcd.
## APPENDIX B: MATRIX OF AFFORDABLE HOUSING TOOLS: PROVIDING A COMPARISON OF CHAPTER 40A, 40B, AND 40R.

<table>
<thead>
<tr>
<th>Provisions</th>
<th>Chapter 40A Inclusionary Zoning&lt;sup&gt;1&lt;/sup&gt;</th>
<th>Chapter 40R Smart Growth</th>
<th>Chapter 40B Comprehensive Permit</th>
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<tbody>
<tr>
<td>Local Site Plan Review</td>
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<tr>
<td>Special Permitting available for housing</td>
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<tr>
<td>Design Standards</td>
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<td>Required Affordability Percentages</td>
<td>Locally determined</td>
<td>20%</td>
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<td>Must be affordable ≤ 80% of median income</td>
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<td>Only local approval necessary</td>
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<td>DHCD Approval needed</td>
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<td>Subsidy needed</td>
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<td>Appeal option w/o fee to appellant</td>
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<td>Payment from state for creating land zoned for dense housing</td>
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<td>Fixed densities required</td>
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<td>Options to build off-site or contribute funds in lieu of affordable unit creation</td>
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<td>Ability to override all local zoning provisions</td>
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<td>All units in development count towards DHCD affordably unit count</td>
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<td>Mitigation possible to off-set impacts</td>
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<td>School cost reimbursement</td>
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<td>Local Legislative approval needed</td>
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<tr>
<td>Planning Board Site Plan Review Process</td>
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<tr>
<td>Ability for a municipality to deny a project</td>
<td>•</td>
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</tbody>
</table>

<sup>1</sup> The Inclusionary Housing Bylaw evaluated are based on the provisions set forth in the Town of Ipswich Protective Bylaw

<sup>2</sup> If the project is a rental project with 25% of the units set aside as affordable, all of the units in the project may be eligible for inclusion in the DHCD inventory.
### APPENDIX C  COMMUNITY CONTACTS

<table>
<thead>
<tr>
<th>Name</th>
<th>Position</th>
<th>Contact Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nancy Stack-Savoie</td>
<td>Director of Planning</td>
<td>508.580.7113 <a href="mailto:planning@ci.brocktonma.us">planning@ci.brocktonma.us</a></td>
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</tr>
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<td>Principal Planner, Concord Square Development Company</td>
<td>617.482.1997 ajennings@con cordsqdev.com</td>
</tr>
<tr>
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</tr>
</tbody>
</table>
Community Interview Questions

1. What led you to explore 40R?

2. What was the most important influence on your decision to apply for/adopt a 40R zoning district?

3. What specifically, for you or your town, were the main attractive qualities of 40R?

4. Who initiated the adoption of a 40R district? If you can share it, what is the political background of your 40R project?

5. What was your process of research and decision-making?

6. What was your interaction with DHCD during your exploration and application processes? Are you currently working with them in any capacity?

7. How did your town’s goals for developing affordable housing affect your decision to apply for a 40R district?

8. What have your town’s experiences with 40B development projects been? Why would you choose 40R over 40B? What are your thoughts on whether or not 40R gives towns more control over developments/developing affordable housing?

9. Will using 40R allow you/your town to limit or control development elsewhere in town in a way that wouldn’t have been possible without 40R?

10. How do you/your town define Smart Growth? (Prompt with: open space, affordable housing, transit oriented, mixed use). How are elements of smart growth incorporated into your 40R proposal/project?

11. What are your views on the funding source for 40R? Did this factor into your decision making process? Do you anticipate your town taking advantage of 40S? Thoughts about funding structure for 40S?

12. Description of 40R project: Only applicable for towns with a project underway, or at least a substantial plan for the project.

13. How does your town view density? Was there a general sentiment about density or affordable housing in town?
14. Do you see 40R/40S as being generally useful in promoting Smart Growth and establishing affordable housing throughout the Commonwealth? Would you recommend it to other towns? What would your advice/precautions be?

15. Are there any changes you (or others in your town who have been instrumental in this process) like to see to the statutes?

Expert Interview Questions

1. Now that 40R is a couple of years old, do you see any changes being made to the legislation to make it more complete, improve its usability, and more fully encourage/foster smart growth in the state?

2. The incentive payment through 40R does not reward towns (as much) that already have dense zoning. Could you comment on how this incentive system was created? What do you think could be done to improve this?

3. We have learned of concerns as to whether or not 40S would successfully be funded. Do you have any thoughts regarding? Also, multiple towns expressed that 40S was not even a part of their consideration process for 40R. How/what do you think about this? What do you think this says about the effectiveness of 40S?

4. We have heard of towns using pre-development agreements to bolster the zoning or their bargaining power with developers, but have not found any literature that speaks of this tool.

5. How do you feel towns can use pre-development agreements, and how can DHCD help to make the pre-development agreements stronger?

6. Could you talk about design standards and the control these give the town? How frequently and under what criteria are they rejected by DHCD? Do you think it would be fostering even smarter growth to have design standards that could not be overturned by DHCD?

7. Can you elaborate on some of the reasons for choosing 40R over 40B and how does the role of abutter appeals factor into the amount of control a town has under 40R?

8. If a main goal for 40R is to create a surplus of land zoned for higher densities, how does the three-year time limitation effect cities/towns interested in pursuing 40R?
Corner of Market Street and Union Street

Address: 44 Market Street
1 Union Street

Current Use: Commercial

Lot Size:
- 0.25 acres / 10,890 ft² (44 Market Street)
- 0.20 acres / 8,712 ft² (1 Union Street)
- 0.45 acres / 19,602 ft² (combined)

Zoning: CB

Assessed Value:
- 44 Market Street: Land: $215,000, Building: $170,200, Total: $393,200
- 1 Union Street: Land: $182,000, Building: $140,800, Total: $322,800
- Combined: Land: $397,000, Building: $311,000, Total: $716,000

Description of Site and Adjacent Land Uses:
A Richdale Convenience Store (44 Market Street) and a NAPA Auto Parts Retailer (1 Union Street), and associated parking currently occupy the two sites. Market Street is the main roadway through the downtown core of Ipswich, and Union Street runs down to the waterfront in the downtown area. Market Street is very busy with pedestrian and vehicular traffic throughout the day as the main downtown strip. The street is populated with the typical businesses: banks, restaurants, gift shops, realtors and other neighborhood conveniences and meeting places. In general, buildings do not reach higher than three stories, and typically have a business on the first floor and offices or apartments on the second and third floors. The site is within 0.2 miles, or about 1,000 feet, of the Ipswich commuter rail station.
Relationship to Current Zoning:
The site is located within the Commercial Business (CB) district of Ipswich. The preferred use for this site is mixed-use development. Mixed-use development requires a special permit, and thus, the existing zoned unit count is zero.

For comparative purposes, with the approval of a special permit, 4 units could be developed at 44 Market Street, 3 units could be developed at 1 Union Street and 9 units could be developed on the two parcels together. If Footnote 11 is used, the following could be developed: 6 units at 44 Market Street, 4 units at 1 Union Street and 12 units on the two parcels.

We do not know of any site constraints at this location that would dramatically reduce the developable number of units.

Development Potential under Chapter 40R:
If the two sites were treated as one (i.e. a 0.45 acre site), the following must be zoned for under Chapter 40R:

- 9 units within a multi-family building;
- 3 single-family buildings; or,
- 5 units within either two or three family buildings.

Financial Impact of Development under Chapter 40R:
The existing zoned unit count is zero. The difference between the future zoned unit count and the existing zoned unit count is 9. The following is the incentive payment for adopting a Chapter 40R district at this site:

- The Zoning Incentive Payment totals $10,000; and,
- The Density Bonus Payment would be $27,000, as it is a payment of $3,000 per new unit in excess of what is developable under the as-of-right zoning

Overall Recommendation:
This location is excellent for mixed-used development due to its prominent location on Market Street. However, two viable businesses, the Richdale convenience store and the NAPA auto body parts store, occupy 44 Market Street and 1 Union Street. Therefore, we recommend contacting the landowners and tenants to determine whether they would entertain redevelopment of the site, to include relocating the businesses on the ground floor of a mixed-use building. Additionally, as this site would receive low monetary incentive under 40R and it might be difficult to meet the residential parking requirement, we are not recommending this site at this time.
3 Topsfield Road

Address: 3 Topsfield Road
Current Use: Commercial / Vacant
Lot Size: 0.64 acres / 27,878 ft²
Zoning: GB

Assessed Value:
Land: $279,800
Building: $675,000
Total: $964,800

Description of Site and Adjacent Land Uses:
This site currently houses an auto repair business, parking, and two vacant lots. It is located across from the Ipswich commuter rail station and a short distance from the downtown core. Topsfield Road, which fronts the site, is actually the continuation of Market Street. Most of the neighboring residences are single-family homes or two-family residences generally 2 stories in height.

