

Housing Choice Legislation

October 3, 2022

Select Board Meeting

Housing Choice Legislation for MBTA Communities

- Enacted as part of the [economic development bill](#) in January 2021, new Section 3A of M.G.L. c. 40A (the Zoning Act) requires that an MBTA community shall have at least one zoning district of reasonable size in which multi-family housing is permitted as of right and meets other criteria set forth in the statute:
- Minimum gross density of 15 units per acre
- Not more than ½ miles from a commuter rail station, subway station, ferry terminal or bus station, if applicable.
- No age restrictions
- Suitable for families with children.

What is an MBTA Community?

“MBTA community” is defined by reference to M.G.L. c. 161A, sec. 1:

- one of the “14 cities and towns” that initially hosted MBTA service;
- one of the “51 cities and towns” that also host MBTA service but joined later; **Lincoln is listed as one of these 51**
- other “served communities” that abut a city or town that hosts MBTA service; or
- a municipality that has been added to the MBTA under G.L. c. 161A, sec. 6 any special law relative to the area constituting the authority.

In total, 175 MBTA communities are subject to the new requirements of Section 3A of the Zoning Act.

What are the General Principles of Compliance?

- DHCD issued final guidelines August 10, 2022.
- 1. What it means to permit multi-family housing by right
- 2. The metrics that determine if a multi-family district is “of reasonable size”
- 3. How to determine gross density of 15 units per acre, subject to wetlands and title V
- 4. The meaning of “such multi-family housing shall be without age restrictions and shall be suitable for families with children”
- 5. The extent of flexibility of choosing the location of the multi-family district.

What is “As of Right”?

- Construction and occupancy of multi-family housing is allowed without discretionary permit of approval ie. No Special Permits, Variances or Zoning Amendments.
- Affordability requirements are allowed up to 10% as long as
 - Units are eligible for SHI and cap on income is not less than 80% AMI
 - May be as high as 20% if requirement predates enactment of Section 3A and town demonstrates the requirement will not make multi-family housing production infeasible. (Lincoln’s 15% inclusionary zoning)
- Site Plan Approval is allowed.
 - May regulate vehicular access and circulation, architecture and design, screening of adjacent properties.
 - Site Plan Review may not impose conditions that make it infeasible or impractical to proceed.

Determining Reasonable Size

- Land Area: must be at least 50 acres or 1.5% of developable land whichever is less. In some cases, a smaller minimum land area applies. Lincoln's minimum land area is 42 or 43 acres.
- At least ½ of the district land area must comprise contiguous lots of land. (Lincoln has 42 developable acres so needs 21 contiguous acres). No portion can be less than 5 contiguous acres will count.
- Unit Capacity: Is a percentage of existing housing units based on category: Rapid Transit – 25%; Commuter Rail – 15%; Adjacent Community – 10%; Adjacent Small Town 5%.
 - Based on % of 2020 Federal Census – Lincoln is 2771 (includes Hanscom) 15%=415
 - Without Hanscom approx. 2400, 15%=360

