



Town of Duxbury Massachusetts Planning Department

TO: Selectboard
Town Manager

FROM: Christopher J. Ryan, AICP, Planning Director *CR*

DATE: July 20, 2023

RE: MBTA Communities Compliance Update – Selectboard Updated Version

EXECUTIVE SUMMARY

This memo was a recent update for the Planning Board regarding the origin of the MBTA Communities Zoning Guidelines and its planning progression in Duxbury. Planning is continuing to keep Duxbury in interim compliance while looking for a possible solution that could be a reasonable fit for the town. While the memo provides a great deal of detail and background, the gist of our current status is that the Planning Board has settled on three (3) sites on a preliminary basis, two (2) of which have been vetted for feasibility using the State's Compliance Model Tool. These sites are identified as #'s 1, 2, & 4 on the accompanying map.

Preliminary site selection is intended to additional analysis and evaluation but also, at some point, a public vetting so that we can determine the likelihood of zoning passage at Town Meeting prior to December 31, 2024. As the summary and conclusion below detail, Planning needs to engage a consultant to develop draft zoning for the three sites and is looking for feedback from all interested parties in regard to appropriate public processes...essentially direction on these three questions:

1. How should Planning proceed with the public regarding the 3 primary sites and the other potential sites?
2. How and to what degree should the public be involved in the draft zoning process?
3. How often does the Selectboard want an update on our programmatic progress?

Introduction and Background

This memo is the first formal update to the Boards since the August 22, 2022 memo provided preliminary guidance to the Planning Board on MBTA Communities compliance activities. This will be chronological so that you can understand the steps taken to get us to where we are now. It should be noted that Duxbury has until December 31, 2024 to have zoning for MBTA Communities in place or be out of compliance, consequences of which will be detailed in the conclusion below.

As background, the MBTA Communities Zoning program was established due to the passage of the Economic Development Bond Bill in December 2020 and signed into law by the Governor in January 2021. The law directed the State Department of Housing and Community Development (DHCD) to develop guidelines for implementation and these were finalized in October of 2022. Please refer to this site for more detailed

information regarding the law and guidelines:

<https://www.mass.gov/info-details/multi-family-zoning-requirement-for-mbta-communities>

Duxbury is defined under the guidelines as an Adjacent Community meaning that the Town must zone at least 50 acres for multifamily housing development at a minimum of 15 units per acre. This means that the Town must find a site or multiple sites that would be zoned to allow the construction of at least 750 multifamily housing units. There are other more detailed criteria that further define how this must be provided but it should be noted that this zoning must be by-right and cannot be by special permit.

At this stage, it is acknowledged that Duxbury has not taken any formal action or made any commitments to ultimately abide by the MBTA Communities guidelines. Clearly, the program is sensitive and controversial and could, if not done carefully, have negative impacts on the Community. Thus, the Planning Department and Planning Board are proceeding cautiously in our planning steps with an eye on technical feasibility, community fiscal and non-fiscal impact, planning best practices, and political acceptability. Finally, it should be emphasized that the approach that the Planning Department and Planning Board are taking to this program is to concede the State's mandate and look after the Town's potential consequences for non-compliance while seeking a pathway to compliance that not only limits or eliminates negative impacts but actually may lead to good planning outcomes and meeting several Town needs.

Action Plan

On January 26th of this year, this office prepared and submitted an Action Plan for MBTA Communities which was a required step to maintain "Interim Compliance" with the State and maintain eligibility for grants including MassWorks and OneStop funds. The Action Plan was accepted and subsequently deemed approved by the State in a notification email received on March 3, 2023.

