

**ARAActional Exuberance:
Lessons and Prospects for Age-Restricted Active Adult Housing Development in
Massachusetts**

by

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B.A. History, B.A. Political Science
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Submitted to the Department of Urban Studies and Planning
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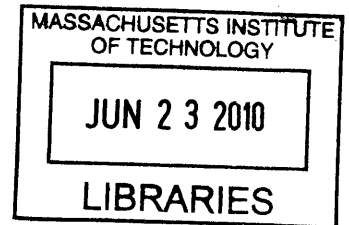
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ABSTRACT

In the last fifteen years, Massachusetts and neighboring states have experienced explosive growth in a hitherto alien form of residential development to the region: the age-restricted active adult retirement community (ARAAC). The growth proved too much for the market to handle, and now developers and municipalities alike are coping with the fallout from oversupply, partially completed projects, and recession-dampened demand.

This thesis describes and analyzes the factors that contributed to the current crisis of ARAAC oversupply in Massachusetts. Based on interviews with town officials, developers, and industry observers and analysts, I find that much of the responsibility for this falls upon municipalities, who failed to adequately plan around ARAACs and were often only too eager to approve projects in the belief that they would bring a fiscal windfall. After a thorough exegesis of the legal, policy, and economic factors at play in this finding, I propose a new framework that municipalities can use to better manage the supply and form of ARAACs and conclude with key findings and recommendations directed at municipalities.

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INTRODUCTION

The Hippie Generation. The Vietnam Generation. The cohort born in the middle fifth of the 20th century (1946-1964) has been labeled many ways, mostly depending on the various micro-epistemes it produced, but it is universally recognizable as “the baby boom generation.” Alternatively vilified and celebrated for their collective influence on culture, politics, and society, there can be no denying that the baby boomers have definitively shaped the prospects and direction of the post-World War II world in ways that will endure long after they die. Their mere arrival revolutionized entire industries, and their tastes, preferences, and outlooks wrought change at a scale and speed never before experienced in modern history.

In the United States, the boomers exerted a particularly powerful and unique influence on metropolitan form. Enabled by technological innovation, mass production, and government policy, the parents of the baby boomers drove a great wave of suburbanization in the 1950s with the goal of creating the “ideal” environment to raise a family. Within a generation, more people lived in the suburban satellites of large cities than in the center city itself, leading to what American philosophers of urbanism like Jane Jacobs and Lewis Mumford labeled “the death of the city.” In later decades, as adults, the boomers spearheaded a modest “revival of the city,” unleashing the contemporary debates over gentrification and the ethics of urban redevelopment. The extraordinary mobility of the boomers coupled with the prevailing ethos of privatization in the last half of the 20th century prompted the transformation of the American metropolis into a space of speculation and consumption, especially as broader economic restructuring led to the dismantling of urban industry.

The agent of many of these transformations was the real estate industry, the nature of which is to build in response to demand. In anticipation of a new wave of demand from “empty nest” and retiring boomers for a wider and deeper range of housing options in senior adulthood, the development community succeeded in securing legislative affirmation from Congress of the age-restricted active adult retirement community, or ARAAC, in 1995. Intended to bridge the life stage divide

between the home in which boomers raised their families and the nursing home, ARAACs quickly became a major focus of the real estate development industry and were built apace throughout the country in the ensuing decade. Now, as a result of the 2008 recession and the earlier collapse in housing prices, ARAACs and their developers are in crisis due to oversupply and evaporating demand. Nowhere is this more the case than Massachusetts, which saw upwards of 200 age-restricted developments built or proposed in an eight-year period.

Municipalities, one of the only actors that can serve as a regular check on development ambition, were on the whole complicit in this runup. This thesis elucidates the factors behind the current ARAAC crisis, identify key design characteristics of specific developments that have weathered the crisis fairly well, and propose ways forward for developers and municipalities that find themselves with a glut of age-restricted housing and no buyers to fill them. It is organized into four chapters:

Chapter 1 develops a macro-level account of the historical, legal, and market forces that have shaped the form and supply of ARAACs and specifies the fundamental issues that will shape any effort to repurpose ARAACs in both the short and long terms. An argument is also advanced as to why ARAACs are primarily a suburban phenomenon throughout the United States.

Chapter 2 focuses on the ARAAC phenomenon in the state of Massachusetts, analyzing the relationship between municipality and developer and identifying the factors that led to a surplus of ARAACs throughout the state

Chapter 3 elaborates a planning framework for municipalities to use when considering future ARAAC development and evaluating existing stock. The framework is based on analysis of two town cases, Hudson, MA and Waltham and Lexington, MA, as well as some of the unique characteristics of developments in those communities.

Chapter 4 concludes with key findings and recommended strategies for municipalities dealing with ARAACs now and in the future.

CHAPTER 1

ARAAC NATION: POLITICAL ECONOMY OF A TYPE

As is the case in many episodes in the history of housing in the United States, ARAACs are a product of a tightly interrelated set of market interventions and responses, mediated by law. In order to understand why ARAACs are located where they are and the forms they take, one must first understand the factors that shape the conditions under which they are built. This chapter offers an exegesis of the supply side at a macro level through a “mapping” of the legal concepts and constructs that affect the relationships of key actors in the production of ARAACs, namely the developer and the municipality; as well as the functioning of the market itself. It identifies two issues that will become important in subsequent chapters: first, the degree to which municipalities are empowered or required to actively manage the supply of age-restricted development; and second, the market factors that have led to age-restricted communities being concentrated in the nation’s suburbs. The existing literature on the subject, which can only be described as disparate and largely originating from the agents seeking to promote this type of housing, will also be reviewed and synthesized in context.

Retirement Communities before Age Restriction

The first large-scale retirement communities in the United States date from the mid-1950s, with the construction of Youngtown, Arizona on 320 acres of land at the terminus of the Arizona Canal, Phoenix’s primary water lifeline. By 1960, residential development magnate Del Webb saw the potential in this type of housing product and built Sun City, considered the first great retirement “lifestyle” community, right next to Youngtown (Guntermann and Moon 263). The lifestyle element was key to the marketing image of Sun City. Built around golf courses, tennis courts, swimming pools, and in later phases shopping centers, churches, and other recreational and community centers, Sun City and its successor developments were designed to function as largely self-contained and self-sustaining communities (Schuman et al 5).

When Sun City and its peer developments were first built, no legal provisions for age restriction existed either in municipal charters or the deed restrictions of the communities themselves. The developers merely assumed that given the site design of the communities, their architectural characteristics, and amenity options, interested tenants would be individuals and couples of retirement age. This assumption proved correct in the early years. But as retirement communities were built throughout the Sun Belt and demand pressure emerged from young baby boomer families seeking entry into the homeowner market in the 1970s and 1980s, developers and municipalities alike in the region began to see the utility in imposing age restrictions on developments intended as retirement communities (Guntermann and Moon 265).

Starting in the early 1970s, state legislatures in Arizona and Florida authorized municipalities to establish age-specific community zoning districts. It was not clear, however, to what extent such legislation could be used to designate communities as age-restricted *ex post* of their original establishment. The concern went beyond public law to the private homeowners' covenants governing the communities and subdivisions, which then as now were written by the developer and then invested in a homeowners' association board. This legal layering illuminates a fundamental dilemma that will be a recurring theme in this analysis: the degree to which a distinction can be made between a municipality as a legal creature of the state and the private corporation of the homeowners' association as a similar legal creature of the state, and accordingly which entity can trump the other in decision-making regarding a subdivision's disposition (Frug 2008). For the first decade after the construction of Sun City, the inherent potential for conflict between these two legal constructs was muted by a development context that kept certain interests in alignment, namely the massive market interest in lifestyle communities that proffered an expanded tax base with limited impact on cost-intensive services to new and growing Sun Belt municipalities. Retirement communities and hosting municipalities throughout the region thus set about quietly adopting age-restricted bylaws in housing covenants and town ordinances alike (McKenzie 38).

Until the 1990s, developers focused retirement community construction overwhelmingly in the desert Southwest and Florida. The operating assumption was that active seniors from northern states would prefer to relocate in retirement to sunnier and warmer climates. But as the leading wave of the 78 million-strong baby boomer cohort approached retirement age in the early 1990s, it became evident that a continued and amplified migration from the North to the South would neither be possible nor desirable. Furthermore, more robust market research attention to the senior demographic starting in the 1980s indicated that many wished to remain close to family and friends in retirement. This focused interest in developing active adult retirement communities in new markets, especially the heavily urbanized Northeast Corridor. Ironically, it was in this region where age restriction underwent its first major legal tests.

Locating the Legal Arguments for Age Restriction

Senior housing was comprised primarily of nursing homes, assisted living, and congregate houses prior to the 1980s in the Northeast and most areas of the country.* By virtue of design and the scope of residential services, the market for such housing was entirely segmented from the broader housing market and thus functioned without any kind of legal specification or intervention with respect to occupancy. In 1962, however, a developer brought a proposal before the zoning and planning commission of the Town of Southbury, Connecticut that initiated a 30-year long systematic legal blurring of the distinction between traditional senior housing and the rest of the housing market. The proposal resulted in *Hinman v. Town Planning and Zoning Commission* (26 Conn. Supp. 125, 214 A2d 131, 1965), a lawsuit that found its way to the Connecticut Supreme Court in 1965 and provided the first *de jure* test of age restriction.

* NOTE: housing that provides a higher continuum of care is not substantively factored into this analysis, given that the “active adult” qualifier in the ARAAC title distinguishes this housing product from other types of elderly housing. Much of the prolific literature on aging and the city and region either focuses on non-active adult housing or does not recognize the distinction, lessening its relevance in evaluating ARAACs.

At issue in the *Hinman* case was whether Southbury overstepped its constitutionally delegated zoning authority in creating a special age-restricted overlay district and amending the town's zoning bylaws to incorporate it. The project proposed by the developer at the time would seem familiar by today's standards: a single-family residential development with a clubhouse and recreation space. The plaintiffs in the case were property owners abutting the proposed development, but curiously their argument hinged on the fact that the zoning overlay discriminated against children (and thus violated the Constitutional rights of a large class of people, namely families) rather than their presumable primary motivation, which was how the development would impact their property values and rights (Doyle 70). Connecticut's Supreme Court affirmed the rulings of lower courts in finding that the town could not use the zoning power to exclude people from particular developments. But the opinion also observed that the proposed overlay district served primarily to advance the interests of the developer rather than those of the overall community. While this interpretation was not substantiated by demographic data specifying a lack of need for such a retirement community, it gestured toward another potential criterion for assessing the legality of age restriction – whether restriction could correct supply shortfalls in elderly housing and thus contribute to the welfare of seniors and the community at large.

This conceptual postscript in *Hinman* was not to emerge for some time again in justifying age restriction legally. Throughout the decade subsequent to the decision, similar cases were argued in front of the Supreme Courts of New York and New Jersey, all resulting in the invalidation of town zoning ordinances enabling age restriction. Not surprisingly, this did not necessarily result in a freezing of the construction of retirement communities in the region; it merely drove the process of age restriction into private law – namely through housing covenants and deeds.* Starting in the mid-1970s, however, courts in New York and New Jersey reversed the precedents established in *Hinman* and other state Supreme Court decisions in the region. The first of these

* An excellent example of this was the development at question in *Hinman* itself. The Town approved the development as a regular subdivision, and the developer merely wrote the age restriction into the private homeowners' covenant that became the basis of internal governance of the subdivision.

landmark cases was *Maldini v. Ambro et al* (36 N.Y. 2d 481-490 [1975]), argued before the New York Court of Appeals. The *Maldini* court identified the general welfare provision from *Hinman* as an acceptable rationale for a municipality to establish retirement community overlay districts. Importantly, the court construed age as a common condition shared by all citizens and held that use restrictions based on age could not be regarded as violating the Constitutional rights of a class as those based on race, religion, or economic status do:

"Senior citizenship" may be more appropriately regarded as a stage in life within the normal expectancy of most people than as an unalterable or obstinate classification like race, religion or economic status. Therefore, providing for land use suitable for the elderly may, as here, be viewed as a nondiscriminatory exercise of the power to provide for the general welfare of all people, especially since, even if the validity of that zoning classification were "fairly debatable, [the town board's] legislative judgment must be allowed to control." (*Euclid v Ambler Co.*, supra, at p 388).*

This reading of "age" enabled the Court to decide that age-restricted zoning overlays could actually serve an inclusive function by creating and protecting a specialized housing market for a class whose specific needs with respect to physical design might not be met in the existing housing stock. Thus, a municipality acting to create such legislation, based on an empirical indication of need, would be well within its statutory "delegated general welfare power" (36 N.Y. 2d at 486).

Maldini was essential in establishing the inherent constitutionality of age restriction and affirming the municipality's ability to provide for the welfare of its citizens, but it was a case brought before New Jersey's Supreme Court that for the first time addressed the municipality's responsibility to demonstrate the *need* for elderly housing. This case, *Taxpayers Association of Weymouth v. Weymouth Township* (71 N.J. 249, 364 A.2d 1016 [1976]), dealt with the same issues as *Maldini* and reached a largely similar set of conclusions, but unlike past decisions it grappled directly with the idea of a "burden of proof" for granting an age-restricted overlay. The *Weymouth* court was particularly concerned with the possibility that municipalities might develop an undue preference for age-restricted housing given the widely-held perception that such

* 36 N.Y. 2d at 490

housing has an ostensible net positive revenue impact (71 N.J. 249, 364 A.2d 1016 at 59). The decision occurred at a time when New Jersey’s legislature was considering an update to the state’s municipal land use planning and zoning statutes, a process that included intense debates over fiscal zoning and into which the discourse over age restriction fed.