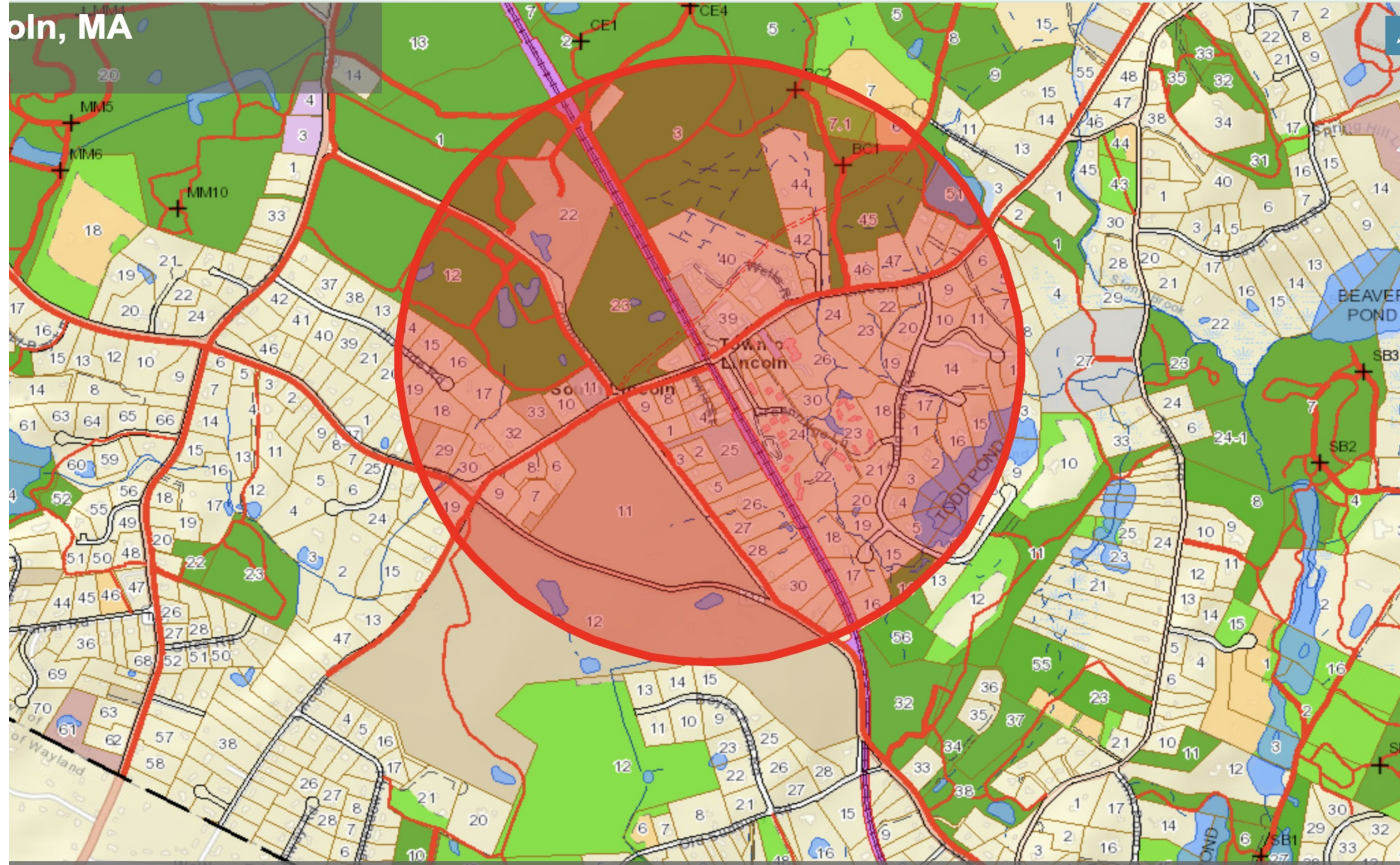
The Formula

- First, multiply the number of housing units by the MBTA category:
 $2771 \times .15 = 415$
- Second, when there is a minimum land area applicable to an MBTA community, multiply the land area by 15 units per acre:
 - The Final Guidelines Document lists Lincoln's land at 42 acres. $42 \times 15 = 630$
 - The official spread sheet has 43 acres $\times 15 = 645$
- Take the higher number but the cap is 25% of the total housing units in the MBTA community:
 - $2771 \times .25 = 692$
 - But if we are allowed to discount the Hanscom Units our total housing units would be approximately:
 - 2130 (2010 census) + 124 (units added) = $2254 \times 25\% = 563$

Determining Multi-Unit Capacity of 15 units per acre

- Must use DHCD compliance model worksheet
 - Inputs include developable land, dimensional requirements for lots and buildings (including height, lot coverage, max floor area ratio), and parking requirements
 - If there are two or more zoning districts, then they may be considered cumulatively to meet the minimum land area and minimum unit capacity as long as each district independently complies with Section 3A's other requirements
 - Water and Septic Capacity need not be in existence or proven to be provided. It is assumed that the Developer will provide. Actual development may be less than what the zoning allows.