Compliance Model Planning

The next step after the Action Plan was accepted was to select sites that had characteristics which could be feasibly zoned for MBTA Communities. The initial review criteria for sites included such characteristics as being located along a major arterial road, preferred to be along an existing GATRA transit route, not have significant physical constraints such as steep slopes or wetlands, be located near or on route to concentrations or commercial or community uses, and be large enough to meet the area requirements. Sites were selected through Planning Board discussions, staff analysis, and a report generated for the Housing Trust by the consulting firm Dodson & Flinker in 2018. The original list of 10 sites was as follows:

- Island Creek Residential Complex (Tremont Street)
- Lincoln Street Site (0 Lincoln Street)
- Mayflower Street Site (0 Mayflower Street)
- Kingstown Way Site (Kings Town Way and Autumn Avenue)
- Hall's Corner (Multiple Streets)
- 6 Kingstown Way (6 Kingstown Way)
- 0 Birch Street Backlands (0 Birch Street)
- Summer-Congress (0 Summer Street and 0 Congress Street)
- 0 Tremont Street (0 Tremont Street)
- 1400 Tremont Site (1400 Tremont Street)

In October, Duxbury applied for state technical assistance for help on all aspects of MBTA Communities

Compliance, including helping prepare the Action Plan (which was ultimately done in-house). In January, Duxbury was awarded a contract with the planning consulting firm JM Goldson to perform the Compliance Model analysis, making sure sites selected could meet the program requirements. The first in-person meeting with JM Goldson allowed for a discussion that reduced the list of potential sites down to five (5) which is the number that Goldson noted was limited under their contract terms, and these were:

- Island Creek Residential Complex (78.57 acres) - 472
- Kings Town Way Site (22.08 acres) - 428
- Hall's Corner (17.46 acres) - 124
- Summer - Congress (32 acres) - 605
- 0 Tremont Street (18.39 acres) - 274

Sites are listed with their acreage along with an initial analysis by Goldson of how many units could potentially be supported by zoning in each. Following below is a brief description of each of the five site areas summarizing their characteristics:

- 1. Island Creek Residential Complex:** This is a six (6) lot mixed-use development with offices, rental apartments, and condominiums already established. The current density of the developed area is below 15 units per acre but the Town could propose an upzoning¹ to bring it in compliance with the Guidelines with little possibility of any redevelopment at the slightly higher density. Additional parcels adjacent to the core Island Creek site are potential additions to meet a 25-acre minimum size for at least one MBTA Communities site. The zoning proposed would be a conventional multifamily base zoning district that, as noted above, is not anticipated to lead to any new development other than some peripherally undeveloped areas.
- 2. Kingstown Way Proposed Mixed Use Village Center:** Through a combination of public roadway improvements and redevelopment of private parcels, the area around Bongi's Turkey Roost could be turned into a new village center for the surrounding neighborhood. Please note that this site has not been approved or endorsed by any landowners. Improvements to the road access could include replacing the awkward triangular intersection of Summer Street and Kingstown Way with a roundabout. This would also allow for an entrance to a new street into what is now the Bongi's property. Lined with two- or three-story mixed-use buildings, this new street would provide an attractive gateway to the village, leading to an interior park surrounded by shops and apartments. If possible, the road could connect to the East and link up with the existing Village at Duxbury development. With a mix of retail, office, and residential uses, the new village center could provide a walkable, attractive place to live, work and play. This area should also be master planned and the zoning should be a form-based code.
- 3. Hall's Corner:** Like the area around Bongi's Turkey Processing, the Hall's Corner commercial area is an older, underutilized commercial area that could benefit from mixed use rezoning (form-based) and redevelopment based on a master plan for the area. This is a current priority of the Town and will be the subject of an upcoming planning and public participation process. This planning process provides an opportunity for collaboration between the stakeholders to promote housing options within a new mixed-use district or commercial redevelopment.
- 4. Summer-Congress:** Site off Route 53 adjacent to commercial uses in Pembroke. This sizeable area could be ideal for a conventional multifamily project with a base zoning district similar to that proposed for Island Creek.

¹ Upzoning is a commonly used term in urban planning that describes an alteration to a community's zoning code to allow new capacity for development.

5. **0 Tremont Street:** Adjacent to Marshfield, this is a wooded site with some ledge and terrain issues but could be an ideal site similar to Summer-Congress for developing something conventional but at a smaller, more intimate scale (see below for further disqualifying information).