These issues were explored in a “due process” section of the *Weymouth* opinion, which candidly evaluated the politics of age restriction in both the state legislature and in municipalities, and articulated new legal questions for future courts to consider. Among the more interesting issues discussed therewith was what kind of mechanism is necessary to control “abuse” of age-restricted zoning ordinances. The Court suggested that the appropriate mechanism might be a legislative requirement for comprehensive planning:

Our decision in *Mt. Laurel* requires developing municipalities to provide by their land use regulations, the opportunity for an appropriate variety and choice of house...we are satisfied, however, that the Public Advocate’s recommendation that zoning for planned housing developments for the elderly be permitted only as part of a comprehensive municipal plan for a balanced housing stock presents a reasonable mechanism for averting the potentially exclusionary effects of such zoning. (71 N.J. 249, 364 A.2d 1016 at 59)

In this excerpt, the *Weymouth* court appears to take initial steps toward articulating an additional test for the legality of age restriction – one based on analysis of community needs and housing supply as part of a broader, comprehensive planning process, which a municipality would be required to substantiate if challenged. It suggests that zoning mechanisms could be found to contribute to “an overall pattern of improper exclusion” through such a test, but the court is careful to note that the circumstances of the *Weymouth* case require it to rule more narrowly.

These three cases – *Hinman*, *Maldini*, and *Weymouth* – form the cornerstone of a fairly limited body of case law on the subject of age restriction prior to the Housing for Older Persons Act of 1995.* Though the prime focus of the three cases is the constitutionality of age-restricted zoning ordinances, a common thread of concern on

* No Federal court has had the opportunity to review age restriction directly prior to the passage of the HOPA. HOPA is analyzed in greater depth in the below section.

how municipalities maintain housing for classes with needs outside the established market segment animates all. Unfortunately, the cases fall far short of either advancing requirements of municipalities to be able to justify age-restricted housing or identifying what specific, common standards might be appropriate to require of such housing. The courts usually found the duty of defining these to rest with the state legislature, though most legislatures were in fact reluctant to take up the question directly and were content to delegate authority over managing the supply of age-appropriate housing back to individual municipalities. A significant intent of all three courts – establishing an independent right of review to prevent the possibility of fiscal zoning through age restriction – was as a consequence lost in the policy process and the legal path was cleared to permitting age-restricted developments without necessarily subjecting them to a standard and rigorous level of scrutiny.

Extending the Legal Sphere – Age Restriction goes Federal

As the market for active adult retirement communities matured, developers and their advocates in Washington began pressuring Congress to enact legislation that would affirm the legality of age restriction throughout the country. The politically opportune moment came in 1988, when Congress considered amendments to the Fair Housing Act of 1964 (hereafter FHA) to add “familial status” and handicapped persons as classes protected by the Act’s provisions. Language was inserted into the authorizing legislation that exempted housing for older persons from the familial status requirements of the Act and established age restriction as a legal mechanism for ensuring the exemption. In naming the categories of housing for older persons, the amended FHA included active adult retirement communities alongside traditional assisted living, nursing care, and public senior housing projects.

The FHA defined “active adult retirement communities” as housing “intended and operated for occupancy by persons 55 years of age or over,” and conditioned eligibility for age restriction on achieving and maintaining one resident aged 55 or older in at least 80% of the occupied units of a development irrespective of its size. In addition, the 1988 amendment required that developments provide “significant

facilities and services” designed for seniors. Both provisions proved problematic. The U.S. Department of Housing and Urban Development, the executive agency charged with implementing the legislation, found it very difficult to interpret the law and write clear administrative guidelines for evaluating the eligibility of developments for age-restricted status. Confusion also took hold in the development community, which flooded HUD with petitions and requests for information concerning projects throughout the country (24 CFR Part 100 1999, 16324).

Much of the puzzlement hinged on the vagueness of the wording of these provisions. Almost immediately, developers questioned how “80%” should be construed and specifically how the disposition of individual estates would be handled under the rule should the 55-plus resident pass away and leave the property to a younger spouse or children. It was additionally not at all clear what would or should count as “significant facilities and services.” Both HUD and the development community maintained that there was an insufficient distinction made in the legislation between elderly housing situated at different points along the spectrum of care. Developers argued that extensive care-oriented facilities were neither necessary nor appropriate in active adult retirement communities: when residents need a higher level of care, they should merely move to a facility offering those services.* They also argued that the confusion over the 80% rule scared away potential buyers who didn’t have sufficient confidence in how much control they had over their estate, thus preventing age restriction from being fully capitalized in the elderly housing market (16326).

The controversy over the 1988 RHA amendment revealed the broader trend of segmentation of the elderly housing market into specialized sectors. The active adult retirement community paradigm was closer in tenure, design, and amenity options to traditional subdivisions, and, it was argued, should be treated accordingly in the law. Congress responded to the mounting pressure from HUD and the homebuilding and

* At the time, the segmentation of the market meant that services were necessarily endogenous to housing type at higher levels of care, e.g. assisted living and nursing home. There were few, if any, developments that operated across the spectrum of care *and* included “active adult” units in which the inhabitants had equity.

senior citizens' lobby by passing the Housing for Older Persons Act of 1995 (Public Law 104-76, 109 Stat. 787, approved December 28, 1995) (HOPA). HOPA retained the elderly housing exemption from the requirements of the Fair Housing Act – reaffirming the legality of age restriction – and dropped the “facilities” requirement. But most importantly, HOPA clarified the residency requirements for attaining age-restricted status. The new requirements stipulated:

1. At least 80 percent of occupied units must be occupied by at least one person 55 years of age or older;
2. The housing facility or community must publish and adhere to policies and procedures that demonstrate intent and operation of the community for people above 55 years of age;
3. The housing facility or community must comply with rules issued by the Secretary [of HUD] for verification of occupancy, including:
 - a. conducting regular, reliable surveys and/or collecting affidavits as to residents' age; and
 - b. drawing up regulations for explicit communication to potential and current residents

HOPA also contained a clause establishing a “good faith defense” against lawsuits seeking civil damages for developers or homeowners' associations who make application for age-restricted status in good faith but, in fact, are not in compliance with the act's requirements. This provision, though ostensibly targeted at senior communities that were unable to *ipso facto* qualify as age-restricted based on the 1988 Act, also affirmed developers' ability to purposefully plan and market communities as age-restricted before they are fully occupied.

HOPA more or less “definitively” settled the question of the legality of age restriction and elaborated minimal criteria to determine whether a development is eligible.* It also effectively opened the entire nation to developers of this type of housing. The insertion of the federal government into the process of determining whether a development can be labeled age restricted has resulted in a system of actors

* One case was heard by a Federal court subsequent to the passage of HOPA – *Taylor v. Rancho Santa Barbara* (206 F.3d 932 [9th Cir. Ct. Appl. 2000]). The *Taylor* court upheld the FHA exemption for age-restricted communities on a rational basis test, thereby establishing HOPA's integrity under judicial review.

and overlapping authorities unique in its complexity. As the implementing agency, HUD is charged with verifying each development's age-restricted status, can theoretically rule a development to be non-compliant with the requirements of HOPA, and move to deprive that development of its age-restricted status. Such an arrangement, in which a homeowners' association or other private governance mechanism has a direct obligation to a federal agency, has few precedents.

The impact of HOPA on the nature of municipal governance and regulation of housing supply is of substantial importance to the argument developed in this paper and is thus worthy of further consideration. As established in the earlier discussion of state case law, the municipality's right and responsibility to ensure adequate housing for the elderly has been in near-constant question. HOPA is completely silent on the role of the municipality in the process of adjudicating whether a development should be age-restricted; it merely confirms the constitutionality of age restriction and sets forth the basic criteria under which it can operate. And yet HOPA empowers HUD to pre-empt the municipality when a development does not meet HOPA criteria and remove the age restriction. The lack of a clear framework of action could be expected from federal legislation, but when the legislation establishes a direct legal relationship between a private entity (the homeowners' association responsible for verifying occupancy) and the federal government, it necessarily constrains the actions that a municipality can take with respect to an important public policy question. This point is glaringly absent from the legal and policy scholarship on HOPA and age restriction (Cutts 205). Much of this writing assumes the improbability of conflict between different levels of government on the subject of managing age-restricted communities, when in fact there is ample potential for conflict under the right circumstances.

HUD's administrative guidelines implementing HOPA give implicit deference to states and municipalities in setting policy goals for elderly housing provision. This deference constitutes a burden on the state and municipality to ensure that elderly housing supply is sufficient to meet demand and vice versa. The legal architecture of HOPA, state legislation, and municipal regulations, is conditioned on the former

condition always being true. When supply exceeds demand, however, and developments necessarily cannot fill in such a way as to meet a) the requirements established by HOPA, and b) the developer's bottom line needs, the municipality is placed at a severe disadvantage. On one hand, it faces direct intervention from the federal government into its housing market, and on the other hand, limited tools with which to either incentivize or force action from developers or the governance mechanisms in required in housing covenants by HOPA. The result in either case is unpleasant: a lifting of age restriction and a concomitant increase in pressure on the municipality's fiscal position, or depreciation of housing value. Given these circumstances, it is clear that a municipality must plan its supply of age-restricted housing thoughtfully and carefully or face potential painful ramifications.

Locating the Economic Argument for Age Restriction

The above sections illustrate the municipality's position in a highly constrained legal and policy environment with respect to decision-making on age-restricted housing. For the decade following the passage of HOPA, most actors were willfully oblivious to the potential pitfalls associated with the legal architecture of age restriction. The reason for this lay in pure demographics and economics: the market demand for age-restricted housing appeared to loom large as the leading edge of the 78-million strong baby boomers neared retirement at the same time as a booming market led to significant increases in personal wealth. The next sections explore the economic forces driving the market and municipalities into a situation that can be best characterized as "irrational exuberance," resulting in an oversupply of age-restricted housing.

A substantial literature exists in economics and real estate on the effect of housing restrictions on housing prices, particularly age restriction. Much of it is based on hedonic modeling and other statistical methods and comes to different conclusions regarding whether and to what magnitude age restriction results in added value. Guntermann and Moon (2002) hypothesize that age restriction yields a quantifiable positive effect due to its uncertainty-reduction characteristics. The authors analyze 13 communities in Mesa, Arizona, finding a global premium associated with age-restriction

among all test communities, controlling for amenity levels and other key subdivision characteristics (Guntermann and Moon 275). Guntermann and Thomas (2004) endeavor to give this finding temporal depth by examining the case of Youngtown, Arizona, identified in an earlier section as the first purpose-built retirement community in the country. The authors calculate an 18% premium associated with age restriction that was capitalized in the values of homes in Youngtown, and then show how the circumstances of a legal challenge to and subsequent lifting of Youngtown's age restriction ordinance in 1997 impacted this premium over time (Guntermann and Thomas 274). They measured a negative price effect of around seven percent on homes in Youngtown for a period of two years following the invalidation of the ordinance, but a quick stabilization and modest recovery based on analysis of home sales data for the community. Interestingly, the price decline abated once the legal status of the community was settled, perhaps confirming Guntermann and Moon's (2002) thesis regarding uncertainty.

Another much smaller strand of the literature finds that age restriction has a *negative* impact on housing values. Of particular note is Do and Grudnitski (1997), who show a six percent price decrease associated with age restriction in their suburban San Diego subject developments. The authors attribute this negative premium not to any economic characteristic of age restriction *ipso facto*, but to government regulations that "impose" certain conditions on the housing markets. In Rancho Bernardo, California, the age-restricted ordinances enacted in the late 1980s (after the first exemption for elderly housing was written into the Fair Housing Act) resulted in an oversupply of age-restricted housing relative to demand, thus depressing housing prices. They contend that the line between age restriction as market failure safeguard and age restriction as a regulatory burden is very thin and not sufficiently responsive to flux in market conditions (Do and Grudnitski 692). Consequently, Do and Grudnitski seem to support the notion that a zoning-based approach to operationalizing age restriction should not be allowed.

It is not insignificant that the divergent conclusions of Guntermann and Moon, Guntermann and Thomas, and Do and Grudnitski are informed by cases influenced by fundamentally different circumstances. For one, the pieces co-authored by Guntermann focus on relatively established developments in municipalities with a great deal of experience managing retirement communities, whereas Do and Grudnitski examine cases in an environment to which age restriction was much newer. But the most significant distinction is the fact that Do and Grudnitski's subject, Rancho Bernardo, California, had specified a *target* for age-restricted housing supply in its zoning ordinances, whereas the communities analyzed in the Guntermann pieces had no such targets – they merely had zoning overlays enabling such development (Do and Grudnitski 692). One could thus conclude that actively controlling supply of active adult elderly housing through regulation yields nothing but harmful impacts on housing supply, but *enabling* age restriction in zoning regulation could result in the market working to reach an optimum allocation of age-restricted housing relative to the broader housing stock.

But what of the counterfactual – that age restriction without explicit supply targets could still lead to an oversupply of age-restricted housing? In other words, could a market-driven approach yield the same outcome as Do and Grudnitski's *bête noir*, overzealous regulations? As established in earlier sections, the "other level" of age restriction is the homeowners' association and concomitant powers of deed restriction. Hughes and Turnbull (1996) demonstrate that such "restrictive private covenants" have an inherent economic value due to the fact that they reduce the negative externalities associated with neighborhood uncertainty (Hughes and Turnbull 160). In this model, residents and potential buyers of houses in communities governed by deeds know with a much higher degree of confidence – barring modification to the deeds by a supermajority of fellow residents or revision by the developer should the 75% ownership threshold not yet be reached – that their neighborhood will retain its core "character," whether defined by aesthetics or the demographic profile of its residents (Hughes and Turnbull 162). As such, homebuyers who value characteristics addressed in

a development's deed restriction will pay a premium to live in that development. Hughes and Turnbull's analysis, much like those of the subsequent papers by Guntermann, finds a significant and positive effect associated with the degree of restriction on par with such major physical design considerations as the number of bedrooms and baths.