Relationship to Current Zoning:
The site is located within the general business (GB) district of Ipswich. Multi-family residential or mixed-use development is the preferred use for this site. Multi-family residential uses or mixed-use development with a residential component requires a special permit, and thus, the existing zoned unit count is zero.

If the site is developed as mixed-use development with the approval of a special permit, 13 units could be constructed on the site. If Footnote 11 is utilized to increase the density, 17 units could be developed onsite within a mixed-use building(s).

If the site is developed as a multi-family building(s) with the approval of a special permit, development would result in 8 units. If Footnote 11 is used, the unit count increases to 12 units within a multi-family building(s).

We are not aware of any major site constraints for development at this site. However, the site is located on a slope that may have an impact on the design of buildings placed on the site.

Development Potential under Chapter 40R:
As a 0.64 acres site, the following must be zoned for under Chapter 40R:
- 12 units within a multi-family building;
- 5 single-family units; or,
- 7 units within either two or three family buildings.
Financial Impact of Development under Chapter 40R:
The existing zoned unit count is zero. The difference between the future zoned unit count and the existing zoned unit count is 12. The following is the incentive payment for adopting a Chapter 40R district at this site:

- The Zoning Incentive Payment totals $10,000; and,
- The Density Bonus Payment would be $36,000, as it is a payment of $3,000 per new unit in excess of what is developable under the as-of-right zoning.

Overall Recommendation:
The site is an excellent location for mixed-use development as it is directly across the street from the commuter rail station. However, due to the uncertainty of the current uses onsite, particularly the auto repair business, as well as the slope at the back of the site, it may be difficult to site the required number of residential units and other residential requirements at this location. Therefore, we recommend contacting the landowners and tenants to determine whether the businesses could be relocated to a ground floor mixed-use building(s). If the landowners and tenants are interested in the proposed plan, there is only a low monetary incentive for development at this site under Chapter 40R.
6 and 14 Topsfield Road

Address: 6 Topsfield Road  
14 Topsfield Road

Current Use: Warehouse / Vacant

Lot Size: 0.76 acres / 33,105 ft² (6 Topsfield Road)  
0.25 acres / 10,890 ft² (14 Topsfield Road)  
1.01 acres / 43,995 ft² (combined)

Zoning: GB

Assessed Value:

<table>
<thead>
<tr>
<th>Address</th>
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<th>Building Value</th>
<th>Total Value</th>
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<td>14 Topsfield Road</td>
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<td>$473,600</td>
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Description of Site and Adjacent Land Uses:

There is a vacant warehouse and associated parking currently onsite. Topsfield Road, which fronts the site, is the continuation of Market Street, the main roadway through the downtown core of Ipswich. The site is located adjacent to the Ipswich commuter rail station and only a short distance from the downtown core. Residential uses become the primary land use near the site, and many of the neighboring residences are single-family or two family homes generally 2 stories in height.

Relationship to Current Zoning:

The site is located within the general business (GB) district of Ipswich. Multi-family residential or mixed-use development is the preferred use for this site. Both types of development require a special permit. Therefore, the existing zoned unit count is zero.

If a special permit was approved for mixed-use development, the following could be developed on each site: 16 units could be developed on 6 Topsfield Road; 4 units could be developed on 14 Topsfield Road; and, a total of 21 units on the two sites combined. If Footnote 11 were utilized to increase the density, the following could be developed: 21 units could be developed on 6
Topsfield Road; 6 units could be developed on 14 Topsfield Road; and, 28 units on the two sites combined.

If a special permit were utilized to construct a multi-family building, 11 units on both sites combined could be developed. If Footnote 11 is used, the unit count increases to 20 units within a multi-family building(s).

There are two site constraints to consider. The first is that the site is located adjacent to the railroad right-of-way that may require a wider rear setback for safety and aesthetic reasons. Second, the Ipswich Planning and Development Department has indicated that there is a water line easement running across the site. It is necessary to have access to the water line in case of maintenance or emergency. As such, any development that occurs on site would have to be mindful of the location of the water line. These two site constraints could have an impact on the number of developable units onsite.

**Development Potential under Chapter 40R:**
As a 1.01 acre site, the following possibilities must be zoned for:
- 20 units within a multi-family building;
- 8 single-family units; or,
- 12 units within either two or three family buildings.

**Financial Impact of Development under Chapter 40R:**
Since no residential units can be constructed onsite as-of-right, the future zoned unit count is 20 units. The following is the incentive payment for adopting a Chapter 40R district at this site:
- The Zoning Incentive Payment totals $10,000; and,
- The Density Bonus Payment would be $60,000 as it is a payment of $3,000 per new unit in excess of what is developable under the as-of-right zoning.

**Overall Recommendation:**
This site is an excellent location for mixed-use development as the site is underutilized and is immediately adjacent to the commuter rail station. We feel that an innovative design can mitigate the site constraints to allow direct access to the water main and buffers from the railroad tracks. Additionally, the redevelopment of this vacant parcel would be an aesthetic improvement to the area. Further, the incentive for the site is significant in comparison to the other site evaluated herein, and adding one additional unit boosts the Zoning Incentive Payment to $75,000, bringing the maximum incentive payment to $135,000. We recommend this site for inclusion in a 40R district.
16 and 18 Hammatt Street

Address:  
16 Hammatt Street  
18 Hammatt Street  

Current Use: Vacant Building / Vacant  
Lot Size:  
0.37 acres / 16,117 ft² (16 Hammatt Street)  
0.13 acres / 5,662 ft² (18 Hammatt Street)  
0.50 acres / 43,995 ft² (combined)  

Zoning: CB  

Assessed Value:  
16 Hammatt Street  
Land: $189,500  
Building: $62,800  
Total: $258,300  

18 Hammatt Street  
Land: $86,000  
Building: $35,300  
Total: $121,700  

Combined  
Land: $275,500  
Building: $98,100  
Total: $380,000  

Description of Site and Adjacent Land Uses:  
A vacant parcel is located at 16 Hammatt Street, and a vacant building is located at 18 Hammatt Street. Hammatt Street, which fronts the site, runs parallel to Market Street, the main roadway through the downtown core. Adjacent to the site is a large municipal parking lot. Commercial businesses are in the immediate area, and light industrial uses are located just a little further away. The site is within walking distance of the Ipswich commuter rail station at approximately 0.3 miles on sidewalks.

Relationship to Current Zoning:  
The site is located within the commercial business (CB) district of Ipswich. The preferred use for the site is a mixed-use development of business and residential uses. However, residential uses cannot be developed onsite without a special permit from the Ipswich Planning Board. Therefore, the existing zoned unit count is zero.

If a special permit is approved for mixed-use, 7 units could be developed on 16 Hammatt Street. If 16 and 18 Hammatt Street are combined, 10 units could be developed in a mixed-use building. If Footnote 11 is utilized, the density allowed at the sites would increase. Nine units could be developed on 16 Hammatt Street using Footnote 11. If both sites are developed together, 13
units could be developed. 18 Hammatt Street cannot be developed on its own or with Footnote 11 due to its small size.

According to the Ipswich Planning and Development Department, the parcels are brownfield sites, which must be considered as a site constraint.

**Development Potential under Chapter 40R:**
As a 0.5 acres site, the following possibilities must be zoned for:
- 10 units within a multi-family building;
- 4 single-family units; or,
- 6 units within either two or three family buildings.

**Financial Impact of Development under Chapter 40R:**
The existing zoned unit count is zero, and the future zoned unit count is 10. For the 10 units, Ipswich would receive:

- $10,000 as the Zoning Incentive Payment; and,
- $30,000 as the Density Bonus Payment, as it is a payment of $3,000 per new unit in excess of what is developable under the as-of-right zoning.