Further consideration of the five led to the conclusion that only three sites were likely necessary to fulfil the MBTA Communities requirements and two sites: Hall's Corner and Kingstown Way, were removed because firstly they were the most complex and sensitive areas; secondly, they would require master planning beforehand which may not be completed before the deadline; and thirdly, enough units could be zoned for in the remaining three sites, which are:

- Island Creek Residential Complex (#1)
- Summer – Congress (#2)
- 0 Tremont Street

However, we had to remove 0 Tremont Street due to ongoing litigation between the owner and the Town that this office was not aware of until recently. This then leaves two current sites under consideration:

- Island Creek Residential Complex (#1)
- Summer – Congress (#2)

It is the plan at this point that Island Creek, with 472 potentially zoned units, can absorb more than half (63%) of the 750 units that Duxbury is required to zone for leaving only 278 additional units to zone for, ideally split between hopefully two additional sites to minimize the overall impact of a specific site. JM Goldson completed their work for the Town submitting a final report and a spreadsheet showing the calculations within the Compliance Model for each site. The final report also had recommendations for the Town regarding three potential ways of proceeding for the analyzed sites. This document will be available on the Town's MBTA Communities website by the time you are reading this.

Hopefully the Summer-Congress site is found to be acceptable to move forward on leaving one additional site to consider. These are the most promising at this point with referring numbers keyed to the accompanying map:

- #3 Apex Site – A difficult site between Route 3 and the Marshfield town line.
- #4 Temple Street – A site that has sufficient acreage adjacent to Route 3 but currently no frontage. The property owner is interested in considering MBTA Communities for the property and is willing to consider Town ideas for specific design framework.

Two additional sites, Nos. 8 and 9 each have site challenges including soil contamination for #8 and multiple ownerships for #9.

So far, our inquiries regarding site selection to Planning Board and Selectboard members have elicited the following comments:

- Acknowledgement that no sites are near an MBTA station.
- Suggestion to consider the area north of Cox Corner noted on map as #10
- Regarding opening up site selection to a public process, “Yes, we should, for several reasons: (1) avoids the appearance of this being done “in secret”; (2) increases public awareness of the absurdity of it all, which can help us apply pressure on the state to show that one-size does not fit all; and (3) if the state goes through with this process as advertised, the effect on our town will be significant, so residents should have the opportunity to participate in it.”
- Start public process with the “Clipper.”
- Sites 3, 5, and 7 seem the most reasonable. Wondering if a contaminated site might be able to qualify as a site.
- Can you briefly talk about the Congress/Summer Street location? Does it back up to properties on Taylor Street in Pembroke? **Answer:** YES
- I seem to remember water issues in terms of ground and supply when doing Dogwood Drive. **Answer:** *Utilities like water and sewer are of NO CONSEQUENCE to the MBTA program.*
- As you know Kingstown Way site near Kingston is again a possibility and that would be my number 1 site for apartments.
- I’m interested in further developing site around Housing Authority. **Answer:** *The MBTA sites cannot be senior restricted. Additionally, the larger area around Halls Corner should first be master planned prior to any consideration of changes in the area.*
- I think apartments/higher density is a no way to go. I know not everyone agrees with that.
- Yes to Island Creek. Maybe some larger units for families? Maybe a memory care apartment type thing?
- The primary red spots look good to me (Nos. 1 and 2). I would suggest the Cox Corner Site (#9) as a third option given there is already some commercial activity in the area and it doesn't need a master plan. **Answer:** *Ideally, Cox Corner should also be master planned.*
- Regarding public outreach, I support any efforts to engage the public. Maybe with an article in the Clipper and then a public hearing to solicit site ideas. I do think folks are going to have more questions about the initiative itself, but engaging the public early on could prove helpful in the long run.

Subsequent to receiving comments² from Planning Board members and others, the sites were further deliberated at the July 17, 2023 regular meeting and it was determined that we should add the Temple Street site (#4) is the third primary site, but still consider the Mayflower Street site and the Apex (#3) site as backups. A discussion with the Town Manager on Tuesday, July 18th determined that the Mayflower site was eminently infeasible so that was removed from consideration and the map.

Public Outreach

The Citizens Housing and Planning Association (CHAPA), a well-known housing advocacy organization in Massachusetts, has offered to assist local communities in the state with their public outreach regarding MBTA Communities. Duxbury has taken advantage of this offer and is working with a small group of shore communities to address best practices and challenges of MBTA

² Back to just the Director and not deliberated.

Communities.