If housing consumers value mechanisms like deed restrictions for their uncertainty-reduction effects and prospective active adult buyers value age restriction for similar reasons, then it should be expected that builders will follow those preferences in order to maximize profits. Indeed, this turned out to be true. Over 24 million households exist in 300,000 private covenant developments nationwide, housing some 60 million people – a little more than one-sixth of the U.S. population. This represents a 30% increase over 2000 figures (Community Associations Institute). Age-restricted housing comprises approximately an eighth of this population – nearly 3 million households in 2009 – but the magnitude of the increase over the 2000 number was much higher than the broader private covenant market, with the number of households in age-restricted communities more than doubling (Mature Market Institute). It may be true that at the level of the isolated individual case, age-restricted deeds add a premium that can be capitalized into housing values, but as is the case with any economic good, as the total number of age-restricted housing units increases, its value (price) decreases so the market can clear, other variables held constant. At the spatial scale, it is very difficult to identify the optimizing point at which the market can absorb supply, but it is even more difficult in a highly specialized market in which decisions are made in an atomized and competition-oriented fashion, as in the case of age-restricted housing.

The House that Marketing Built

The drive for age-restricted housing nationwide in recent years was based on framing a ramp-up of elderly housing production as a proper market response to demographic exigency. A constellation of marketing and market research actors affiliated with the

building industry spearheaded this process and created the conditions for an overheated market.

The baby boom generation has long basked in the attention of scholars, industry analysts, and marketers, since the cohort's arrival on the demographic stage due to its sheer size and disproportionate buying power. That aging baby boomers would pose large challenges for the housing market (and other markets) as well as public policy is thus certainly not a new realization. In fact, it animated much of the housing industry and aging advocacy organizations' lobbying for the modification of the 1988 amendment to the Fair Housing Act and the passage of HOPA (Schuman et al 142-143). In 1997, coinciding with the first wave of boomers turning 50, insurance giant MetLife founded the Mature Market Institute (MMI), dedicated to studying the impact of a graying society on all sectors of economy, with particular focus on finance. The National Association of Home Builders (NAHB) began collaborating with the MMI through its newly constituted 50+ Housing Council shortly thereafter, with the aim of studying the "mature housing market" more closely and tracking its development. Since then, the jointly authored MMI-NAHB reports on the mature housing market have been a leading source of data and trend analysis for developers nationwide, and the NAHB's 50+ Housing Council a key agent in supporting developers' entry into the active adult housing market on a national scale (O'Connor interview).

Though marketing drives all industries, it is especially important in real estate and homebuilding, and even more so in the age-restricted active adult segment. Much of this stems from the fact that the consumer of active adult housing is "passive." As a major developer observed in a recent interview, the decision to buy into an active adult retirement community is a completely discretionary one – target customers are not driven by the same life stage and equity building concerns of new homebuyers and have little incentive to move (Shashaty 86-87). The primary motivation for these consumers is finding a smaller home in which aging in place is easier and all or most of the cost can be covered with proceeds from the sale of their existing home. Marketing's downstream position in the real estate development process is key to attracting and

motivating these potential buyers and thus a major determinant of an ARAAC's success. It is important to note that "marketing" comprises not only traditional advertising but event planning (open houses and other "experiential" marketing elements) and realty (sales and management) as well. Developers typically have to outsource these activities unless they are of a sufficient size to afford in-house staff, which in the recent housing boom translated into a thriving pipeline of work for smaller advertising agencies and incentives for vertical integration between the different segments of the tertiary services market (O'Connor interview).

Market research is a close cousin of marketing, and the two are mutually dependent. Market research typically involves mining multiple sources of quantitative data and tailoring it to the needs of particular clients, often to shed light on consumer preferences, inform market feasibility studies, or persuade municipalities of the minimal impacts that such development has on public services (Shashaty 1991, 18). These can take the form of descriptive demographic information derived from Census data or independent analysis and modeled according to specific parameters, or original survey research data. Either is instrumental to the development process, as the developer must understand the consumer in a target market in defining the scope, design, and marketing of a project. Some developers retain private commercial research firms to provide targeted data on a particular spatial market, but many rely on more general research conducted on the market as a whole by organizations like the MMI and NAHB. Still others, like Del Webb and Pulte Homes, are large enough to have internal market research divisions and even offer market research products for use by third parties (Suchman et al 2001, 12).

The line between market research and marketing has historically been blurred, but with ARAACs the two are inextricably linked. A coterie of private consulting practices exists that offer niche services blending classic market research and marketing services along with "coaching" programs that assist developers seeking entry into the specialized 55 and over market (O'Connor interview). Jane O'Connor's Massachusetts-based 55+, LLC is a prime example of this type of firm. In addition to standard pre-

development review, market feasibility studies, and expert witness services, 55+, LLC offers training services targeted specifically at developers and community association presidents. These range from daylong workshops on marketing techniques specific to the active adult market, symposia on regional active adult market health, and instruction modules on managing community associates in 55 and over developments (55+ marketing website). One of the more interesting services offered is independent performance evaluations of marketing and development personnel, aimed at helping developers hone their interactions with clients and improve their yield. This wide range of activities enables firms like this to have direct contact with and influence developers, municipalities, and community associations, making them a prominent actor in the production and management of active adult housing in their own right. Yet it also illustrates the problematic nature of the structure of the active adult housing industry: given a business model explicitly predicated on expansion while outwardly representing themselves as objective arbiters of information regarding the active adult market segment, the activities of such firms could arguably facilitate overly optimistic decision-making just as they have certainly facilitated many small and mid-size developers' entry into the active adult market.

Industry Structure

The age-restricted active adult segment of the housing industry mirrors to a degree the structure of the larger industry: at the top are large, publicly held professional developers of retirement communities with nationwide operations, and at the base are independent private contractors that develop smaller-scale communities exclusively in a local metropolitan market. Developers working in specific regional markets occupy the middle range. Beyond scale of operations, community size and type also differentiates developers – some produce suburban single-family townhomes, others apartment and condominium complexes. Yet further differentiation can be found in the range of community amenities, with developers building communities that function as self-contained towns, with abundant recreation and common space; and some focusing on conventional suburban subdivisions with few, if any, amenities.

Industry observers like Bonnie Heudorfer (2005) have noted that a strong correlation exists between a developer's scale of operations and the various other differentiating factors, particularly the size and type of community as well as the level of amenities offered for common use (Heudorfer, *Age Restricted Active Adult Housing in Massachusetts: A Review of the Factors Fueling Its Explosive Growth and the Public Policy Issues It Raises* 37, Sullivan 2010). The national brand developers tend to build big, amenity-rich communities of 150 units or greater, and local developers build smaller communities with several dozen units or less and few amenities.* This correlation appears to hold true for the various firm sizes and market niches of mid-range developers operating at the regional scale. In addition to the factors cited above, developer size and market position also appear to predict the quality of market research employed when preparing project proposals, which can be viewed as an indicator for risk-aversion (Heudorfer interview). Larger developers tend to have higher requirements in terms of market research quality before deciding to pursue a project given their need to spread risk across a large portfolio of projects; and smaller local developers are less stringent, relying more on general data and qualitative assessments of the market.

From this, an interesting portrait of the active adult housing industry begins to emerge, one characterized by a high degree of stratification between different "classes" of developers and a commensurately disproportionate distribution of risk. This can be best observed at the metropolitan and regional scale: as a class, smaller developers typically constitute a larger share of the market, and the substantially higher amount of risk they assume coupled with the fact that they tend to build more homogeneously and with fewer amenities, results in supply-side distortions that could prove problematic in the face of changes in regulations or demand. This hypothesis appears to have been vindicated in the recent market crisis, which caused many smaller developers in new

* It is important to highlight the distinction in scale between ARAACs in Sun Belt states and other regions. In the Northeast in particular, it is commonplace for an ARAAC of 150 or more units to be considered "large," due usually to the greater constraints on community size posed by higher land values and stricter land use regulations.

ARAAC markets – particularly in Northeast states like New Jersey and Connecticut – to fail or otherwise exit the industry, and has left a glut of vacant or half-completed developments with little prospect of actually being completed.

Fiscal Economics – Bringing the Municipality Back In

Just as the housing industry mobilized around ARAACs as the best way of delivering housing for aging baby boomers, municipalities saw this type of development as a means to continue growing the tax base presumably without placing additional demand on expensive social services, particularly education. As a result, the municipality – which normally serves as the primary check on the vicissitudes of real estate market activity – openly embraced and even encouraged ARAAC development, often without much, if any, analysis of how much of this type of development it could realistically support with respect to demand.

The fiscal motivations of municipal zoning and land use policy are the subject of a massive body of literature in economics, political science, urban studies, and sociology. While a comprehensive review of this literature is not possible or desirable given the scope of this thesis, there are several key contributions and points to highlight that bear directly on the argument being developed herewith. Tiebout (1956) views municipalities as economic actors offering “bundles” of goods, namely government services, at certain prices, expressed by the tax rate. Individual residents, in a theoretical environment of perfect mobility and information, move around until they find a community with a bundle of services and accompanying tax rate that maximizes their individual utility (Tiebout 416). While the many assumptions of Tiebout’s model – in particular the notion of perfect information and mobility, no positive or negative spillovers from one community to another, and optimal town size – have been shown to be problematic, his theory is the fountainhead of most scholarly accounts of municipal behavior.

Hamilton (1975) and White (1975) build on Tiebout with empirical investigations into the relationship between housing value, housing stock consumption, and tax-base composition, and three local fiscal variables: property tax rates, expenditures per capita,

and home valuation per capita (Hamilton in Mills and Oates 1975, 16, and White in *ibid*, 46). They find that property tax declines with increases in housing value and household income and rise with the proportion of multifamily housing. From these findings, Hamilton and White conclude that single-family homes yield higher taxable valuations given higher-income residents' preference for this type of housing over multifamily units, particularly multifamily rental units. They also conclude that residents of such communities – and by extension, the municipality – will seek to “freeze” growth beyond a certain level of development (and also restrict it to a certain type of development) whereby additional population necessitates an increase in property taxes to cover the cost of expanded services. This is particularly salient in the case of education, which emerged as the ultimate “third rail” of local politics in the final quarter of the twentieth century and remains so in the present. Hamilton and White’s research thus seems to confirm the dominant postwar view that single-family housing was the *sine-qua-non* of fiscal health, and that the municipality must be compelled to control growth in such a manner that prevented fiscal “free-riding” by low-income populations.

ARAAC Location Theory

Thus far, there has been little discussion as to *where* ARAACs are developed. It can be readily observed that most, if not all, are built in the suburbs. In fact, over 75% of ARAAC development nationwide is suburban, with nearly half built in suburbs within 15-20 miles of the metropolitan core, and 30% in outer suburbs greater than 20 miles from the center (Mature Market Institute 23). But it is not necessarily clear why this is the case. This final section synthesizes the various factors and actors introduced throughout the chapter in theorizing why ARAACs are concentrated in suburbs.

Cities are generally characterized by a land rent gradient wherein the most valuable and intensively built land is located in the center, and as one journeys away from the center, land values decrease. This general land rent gradient for a city is in turn comprised of individual curves for various uses of the land. At any given point in space, whatever land use commands the highest rent will be found. The earliest

economic models of the city recognized this phenomenon, and they have more or less held, with some modification, to the present day (Von Thunen).

In the second half of the twentieth century, technological innovation and government intervention fundamentally changed the economics of American cities. Thanks largely to the automobile, the land rent curve for residential uses was dramatically flattened as outlying areas in the metropolitan region came within reach of the daily commute. As a result of this process, the housing market became pronouncedly segmented, with few very high-priced residences at higher densities in the city center and progressively cheaper housing, largely single-family, located in low-density suburbs. In recent years, as urban residential living became popular anew, this market segmentation has reasserted itself in several key ways. First, the more expensive land in the center called for a different development approach with respect to design, financing, and marketing, from the existing dominant suburban homebuilding model. This has resulted in a very different niche within the housing industry for developers of urban infill housing, characterized usually by high-density multifamily buildings. Second, the higher costs associated with developing housing in center cities are generally passed on to the consumer, meaning that market-rate housing in urban areas is sufficiently expensive to be out of reach of most families with children.

This brief excursion into basic economic theories of the city, as with other digressions above, begins to illuminate why age restriction, and ARAACs in particular, are fundamentally suburban phenomena. From an earlier section, it is clear that one of the major economic arguments for age restriction is to reduce the uncertainty associated with neighborhood change. In redeveloped urban areas where housing is sold at a market rate, the expense and nature of such housing naturally targets it more to two demographic groups, older retirees and young professionals. Age restriction thus does not add value for seniors seeking urban housing, because the market already works to support an outcome whereby residents can be relatively certain of the

composition of their building or development.* In suburban environments, this is not the case. Because suburban housing is both more affordable to and preferred by families with young children, developments targeted to seniors require age restrictions either by deed or law to ensure the same outcomes with respect to community composition.

The housing industry segmentation described earlier is also a factor in determining the location of ARAACs. Developers, particularly of residential communities, rarely compete in both suburban and urban markets (Mature Market Institute 21). This holds true for firms in the age-restricted active adult segment, in which the overwhelming majority develop single-family housing and subdivisions whether they are new to the development industry or have pre-existing operations in the conventional suburban housing market (Mature Market Institute 22). Because suburban areas constitute the only environment in which ARAAC developers can build such housing at a competitive price, this is where most development of this type is necessarily concentrated. Municipalities have reinforced this by openly competing for ARAAC development, given their preference for development that will not place additional burden on fiscal outlays.