**Overall Recommendation:**
This site is an excellent location for mixed-use development as it is located near a large municipal parking lot and in the downtown core. There is a moderate financial incentive for utilizing Chapter 40R at this site. The brownfield site constraints are not an additional cost to the town; they are an additional cost consideration for a developer considering this site for mixed-use development. We would recommend this site for inclusion in a 40R district as it could be developed to mimic the Depot Square development nearby this site. Depot Square, a smaller site at 0.28 acres, is a mixed-use development that is consistent with the scale and massing of the community.
5, 11 and 31 Washington Street

Address: 5 Washington Street
          11 Washington Street
          31 Washington Street

Current Use: Vacant / Car Wash Business / two family residence

Lot Size:
0.14 acres / 6,098 ft² (5 Washington Street)
0.67 acres / 29,185 ft² (11 Washington Street)
0.81 acres / 35,283 ft² (combined)

0.27 acres / 11,761 ft² (31 Washington Street)

Zoning: IR

Assessed Value:

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31 Washington Street
Land: $204,300
Building: $178,300
Total: $382,600

Description of Site and Adjacent Land Uses:
The three parcels are located at the intersection of Washington Street and Mineral Street. Both 11 Washington Street and 31 Washington Street are developed; a car wash business is located on 11 Washington Street, and a two-family home is located on 31 Washington Street. 5 Washington is irregularly shaped and vacant. The railroad right-of-way is located adjacent to all three sites. The surrounding neighborhood contains primarily single-family homes and two family homes, generally two to three stories in height. The downtown core is within walking distance from the site, as is the commuter rail station, both about 0.2 miles away.
**Relationship to Current Zoning:**
The sites are located within the In-town Residence (IR) district. The preferred use is multi-family buildings. Single-family homes and two family homes are the only as-of-right residential uses within the IR district. Mineral Street separates the three sites; therefore, we considered possible improvements separately. For this site evaluation, we consider 5 Washington Street in combination with 11 Washington Street, as it too small to develop based on the Zoning Bylaw. The existing zoned unit count for single-family homes is 3 units, and for two family units, the existing zoned unit count is 2 two family buildings. For multi-family residential use, the existing zoned unit count is zero.

If a special permit is approved for multi-family and to increase the density allowed on the parcels, the following can be developed: 5 units on 11 Washington Street or 6 units on both 5 and 11 Washington Street combined.

The Zoning Bylaw allows one single family home to be developed on 31 Washington Street. Neither two family buildings nor multi-family buildings could be developed even without a granting of a special permit in addition to the use of Footnote 11 to increase the density due to the size of the parcel.

There are site constraints on 5 and 11 Washington Street. Both sites are adjacent to the railroad right-of-way so additional setbacks may be necessary for safety and aesthetics. Further, 5 Washington Street is very small and irregularly shaped, making it difficult to develop under the current zoning bylaws.

**Development Potential under Chapter 40R:**
5 Washington Street and 11 Washington Street, totaling 0.81 acres, the following must be zoned for:
- 16 units within a multi-family building;
- 6 single-family units; or,
- 9 units within either a two or three family building.

31 Washington Street, totaling 0.27 acres, the following must be zoned for:
- 5 units within a multi-family building;
- 2 single-family units; or,
- 3 units within either two or three family building.

**Financial Impact of Development under Chapter 40R:**
The existing zoned unit count is one, and the future zoned unit count is 18. For the 17 units, Ipswich would receive:
- $10,000 as the Zoning Incentive Payment; and,
- $51,000 as the Density Bonus Payment, as it is a payment of $3,000 per new unit in excess of what is developable under the as-of-right zoning.
Overall Recommendation:
Housing at this location is an appropriate use. However, due to the location of the railroad tracks immediately adjacent to the sites as well as the existence of a viable business and an existing two family residence, inclusion of this site in a 40R district may not be appropriate at this time. If the town and the landowner and/or tenants can collaborate on redevelopment of the sites, arranging the buildings in a way that limits conflicts with the railroad tracks could mitigate the site constraints. We do not recommend the sites, while there is a financial benefit, for development under Chapter 40R at this time.
20 and 24 South Main Street

Address: 20 South Main Street
24 South Main Street

Current Use: Commercial

Lot Size: 0.30 acres / 13,068 ft² (20 S. Main Street)
0.11 acres / 4,791 ft² (24 S. Main Street)
0.41 acres / 17,859 ft² (combined)

Zoning: CB

Assessed Value:

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Description of Site and Adjacent Land Uses:

An operating gas and service station and associated parking currently occupy the site. South Main Street is a main roadway into the downtown core of Ipswich, located on the eastern bank of the river. South Main Street is busy with pedestrian and vehicular traffic throughout the day as a main roadway to reach the downtown core, but the street is populated with only a few stores and other private businesses. In general, buildings do not reach higher than three stories. The site is within 0.25 miles of the Ipswich commuter rail station, which can be accessed by crossing the river via the River Walk Bridge.

Relationship to Current Zoning:

The site is located within the commercial business (CB) district of Ipswich. The preferred use is mixed-use development; however, a special permit from the Planning Board is required to develop mixed-use development. Thus, the existing zoned unit count is zero.

If a special permit is approved to allow mixed-use development, 6 units could be developed on 20 S. Main Street or 8 units could be developed on both 20 and 24 S. Main Street. 24 S. Main Street is undevelopable alone under conventional zoning due to its small size.
If an additional special permit is approved for Footnote 11 to increase the density allowed on the parcels, 7 units could be developed on 20 S. Main Street, or 10 units could be developed on 20 and 24 S. Main Street. Even by increasing the density allowed, 24 S. Main Street is still undevelopable under the current zoning for mixed use.

We are not aware of any major site constraints at the site. There is space for onsite parking and other accessory structures.

Development Potential under Chapter 40R:
As a 0.45 acres site, the following possibilities must be zoned for:
- 8 units within a multi-family building;
- 3 single-family units; or,
- 4 units within either two or three family buildings.

Financial Impact of Development under Chapter 40R:
As the existing zoned unit count is zero, the financial incentive for the site is as follows:
- The Zoning Incentive Payment totals $10,000; and,
- The Density Bonus Payment would be $24,000 as it is a payment of $3,000 per new unit in excess of what is developable under the as-of-right zoning.

Overall Recommendation:
There is a business currently occupying the site. While the addition of residential units at this location within a mixed-use building potentially would liven up the street, the incorporation of the existing business and the residential uses may be difficult based on the nature of the business. At this time, we cannot recommend this site for inclusion in a 40R district. However, if the landowner collaborates with Ipswich on the redevelopment of the site, the mixed-use development would be sited in an appropriate location for inclusion in a 40R district. Further, there is only a small financial benefit for development of this site under Chapter 40R.
22 Brown Square

Address: 22 Brown Square
Current Use: Commercial
Lot Size: 0.31 acres / 13,503 ft²
Zoning: GB

Assessed Value:
Land: $163,100
Building: $58,000
Total: $225,300

Description of Site and Adjacent Land Uses:
A marble cutting shop currently occupies the site located on Brown Square in an industrial area of the downtown core. It is a U-shaped building containing offices, and the yard contains marble and marble cutting apparatuses. The other buildings in the surrounding area are generally commercial and light industrial buildings such as lumberyards and mechanics. There are some residential buildings on Brown Square; those buildings are mainly multi-family residences. This area of the downtown is not high in traffic. It is located within walking distance (0.3 miles) of the downtown conveniences and the commuter rail station.

Relationship to Current Zoning:
The site is located within the general business (GB) district of Ipswich. The preferred use for the site is either mixed-use or multi-family development; however, a special permit is needed to developed residential uses. Therefore, the existing zoned unit count is zero.

A special permit authorization for mixed-use development results in the development of 6 units. If Footnote 11 is used to increase the density, 8 units could be developed. A multi-family building developed with the approval of a special permit results in 4 units. If Footnote 11 is used, the unit count increases to 5 units within a multi-family building(s).

There are no major site constraints with development at this site. There is ample space for parking or accessory structures.

Development Potential under Chapter 40R:
As a 0.31 acres site, the following possibilities must be zoned for:
- 6 units within a multi-family building;
- 2 single-family units; or,
- 3 units within either two or three family buildings.
Financial Impact of Development under Chapter 40R:
The difference between the existing zoned units and the future zoned units is 6 units within a multi-family building. The following is the incentive payment for adopting a Chapter 40R district at this site:

- The Zoning Incentive Payment totals $10,000; and,
- The Density Bonus Payment would be $18,000 as it is a payment of $3,000 per new unit in excess of what is developable under the as-of-right zoning.

Overall Recommendation:
While there are residential uses in the immediate area, the location is not very residential friendly. Due to the low monetary incentive coupled with the surrounding land uses, we do not recommend this site for inclusion in a 40R district. If the site is included in a 40R district, we feel that buffers and improvements to the street are necessary to make the area more pedestrian friendly.
2 Soffron Lane

Address: 2 Soffron Lane
Current Use: Light Industrial
Lot Size: 0.88 acres / 38,332 ft²
Zoning: GB

Assessed Value:
Land: $407,300
Building: $513,600
Total: $928,000

Description of Site and Adjacent Land Uses:
The site houses the former Soffron Brother’s Clam factory. The building is abandoned. The site is located on Soffron Lane in a more industrial area of the downtown core. The other buildings in the surrounding area are generally commercial and light industrial buildings such as lumberyards and mechanics. There are some residential buildings on an adjacent street; those buildings are mainly multi-family residences. This area of the downtown is not high in traffic. It is located within walking distance (0.3 miles) of the downtown conveniences and the commuter rail station.

Relationship to Current Zoning:
The site is located within the general business (GB) district of Ipswich. The preferred use is mixed-use development or multi-family residential. However, residential uses require the approval of a special permit.