Lincoln, MA



Station:
Lincoln

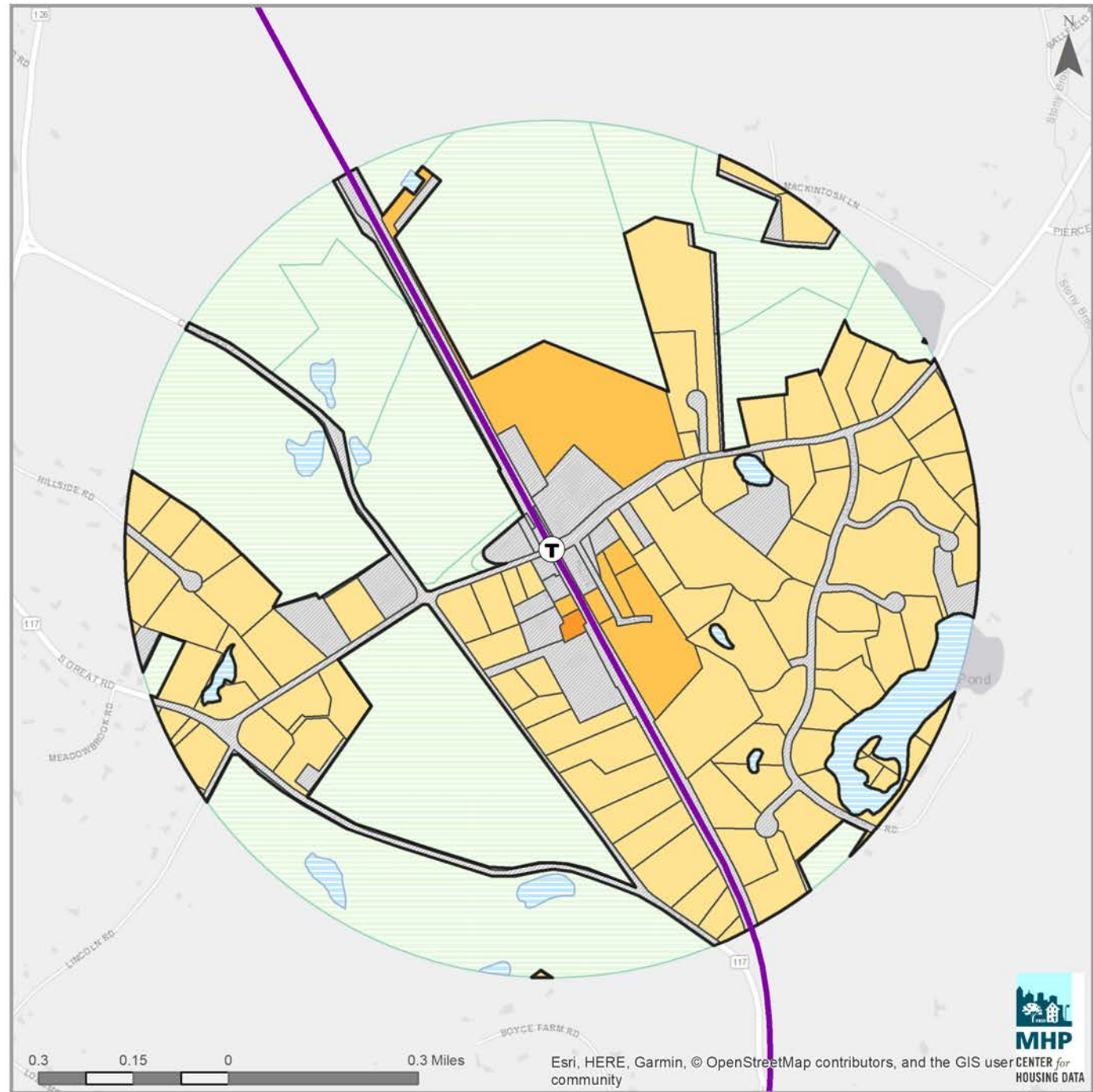
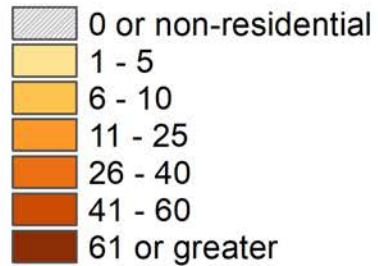
Line/Route:
Fitchburg Line