Conclusion

The American suburban municipality thus faces a dilemma: on one hand, a graying tax base will in the long run threaten fiscal health, while on the other, capturing taxes from new elderly residents will reap fiscal windfalls in the short run. It is clear that many municipalities opted for the latter outlook, and the solution presented itself in the form of the ARAAC. This chapter identified the factors at play in creating conditions in which an oversupply of ARAACs was not only a probable, but likely, outcome, and that any resultant crisis would disproportionately affect the suburbs. It found that much of this outcome hinged on the systematic alignment of economic incentives, legal ambiguities, and fiscal politics across the private and public sectors, blinding both to the risk of

* The crucial exception is low-income seniors seeking urban housing. These developments typically must be age-restricted in order to preserve the character and goals of the development (Zais and Thibodeau 1983, 20).

overbuilding. The next chapter will delve into the case of Massachusetts and explore its unique policy and market environment in relation to ARAACs.

CHAPTER 2

ARAACs IN THE BAY STATE

Few developers built ARAACs in the New England region before the passage of HOPA in 1995. This was likely due to a combination of a lack of demographic demand for such communities in the region and a development paradigm that emphasized the Sun Belt as the active retirement destination of choice, as well as the perennially contested legal status of age restriction. HOPA came at a moment in time in which this calculus was undergoing a fundamental shift: the leading edge of the 78-million strong baby boomer cohort was looming on the retirement horizon, market researchers “discovered” that most people in this generation prefer aging in their communities close to families and friends to moving elsewhere in retirement, and states and municipalities nationwide were increasingly formalizing the legality of age-restricted housing. With the legal questions resolved at the federal level by HOPA, states that had not previously addressed the matter of age-restricted housing were compelled to amend any statutes that might hamper the implementation of HOPA. Massachusetts was one of these states.

Fifteen years on, Massachusetts faces a glut of age-restricted housing that is of truly staggering proportions – 10 years worth, by some estimates. Much of this is admittedly due to demand side conditions, especially the boomers’ inability to sell existing homes as a result of the 2007 housing market collapse and the shock dealt to many boomers’ net worth by the 2008 recession. But this is only a sufficient cause of the current crisis. The real problem was shortsightedness, lack of proper planning of supply, and in some cases, recklessness on the part of municipalities in their dealings with a highly active and rapidly expanding market for active adult housing. This chapter considers how Massachusetts came upon this predicament through a thorough review and analysis of the legal principles and political realities underpinning the relationship between the state and municipalities and how this affects supply outcomes for ARAACs. It offers a view of the Massachusetts municipality simultaneously constrained by its legal relationship to the state and seduced by the prospect of revenue-positive

development, and introduces questions of community form that will constitute the basis of subsequent chapters.

A Commonwealth of Towns? State-Municipal Relations Under Home Rule

Any discussion of land use and planning in Massachusetts cannot proceed without first considering the state's Home Rule law. "Home rule," in American jurisprudence, is a legal construct by which a state legislature grants subdivisions of government some measure of autonomy in fiscal and other policy-making matters. Massachusetts resisted adoption of home rule during the first wave of such reforms in the latter quarter of the 19th century and first quarter of the 20th (Frug 62). The Commonwealth did not adopt its Home Rule Amendment until the mid-1960s. Authorized in the Home Rule Procedures Act (1966) and codified as Article 89 of the Massachusetts Constitution (1967), home rule was intended to empower municipalities to act more independently in an era when the scale and scope of demand for public services made it impossible for the state legislature to consider enabling legislation for each appropriations request brought before it by municipalities.

As could be expected of any action in which an institution devolves power in a time of "crisis," the Home Rule Amendment was carefully designed so as to keep municipalities reigned in by the state. The Amendment grants local governments the right to adopt a home rule charter, which essentially allows a municipality to declare what *kind* of municipal entity it is, namely a city or a town. But because state law defines what kind of governance structure a city must have versus a town, this authority is inherently limited.* Furthermore, the Home Rule Amendment specifies that municipalities may not adopt bylaws or act in any fashion that contravenes the state constitution or statutes, and reserves the state's right to overrule any municipal action it deems inappropriate, without setting forth criteria the state must follow for making this judgment (MA const. art. LXXXIX [89] §§6-8). In spite of these major limitations, the granting of home rule charter authority does nominally empower the municipality to

* State statutes define a "city" as having an elected managerial council and an executive, whereas the "town" retains the open or representative town meeting as its governing body.

improve its administrative efficiency, whether through creating or consolidating administrative departments or reducing the size of representative town meetings or city councils.

Barron et al (2007) have found that many municipalities in Massachusetts see little freedom or utility in their home rule authority, and thus seldom take advantage of it (Barron, Frug and Su 4). Local governments instead either persist with the tried-and-true method of petitioning the legislature on issues related to their organization or find ways to essentially ignore the state unless a major preemptive intervention occurs. Either mentality is troublesome, as it reveals the power of local governments' perception that in spite of home rule, their relationship with the state is still one-sided and acting within the established legal framework means not being able to pursue their best interests. This perception is confirmed to a certain extent by the letter of the law – specifically the appeals process established by Section 8 of the Home Rule Amendment – which empowers the state to enact special legislation for individual municipalities upon petition irrespective of the town-city distinction in state law.

Land Use Planning and Municipal Power in Massachusetts

The substantive framework for municipal home rule powers in Massachusetts is described in various sections of Chapter 40 of the Massachusetts General Laws. The second section, 40A, delegates authority to municipalities on matters of zoning and land use planning, including the right to propose or amend zoning bylaws. While not unique in comparison to most states, this was a big step for Massachusetts given the utter lack of preceding legal architecture on local control over land-use planning and zoning. Officials in Massachusetts' cities and towns have thus come to regard the zoning power outlined in Chapter 40A as perhaps the most important single aspect of their authority as local governments (Barron, Frug and Su 41). But even this has limitations: the Massachusetts Supreme Court has previously interpreted 40A as subject to the constraints on municipal power expressed in Section 6 of the Home Rule Amendment, and thus conditions a municipality's exercise of the zoning power on conformance to

state statutes. The legal door is thus open for the state to theoretically nullify any zoning ordinance or bylaw it finds to stand in opposition to state law or priorities.

Significant uncertainty still surrounds whether and how the state may interpret an ordinance or bylaw as non-conforming to its statutes. Municipalities are sensitive to this and have by and large opted to follow wholesale the zoning and land use planning administrative framework established by 40A (Barron, Frug and Su 43). Other cities and towns for whom the framework is inadequate typically file home rule petitions with the state, as they do on issues pertaining to their charters. The uncertainty is compounded by the “special exemption from local review” clauses found in many state laws addressing land use. These exemptions are usually piecemeal and targeted to certain land use and zoning categories, but when added up the scope of these exemptions becomes striking. Some key examples include:

1. Local ordinances may not restrict the floor area of single-family residential properties (40A M.G.L., §3 para. 2);
2. Certain uses, such as child care and other education facilities as well as religious facilities, are exempt from local zoning (40A M.G.L. §3 para. 3-5);
3. Property owned by the state and its assignees (including private entities contracted with the state) are exempt from local zoning (40A M.G.L. §3 para. 2)
4. Subdivisions fronting on existing roads are insulated from local review with respect to accessibility standards (41 M.G.L. §81Y para. 2).

Some exemptions, including the third item above, give *de facto* site control to the state and do not carry with them any kind of requirement to either consult with the town or consider other suitable sites. The structure and nature of such exemptions to municipalities’ land use and zoning power greatly complicate local efforts to create master plans, which has the effect of stymieing strategic visioning and planning in town planning departments throughout the state (Lacy interview).

Chapter 40B: Affordable Housing by Pre-emptive Design

Perhaps the ultimate example of state exemption of certain actors from local planning authority is Chapter 40B, Massachusetts’s comprehensive affordable housing permitting

law. Passed in 1969, just three years after the adoption of the state's Home Rule Amendment, Chapter 40B empowers the state to overrule local land use regulations in favor of projects where 20 to 25% of units are subsidized if the community's affordable housing supply is under 10% of total housing stock (Rosan and Susskind 17). The intent of the law is for the state to act as guarantor of affordable housing should local governments be disinclined to permit subsidized units. As such, Chapter 40B essentially creates a direct relationship between a developer of a project and the state, with the municipality serving a largely administrative role.

The impact of 40B on housing and land use policy in Massachusetts cannot be understated. Since the law took effect in 1970, over 35,000 housing units have been created in the state. Of these, approximately 25,000 house families making less than 80% of median area income (Heudorfer, Interview). The last ten years have seen particularly prolific construction of 40B units – nearly half of the units constructed under the law are less than ten years old (Heudorfer, Interview). Yet as much as 40B has positively contributed to the affordable housing picture in the state, it has been a source of ambivalence for local planners. On one hand, 40B plays an important social justice and equity goal in the community and in some planners' view is a positive force in diversifying housing stock. But because the law enables developers to build at higher densities than zoning would otherwise allow and even build in areas zoned for uses other than residential, many planners have come to view 40B as thwarting communities' ability to effectively plan and manage growth (Rosan and Susskind 18). Given the popularity and magnitude of 40B development in the state, it is easy to see how 40B could be understood as emblematic of the compromised position municipalities occupy with respect to the zoning and land use planning power ostensibly delegated to them.

Chapter 40B has also greatly impacted the structure of the housing industry in Massachusetts. The law created an attractive niche for developers by streamlining the approval process, thereby cutting down on development costs associated with the lengthy permitting negotiations with local planning and zoning boards that characterize

typical new residential projects. As the affordable housing market matured and the state funded additional measures to maintain housing affordability during the run-up in housing values in the late 1990s and early 2000s, more developers entered the market. One 40B developer noted in an interview that increasing familiarity with affordable housing development techniques on the part of developers and financial institution as well as additional public funding sources made it easier to secure financing, reducing the risk quotient sufficiently between affordable and market-rate housing to make the former much more appealing (Frias , Interview).

Caught between a robust market and the processes set in place by 40B, the municipality was left with few means to influence affordable housing development in their communities. In an effort to insert their preferences a bit more into the process, local governments have adopted zoning ordinances around 40B and through deferential and cooperative negotiating techniques have been able to successfully attach conditions to some permits without triggering an appeal to the Housing Appeals Committee (HAC), which has jurisdiction over 40B developments.* Some municipalities have gone a step or two further, becoming more proactive in promoting affordable housing in order to meet the 10% quota and in some cases setting up affordable housing trusts for developers to pay into either alone or in cooperation with other communities. Christina Rosan highlights one such case in Franklin, where the town established a fund into which developers can pay an amount equivalent to the value of affordable units proposed, and the funds used by non-profit land trusts and affordable housing developers to build full-fledged affordable housing developments (Rosan and Susskind 20).

Legal Means of Delivering Age-restricted Housing in Massachusetts

Massachusetts state law does not elaborate explicit requirements for ARAACs that municipalities must follow, expecting instead that local governments will devise their

* Lynn Fisher has found that in over 80% of cases between 1999 and 2005 in which towns attached conditions to 40B proposals, developers did not appeal to the HAC (Fisher 2).

own regulations.* The Office of the Attorney General does provide a model zoning overlay bylaw on its website to communicate what it regards as a best practice for wording zoning bylaws addressing age-restricted development. But because the Attorney General's office has right of review of any new bylaws drawn up by municipalities, this template holds great sway and thus informed many communities' regulations, at least those that chose to enact regulations addressing senior housing.

At present, 96 of the 187 municipalities within 50 miles of Boston have ordinances on the books that explicitly enable age-restricted housing (Dain 14). Most of these are worded specifically for active adult housing and take the form of an overlay district. An overlay district is a zoning tool that enables the standards applicable to basic zoning categories to be superseded. Age-restricted zoning overlays typically contain their own dimensional and water runoff standards, and notably almost always allow much denser development than other zoning categories (besides multifamily residential). Even so, the dimensional requirements are usually such that the most intensive form of development allowable in an age-restricted overlay district is a townhouse or other variant of single-family attached housing. This in fact proves to be the dominant type of housing unit in ARAACs permitted under senior overlay districts (Heudorfer 2005, 34).

Half of the communities in greater Boston still permit ARAACs but without any kind of formal zoning that enforces age restriction. In these cases, ARAACs are treated as cluster developments, on which almost all municipalities in Greater Boston have zoning laws on the books (Heudorfer 2005, 40). In explaining this phenomenon, one South Metro town planner remarked that the legal distinction between ARAACs and typical cluster developments need not be reinforced through a special overlay district (Lacy , Interview). Rather, private law (deeds) can define whether a community is age-restricted or not, and the private homeowners' association be held responsible to verify its compliance with HOPA standards independently. This planner and others in

* The exception is Chapter 151B of the Massachusetts General Law, which was amended to reflect HOPA's exemption of 55+ communities from the requirements of the Fair Housing Act and sets out reporting requirements for such communities (151B M.G.L. § 4 para. 7A).

communities without age-restricted zoning ordinances tend to take the view that enacting such age-restricted zoning overlays needlessly complicates the administrative duties of local governments and makes it more difficult to adapt developments to changing needs.

The above observation regarding the distinction between permitting ARAACs through age-restricted overlay districts versus more general cluster development regulations seems apt in light of the current development environment, in which many age-restricted communities built in the state after 2006 are suffering from unsold and vacant units. Because specialized overlays condition designation of a development as age-restricted on meeting the criteria defined in HOPA, they constitute an added layer of regulatory oversight that can make a necessary step like removal or modification of age-restriction for a particular development difficult.