With the approval of a special permit for mixed-use development, 18 units could be developed on the site. If Footnote 11 is used to increase the density, 24 units could be developed onsite within a mixed-use building(s).

With the approval of a special permit for multi-family residential, 10 units could be developed on the site. If Footnote 11 is used to increase the density, 17 units could be developed onsite within a multi-family building(s).

We are not aware of any major site constraints for development at this site. There is ample space for parking or accessory structures as necessary.

Development Potential under Chapter 40R:
As a 0.88 acres site, the following possibilities must be zoned for:
- 17 units within a multi-family building;
- 7 single-family units; or,
- 10 units within either two or three family buildings.
Financial Impact of Development under Chapter 40R:
The difference between the existing zoned units and the future zoned units is 17 units within a mixed-use development. The following is the incentive payment for adopting a Chapter 40R district at this site:

- The Zoning Incentive Payment totals $10,000; and,
- The Density Bonus Payment would be $51,000 as it is a payment of $3,000 per new unit in excess of what is developable under the as-of-right zoning.

Overall Recommendation:
Mixed-use or multi-family residential is an appropriate use for this location. We suggest that any new development include the rehabilitation of the existing buildings onsite as there may be some historical significance as an old mill building. Unlike the recommendation for 22 Brown Square, we feel that the financial benefit makes this viable for consideration under 40R, and additionally, the building is currently vacant.
28 Topsfield Road

Address: 28 Topsfield Road
Current Use: Vacant Church
Lot Size: 0.37 acres / 16,117 ft²
Zoning: IR

Assessed Value:
Land: $212,200
Building: $454,700
Total: $678,000

Description of Site and Adjacent Land Uses:
A vacant church currently occupies the site. Topsfield Road is the continuation of Market Street, the main roadway through the downtown core of Ipswich. The site is located approximately 0.2 miles from the Ipswich commuter rail station and the downtown core, in a primarily residential area. Most of the neighboring residences are single-family homes generally 2 stories in height.

Relationship to Current Zoning:
The site is located within the in-town residence (IR) district of Ipswich. The preferred use for the site is multi-family housing. Multi-family residential development requires a special permit within the IR district. As such, the existing zoned unit count is zero. Even with a special permit, under the current zoning bylaw and due to the small lot size, multi-family housing cannot be developed. By increasing the allowable density utilizing Footnote 11, 4 units could be developed on this site in a multi-family building(s).

The vacant church onsite could be rehabilitated to contain new residential units.

Development Potential under Chapter 40R:
As a 0.37 acres site, the following possibilities must be zoned for:
- 7 units within a multi-family building;
- 2 single-family units; or,
- 4 units within either two or three family buildings.

Financial Impact of Development under Chapter 40R:
As no multi-family units could be developed on site under the conventional zoning, the 7 units within a multi-family building could be counted toward the incentive payment. The following is the incentive payment for adopting a Chapter 40R district at this site:

- The Zoning Incentive Payment totals $10,000; and,
- The Density Bonus Payment would be $21,000 as it is a payment of $3,000 per new unit in excess of what is developable under the as-of-right zoning.
**Overall Recommendation:**
The site is located at the limit of the ¼ mile radius from the commuter rail station. Additionally the incentive is low and there is a lack of space for residential parking onsite. Therefore, we do not recommend this site for inclusion in a 40R district.
2 Washington Street

Address: 2 Washington Street
Current Use: Sales Office
Lot Size: 2.09 acres / 91,040 ft²
Zoning: GB

Assessed Value:
Land: $759,800
Building: $526,400
Total: $1,293,500

Description of Site and Adjacent Land Uses:
The Reifenhauser sales office currently occupies the site, at the intersection of Washington Street and Hammatt Street and Topsfield Road. The site is located approximately 0.2 miles from the Ipswich commuter rail station, and within walking distance from the downtown core, near where residential uses become the primary land use. Most of the neighboring residences are single-family homes, generally 2 stories in height.

Relationship to Current Zoning:
The site is located within the general business (GB) district of Ipswich. The preferred use is mixed-use development, which is undevelopable without a special permit approval from the Ipswich Planning Board. As such, the existing zoned unit count is zero.

A special permit to authorization results in 45 units that could be developed on the site within a mixed-use building(s). If a Footnote 11 special permit is approved to increase the density, 59 units could be developed onsite within a mixed-use building(s).

We are not aware of any site constraints at this location, nor are we aware of any active selling plans. It is in a prominent location in the downtown area, and a large mixed-use building taking full advantage of what is allowable under the current zoning bylaw may not be of the same scale as the rest of the community. The development potential might become a challenge for a developer to create a design that is of the same scale and massing as the community.

Development Potential under Chapter 40R:
As a 2.09 acres site, the following possibilities must be zoned for:

- 41 units within a multi-family building;
- 16 single-family units; or,
- 25 units within either two or three family buildings.

Financial Impact of Development under Chapter 40R:
Mixed-use development is not permitted within the site’s zoning district as-of-right. Therefore, the future zoned units total 41 units within a mixed-use development could be counted toward
the incentive payment. The following is the incentive payment for adopting a Chapter 40R district at this site:

- The Zoning Incentive Payment totals $75,000; and,
- The Density Bonus Payment would be $123,000 as it is a payment of $3,000 per new unit in excess of what is developable under the as-of-right zoning.

**Overall Recommendation:**

As discussed above, the site is located very prominently in Ipswich’s downtown, and taking full advantage of the 40R as-of-right zoning could produce a building(s) that is out of scale with the community. However, innovative design of the building(s) onsite to accommodate the density required by 40R and relocating the Reifenhauser sales office into the commercial portion of a mixed-use development, the site could be developed in a fashion consistent with the neighborhood scale and character. Further, the incentive payment at this site is the largest of any that we evaluated. We recommend this site for inclusion in a 40R district, and suggest that Ipswich approach the landowner and/or tenant to develop a mixed-use development at this excellent location.
17-25 South Main Street

Address: 17-25 South Main Street
Current Use: Vacant, Building Destroyed in Fire
Lot Size: 0.09 acres / 3,920 ft$^2$
Zoning: CB

Assessed Value:
Land: $107,400
Building: $0
Total: $107,400

Description of Site and Adjacent Land Uses:
This vacant site is located adjacent to the Choate Bridge on South Main Street. A fire recently destroyed the structures on the site. The site is located within the downtown core of Ipswich near where South Main Street meets Market Street. The street is populated with only a few stores and other private businesses. In general, buildings do not reach higher than three stories. The site is within 0.3 miles of the Ipswich commuter rail station, which is accessed by crossing the river via the River Walk Bridge.

Relationship to Current Zoning:
The site is located within the commercial business (CB) district of Ipswich. The preferred use for the site is a mixed-use building. The Zoning Bylaw requires a special permit approval for mixed-use development within the CB district. Due to the special permit requirement, the existing zoned unit count is zero. Further, according to the Zoning Bylaw, if a special permit was granted, neither mixed use nor multi-family housing can be developed on the site under the conventional zoning or a density increase allowed under Footnote 11 due to the small lot size.

Before a fire destroyed the buildings onsite, there was a mixed-use building of eight units and commercial space. The previous use can be grandfathered to the site. However, the site is extremely small and located right on the Ipswich River making onsite parking (aboveground or underground) infeasible.

Development Potential under Chapter 40R:
As a 0.09 acres site, the following possibilities must be zoned for:
- 1 unit within a multi-family building;
- 1 single-family units; or,
  - 1 unit within either two or three family buildings.

As the site is so small, Chapter 40R would only require 1 unit on the site.
Financial Impact of Development under Chapter 40R:
As no multi-family units could be developed on site under the conventional zoning, the one unit required under Chapter 40R could be counted toward the incentive payment. The following is the incentive payment for adopting a Chapter 40R district at this site:

- The Zoning Incentive Payment totals $10,000; and,
- The Density Bonus Payment would be $3,000 as it is a payment of $3,000 per new unit in excess of what is developable under the as-of-right zoning.

Overall Recommendation:
We do not recommend Chapter 40R for use at this site. As discussed above, because fire destroyed the building onsite, the grandfather clause would allow the previous land use to be redeveloped at this site. The previous land use was eight residential units over a commercial business. The site constraints in addition to environmental concerns associated with redevelopment on the river leads us to not recommend this site for inclusion in a 40R district.
Much like how Chapter 40R was enacted to respond to the rising prices of homes in Massachusetts, Chapter 40S was enacted to respond to the rising school costs associated with housing production under Chapter 40R. Chapter 40R, as it was enacted, did not provide a provision to cover the additional school costs in circumstances where the revenue generated from new property tax of modestly priced single family homes do not cover the costs of educating the new public school students living within Smart Growth Districts. The reason behind the gap between new revenue from property tax and the cost of educating a new student is due to the high density required for Smart Growth Districts. In theory, the high density will lower the land costs allowing lower priced single family homes to be built which in turn reduces the total amount of property tax levied on each new unit.

