



## TOWN OF WENHAM, MASSACHUSETTS

### Frequently Asked Questions Regarding MBTA Communities 3A Regulations

#### New Information- Updated October 30, 2024

The Metropolitan Area Planning Council recently updated a 2017 study that looks into the impacts of multi family housing on school enrollment. That report is available [HERE](#).

#### **Q. What types of funding are impacted by compliance or non compliance with the MBTA Communities Law?**

A. The State has updated the grant sources that will be withheld if a community is non-compliant with the 3A Legislation. If a community is non compliant with Section 3A they will not be eligible for

(1) the [Housing Choice Initiative](#) which is a grant program that provides funds to communities that have been designated as a Housing Choice Community. Wenham has not been designated as a Housing Choice Community and is not eligible for these funds regardless of our compliance with 3A Legislation;

(2) the [Local Capital Projects Fund](#) established in [Section 2EEEE of Chapter 29 of Mass General Law](#) is a federal grant program that aims to expand the availability of reliable, high-speed internet. Wenham has not been awarded any funds from this program;

(3) the [MassWorks](#) infrastructure program established in [Section 63 of Chapter 23A of Mass General Law](#) is a program that provides capital funds to municipalities and other eligible public entities primarily for public infrastructure projects that support and accelerate housing production, spur private development, and create jobs throughout the Commonwealth. Wenham has not been awarded any Massworks grants; or

(4) the [HousingWorks infrastructure program](#) established in [Section 27½ of Chapter 23B of Mass General Law](#) is a grant program established in May of 2023 for municipalities and other public entities for a variety of infrastructure related activities to support and unlock housing opportunities.

In addition, the state has announced it will take noncompliance into consideration when evaluating these grants and funding:

1. Community Planning Grants, EOHLIC
2. Massachusetts Downtown Initiative, EOED
3. Urban Agenda, EOED

4. Rural and Small Town Development Fund, EOED
5. Brownfields Redevelopment Fund, MassDevelopment
6. Site Readiness Program, MassDevelopment
7. Underutilized Properties Program, MassDevelopment
8. Collaborative Workspace Program, MassDevelopment
9. Real Estate Services Technical Assistance, MassDevelopment
10. Commonwealth Places Programs, MassDevelopment
11. Land Use Planning Grants, EOEEA
12. Local Acquisitions for Natural Diversity (LAND) Grants, EOEEA
13. Municipal Vulnerability Preparedness (MVP) Planning and Project Grants, EOEEA

Wenham was awarded a \$65,000 Community Planning Grant in October of 2024 but if we are not in compliance with MBTA 3A in January 2025 we will most likely not be awarded these funds.

In 2024 the Governor released a new [MBTA Communities Catalyst Fund](#) to support housing production and reward MBTA Communities that have an approved 3A district compliant with M.G.L. Chapter 40A Section 3A. The Catalyst Fund will support activities related to housing creation, infrastructure projects associated with housing, and acquisition of property to promote housing. Non-compliant communities will not be eligible for this funding. These grants will range between \$250,000 – \$1Million.

**Q. Why has the Town cancelled the Special Town Meeting that was scheduled for November 16, 2024?**

A. The Select Board, in [a letter to Edward M. Augustus, Secretary of the Executive Office of Housing and Livable Communities](#) explained that they decided to wait until there was a final result in the case of Attorney General v. Town of Milton before bringing the MBTA Communities zoning to the residents for a vote. The Milton Case challenges the legal validity of parts of the Act and the Guidelines that are material to municipalities' compliance obligations. The Select Board felt that the residents of Wenham would be better informed by waiting for the outcome of that case in the event that the State's guidelines are required to change. The Select Board believes it is vital that Wenham's Town Meeting voters be equipped with all relevant facts about the Act and the Guidelines before casting their vote on the Re-Zoning Proposal. If the STM were to move forward on November 16, voters would be deprived of answers to critical questions concerning the Act and the Guidelines that the SJC will be answering in a matter of months. It is anticipated that the rezoning question will be presented at the Town's Annual Town Meeting in April of 2025.

**Q. Will the Town be out of compliance if we don't adopt it by December 31, 2024?**

A. Yes. Wenham will be out of compliance beginning January 1, 2024 if the MBTA Zoning is not adopted by the community.

## Questions answered prior to October 30, 2024

### **Q. What is MBTA 3A?**

A. MBTA 3A refers to a state law (M.G.L. c. 40A, § 3A) that requires certain communities near public transit stations, identified as MBTA communities in the statute, to zone for multifamily housing as-of-right. The policy goal of the statute is to increase housing availability near transit areas by encouraging the production of multi-family housing.