Chapter 40B and Age Restriction

Chapter 40B has, not surprisingly, become a popular tool for developing age-restricted housing in Massachusetts. To date, nearly a third of all developments approved under 40B are age-restricted, and while most developed prior to 2004 were rental apartments, in recent years many more condominium and other homeownership tenure types have been built. Coinciding with this sea change in tenure type was a tremendous growth in the overall number of age-restricted 40B development. Between 2004 and 2006 alone, over 60 40B age-restricted homeowner developments were built in Massachusetts, with even more in the pipeline. Considering that a total of 12 such developments were built since the inception of the law over 30 years earlier, this represents a dramatic pattern shift.

40B Age-Restricted Housing, 1980-present			
Timeframe	Towns with 40B AR Developments	Total AR	
		Developments/ Proposals	Total AR Units
1980s	0	0	0
1990s	2	2	53
2000-2003	10	10	330
2004-2007	63	77	4,019

Table 2.1: 40B Age Restricted Housing in Massachusetts. SOURCE: Heudorfer 2005, 45; and CHAPA 2009

An interesting story lurks behind the extraordinary numbers presented in Table 2.1. Several developers revealed in interviews that some towns actively recruited age-restricted 40B development, intimating that this was a deliberate effort to meet affordable housing quotas while avoiding adding low-income families to the population.* In some cases, developers approaching town planning boards with proposals for traditional *market-rate* single family subdivisions were strongly encouraged and eventually persuaded to build age-restricted affordable developments, even if they did not have prior experience with the age-restricted active adult market (Heudorfer interview). This phenomenon occurred in communities throughout the metro area, and market observers have noted that it essentially shut down the pipeline of affordable housing for families in the early- to mid-2000s. It also resulted in oversupply: at least nine of these developments were unable to attract enough, if any, buyers who met both the age and income qualifications, forcing their developers to request relief in the form of lifting the age restrictions. These developments, along with their key physical attributes, are summarized in Table 2.2.

* Due to the legal sensitivity associated with this finding, specific names are not identified

Age Restricted Affordable Housing Developments Converted to Non-Age Restricted Affordable Housing				
<i>Name</i>	<i>Town</i>	<i>Type of Housing</i>	<i>Community Amenities</i>	<i>Location</i>
Holden Hills Condominiums	Holden	Townhomes	Y - Golf Course	Beyond 495
Village at Bedford Road	Bedford	SF Detached	N	Between 128 & 495
High View	Dracut	SF Detached	N	Beyond 495
Brackett Landing	Eastham	SF Detached/Townhomes	N	Cape Cod
Cobblers Knoll	Mendon	SF Detached	N	Beyond 495
Merry Village	Duxbury	Townhomes	N	South Metro
Pond View Village	Stoughton	SF Detached	Y - Clubhouse	South Metro
Nortpoint	Hanover	Multifamily Rental	N	South Metro

Table 2.2: Age-restricted affordable developments converted to non-age restricted affordable developments. SOURCE: author

The above table illuminates the problematic nature of age-restricted affordable homeowner housing. The income and asset requirements for such developments are often the major barrier. Three homeownership programs in Massachusetts are the delivery mechanism of Chapter 40B homeowner housing. Of these, the Department of Housing and Community Development's Local Initiative Program (LIP) is the most generous: a homeowner may apply either all or part of their equity from the sale of the home toward the purchase of a new unit, and keep up to \$100,000 beyond that plus \$50,000 in other assets (Heudorfer 2005, 48). Still, as the likely candidates for these units are drawn from the immediate milieu of where the development is located and typically have much higher levels of personal wealth than even that allowed under LIP, the income and asset restrictions effectively shut out the majority of buyers in most communities. Furthermore, the standard argument of affordable housing advocates in terms of first-time homebuyers does not apply to the demographic segment eligible for age-restricted units: few, if any, of these households are first-time homebuyers. It thus appears that the overabundance of these types of units was due less to market signal or unmet need and more to other factors, likely municipalities' ambition to meet their affordable housing quota while generating tax revenue from a population segment that doesn't demand as much services as families.

Legal form and (sub)urban form

The legal and policy framework governing age restriction in Massachusetts bears directly on questions of community form. Broadly speaking, regulations permit three

types of age-restricted housing: single family detached, single family attached (townhomes/condominiums), and multifamily (apartments/condominiums). Type is observed to be closely associated with the legal mechanism used to develop an age-restricted community. Table 2.3 summarizes these associations.

Relationship between Housing Type & Legal Tools	
<i>Housing Type</i>	<i>Legal Tools</i>
SF Detached	Varies
SF Attached/Townhomes	Senior Overlay District
Multifamily	Chapter 40B

Table 2.3: Relationship between age-restricted housing type and legal tools. SOURCE: author

Senior overlay districts overwhelmingly yield single-family attached homes, particularly townhome condominiums, due to the fact that most districts are merely reworded cluster development regulations. While some communities word their overlay districts to allow for single-family detached homes, the dimensional and density requirements of all overlay districts reviewed by the author bar denser multifamily development from this zoning category. For this reason, most multifamily age-restricted development is built either through 40B, traditional multifamily zoning, or in some cases, building conversions in special historic districts.

Housing type is a key variable linking the legal and policy structure of age restriction with the problem of oversupply. Much as the law shapes the range of forms an ARAAC can take, the range of ARAAC forms in turn largely determines how well the market functions. If the supply of ARAACs is too homogeneous in form and developments too numerous, then it becomes difficult to differentiate any one development in the marketplace. The natural response to this phenomenon from the development industry is to stratify the market according to qualitative characteristics like type, design, and community amenities. But this market stratification does not replicate itself evenly in space. In fact, developers competing in the same market will often cluster their developments together to leverage agglomeration effects in reaching

potential buyers, and use aggressive marketing, financing, and/or premium design features to differentiate one from the other. While this may work in strong economic times, homogeneity of type can become very troublesome in a weak economy, when competition for scarce buyers drives the price and value of housing in a development down.

It is thus up to the municipality, as the most proximate level of spatial governance to these developments and thus the actor most likely to suffer the negative externalities (risks) associated with homogeneity of ARAAC form, to consider both the qualitative and quantitative dimensions of supply. Surprisingly, though few town planning boards or meetings do their own feasibility studies or track or manage overall supply, some have been able to do so *de facto* by focusing on design and type and encouraging and approving developments that seem to fit. Hudson – one of the case studies of “accidental success” presented in the next chapter – is a good example of this. Town planner Jennifer Baker remarked that although neither the planning department nor the planning board have any kind of policy or methodology for managing the supply of age-restricted developments, members of the board do pay close attention to the design of these communities and their actions have resulted in a fairly balanced spread of development types in the community (Baker , Interview).

Conclusion

The above sections situate the Massachusetts town in a complex legal and policy environment and examine how both its laws and those of the state affect the market for and form of ARAACs. The many legal encumbrances local governments face coupled with the piecemeal character of these encumbrances make it difficult to actively and meaningfully plan growth at the local level. ARAAC developments offered somewhat of a reprieve, as they seemed to provide a steady source of income and a means to satisfy state-mandated affordable housing requirements. It was precisely this logic that led to the current ARAAC supply crisis, and it is time for municipalities to recognize the role they can and should play in managing the growth of these developments. For this,

however, a new planning framework is needed that balances qualitative concerns with legal and pure cost-benefit analysis.

The next chapter turns away from analyzing the factors contributing to oversupply and develops such a framework for planning around ARAACs based on an analysis of what elements have worked in the Towns of Hudson and Waltham/Lexington.

CHAPTER 3

LEARNING BY ACCIDENT: A FRAMEWORK FOR EVALUATING ARAACs

Few towns or cities in Massachusetts were completely immune from the dramatic expansion in ARAAC development in the early- to mid-2000s. As the previous chapters revealed, many actually enthusiastically embraced these developments, believing them to be net revenue generators. Most town officials gave little thought to the possibility of overbuilding, and none had any sort of plan or strategy in place with regard to managing the supply of ARAACs. Despite the general lack of deliberate planning for this type of housing, there are some Massachusetts municipalities that have fared better than others in the recent housing crisis. The Towns of Hudson and Lexington and the City of Waltham stand out in particular. This chapter proposes a qualitative framework for evaluating and planning around ARAACs based on analysis of what has worked in these towns. The framework consists of several dimensions of performance related to the design of the development, location and fit in the fabric of the town, and preservation of demographic balance.

Introduction to Town Cases

Hudson

Before its incorporation as a town in 1866, Hudson, MA was little more than a suburb of Marlborough, its larger neighbor to the south. The town thrived in the late nineteenth and early twentieth centuries, attracting thousands of immigrant laborers to work in its robust shoemaking and rubber industries. Following a painful midcentury period of economic restructuring, Hudson leveraged its adjacency to the I-495 outer beltway and cheaper land prices to attract a large Intel facility and several other technology-related enterprises, facilitating its economic recovery and stabilizing its population at the present level of 19,580. Hudson has a relatively low average median income per household (AMI) compared to its wealthier neighbors Stow and Berlin – \$58,549 – but is on par with the average for the entire metro region. About 18% of the population, or just over 3,500 residents, is 55 years of age or older and thus qualified to live in an age-restricted community (U.S. Census Bureau 2007).

Though convenient to the Interstate and within a relatively short commute to Boston, Hudson's position on the peri-urban fringe means that it has nearly non-existent transit service. The town is not a member of the MetroWest Regional Transit Authority, which provides regular fixed-route and paratransit services to 11 cities and towns in the region, including Marlborough (MetroWest Regional Transit Authority). It is also nearly 10 miles away from the nearest commuter rail station at Cordaville, on the MBTA's Worcester Line. This situation may change in the coming decade given MAPC's recent feasibility study on constructing the Mass Central Connector, a shared BRT and bike trail connecting Alewife to Berlin. The proposed alignment runs past Hudson's downtown and would close a major rapid transit gap in the region (MAPC 2009).

Hudson's housing stock is dominated by single-family detached homes. In 2007, over 60% of households in the town own and occupy such homes, dwarfing all other types combined. The median value of a single-family home in Hudson the same year was \$354,375, just \$1,000 greater than the median value statewide. Around 30% of the town's population lives in rental housing, with approximately half living in complexes of five or more units and half in subdivided single-family attached or detached houses (Heudorfer 2005 and U.S. Census Bureau 2007). Persons over 55 constitute 40% of all homeowners in the town, which is slightly below the mean for the state.

As a chartered town in the State of Massachusetts, Hudson is run by town meeting, though unusually for its size, the town has open rather than representative town meeting. The primary policymaking body is the five-person board of selectman, and the planning board, also composed of five members, is charged with overseeing development in the town. A single staff member, the planning director, assists the planning board and the eight-member zoning board of appeals in its duties. Given the small planning staff, Hudson does not prepare comprehensive planning documents.

ARAAC development in Hudson takes place largely through the town's retirement community overlay district spelled out in the zoning bylaws. The district was approved in 2002 to make the development of the Village at Quail Run ARAAC possible

(Baker Interview).^{*} The requirements set forth are clearly biased toward a particular type of housing, namely single-family. The district allows for attached homes only if they are townhomes, both through explicit wording on the point and through lot and yard dimensional standards. One of the more unique aspects of Hudson’s overlay district is the requirement that a minimum of 66% of the living area in each unit be on the ground floor (Town of Hudson 2008).

Hudson is home to four age-restricted communities: the Village at Quail Run, Sconset Village, the Esplanade, and WestRidge. The first three of these developments were proposed and built by smaller development firms with a limited portfolio of projects (though the builder of the Village at Quail Run went on to construct similar developments in other I-495 corridor communities). The most recent, WestRidge, is still under construction, and is the brainchild of Thorndike Development, a large and well-known developer of traditional neighborhoods in the region. All but the Esplanade were built using Hudson’s retirement community overlay district. Table 3.1 presents the vital statistics of each of these developments.

ARAACs in Hudson				
	<i>Village at Quail Run</i>	<i>Sconset Village</i>	<i>The Esplanade</i>	<i>WestRidge</i>
Proposed	2002	2004	2004	2005
Built	Y	Y	Y	under construction
40B	N	N	Y	N
Type	SF attached townhome	SF attached townhome	Multifamily condominium	SF attached townhome/SF detached
Price range	\$350K-\$450K	\$552K-\$618K	\$250K-\$300K	\$449K-\$604K
Unit area (sq ft)	1749-1838	2100-2400	900-2100	2000-2600
Area (acres)	35	24	4	20
No. of Units	150	66	140	150
Density (units/acre)	4.29	2.75	35.00	7.50

Table 3.1 Age-restricted active adult retirement communities in Hudson, MA. SOURCE: author

^{*} Appendix A contains the full text of the bylaw defining the district.

Waltham/Lexington

Another interesting case of ARAAC development is a cluster of built and planned developments on former hospital grounds on the border of Waltham and Lexington. Both municipalities trace their roots to the early colonial period, having been incorporated before Massachusetts became a state. But the economic history of the towns took wildly divergent paths shortly thereafter. Lexington remained largely a residential community oriented toward tourism given its illustrious Revolutionary War history; Waltham became one of the first industrial towns in Massachusetts. The two municipalities' demographics reflect this divergent path: Waltham is larger, with a 2007 population of 59,578 and an average median income of \$54,010; Lexington had a 2007 population of 30,332 and a higher average median income of \$96,825. Owing to the proximity of both municipalities to the high-technology Route 128 corridor and downtown Boston, Waltham and Lexington have high employment rates (cyclical downturns notwithstanding) and are thus relatively economically stable. Both municipalities have relatively high 55 and older populations: some 17% of the population in Waltham and nearly a quarter of the population in Lexington.