The Commonwealth Housing Task Force (CHTF) produced a document that analyzed the disconnect between new property tax revenue resulting from Smart Growth Districts and the costs of education and how to formulaically solve the problem. The result of the CHTF’s document is that most communities within the Commonwealth are “currently financially penalized if they allow modest-priced single family homes to be built within 40R districts”\(^3\). The CHTF found that the communities to be affected the most are the communities where actual school spending exceeds the amount of Chapter 70 Foundation Aid Budget for that community. Additionally, the CHTF found that in non-Foundation Aid Communities, the new property tax revenue generated from modestly priced new homes multiplied by the percent of property tax spent on education (the Education Percent), do not equal the average educational spending associated with the projected number of school aged children living in the new homes and attending public school. Further, the CHTF found that a community cannot predict whether they will remain a Foundation Aid Community or not for years into the future. Many different variables can cause a community to continue receiving Chapter 70 Aid or not.

Thus, as a result for communities to want to add modestly priced single family homes within Smart Growth Districts, the CHTF proposed that the Commonwealth must make a financial commitment to cover the costs of education in order to alleviate municipal concerns

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regarding any net school costs incurred through the adoption and implementation of a Chapter 40R Smart Growth District. In November 2005, an amendment to Chapter 70 providing a Smart Growth School Cost Insurance Supplement was signed into law protecting communities from net education costs arising from new students living in Smart Growth Districts. The law also allows for the supplement to reassessed each year based on the actual numbers of students and the actual school spending per student at that time; however, the funds for Chapter 40S are subject to appropriation by the legislature each year bringing into consideration to availability of these funds to cover the net costs to communities.

Methodology

As laid out in Chapter 3, the formula as developed by the CHTF to assess the Smart Growth School Cost Insurance Supplement is as follows:

Reimbursement = Total added education costs – (Education revenues generated + Ch. 70 aid),
where education revenues generated = (New property taxes from smart growth development + New automobile excise taxes from smart growth development) * Statewide average proportion of local revenues spent on education

The CHTF in their report, “Chapter 40R School Cost Analysis and Proposed Smart Growth School Cost Insurance Supplement”, projected the amount of the supplement for every community in the Commonwealth for Fiscal Year 2002. The findings for the town of Ipswich are presented in a later section. Some key definitions and assumptions from the CHFT report are defined below:

Cost of Education per Student

In developing the formula to calculate the School Cost Insurance Supplement, the CHTF wanted to ensure that the formula was easy to understand and administer, not only in year 1 but also in year 20. As a result, the CHTF decided to use the average cost of education per student instead of education cost per capita, marginal cost method which is a standard method for determining education costs. The CHTF makes clear that the use of average cost of education per student is “not in conflict with the standard per capita approach for doing cost/benefit analyses for individual housing developments. Instead it should be understood as a way to
accurately assess education costs from multiple housing developments that may be built over an extended period of time, each potentially under significantly different circumstances”.

Required Local Contribution

The required local contribution for the School Cost Insurance Supplement is determined in a similar fashion to the Chapter 70 Aid local contribution. The School Cost Insurance Supplement takes into consideration the assessed value of all property, both residential and commercial, that is newly built or substantially rehabilitated within a Smart Growth District. It is assumed that the community would dedicate a portion (the Education Percent – see next section) of the new revenue to pay for education costs. The formula also assumes that a portion of the excise tax levied on cars associated with the new growth will be dedicated to education costs.

The Education Percent

In FY 2002, the Education Percent is 52.7 %, the average across all communities in the State that are not in a regional school system. The Education Percent represents the amount per dollar of revenues allocated to education costs. The actual percent per community varies substantially across the Commonwealth, but the CHTF found that “new housing built in different communities is likely to have similar long term costs associated with its construction.” It was determined that the statewide average education percent would be the most relevant, appropriate and fair across communities.

Other Assumptions

The following are other assumptions used by the CHTF in determining the School Cost Insurance Supplement per community:

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1. All data is from FY 2002.

2. Each figure presented is from the construction of one new single family home or multi-family unit under a range of assumptions regarding assessed value and school aged children.

3. The CHTF identified the average number of school aged children in multi-family units is 0.129 school aged children per unit. The figure is taken from a report prepared by the University of Massachusetts’ Donahue Institute for the Citizens Housing and Planning Associated (CHAPA) in 2003. In that report, it was assumed that in a typical multi-family housing development of 100 units, 42 would be one bedroom units, 50 would be two bedroom units and 8 three bedroom units. The appropriate number of school aged children for each sized unit, based on the Census Data, was averaged to result in the 0.129 figure. This figure is supported by empirical studies performed in Massachusetts.

4. The CHTF identified the average number of school aged children in single family housing to be 0.95 school aged children per home based on a census data analysis prepared by the Northeastern University Center for Urban and Regional Policy (CURP) and from the data in the Donahue Institute Report mentioned above. The CURP census data estimates that the number of school aged children in single family 3 and 4 bedroom homes where the families are recent movers will be approximately 1.0 children per home. The number has been reduced to 0.95 in order to account for the fact that a number of children will attend private school or for other reasons will not be in the local school system. This figure is also supported by empirical studies performed in Massachusetts.

5. It is assumed that “Foundation Aid Communities” will receive additional funding from Chapter 70 equal to the difference between the increase from the town’s property tax and excise tax revenues from the home or apartment multiplied by the community’s Education Percent and the cost to educate the pupil(s) who live in the home or apartment and attend public schools.

6. Non-Foundation Aid Communities will receive no increase from Chapter 70 when enrollment increases.

7. Auto excise tax receipts are estimated based on a tax rate of $25 per thousand (by statute, the same in every community), and average initial vehicle purchase price of $25,000 and a average age of the vehicle of three years (which means the tax is on 40% of the initial value). Based on the statewide formula, this results in an average excise tax of: $25 times $25,000 divided by $1,000, times 40% = $250.

8. The numbers presented in the following tables represents the actual educational spending per home or apartment, less the Education Percentage times the sum of the property and excise taxes generated by the home or apartment. This amount is the same as the Smart

Recommendations for the Commonwealth Housing Task Force from the Center for Urban and Regional Policy, Northeastern University. May 14, 2005.
Growth School Cost Insurance Supplement. It can also be used as a proxy for the net cost to the community for the construction of a housing unit that has the stated characteristics of assessed value and number of school aged children.

Findings

For Fiscal Year 2002 and based on the assumption presented in the CHTF report and outlined above, the following table represents the projected School Cost Insurance Supplement related to the construction or rehabilitation of one new single family home. Based on information presented in Ipswich’s Affordable Housing Plan and Community Development Plan, the median home value in 2001 was $325,000 and using the generally accepted multiplier of school aged children per single family home of 0.95, the projected School Cost Insurance Supplement would be approximately $4,105 per new single family home constructed as presented in the table and chart below. It should be noted that the zero represents no supplement paid as the revenue generated from new property tax and excise tax exceeds the average spending per pupil.

<table>
<thead>
<tr>
<th>Assessed Value</th>
<th># SAC (School Age Children) per House</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>0.6</td>
</tr>
<tr>
<td>250,000</td>
<td>2,325</td>
</tr>
<tr>
<td>350,000</td>
<td>1,719</td>
</tr>
<tr>
<td>450,000</td>
<td>1,113</td>
</tr>
<tr>
<td>550,000</td>
<td>507</td>
</tr>
<tr>
<td>650,000</td>
<td>0</td>
</tr>
<tr>
<td>750,000</td>
<td>0</td>
</tr>
</tbody>
</table>
Using the same data for FY 2002 and the assumption presented above from the CHTF report, the following table represents the projected School Cost Insurance Supplement related to the construction or rehabilitation of one new unit within a multi-family building. While it is not presented on the table, if the 2001 median house value in Ipswich is $325,000 as stated in the Housing Production Plan and the Community Development Plan and using the generally accepted multiplier of school aged children per single family home of 0.129, the projected School Cost Insurance Supplement would be approximately $0 per new unit in a multi-family building constructed as presented in the table and chart below. Note that as stated above, the zero means the new revenue generated due to new property tax and excise tax exceeds the average amount of education spending per pupil.
Table 2

<table>
<thead>
<tr>
<th>Assessed Value</th>
<th># SAC (School Age Children) per Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>0.08</td>
</tr>
<tr>
<td>100,000</td>
<td>0</td>
</tr>
<tr>
<td>115,000</td>
<td>0</td>
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<tr>
<td>150,000</td>
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</tr>
<tr>
<td>200,000</td>
<td>0</td>
</tr>
<tr>
<td>250,000</td>
<td>0</td>
</tr>
<tr>
<td>300,000</td>
<td>0</td>
</tr>
</tbody>
</table>

40S Supplement per Unit with varying Assessed Values and School Aged Children (SAC)/Unit

While this data is for FY 2002, it can been seen based on the trends presented in the tables that a new single family home or new multi-family unit that has a high assessed value and projected to house many children will result in a higher School Cost Insurance Supplement payment. Further, as can be inferred from the tables presented, there is very little benefit of adding new multi-family units under Chapter 40R as multi-family units based on the generally accepted average multiplier for multi-family housing (0.129 SAC) and a high median home
value of $325,000 will result in no School Cost Insurance Supplement payment to Ipswich. As presented in previous chapters of this report, Ipswich is primarily interested in adding new multi-family housing or mixed-use development with multi-family housing to their downtown core. In this case, there would be no benefit to Ipswich under Chapter 40S based on the figures presented.