It seems as though some Planning Board members think we should open site selection up to a public process. This could either be giving an opportunity to voice opinions about current sites under consideration and also suggesting other sites. Alternatively, we could just provide one-way notification of the sites. Other Planning Board members suggest holding off until we have something more concrete to present which in my mind would be selecting the 3-4 sites, running the Compliance Model calculations, and discussing it at that time.

Zoning Consulting Assistance

One challenge for the Planning Department in moving forward in consideration of the final selected sites is how to develop appropriate zoning for them. Some of the questions at hand are:

1. Should the zoning be an overlay district or a new base zone?
2. Should there be just one new district created or a specialized district for each site? For example, the Island Creek site may need to not only meet MBTA guidelines but also accommodate the existing underlying development.
3. How will design, mixed uses, and affordable units come into play?

Each of these questions will ultimately need to be addressed and additionally, will we want to first establish a vision for not only these sites but the larger areas within which they are situated? The greater clarity of thought and purpose we can interject into the process and the outreach, the greater chance of success.

While Planning staff has the qualifications to address the zoning, unfortunately there is not enough available time for staff by themselves to fully develop and vet the zoning. On June 2nd, Mr. Ryan made three (3) specific applications (of five total) to the state for OneStop for Growth grant funding directly related to. These applications were:

- Hall's Corner Master Plan - #00981
- MBTA Communities Technical Assistance Zoning - #01001
- Bongi's Area Master Plan - #01280

The MBTA Communities Technical Assistance Zoning (#1001) application was specifically crafted to request technical zoning assistance to help the Town develop zoning bylaws for our local MBTA sites. Since these applications were made on June 2, the Town received word on June 13th that this specific project was approved under an accelerated framework and the Town may proceed to procurement for a qualified zoning consultant once a contract is signed.

Note that two other OneStop grant applications submitted on June 2nd were for master plan funds for the other two secondary sites—Hall's Corner and Kingstown Way. If they are awarded, and if time allows, these areas may also be considered for some targeted and limited MBTA Communities zoning, but the likelihood of all stars aligning for this is not high.

Next Steps

As of mid-June, Planning developed outreach materials for public education on this program and was also preparing to proceed on MBTA Communities zoning consulting procurement. We will continue to add documents, maps, and other information to the MBTA Communities website that Planning maintains.

Summary and Conclusion

There has been some thought in town to possibly purposefully not complying with these guidelines given their excessive impact related to the scale of the town. Choosing this path would make Duxbury ineligible for the following grant programs:

- MassWorks Grants
- Housing Choice Grants
- Local Capital Projects Fund
- Other grant funds that the Secretary may identify for withholding.

While Housing Choice is not impactful to Duxbury, the other two programs are very relevant and could reduce Duxbury's ability to address infrastructure needs in the future, and it is unknown what other grants may be added to the mix. Additionally, the Attorney General issued an Advisory which threatens civil enforcement action for non-compliance and it suggested also the towns could be subject to liability under federal and state fair housing laws. Therefore, I would recommend continuing to take the most basic steps to maintain compliance, see if there is a good pathway to meeting the guidelines, and avoid experiencing a huge risk for non-compliance.

We strongly recommend firming up a selection of 3-4 sites so that we can proceed on the zoning work. Planning is prepared to execute a Request for Proposal (RFP) for the \$50,000 grant we have received from the State for developing draft zoning for our sites. At this point, we see two different kinds of zoning to create, one for the Island Creek properties, and another for everything else, suggested to be something like the following:

1. Island Creek Zoning – Very simple basic multifamily zoning district with a projected density of around 16-17 units per acre so that it is not significant enough to entice the property owner to redevelop the property at a density that would provide financial feasibility. The zoning would be enough to comply with the MBTA requirements and just a little more so that it would concurrently reduce the required zoning on the remaining properties selected. They would not need to be as high as the minimum as long as the entirety of the 50 acres was at 15 per. One alternative here could be to offer a mixed-use add-in for the frontage parcels on Tremont Street.
2. Other Sites – Craft a very Duxbury-compatible village center zoning, allowing but not requiring mixed-use, that would blend in to the local character architecturally and in site design. The expectation is that we could conceivably lower the density on these sites to somewhere between 10-13 units per acre.

Please let us know what your questions are.