Waltham is well served by transit. A commuter rail station downtown connects the city to Boston's South Station and serves as a terminus for MBTA buses operating in the area as well as a hub for various Metro West transit and paratransit services. Lexington is not served by rapid transit, but the town operates its own fixed-route bus service, called Lexpress, on six routes throughout the town limits. This service connects Lexington transit commuters to MBTA bus routes serving commuter rail stations at Belmont and the Red Line terminus at Alewife (Lexpress website). Despite the relatively good transit service, both municipalities are overwhelmingly characterized by automobile use, particularly for the daily commute.

Lexington and Waltham differ greatly in their housing stock and use profiles. Some 84% of Lexington residents live in single-family homes, while only half as many do in Waltham. The gulf is even wider for renters: only about ten percent of Lexington residents live in rental housing, while over 30% of Waltham residents are renters. Both

communities are similar in the percentage of homeowners over 55 years of age – just shy of 50%. This figure is indicative of high land and home values in both towns. Indeed, Waltham’s median home value in 2008 was \$427,167, nearly \$100,000 greater than the state average; and Lexington’s median home value for the same year was \$716,857.

The two communities also differ in their governance structure. Lexington is a town, and thus similar to Hudson in that it is governed by town meeting and a board of selectmen. Waltham, however, is a city, and under state law and home rule charter is required to have a city council and elected mayor. The city council is invested by the city charter with right of review and approval for all development proposals, whereas in Lexington a separate planning board is responsible for this task. The zoning appeals process is similar for both municipalities, as independent zoning boards of appeal exist to handle these cases. Both towns are also similar in the extent to which they are supported by fully staffed planning departments that assist with development review and also prepare comprehensive land use plans for the municipalities.

Interestingly, neither Waltham nor Lexington has any kind of specialized bylaws in its respective zoning codes regarding age-restricted active adult development. Lexington’s zoning code does mention “senior housing,” but defines such housing as congregate living, nursing homes, assisted living, and continuing care – covering everything but an active adult retirement community. Waltham lacks any explicit zoning ordinance addressing senior housing, though the issue is raised in comprehensive planning documents as a “need” (Waltham 2006). When asked why the city has yet to adopt such an ordinance, a Waltham planner stated that the city had not seen a need to enact such regulations given that age restriction can be sufficiently captured in private deeds(Lacrosse).

Even without explicit regulations on senior housing, Waltham and Lexington have recently seen a couple of big developments built that include age-restricted units. The first was Wellington Crossing, a project by the major national ARAAC developer Pulte Homes, which contains 118 age-restricted units in its 268 unit complex. This was

followed by Avalon at Lexington Hills, a luxury rental community with 60 age-restricted lofts built by national apartment developer AvalonBay less than a half mile away but within Lexington town limits. Yet another active adult development, The Woodlands at Belmont Hill, opened recently in neighboring Belmont, but is aimed at extremely upmarket retirees and is not formally age-restricted either in zoning or in the deed. Table 3.2 summarizes the basic characteristics of these developments.

Active Adult Development in Waltham/Lexington/Belmont				
	<i>Wellington Crossing</i>	<i>Avalon at Lexington Hills</i>	<i>The Woodlands at Belmont Hill</i>	
Proposed		2005	2006	2005
Built	Y	Y		Y - partially
40B	Y	Y		N
Type	Multifamily condominium/SF attached townhome	Multifamily apartment (age restricted units)		SF attached townhome/multifamily converted historic bldg
Area (acres)		20	20	27
No. of Units		268	387	121
Density (units/acre)		13.40	19.35	4.48

Table 3.2: Age Restricted & Active Adult Development in Waltham, Lexington, Belmont. SOURCE: author

Demographic & Market Characteristics of Town Cases			
	<i>Hudson</i>	<i>Waltham</i>	<i>Lexington</i>
Population (2007)	19,580	59,578	30,332
Population 55+ (est.)	3564	10128	7583
Population 55+ (%)	18.2%	17.0%	25.0%
Homeowning 55+ (%)	40.0%	47.4%	48.6%
Total 55+ units	506	268	387
Median Home Value	\$354,375	\$427,167	\$716,857
Median Income	\$58,549	\$54,010	\$96,825

Table 3.3: Demographic & market characteristics of Hudson, Waltham, and Lexington. SOURCE: U.S. Census Bureau 2007, CityData 2007

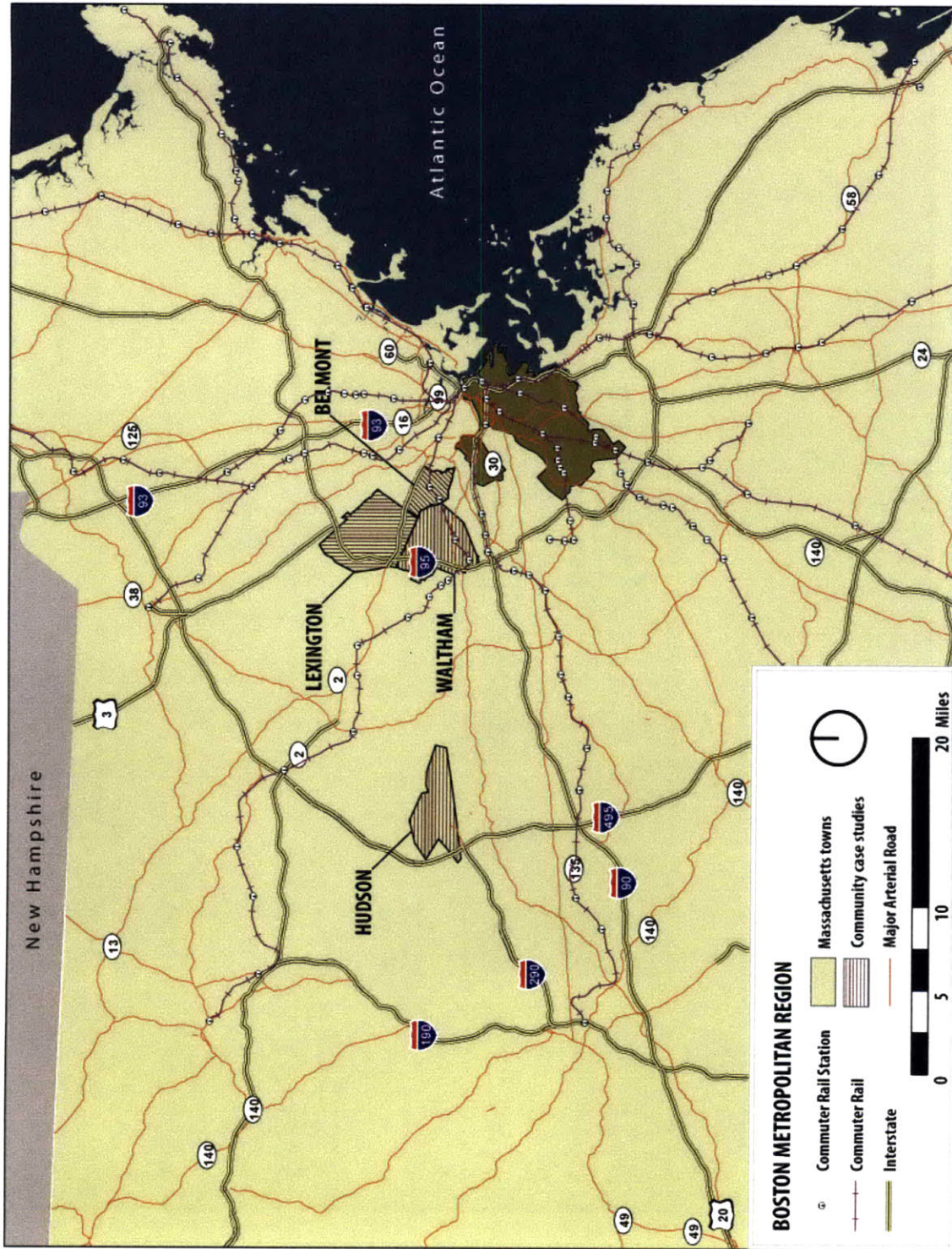


Figure 3.1: Location of community case studies in metropolitan context. SOURCE: Author, using MassGIS data

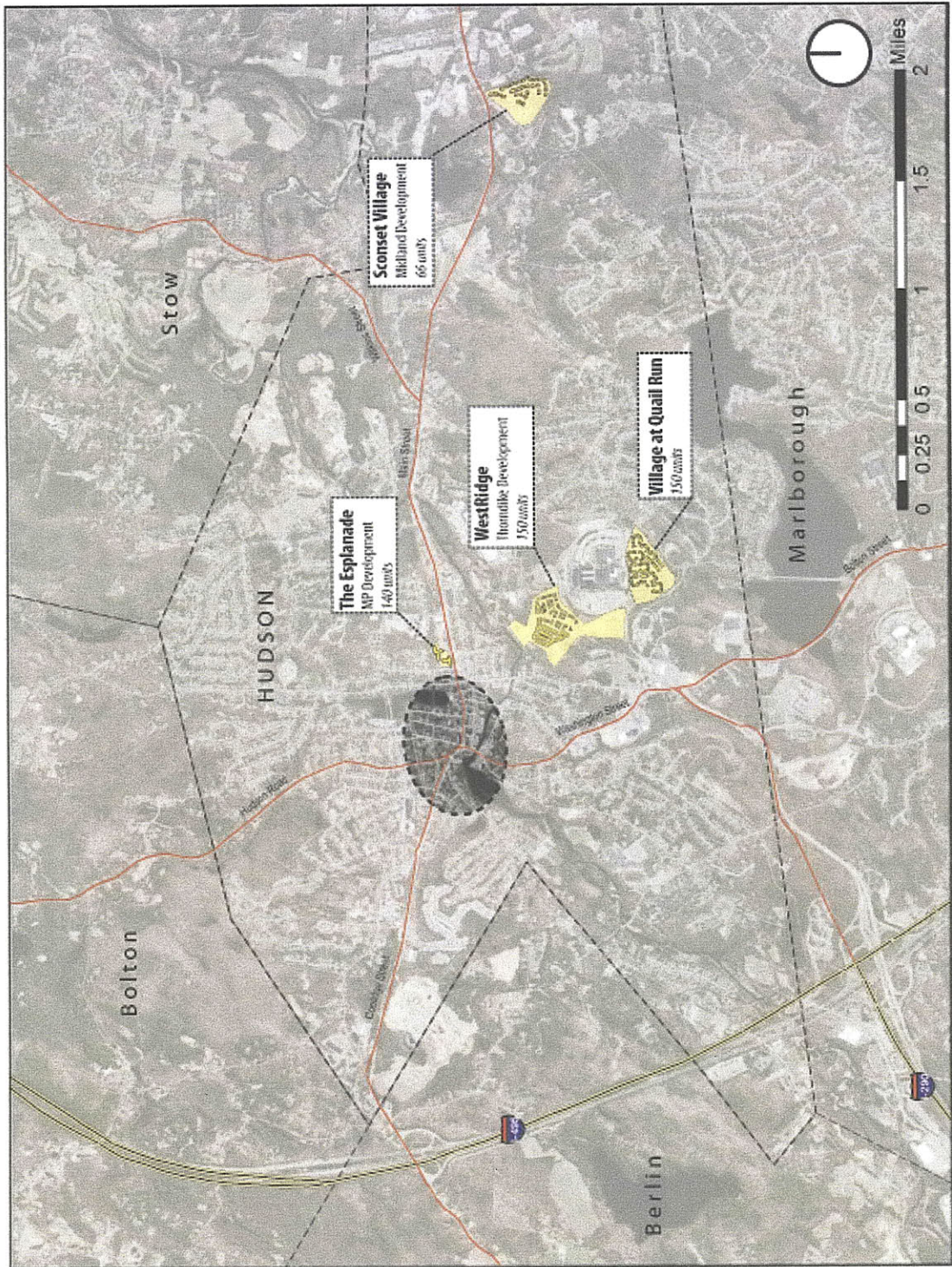


Figure 3.2: Age-restricted active adult communities in Hudson. SOURCE: Author, using MassGIS data