There is no doubt that as each year goes by communities are spending more money on education which could result in a positive net impact under the School Cost Insurance Supplement producing a Chapter 40S payment for Ipswich. There are also, however, many other factors that can counteract the increased spending that are taken into account in the formula (i.e. property tax rate and the Education Percent as well as Chapter 70 Foundation Aid). This research team encourages the Ipswich Planning and Development Department and the Ipswich School Board to investigate updating the numbers using the assumptions laid out in this chapter to project the School Cost Insurance Supplement for a more recent year.
The definitions included in this section are the main definitions from the Smart Growth Zoning and Housing Production regulations (760 CMR 59.00) and the 2006 Ipswich Zoning Bylaw. Additional definitions are included as needed.

### Adjacent Area

An Adjacent Area is “an area physically contiguous to an [Eligible Location](#) or that is currently served or planned to be served within five years of the application by public sewer(s) and/or private wastewater treatment plant(s) and other infrastructure, and that is located within one-quarter mile distance of at least one destination that pedestrians frequently use and that is located within the [District](#), such as an elementary or high school; a college or university; a hospital; a municipal office building, public library, post office, public safety facility, or other civic facility; a general or neighborhood commercial or business area with substantial employment and/or retail or entertainment activity; a recreational facility open to the public; or a bus stop along a route serving the [Eligible Location](#) at a minimum of hourly frequency during peak periods” (76-CMR 59.02).

### Affordable

Affordable means “housing units that are affordable to and occupied by individuals and families whose annual income is less than 80 percent of the area-wide median income as determined by the United States Department of Housing and Urban Development (HUD), adjusted for household size and using HUD’s rules for attribution of income to assets. Affordability shall be assured for a period of no less than 30 years through the use of an affordable housing restriction as defined in M.G.L. c.184 §31. Affordable units created within a Smart Growth District meeting the standards set out in 760 CMR 45.03 shall count as low- or moderate-income units on the Subsidized Housing Inventory in accordance with the Department’s rules for the Inventory” (76-CMR 59.02).

### Area of Concentrated (or Compact) Development

An area of concentrated or compact development means “a city or town center, an existing commercial district, or a rural village district that qualifies as an [Eligible Location](#)” (760 CMR 59.02).

### As-of-Right or By-Right

As-of-Right or By-Right means “a unit of housing is developable if it may be developed under the [Underlying Zoning](#) or Smart Growth Zoning without recourse to a special permit, variance, zoning amendment, or other form of zoning relief. Units that require [Plan Review](#) shall be..."
considered As-of-right, subject to review and approval by the Department of the proposed Smart Growth Zoning and Design Standards under 760 CMR 59.00.” (760 CMR 59.02)

CMR

Code of Massachusetts Regulations. The citation of the Smart Growth Zoning and Housing Production Statute is 760 CMR 59.00.

Central Business District

“The Central Business (CB) District is intended primarily to accommodate a composite of business and retail uses, multi-family residential uses, office uses, and institutional uses, all of which comprise the Town’s central core. Multi-family uses require the approval of special permit. The district is served by municipal water supply and sewerage facilities” (Ipswich Zoning Bylaw, 2006). The maximum building height is three stories, not to exceed forty-five feet in height. A special permit will allow a four-story building, but it must still be less than forty-five feet in height. The minimum square footage required for mixed-use development within the CB district is 3,000 square feet for the first dwelling unit and 2,000 square feet for each dwelling unit thereafter.

Chapter 40R or 40R

Chapter 40R or 40R is a shortened reference to the Smart Growth Zoning and Housing Production Statute referring to the statute’s chapter as part of the Massachusetts General Laws.

Density Bonus Payment

The Density Bonus Payment is “a one-time payment made to a municipality from the Trust Fund for each Bonus Unit within an Approved District for which a building permit has been issued” (760 CMR 59.02). The one-time payment totals $3,000 and is paid to the municipality upon proof of the building permit. It is the second incentive payment built into the regulations.

Density Requirements

“The Smart Growth Zoning for the District shall provide for any one or more of the following minimum allowable As-of-right density requirements, as applicable, unless the Department has previously approved a density reduction under 760 CMR 59.04(3):

1. Allowing a density of at least 8 units per acre for Developable Land zoned for single-family residential use;
2. Allowing a density of at least 12 units per acre for Developable Land zoned for 2- and/or 3-family residential use; or
3. Allowing a density of at least 20 units per acre for Developable Land zoned for Multi-Family Residential use” (760 CMR 59.03).

Department or DHCD

The DHCD is the Department of Housing and Community Development. The DHCD administers the Smart Growth Zoning and Housing Production statute.

Design Standards

Design Standards are the standards municipalities write in addition to the Smart Growth Zoning that dictate the requirements of any new project with the overlay zone. Design standards are enforceable under the Smart Growth Zoning and Housing Production statute.

Developable Land

Developable Land is “all land within a District that can be feasibly developed into residential or Mixed-Use Development Projects. Developable Land shall not include:

1. Substantially Developed Land;
2. Open space;
3. Future open space;
4. The rights-of-way of existing public streets, ways, and transit lines;
5. Land currently in use for governmental functions (except to the extent that such land qualifies as Underutilized Land); or
6. Areas exceeding one-half acre of contiguous land that are:
   a. Protected wetland resources (including buffer zones) under federal, state, or local laws;
   b. Rare species habitat designated under federal or state law;
   c. Characterized by steep slopes with an average gradient of at least 15%; or,
   d. Subject to any other local ordinance, by-law, or regulation that would prevent the development of residential or Mixed-Use Development Projects at the As-of-Right residential densities set forth in the Smart Growth Zoning” (760 CMR 59.02).

Developable Land Plan

“A developable land plan that identifies and describes the boundaries of the proposed District, and that identifies on a parcel-by-parcel basis (unless another method has been previously approved by the Department) those areas within the District that qualify as Developable Land (including any Underutilized Land), as Substantially Developed Land, and each of the other categories of land excluded from the definition of Developable Land, along with a calculation, in acres, of the area of each such category of land within the proposed District” (760 CMR 59.03).
District or Smart Growth District

The Smart Growth District is the “overlay district within a municipality that is subject to Smart Growth Zoning. A District may be superimposed over one or more zoning districts (as defined by the Underlying Zoning) in an Eligible Location. Within a District, the Smart Growth Zoning shall allow residential Projects As-of-right, and it may also permit Mixed-Use Development Projects As-of-right. Within the boundaries of a District, a developer may elect either to develop a Project in accordance with the requirements of the Smart Growth Zoning, or to develop a project in accordance with requirements of the Underlying Zoning” (760 CMR 59.02).

Eligible Location

An Eligible Location is:

1. An area near a rapid transit or commuter rail station, or a bus or ferry terminal, plus any qualifying Adjacent Area;
2. An area of concentrated development, including a city or town center, an existing commercial district, or an existing rural village district, plus any qualifying Adjacent Area; or,
3. Another highly suitable location, in each case that qualifies under the criteria set forth in 760 CMR 59.04(1)(a).

If a portion of a parcel of land falls within an Eligible Location, then all of such land, to the extent of its legal boundaries, may also be deemed an Eligible Location.

Existing Zoned Units Plan or Existing Residential Density Plan

As part of the application process, a municipality must prepare an Existing Zoned Units Plan “that clearly identifies on a parcel-by-parcel basis (unless another method has been previously approved by Department) the maximum As-of-right density or densities achievable through throughout the District in accordance with the Underlying Zoning. This plan shall be used to in calculating the Existing Zoned Units, Zoning Incentive Payments and Density Bonus Payments” (760 CMR 59.03).

Existing Zoned Units

Existing Zoned Units are “for a given parcel or area of Developable Land within a District, the maximum number of housing units that could feasibly be developed As-of-right under the Underlying Zoning through new development, the substantial rehabilitation of existing buildings, or the conversion to residential use of existing buildings. For purposes of determining the Zoning Incentive Payment and the Density Bonus Payment, the Existing Zoned Units within any
District or Project site shall presumptively be determined upon the basis of the allowable As-of-right residential density per acre shown on the plan submitted under 760 CMR 59.03(1)(c), multiplied by the acreage of Developable Land area” (760 CMR 59.02).