Communities in area:
Lincoln

Total units:
342

Average density:
1.3 units per acre

**Residential Density
(units per acre)**



How to Determine Minimum Gross Density of 15 Units/Acre?

- District-Wide Gross Density: The municipality must show at least 15 multi-family units per acre. Units per acre includes land occupied by public rights of way and any recreational, civic, commercial and other nonresidential uses.
- DHCD will not count in the denominator any “excluded land” which is defined in the guidelines.
- Sub-Districts: A municipality may establish sub-districts with different density requirements and limitation provided the district as a whole meets the requirement.
- As further limited by wetlands and Title V: Even though the zoning district allows 15 units/acre, any development must comply with Title V and the state wetlands protection act even if compliance means the development will be less dense than 15 units/acre.

How to Determine Suitability for Families with Children?

- Zoning will comply if:
 - 1. Units do not have age restrictions
 - 2. There are no limitations on the size of units, the number of bedrooms, the size of bedrooms, or the number of occupants.

Location of Districts

- **General Rule is Within .5 miles of a transit station.**
 - DHCD provides a table. Lincoln has 130 acres of developable land near the train station. Lincoln is required to have **20% of the land and capacity** within the .5 miles of the train station.
- Lincoln can choose locate more or less of the remainder of the land and capacity in other locations preferably near public transit;
- This gives Lincoln flexibility in location.

What is the Timeline for Compliance?

- 1. Must provide DHCD with a proposed action plan and timeline for studies and outreach in order to adopt a multi-family district.
 - Commuter Rail Communities must submit an **action plan** by **January 31, 2023**.
 - The action plan must provide information about current zoning, past planning for multi-family housing, and potential locations for the district(s)
 - The action plan must also establish a timeline for actions needed to create a compliant district.
 - Action plan must be submitted 90 days before a zoning vote.
 - DHCD must approve this interim compliance
- 2. Must submit a **District Compliance Application** by **December 31, 2024**.

Penalties for Non- Compliance

- Municipalities who do not timely comply with Section 3A:
- Will not be eligible for Massworks or Housing Choice Grants.
- Will not be eligible for Local Capital Projects Fund established in section 2EEE of chapter 29.
- Determinations of compliance may also inform funding decisions by EOHED, DHCD, the MBTA and other state agencies which consider local housing policies when evaluating applications for discretionary grant programs or other discretionary funding decisions.

What Are The Grant Programs?

- **Housing Choice Grants:**
 - Municipality must have a Housing Choice designation. Lincoln designated 2021. Expires 2026.
 - Designation gives points on other grants.
 - Capital grant funding
 - Maximum award is \$250,000.
- **MassWorks:**
 - Largest Capital Grant Funding for infrastructure and capital improvements.
 - Recent awards to similar communities range from \$1+ million to several million.
 - No minimum or maximum amounts
 - Lincoln has not historically applied for MassWorks funding.
- **Capital Projects Fund:**
 - Revenue from casino tax and gaming licensee fees
 - Historically used for subsidizing housing authorities
- Note that Draft Guidelines say DHCD can take into consideration non-compliance on other grants. Lincoln received approx. \$570K in 2021