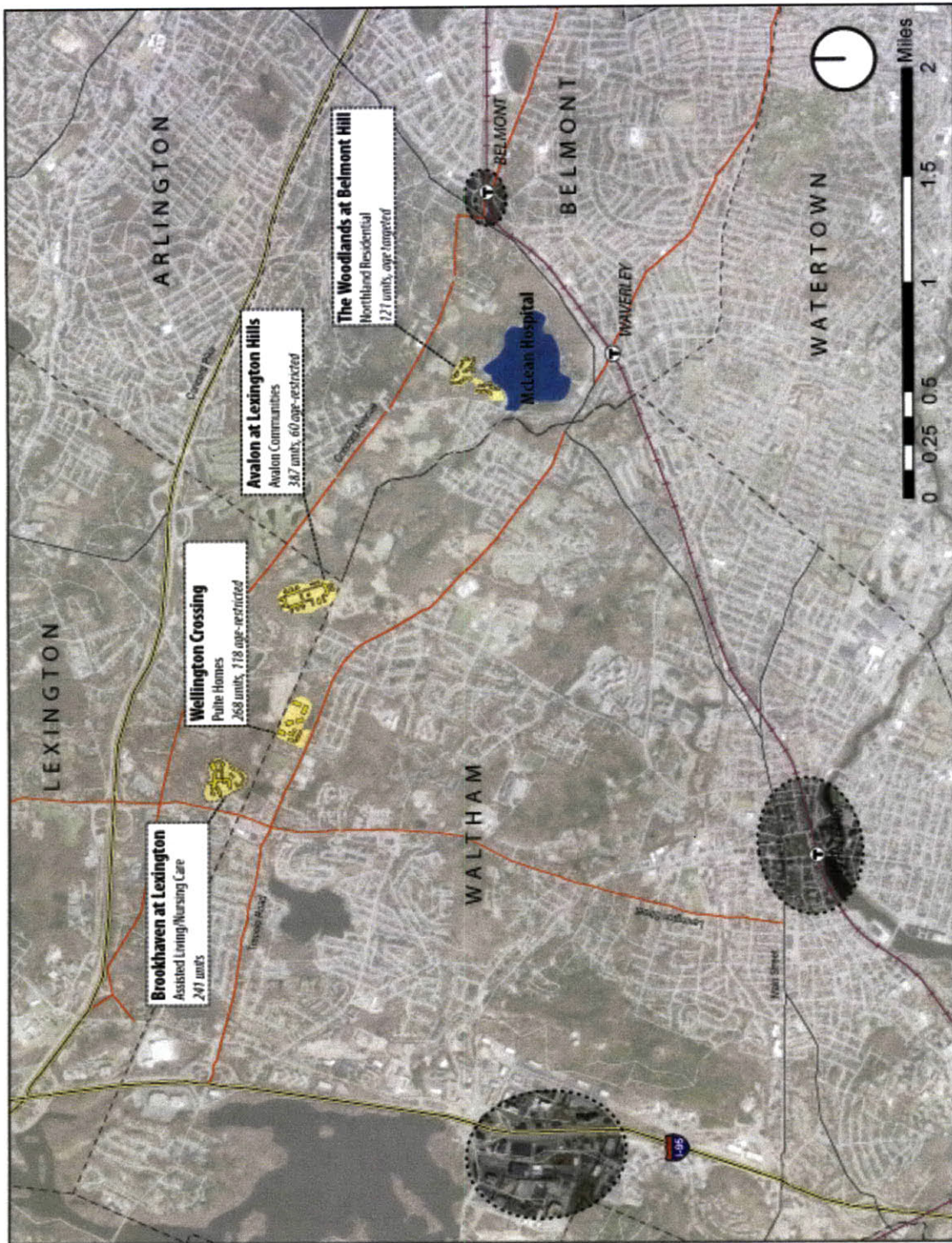


Figure 3.3: Age-restricted active adult communities in Waltham/Lexington. SOURCE: Author, using MassGIS data

Introducing the Framework

Municipalities are inherently conservative creatures. Their duty to protect the interests of citizens and the town at large requires not only a sensitivity to risk, but also a deep awareness and understanding of how elements in the landscape work together at a scale between the specific site and the region. The latter is what distinguishes a municipality from any other actor, be it the state or a developer. As preceding chapters have revealed, all too often the municipality stops short of pursuing its interests strategically, falling back on standard excuses about legal encumbrances and fiscal constraints to explain the lack of vision in its activities. The consequences of this mindset have been laid bare by the current crisis that has effectively shut down the market for ARAACs.

Municipalities need to be realistic about the risks associated with overbuilding ARAACs and recognize the fact that they are best positioned to manage these risks. This involves becoming better attuned to the bigger picture of demand and supply as well as how well these developments function in situ. But in order to get from this realization to positive outcomes, a framework is needed with which municipalities can evaluate their existing supply of developments as well as future proposals. Examples from the town cases introduced above are used to illustrate several dimensions of ARAAC performance at the municipal scale that when taken together constitute the elements of such a framework. It is important to note that no single municipality, even the selected cases, has succeeded or necessarily can succeed to a certain specification in every performance dimension. Rather, the intent of the framework is to provide municipalities with some structure in thinking about what attributes it should look for in its supply of ARAACs. The key dimensions comprising the framework are:

1. *Mix of types*
2. *Accessibility and mobility*
3. *Opportunities for intergenerational interaction and succession*

Mix of Types

The first-order priority with which municipalities should approach planning for ARAACs is ensuring a diversified and balanced supply of housing and community type. Many municipalities erred in approving nearly identical ARAAC developments in the 2000s, which did not sufficiently stand out in the market to catch the attention of consumers particularly with the onset of the 2008 recession. As discussed earlier, the fact that ARAACs constitute a discretionary expense to consumers requires a fundamentally different planning approach than one would pursue vis-à-vis a traditional suburban subdivision. It becomes much more important to pay attention to the details that *differentiate* individual developments. As Jane Marie O'Connor, 55+ marketing and dev observed, most municipalities remain in a "subdivision mentality" held over from a previous era where the most important consideration was building *a lot* of housing to meet the demands of young baby boomer families (O'Connor interview). But the baby boom generation is now looking for different attributes in their next home, and the greater discretion they have over their decisions, the more assertive they will be with their preferences. It is thus prudent for municipalities to seek diversification in the types of ARAACs they approve, as this will insulate them from supply shock associated with homogeneity.

The case of Hudson is instructive on the value of diversifying type of ARAAC housing and community. As of 2010, four developments comprising a cross section of the various forms that ARAACs in Massachusetts take are built or under construction in Hudson (see Table 3.1). Two of the developments, Village at Quail Run and Sconset Village, represent the standard ARAAC type found in most Massachusetts communities: attached single family townhomes arrayed in a typical suburban subdivision street pattern characterized by circular drives and cul-de-sacs (Figures 3.2 and 3.3). Because these two developments were the first ARAACs to be completed in Hudson, almost all of the units were sold within eight months of their respective openings and absorbed

much of the demand within Hudson for age-restricted housing, particularly following the sudden collapse of the housing market in mid-2007 (Baker , Interview).

The other two developments break the ARAAC mold in Massachusetts: the Esplanade and WestRidge. A consortium of a local businessman, Tony Frias, and a scion of the Kraft Family developed the Esplanade. It is a unique project, particularly for Hudson: a pair of four-story multifamily residential buildings, with one fronting Main Street and containing ground-level retail (Frias, Interview). The development's marketing materials bill it as "refined living" in the town's "newest landmark," presumably a commentary on its distinctive addition to Hudson's skyline. Despite luxury appointments and a reserved section of affordable apartments under 40B, the Esplanade's sales were sluggish in its first few years, prompting a move by the developers to lift the age restriction in 2008 (Frias , Interview). In a much-publicized drama, the town turned down the developer's request to lift the age restriction, which although catalyzed the dissolution of the development partnership, also attracted new interest from the public. As of present, only twelve units remain unsold and the ground-level retail has been occupied by a café, a grocery, and a drycleaner (Frias, Interview).

WestRidge is a project of the established Massachusetts developer Thorndike Development. Thorndike entered the ARAAC market with its Red Mill Village development in Norton, which drew praise from the development industry for excellence in design. Many of the same principles were introduced into the plan for WestRidge, namely a putatively traditional neighborhood design, a "town common" toward which much of the development is oriented, and linear internal streets leading to the main access drive to encourage more pedestrian circulation. The development contains 150 units, 89 of which are single-family attached townhomes and 61 of which are single-family detached homes on larger lots. As a latecomer to the Hudson ARAAC market, having opened in the midst of the recession, and having not yet reached full build-out, WestRidge's sales have lagged behind expectations. Rather than seek removal of the age restriction, however, Thorndike lowered prices in the summer of

2009. This strategy has subsequently generated several new sales, enough to close out Phase I of the development.

Though the Hudson market is certainly oversaturated relative to overall demand within the town and its environs, it has managed to avoid the complete collapse of activity around ARAACs that many other peer towns without the same degree of typological diversity suffered. Hudson's town planner attributes much of this to the fact that the town has a development for every possible taste and preference of environment (Baker , Interview). An important corollary to add might be the fact that there is also a wide range of prices among the four developments, adding another dimension to the value of diversifying the supply of housing.



Figure 3.4: Single-family attached townhome form, Village at Quail Run. SOURCE: Bing Map – Bird’s Eye

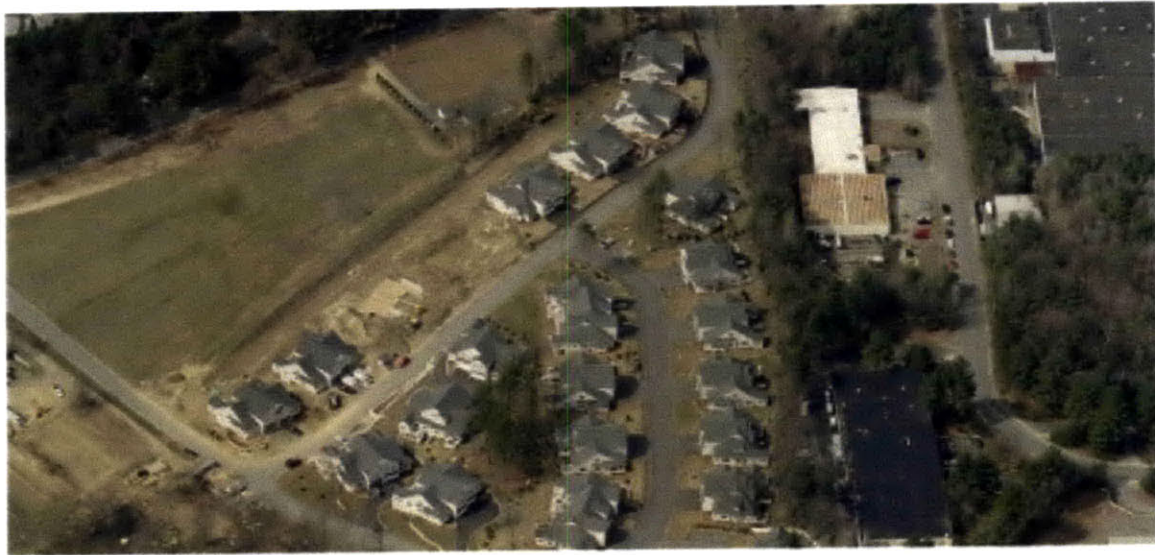


Figure 3.5: Single-family detached condominium form, Sconset Village. SOURCE: Bing Map – Bird’s Eye



Figure 3.6: Mix of housing typologies at WestRidge. SOURCE: Author, WestRidge

Accessibility and Mobility

Another key planning dimension for municipalities to consider with respect to ARAACs is accessibility and mobility. This is one of the most challenging and least straightforward issues for municipalities to tackle, particularly suburban towns that are auto-oriented and lack easy access to commuter rail or other transit. The distinction between “accessibility” and “mobility” is subtle but important: accessibility refers to the ease with which residents of ARAACs can get to needed destinations and generally remain an active part of the community in which they live; and mobility refers to the means and ability of residents of such communities to move about at will. Many of the ARAACs built in the past few years in Massachusetts ignore these considerations. Often located far from a town center, or any kind of center, such developments encourage isolation and in the long run can detrimentally affect individuals’ health (Freedman 2254).

It is no great mystery that as people age, mobility becomes increasingly difficult and accessibility considerations grow commensurably in importance. Empirical research has corroborated this, showing that average daily travel distance halves between the 55-64 cohort and the 75 and above cohort (Giuliano 196). While the target resident for an ARAAC is usually 55-64, these residents will likely remain until they must move up the continuum of care. Thus, how mobility needs and accessibility will change over time should be a major consideration for municipalities and factor in deciding where to permit ARAAC development. It is in the long-run interest of the municipality to encourage location of ARAACs near key services, amenities and public transportation, if available, to preserve the independence of ARAAC residents as long as possible.

Hudson and Waltham/Lexington are good contrasting cases of ways to manage the balance between accessibility and mobility. Given Hudson’s lack of public transportation and consequently limited means of intervening in the mobility prospects of ARAAC residents, the best accessibility strategy for the town would be to cluster ARAAC development within walking distance of shopping centers and downtown to encourage more walking and other non-motorized trips. While the spatial elements are in place – three of Hudson’s four ARAACs are within a mile radius of one another – the

pedestrian connections in the town leave a lot to be desired (Baker , Interview). The most accessible development is the Esplanade, which is a quarter-mile walk away from downtown Hudson and its shopping and dining, and around the corner from the newly refurbished Hudson Senior Center on North Church Street.



Figure 3.7: Mix of housing typologies at WestRidge. SOURCE: Author, Bing Map – Bird’s Eye

Waltham, Lexington, and Belmont offer similarly nuanced insight into questions of mobility and accessibility. The three developments that have taken shape on the border of these communities – Wellington Crossing, Avalon at Lexington Hills, and The Woodlands at Belmont Hill – constitute an emerging “aging corridor,” especially when existing assisted living and nursing home facilities are factored in as well.* This corridor is characterized by relatively high mobility as a result of its relatively ready access to public transportation on Trapelo Road, Lexington Street, and Concord Avenue, which connect the various developments to MBTA bus routes and the commuter rail stations at Belmont, Waverly, and Waltham. Yet despite the transit connections, all of the developments perform poorly with respect to accessibility. There is little in the way of

* As far as can be told, there was no deliberate cooperation between Lexington and Waltham on clustering these developments together (Lacrosse, Interview).

destinations within easy walking distance of these developments, and the lack of good sidewalks make a long journey on foot a very difficult prospect for even the most active adult. Furthermore, the transit service follows jurisdictional boundaries and does not link the developments together, a move that would optimize both the mobility and accessibility of residents in those communities. Despite the current drawbacks, the spatial arrangement of the developments promises much in terms of serving a population of mobile and active adults as it continues aging.