Footnote 11

Footnote 11 is a footnote to Ipswich’s Table of Dimensional and Density Regulations outlined in the 2006 Ipswich Zoning Bylaw. “The number of dwelling units obtained by this requirement may be increased by special permit of the Planning Board if the Planning Board determines that the multi-family dwelling shall provide significant public benefit to the Town. Public benefit shall mean affordable housing as defined in the Ipswich Zoning Bylaw, hospice, or public recreational facilities. Under no circumstances shall the Planning Board waive the density and dimensional requirements to exceed 5,000 square feet plus 2,000 square feet per unit in overall density for multi-family, and 3,000 square feet plus 1,500 square feet in overall density for mixed residential/business use” (Ipswich Zoning Bylaw, 2006).

Future Zoned Units

Future Zoned Units are “for a given parcel or area of Developable Land within a District, the maximum number of housing units that could be developed As-of-right under the Smart Growth Zoning through new development, the substantial rehabilitation of existing buildings, or the conversion to residential use of existing buildings” (760 CMR 59.02).

General Business District

“The General Business (GB) District is intended primarily for retail, trade, service, and other commercial uses with some compatible light industrial uses. Multi-family residential uses may be permitted with the approval of a special permit. The District is generally served by municipal water supply and sewerage facilities” (Ipswich Zoning Bylaw, 2006). The maximum building height is three stories, not to exceed forty-five feet in height. The minimum square footage required for mixed-use development within the GB district is 3,000 square feet for the first dwelling unit and 2,000 square feet for each dwelling unit thereafter.

Incentive Units

Incentive Units are “for a given parcel or area of Developable Land within a District, the maximum number of housing units that could be developed As-of-right under the Smart Growth Zoning through new development, the substantial rehabilitation of existing buildings, or the conversion to residential use of existing buildings” (760 CMR 59.02). The number of Incentive Units is used to determine the Zoning Incentive Payment.
Chapter 40R: An Initial Report

Inclusionary Zoning Bylaw

Municipalities can establish Inclusionary Zoning Bylaws under the Massachusetts Zoning Act, Chapter 40A, to require affordable housing units in new housing development projects.

In-town Residence District

“The Intown Residence District is intended primarily for residential uses in the older, more established area of the Town. The predominantly permitted use is single-family residences, but two-family and multi-family residential uses may also be permitted. Multi-family residential uses require a special permit. Community facilities necessary to service the residential uses are permitted. In addition, certain business uses (the principle one being offices) may be permitted, but most non-residential uses are not allowed. The district is generally served by municipal water supply and sewerage facilities” (Ipswich Zoning Bylaw, 2006). The maximum building height is three stories, not to exceed thirty-five feet in height. A special permit will allow a height of forty-five feet in height. The minimum square footage required for a multi-family residence within the IR district is 9,000 square feet for the first dwelling unit and 5,000 square feet for each dwelling unit thereafter.

Massachusetts General Law Chapter 40A

Massachusetts General Law Chapter 40A (M.G.L. c.40A) is commonly referred to as the Zoning Act. The Zoning Act gives authority to Massachusetts’s municipalities to create and implement zoning bylaws to guide land development within the boundaries of their community. This statute also gives municipalities to create Inclusionary Zoning Bylaw.

Massachusetts General Law Chapter 40B

Massachusetts General Law Chapter 40B (M.G.L. c.40B) is commonly referred to as the Comprehensive Permit Act or, simply, Chapter 40B. Chapter 40B was developed to increase the amount of affordable housing production in the Commonwealth, and mandates each city and town in the Commonwealth have a minimum of 10% of the housing stock affordable as defined by the DHCD.

Mixed-Use Development

Mixed-use Development in the context of Chapter 40R “means a Project containing a mix of some or all of multi-family residential, 2 and 3 family residential, or single-family residential uses, together with commercial, institutional, industrial, or other non-residential uses, so long as the applicable residential densities set forth in 760 CMR 59.04(1)(d)1 through 3 apply to the Mixed-Use Development Project” (760 CMR 59.02).
Multi-Family Residential Use

Multi-Family Residential Use in the context of Chapter 40R “means apartment or condominium units in buildings that contain or will contain more than three such units, provided that the Smart Growth Zoning may treat attached townhouses on separate lots as single-family residential use” (760 CMR 59.02). Under Chapter 40R, the required density of multi-family residential use is 20 units within a multi-family building(s) per acre of Developable Land.

Plan Review

Plan Review is “the standards and procedures by which a proposed Project within a District is made subject to review by the Approving Authority under the provisions of the Smart Growth Zoning” (760 CMR 59.02).

Project

A Project is a “residential or Mixed-Use Development undertaken within a District in accordance with the requirements of the Smart Growth Zoning. Within the boundaries of a District a developer may elect either to develop a Project in accordance with the requirements of the Smart Growth Zoning, or to develop a project in accordance with the requirements of the Underlying Zoning” (760 CMR 59.02).

Single-Family Homes

Chapter 40R requires a residential density of 8 Single-Family Homes per acre of Developable Land.

Smart Growth

Smart Growth is “a principle of land development that:

1. Increases the availability of affordable housing by creating a range of housing opportunities in neighborhoods;
2. Emphasizes mixing land uses;
3. Takes advantage of compact design;
4. Fosters distinctive and attractive communities;
5. Preserves open space, farmland, natural beauty and critical environmental areas;
6. Strengthens existing communities;
7. Provides a variety of transportation choices;
8. Makes development decisions predictable, fair and cost effective; and,
9. Encourages community and stakeholder collaboration in development decisions” (760 CMR 59.01).
Smart Growth Residential Density Plan

“A Smart Growth Residential Density Plan that clearly identifies on a parcel-by-parcel basis (unless another method has been previously approved by the Department) the allowable As-of-right residential density or densities achievable throughout the District on Developable Land in accordance with the Smart Growth Zoning, and any other local ordinance, by-law, or regulation. This plan shall be used in calculating Future Zoned Units, Incentive Units, and Zoning Incentive Payments” (760 CMR 59.03).

Smart Growth Zoning

Smart Growth Zoning “means the local zoning overlay requirements for a District adopted or changed by amendment by the municipality pursuant to M.G.L. c.40R, in accordance with the procedures for zoning adoption and amendment as set forth in M.G.L. c.40A for communities other than Boston and approved by the Department pursuant to M.G.L. c.40R and 760 CMR 59.00” (760 CMR 59.02).

Special Permit

“Section V of the Ipswich Zoning Bylaw lists the uses regulated in each zoning district, including prohibited uses, those permitted as a right of the landowner, and those requiring a special permit from a Special Permit Granting Authority (SPGA), i.e. the Planning Board, the Zoning Board of Appeals or the Board of Selectmen. Special permits are discretionary, and are only granted when the issuing authority is certain that the project will not be in any way detrimental to the public good. They are a flexible tool for land use regulation, and generally leave room for the town and applicant to negotiate conditions that will satisfy the needs of the town and the applicant” (Ipswich Development Guide, 1999).

Subsidized Housing Inventory

The Subsidized Housing Inventory is a list of the percentage of affordable housing units in each municipality updated regularly by the DHCD. Only the affordable housing units that qualify as affordable as defined in this Glossary are counted toward the Subsidized Housing Inventory. Those units are compared to the total housing units as identified during each decennial census.

Substantially Developed Land

“Any land within a District that is currently used for commercial, industrial, institutional, or governmental use, or for residential use consistent with or exceeding the densities allowable under the Underlying Zoning, and which does not qualify as Underutilized Land. Any land located within a historic district shall be presumed to be Substantially Developed, unless the municipality can show that all or a portion of such land qualifies as Developable Land” (760 CMR 59.02).
Trust Fund

The Affordable Housing Trust Fund. The incentives paid to municipalities are drawn from the Affordable Housing Trust Fund.

Two or Three Family Units

Two or Three Family Units mean any building(s) with two or three units. The required density is 12 units per acre within Two or Three Family buildings on Developable Land.

Underlying Zoning

“The local zoning requirements adopted pursuant to M.G.L. c.40A that are otherwise applicable to the geographic area where a District is located. Solely for the purposes of calculating existing residential densities under 760 CMR 59.03(1) the Underlying Zoning shall be deemed to be the zoning which was in effect one year prior to the date upon which the application was submitted to the Department under 760 CMR 59.05(2). Nothing in M.G.L. c.40R and 760 CMR 59.00 shall affect a Municipality’s authority under M.G.L. c.40A to amend any provision of its local zoning ordinance or by-law, including the Underlying Zoning applicable within any area that lies within the boundaries of an Approved District” (760 CMR 59.02).