### **Q. Have there been any studies on the economic impacts of multifamily development or mixed-use development projects like the Town's proposal would allow, on the Town of Wenham?**

A. Yes, the Town of Wenham conducted an economic impact study, using a consultant, as part of its Master Plan process, which can be found [HERE](#). Additionally, the Town of Milton commissioned a study to assess the impact of large multifamily developments, such as those required by MBTA 3A, on its own local schools. That report is available [HERE](#). Both studies concluded that these types of developments result in a positive net economic impact, from the kinds of development the new districts would allow, meaning they generate more revenue for the town and its residents than they cost.

### **Q. Does the state own the land if the town complies with the law at Town Meeting?**

A. No, there is no transfer of ownership to the state. The private owner, or the town (if town-owned land is used) remains the owner. The Town retains the right to define the details of the dimensional and design characteristics for any development that may be proposed by a private landowner, including a site plan review process.

### **Q. Will the state develop the land?**

A. No, neither the statute, nor the guidelines include any requirement or even expectation that the state would acquire and develop the land. This development would still have to comply with zoning and go through the development process. Multi-family housing would be allowed as of right in the new zoning districts, not by special permit, and subject only to site plan review by the Planning Board along with being required to comply with the new overlay districts dimensional and design requirements which the Planning Board is working on now.

### **Q. Is the town planning for additional development of diverse/affordable dense housing, and does it need it, or is it constrained due to infrastructure?**

A. Currently, the town has no formal plan for additional development of diverse or affordable dense housing.

### **Q. If we don't have the infrastructure to support this kind of development, why are we zoning for it?**

A. The MBTA 3A law requires towns to create zoning districts to allow for multifamily development as of right, within half a mile of the train station, in order to be in compliance with the law, regardless of current infrastructure capacity. The guidelines allow Wenham to create an additional district that is not in that half-mile radius, which is why we are proposing a second district, at higher density, out near the highway interchange with Grapevine Road. Regarding water infrastructure, the current Massachusetts DEP water withdrawal limits allow the town to access enough water to support some development under this law. However, it is unlikely that water limits could support the full build out of the density that would be otherwise allowable under the law. It's important to note that while our current water withdrawal limits have some capacity, most developments in the two proposed districts (even if not at the full allowable densities) would still require infrastructure upgrades to ensure adequate water delivery.

**Q. We have heard that there can be unlimited number of bedrooms and occupancy in these units. How can the Towns regulate that?**

A. The 3A Guidelines state that, "Housing suitable for families" means residential dwelling units that are not age-restricted and "for which there are **no zoning restrictions** on the number of bedrooms, the size of bedrooms, or the number of occupants." See 3A Guidelines at § 2. Some communities do put restrictions on things such as number of bedrooms for projects that need a special permit. The prohibition of "zoning restrictions" on the number of bedrooms does not mean, however, that a development would or could have "unlimited bedrooms." Wenham currently does not have any zoning restrictions in our Zoning Bylaw now that would limit the number of bedrooms in a dwelling unit with one exception (for accessory apartments by special permit, § 255-4.3). As a practical matter, moreover, septic requirements would limit the number of bedrooms and units that could be developed as well as certain building and fire code requirements which any new development would need to adhere to. If you have specific questions about building or fire codes we can arrange for more information from our Building Inspector Rich Maloney and our Deputy Fire Chief Jeff Baxter.

**Q. Why did we hire/pay for a consultant to show us net revenue scenarios for developments that are unlikely to happen?**

A. The net revenue projections were part of the Town of Wenham's recently completed Master Plan, which was presented to the Town at Spring Town Meeting in 2024, after two years of extensive public involvement. The full Master Plan can be found [HERE](#). This expenditure had nothing to do with the MBTA Zoning requirements, however it does provide important information to the Town about the impacts of all kinds of development, from Single Family through Commercial and Industrial uses. The Master Plan gathered input from many Wenham residents, and one of the core needs identified was economic development and diverse housing. As a result the Master Plan work included a [study conducted by Cambridge Econometrics](#) as a tool to illustrate various types of development and their potential economic impact (net revenue) on the town. This information helps the Town plan for uses that are most beneficial to the community and supports the Planning Board in thinking about all kinds of applications that come before it.

**Q. Was an estimate of the impact on the school budget included in the Master Plan analysis the consultants did? If so, did the cost estimate include new teachers and the added pension costs as well?**

A. Yes, the [Cambridge Econometrics study](#) completed as part of the Master Plan project included an estimate of the total costs associated with educating a student. However, shifts in apportionment within the regional district were not analyzed. Nor were any specific development plans analyzed, as that was not the intention of the study.

#### Questions from the MBTA Communities Public Forums

**Q. What is the density of Maplewoods property and can we zone that area since it is already developed?**

A. Maplewoods is a 3.90 Acre parcel with 45 units. The density is 11.53 units/acre. Maplewoods is only 3.9 acres. We would need to zone at least 19.2 acres outside of the half mile radius. That would involve zoning properties that are already improved with single family homes giving all of those properties the right to develop 17 units per acre. That would be a large burden on that neighborhood.

