

# **Discussion on Statutory Land Area Minimum for West Boylston, Massachusetts**

## **As defined by M.G.L. c. 40B, § 20**

July 7, 2013

### **Summary:**

West Boylston has achieved a 1.5% land area minimum as defined by M.G.L. c. 40B, § 20 and the ZBA may exercise the option to deny 40B applications that are considered inappropriate. As shown in Table 21 and 22, West Boylston must have 55.4 acres of SHI Eligible Land Area and actually has 58.0 acres and therefore has achieved the land area statutory minimum of 1 ½% as defined in M.G.L. c. 40B, § 20.

### **Report on 1.5% of Land Area Criteria:**

M.G.L. c. 40B, § 20 establishes requirements that can be met if affordable housing exists on more than 1.5% of the total land area zoned in town for residential, commercial, and industrial uses. DHCD regulations 760CMR56.03 (3) (b) General Land Area Minimum requirements describe this process:

### ***Denominator of the 1 ½ Land Area Equation:***

For the purposes of calculating whether SHI Eligible Housing exists in the city or town on sites comprising more than 1½% of the total land area zoned for residential, commercial, or industrial use, pursuant to M.G.L. c. 40B, § 20, involves first calculating the “General Land Minimum” or the denominator of the land area equation.

760CMR56.03 (3) (b) General Land Area Minimum. For the purposes of calculating whether SHI Eligible Housing exists in the city or town on sites comprising more than 1½% of the total land area zoned for residential, commercial, or industrial use, pursuant to M.G.L. c. 40B, § 20:

1. Total land area shall include all districts in which any residential, commercial, or industrial use is permitted, regardless of how such district is designated by name in the city or town's zoning by law;
2. Total land area shall include all un-zoned land in which any residential, commercial, or industrial use is permitted;
3. Total land area shall exclude land owned by the United States, the Commonwealth or any political subdivision thereof, the Department of Conservation and Recreation or any state public authority, but it shall include any land owned by a housing authority and containing SHI Eligible Housing;
4. Total land area shall exclude any land area where all residential, commercial, and industrial development has been prohibited by restrictive order of the Department of Environmental Protection pursuant to M.G.L. c. 131, § 40A. No other swamps, marshes, or other wetlands shall be excluded;
5. Total land area shall exclude any water bodies;
6. Total land area shall exclude any flood plain, conservation or open space zone if said zone completely prohibits residential, commercial and industrial use, or any similar zone where residential, commercial or industrial use are completely prohibited.
7. No excluded land area shall be counted more than once under the above criteria.

Table 21 summarizes the calculation of the denominator of the General Land Area Minimum for West Boylston that results in 55.4 Acres of General Land Area Minimum as described in 760CMR56.03 (3).

## Land Area Minimum (Denominator) July 7, 2013

Table 21-- 1.5% of Land Area Calculation

Criteria	Unavailable Land	Land Area
<b>Total WB Land Area</b>		<b>8,838.9</b>
Owned by Town	879.0	
Owned by DCAM	32.4	
Owned by Worcester County	241.2	
Owned by DCR Water Supply	3,476.2	
Open Water	8.4	
Deeded Conservation Restrictions	237.4	
100 Yr FMEA Flood Plains	273.0	
Total	5,147.6	
<b>Total Available Land Area</b>		<b>3,691.3</b>
<b>1.5% of Available Land</b>		<b>55.4</b>

Note: West Boylston Assessors Data-2013

West Boylston has a total land area of 8,838.9 acres of which 3,691.3 are available for residential, commercial, and industrial uses, and 5,147.6 are excluded per regulations cited above. The “General Land Area Minimum” is 3,691.3 Acres. 1.5% of the General Land Area Minimum is 55.4 Acres.

### ***Numerator of the Land Area Equation:***

For the purposes of calculating whether SHI Eligible Housing exists in the city or town on sites comprising more than 1½% of the total land area zoned for residential, commercial, or industrial use, pursuant to M.G.L. c. 40B, § 20, involves calculating “SHI Eligible Land Area” or the numerator of the % of land area equation as described in 760CMR56.03 (3) (b). This includes land area that contains SHI units approved by DHCD or under a valid comprehensive permit from the ZBA. SHI Eligible Land Area is prorated based on the corresponding land area for SHI eligible units:

#### **760CMR56.03 (3) (b)**

Only sites of SHI Eligible Housing units inventoried by the Department or established according to 760 CMR 56.03(3)(a) as occupied, available for occupancy, or under permit as of the date of the Applicant's initial submission to the Board, shall be included toward the 1½% minimum. For such sites, that proportion of the site area shall count that is occupied by SHI Eligible Housing units (including impervious and landscaped areas directly associated with such units).

Table 22 summarized the calculation for the numerator of the land area calculation and identifies 58.0 acres of SHI Eligible Land Area.

## Affordable Land Area Minimum (Numerator) July 7, 2013

Table 22-- Affordable Eligible Land Area

Project Name	Address	Type	Total Land Area	Total Units	Afford Units	Eligible Land Area
Orchard Knoll	87 Maple	Rental	26.29	54	54	26.3
Oakdale Village	94 North Main St	Rental	9.82	96	96	9.8
Foster Street	14-16 Foster St	Rental	1.80	8	8	1.8
Lancaster Commons*	109 Lancaster St	Ownership	15.00	32	8	3.8
Franklin St	11 Franklin St	Rental	3.51	26	26	3.5
DMH Group Homes	Confidential	Rental	1.40	8	8	1.4
DDS/DMH Group Homes	Confidential	Rental	2.60	17	17	2.6
Alfa Terrace	Shrewsbury St	Ownership	35.45	52	13	8.9
<b>Affordable Land Area Min</b>						<b>58.0</b>
<b>Actual % of Land Area</b>						<b>1.57%</b>
*Note: Comp Permit 48 Units on 21 acres, Reg Agreement 32 Units on 15 acres						
Note: Group Home at 78 Maple Street Not included						
Source - Comp Permits and West Boylston Assessors Data-2013						

As shown, West Boylston must have 55.4 acres of SHI Eligible Land Area and has 58.0 acres and therefore has achieved the land area statutory minima of 1 ½% as defined in M.G.L. c. 40B, § 20.

### Procedure for ZBA to Implement Land Area Minimum 760 CMR 56.03(8) (a):

If a Board [ZBA] considers that, in connection with an Application, a denial of the permit or the imposition of conditions or requirements would be consistent with local needs on the grounds that the *Statutory Minima* defined at 760 CMR 56.03(3)(b or c) have been satisfied or that one or more of the grounds set forth in 760 CMR 56.03(1) have been met, it must do so according to the following procedures.

Within 15 days of the opening of the local hearing for the Comprehensive Permit, the Board shall provide written notice to the Applicant, with a copy to the Department, that it considers that a denial of the permit or the imposition of conditions or requirements would be consistent with local needs, the grounds that it believes have been met, and the factual basis for that position, including any necessary supportive documentation.

If the Applicant wishes to challenge the Board's assertion, it must do so by providing written notice to the Department, with a copy to the Board, within 15 days of its receipt of the Board's notice, including any documentation to support its position.

The Department shall thereupon review the materials provided by both parties and issue a decision within 30 days of its receipt of all materials. The Board shall have the burden of proving satisfaction of the grounds for asserting that a denial or approval with conditions would be consistent with local needs, provided, however, that any failure of the Department to issue a timely decision shall be deemed a determination in favor of the municipality.