Underutilized Land

“Developable Land within a District that would otherwise qualify as Substantially Developed Land, but which contains land, buildings, and/or structures that are currently underutilized and may potentially be developed, recycled, or converted into residential or Mixed-Use Development. Part or all of a parcel of land shall be considered Underutilized if it is no longer necessary to support the current use, based on factors including but not limited to current and projected employment levels, vacancy rates, and parking demand” (760 CMR 59.02).

Zoning Incentive Payment

The Zoning Incentive Payment is “a one-time payment to a municipality from the Trust Fund that is made upon submission by the municipality to the Trust Fund of the Department’s Letter of Approval” (760 CMR 59.02). The payment corresponds to the difference in the Existing Zoned Units and the Future Zoned Units, and is as follows:

- $10,000 for up to 20 units;
- $75,000 for 21-100 units;
- $200,000 for 101-200 units;
- $350,000 for 201-500 units; to
- $600,000 for 501 or more units.
APPENDIX H  MEMORANDUM OF UNDERSTANDING

MEMORANDUM OF UNDERSTANDING
BETWEEN
TUFTS UNIVERSITY FIELD PROJECTS TEAM NO. 5
AND
TOWN OF IPSWICH PLANNING DEPARTMENT

I. Introduction

Project (i.e., team) number:  5
Project title:  Is Chapter 40R the Right Route for Ipswich?

This Memorandum of Understanding (the “MOU”) summarizes the scope of work, work product(s) and deliverables, timeline, work processes and methods, and lines of authority, supervision and communication relating to the Field Project identified above (the “Project”), as agreed to between (i) the candidates for the Master of Arts degree enrolled during the spring 2007 semester in the Field Projects and Planning course (UEP-255) (the “Course”) offered by the Tufts University Department of Urban and Environmental Policy and Planning (UEP) who are identified in Paragraph II(1) below (the “Field Projects Team”); (ii) Town of Ipswich Planning Department , further identified in Paragraph II(2) below (the “Client”); and (iii) a Tufts faculty member directly involved in teaching the Course during the spring 2007 semester.

II. Specific Provisions

(1) The Field Projects Team working on the Project consists of the following individuals:

1. Erin Heacock  email address: [REDACTED]
2. [REDACTED]
4. Amy Kuykendall  email address: [REDACTED]
(2) The Client’s contact information is as follows:

Key contact/supervisor: Glenn Gibbs and Kate Day
Email address: [Redacted]
Planning Department
Address: Ipswich Town Hall, 25 Green Street, Ipswich, MA 01938
Web site: [www.town.ipswich.ma.us/Plandev/default.htm](http://www.town.ipswich.ma.us/Plandev/default.htm)

(3) The goal/goals of the Project is/are:

The goal of this project is to prepare a document which identifies a suitable location or multiple locations to designate as a 40R district. Based on the work done for the Affordable Housing Plan for Planned Production Regulation, the Project will expand on the sites identified within the Affordable Housing Plan as appropriate for affordable housing to determine appropriate location(s) for a 40R district within the downtown core of the Town of Ipswich. We will attempt to determine whether 40R and 40S are the right tools for accomplishing the housing goals embodied within the Town Character Statement, the Community Development Plan and the Affordable Housing Plan for Planned Production Regulation.

(4) The work processes and methods by which the Field Projects Team intends to achieve this goal/these goals is/are:

1. Research the legislative and political histories of the statutes;
2. Surveying other communities that have adopted 40R districts, and providing a description of those districts and lessons learned to date;
3. Evaluating the sites identified within the Affordable Housing Plan suitable for a 40R district; and,
4. Research existing guidance on 40R district bylaws and district boundaries for a 40R/40S district within Ipswich.

(5) The Project work products and deliverables are:

The following items will be conducted and prepared for use in the final document:

- Memo on 40R/40S – This memo will be prepared for the meeting with the client on February 16th. The memo will include research on the legislative and political history of 40R and 40S, include a summary key statutory and regulatory provisions of these laws and specific details on designating and implementing 40R and 40S districts.
- Interviews – Interviews will be conducted with individuals who have experience in the development and implementation, as well as direct project experience of 40R and 40S.
should be noted that at this time no community has been able to finalize a 40R district, so interviews will not provide information on final outcomes. The number of interviews completed will be mutually determined by the client and team. Interviews will take place during February and March, and an update on where the interviews stand will be provided to the client for the February 16th meeting.

- Feasibility Study – The feasibility study will identify the sites with the downtown core of Ipswich which are suitable for a 40R designation. Possible sites to be included in the designation are limited to those identified in the Affordable Housing Plan. Information that will be identified for each site will include parcel information and current owner (to be provided by the client), the proposed possible density within the context of 40R and representative graphics to help to “visualize density” and financial pro-formas. The impacts of a site on the community will be evaluated in terms of 40R and 40S, and how the financial incentives of 40R and 40S can benefit the town. The team does not anticipate researching the infrastructure and environmental limitations of a site or necessary improvements that may impact the suitability of a site. In addition, the client will provide clarification of expectations and guidance regarding financial pro-formas.

- 40R District Boundary Map and Bylaws – The 40R District Boundary will be prepared using GIS software, and required data layers will be provided by the client on a CD. Those data layers may include parcel information, zoning, roads, and other pertinent information necessary for the completion of the project. It is anticipated that this GIS work will be completed at Tufts University utilizing the equipment available in the GIS laboratory. The client will be provided with the created boundary layer in GIS format on a CD. The 40R District Bylaws will be prepared utilizing examples from other towns and from the MA Department of Housing and Community Development.

- Final Document – The final document will include all the above-specified information as well as a final evaluation of whether it would be beneficial for Ipswich to utilize Chapter 40R and 40S to increase the amount of affordable housing within the town. It is expected that any use of the information presented in the final document be credited appropriately to the team in association with Tufts University Department of Urban and Environmental Policy and Planning. Two copies of the final document will be provided to the client at the completion of the project. A CD with the document in .pdf version will also be provided. Any additional copies of the document will be at the client’s expense.

(6) The anticipated Project timeline is:

The following dates are non-negotiable:

- February 6, 2007 – MOU signed by all parties;
• February 16, 2007 – 40R/40S memo due; Meeting in Ipswich to discuss project status, particularly upcoming interviews and possible sites;
• February 27, 2007 – Initial outline of final document prepared and provided to Tufts instructors and client;
• February and March 2007 – Conduct interviews and site assessment;
• March 2007 – An additional meeting during March to be determined;
• April 6, 2007 – Draft of final document provided to Tufts instructors and client;
• April 2007 – Review of materials and document; and,
• May 4, 2007 – Final document provided to Tufts instructors and client.

A final presentation as part of the class will be given on April 17, April 24 or May 1. The date will be determined by February 16. The presentation is open to the community, and the client is encouraged to attend. If a date can be mutually agreed upon with the client, the team will present the report to the Ipswich community.

(7) The lines of authority, supervision and communication between the Client and the Field Project Team are:

The team will designate one person to be the main contact. We will inform the client of this person during our February 16th meeting. The client should inform the team of who in the Planning Office is our main contact.

(8) The understanding with regard to payment/reimbursement by the client to the Field Projects Team of any Project-related expenses is:

The team will provide the client with two copies of the document, a CD of the document and a CD of the GIS data. Any additional copies are at the expense of the client. As Tufts University provides the team with one hundred ($100) dollars for expenses including travel and photocopying, the client and team will need to address additional expenses.
III. Additional Representations and Understandings

A. The Field Projects Team is undertaking the Course and the Project for academic credit and therefore compensation (other than reimbursement of Project-related expenses) may not be provided to team members.

B. Because the Course and the Project itself are part of a larger academic context, it is understood that the final work product and deliverables of the Project (the “Work Product”) – either in whole or in part – may and most likely will be shared with others inside and beyond the Tufts community. This may include, without limitation, the distribution of the Work Product to other students, faculty and staff, release to community groups or public agencies, general publication, and posting on the Web. Tufts University and the Field Project Team may seek and secure grant funds or similar payment to defray the cost of any such distribution or publication. It is expected that any issues involving Client confidentiality or proprietary information that arise in connection with a Project will be narrow ones that can be resolved by discussion among the Client, the Field Projects Team and a Tufts instructor directly responsible for the Course (or his or her designee).

C. It is understood that this Project may require the approval (either through full review or by exemption) of the Tufts University Institutional Review Board (IRB). This process is not expected to interfere with timely completion of the project.
IV. Signatures

For Town of Ipswich Planning Department
By: 
Date: __________, 2007

Representative of the Field Projects Team
By: 
Date: __________, 2007

Tufts UEP Faculty Representative
By: Rusty Russell
Date: __________, 2007