**Q. How much development is expected?**

A. Development is contingent on several factors including, site topography and soil conditions, infrastructure costs, market trends, water and sewer. At the proposed density the area within the half mile of the train station could accommodate up to 81 units, however when the requirements for buffer zone, open space, parking and other constraints of the land it is more likely that we would see fewer units than that within the half mile also depending on water and septic availability.

**Q. If Wenham votes to comply with 3A and the statute is changed can Wenham change zoning?**

A. Yes, Wenham can go back to Town Meeting and change zoning through the same process that zoning is created.

**Q. Will school money be impacted?**

A. Right now we are being told that legally the State regulation only allows the State to withhold funding from just three grant sources. MassWorks, Housing Choice program and the Capital Funds Program. Wenham does not participate in those programs currently. The State has also changed several grant programs to “take compliance into consideration” when applying. Several of these programs are ones that Wenham utilizes. Most of these are planning grants. No one has indicated that school or highway funds would be impacted by compliance or noncompliance with 3A. In discussion with Chris Kluchman Director, Livable Communities Division, Executive Office of Housing and Livable Communities (EOHLC) we were told that she is not aware of any school funding or public safety funding being impacted by noncompliance. Nor are library funds being proposed as being penalized for noncompliance.

**Q. Can we petition the State to change our classification since we are only 11 acres over the required number of developable station area acres to qualify as an adjacent community? What would our numbers be if we were an adjacent small town?**

A. We have heard from MAPC that the state is not interested in negotiating the terms of compliance with individual communities and the state will take legal action to force communities to comply (e.g., Milton). In terms of classification, no individual community has successfully requested a reduced unit count or a reclassification. We were told that they don't think that EOHLIC would entertain a reclassification even if our amount of developable land area was smaller than 100 acres. EOHLIC is also standing by the map data, although communities are allowed to request counting excluded land towards their minimum requirements in certain situations (for example, a Town-owned parking lot that's identified as a redevelopment site in a housing production plan).

However, if Wenham were reclassified as an adjacent small town we would need to zone for 5% of our total housing units or 5% of 1,460 = 73 units. In adjacent small towns, there is no minimum land area. In these communities, the multifamily zoning district may comprise as many or as few acres as the community determines is appropriate, as long as the district meets the applicable minimum multifamily unit capacity and the minimum gross density requirements. 73 units at 15 units/acre would equal approximately 4.8 acres total. Which is similar in size to the district the Board is currently proposing within half mile of the train station.

“Adjacent small town” means an MBTA community that (i) has within its boundaries less than 100 acres of developable station area, and (ii) either has a population density of less than 500 persons per square mile, or a population of not more than 7,000 year-round residents as determined in the most recently published United States Decennial Census of Population and Housing.

“Commuter rail community” means an MBTA community that (i) does not meet the criteria for a rapid transit community, and (ii) has within its borders at least 100 acres of developable station area associated with one or more commuter rail stations.

**Q. Gordon College has sold their property to a developer. How does this impact MBTA.**

A. We know that Gordon College has not sold any of their land yet. We are aware of a possible agreement with Pulte homes and Gordon College for Pulte to develop a 350 unit, age restricted condo development made up of 1 and 2 bedroom units. This project has not been officially submitted to the Planning Board for approval. They are having difficulties getting water to the site and making accommodations for sewer or septic. If Pulte pursues this project it would not be through the MBTA regulations. They would be submitting under the Town's Independent Living Overlay District Special Permit process. This would be a public hearing process as this type of development is not allowed by right. The Planning Board considered whether to zone the Gordon College property but if that was done the entire site would have been zoned for multi family by right and the Town would have had less control than if they were to come in for a special permit.

**Q. Have you checked with other Towns that voted no on 3A? What has happened with them?**

A. Towns that have the deadline of compliance of December 31 2024 will be in interim compliance until then. We do not anticipate the State taking any action against these communities until after Jan 1, 2025. Our Town Planner is in communication with other Planners waiting to see if any action is taken.

**Q. How will this type of development affect our taxes?**

A. Any development under the MBTA district will be responsible for property taxes. These units are not exempt in any way. Depending on the size of the units these developments could result in substantial taxes for the Town. However, the costs to the Town would need to be calculated based on what types of services they require. These costs typically include school costs, additional fire and police calls and depending on whether these developments are private roadways there could be costs for snow removal and trash collection. During the Town's Master Plan process an economic study was done by Cambridge Econometrics. This study (Wenham Fiscal Impact Analysis: Benchmarks& Development Scenarios) is available on the Town's website.