Mobility and accessibility are the most spatially specific dimensions of performance introduced in this framework, as the presumption is that in any one municipality there are a finite number of suitable sites that can satisfy both criteria, if even possible given context. From the experience of Hudson and Waltham/Lexington, it is clear that limitations in mobility can be mitigated and even offset by a spatial planning strategy that emphasizes accessibility, but that the reverse is much more difficult to accomplish. So while future planning around ARAACs should involve thinking about both elements and how they influence one another, all municipalities must pay special attention to accessibility.

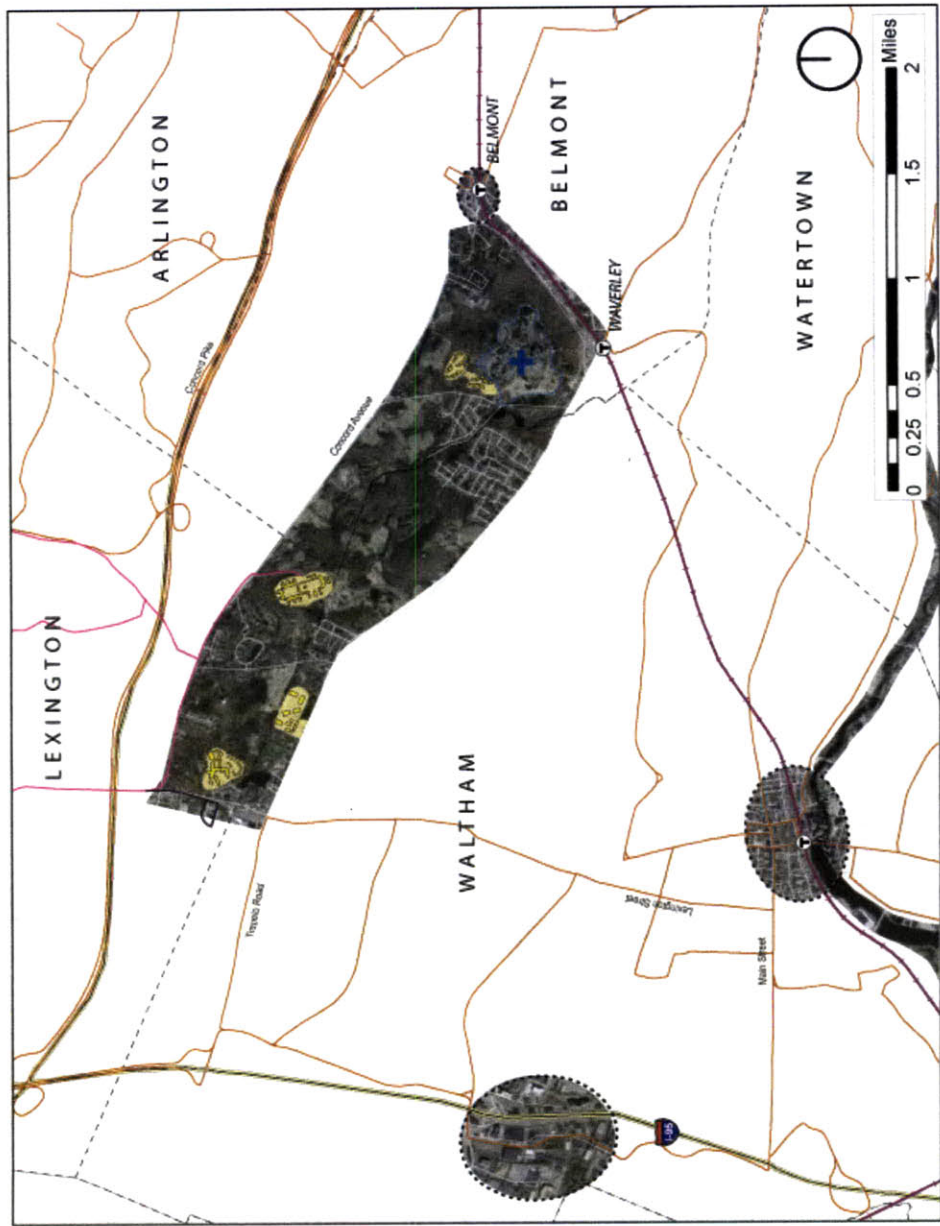


Figure 3.8: Mobility networks in Waltham/Lexington’s “Aging Corridor”. SOURCE: Author, MassGIS, Lexpress

Opportunities for Intergenerational Interaction and Succession

One of the more troubling aspects of ARAACs from a planning perspective is the potential they create for splitting off a valuable segment of society into islands of self-involved isolation. While industry studies and market research regularly trumpet ARAAC residents' volunteerism and civic activity, this is no substitute for the kind of meaningful, sustained interaction with community that occurs when one is physically present in that community. This raises a profound question: are the goals of ARAACs and of community mutually exclusive?

Clearly, this needn't be so. The challenge for municipalities is identifying what kinds of programmatic or physical interventions are appropriate for them to ensure ARAACs remain a part of community life. In some cases, a focus on integrating developments into a municipality's parks and recreation or trail network might be best, while others might go about creating programs or spaces for ARAAC residents to engage with the community, such as tutoring and gardening, among others. But one of the more interesting interventions, along with being potentially more sustainable in the long run, is intergenerational housing. Intergenerational housing turns the notion of an ARAAC on its head: by using the same technique of restricting the deeds or terms of occupancy on a portion of a development, a developer or landlord restricts a portion of the community, but not all of it, to people meeting the age qualifications, leaving the rest of the development open to anyone. Most condominium and other high-end urban housing is already *de facto* intergenerational – most residents of such developments are older retirees, with a smattering of young families and usually quite a few young professionals. The same concept might very well be adaptable to some suburban development types.

There is already a successful case of such a community in Lexington. The name of the community is Avalon at Lexington Hills, and it is a project of AvalonBay, a major national apartment developer and manager. Lexington Hills was built on the site of the former Metropolitan State Hospital, and has been heralded as a model for rehabilitation and re-use of buildings and a site with a difficult history. It contains nearly 400 units, 60

of which are age-restricted. The site plan (Figure 3.9) shows how these age-restricted units are concentrated in one of the buildings on the development's campus, with easy access to the clubhouse, the common outdoor spaces, and the bus stop (both Lexington's municipal transit service, Lexpress, and a privately-provided paratransit shuttle to Alewife station on MBTA's Red Line stop here). The age-qualified residents of the community thus have a space of their own, but share common facilities with families and young professionals, which has the potential to foster cross-generational contact and learning. Thus far, if a visit on a Saturday morning in April is any indication, Lexington Hills has enjoyed quite some success in attracting both renters for the 55+ apartments as well as younger families, even in spite of the fact that the community is rental and not based on homeownership.

Intergenerational housing might seem like too much a pattern break for most Massachusetts towns, and surprising in light of the research and analysis presented in Chapter 1 regarding the value of age-restriction. There is no empirical research comparing the perceptions of residents of intergenerational communities with those of age-restricted communities, and it is likely that if there were any, it would be subject to identification and self-selection problems. Even so, the few cases that exist are successful, including Lexington Hills. Encouraging future development of age-restricted units into such communities could be a means for municipalities to meet housing needs while spreading risk better and thus forestall the potential for another painful adjustment when the baby boomers start selling their homes in ARAACs and cannot find replacement buyers (Ryu and Myers 20).

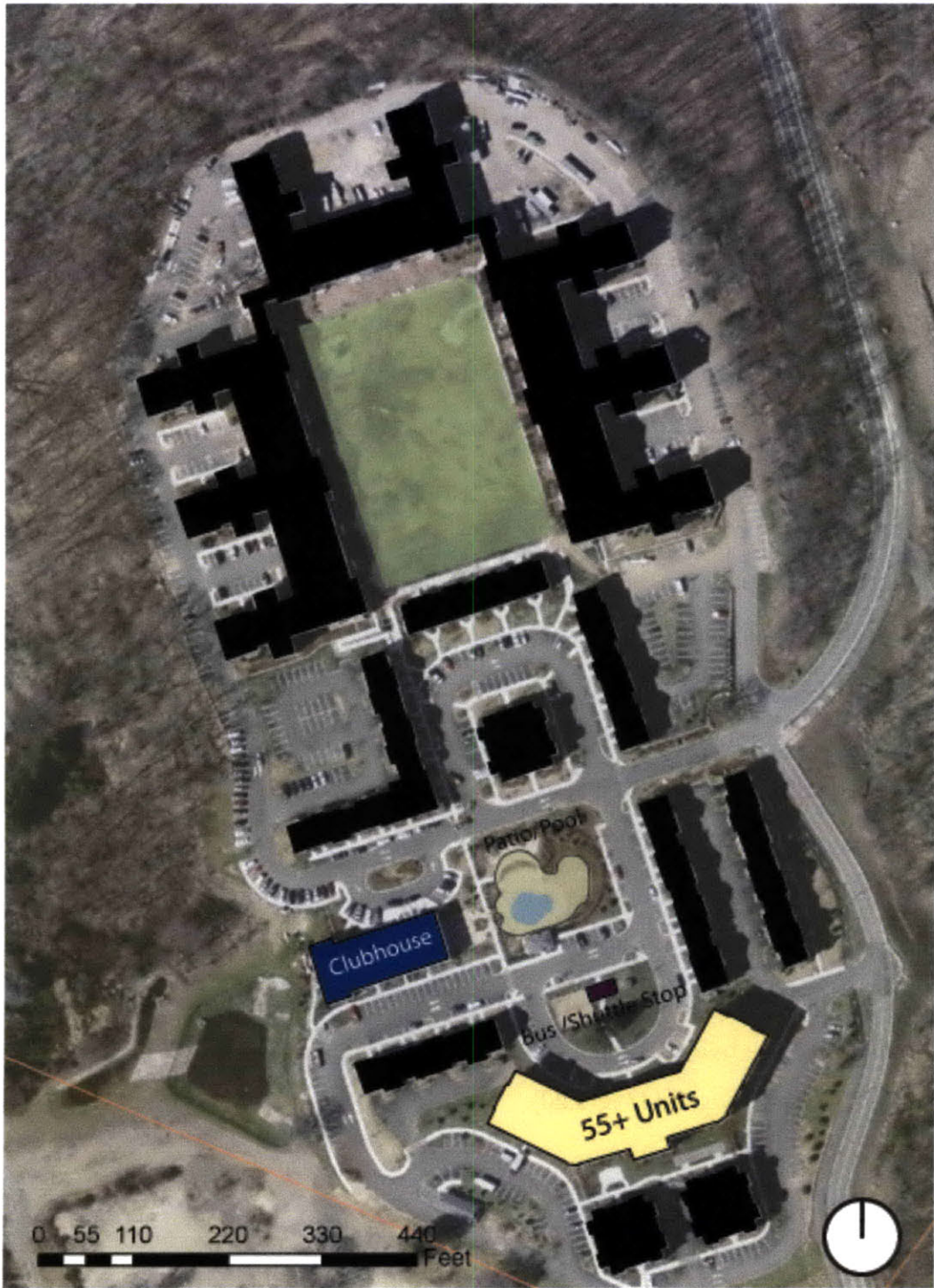


Figure 3.9: Intergenerational living at Avalon Lexington Hills. SOURCE: Author, Mass GIS

Conclusion

This chapter presented a framework for municipalities to begin thinking about what characteristics to look for in new ARAAC developments and gestured toward new ideas on community form and composition. It also asserted the importance of the municipality in stepping forward and developing planning standards and strategies for these types of developments. In the concluding chapter, the focus moves to synthesizing all of the major ideas developed in the course of this thesis and developing some concrete recommendations for municipalities vis-à-vis the ARAAC question.

CHAPTER 4

CONCLUSIONS AND RECOMMENDATIONS FOR ACTION

Massachusetts presently faces an oversupply of age-restricted active adult retirement communities that has effectively shut down the pipeline of these types of developments for the time being. The crisis is sufficiently large in scope that many developers have been forced to appeal for lifting of age restrictions on some communities that simply aren't moving in the marketplace; others have been forced out of business. These circumstances have left municipalities with an uncomfortable choice: either to agree to lifting the age restrictions and absorb the added fiscal burden of families with children that they were seeking to avoid in the first place, or risk further depression of home values associated with allowing developments to remain vacant or lower asking prices in an effort to clear the market.

This thesis has focused on elucidating the supply-side factors that contributed to the present crisis and proposing new ways for municipalities to think about ARAACs in the future. There can be little doubt that market interest in these types of developments will turn around at some point, and municipalities should be better prepared when it does. The key findings of the thesis are:

1. There was a systematic lack of planning on the part of municipalities with respect to managing the supply of ARAACs;
2. The ambiguity of the legal architecture of age restriction failed to sufficiently parameterize the market and created an awkward relationship between the different levels of government on overseeing such development;
3. The alignment of the fiscal interests of municipalities with the profit motive of developers created conditions where there was little incentive for either actor to monitor supply of ARAACs and check market enthusiasm;
4. In Massachusetts, the pre-emptive legal relationship between the state and the municipality encourages a culture of passivity at the local level with respect to planning;

5. The prevalence of specialized retirement community overlay districts exacerbates supply problems by requiring a standard form of housing and density in order to gain municipal recognition of age-restricted status.

Many of the factors identified in this thesis as contributing to the supply crisis are sufficiently beyond the pale of any one actor's control to make recommendations targeted at all of the concerns not worthwhile. It is for this reason that the municipality became the primary object of attention, as it is the one actor with both the means and the mandate to act more forcefully in planning around ARAACs and managing their supply. The following recommendations build on the analysis developed in previous chapters and are targeted to explicitly to municipalities:

1. **Immediately undertake a thorough baseline inventory of existing supply of age-restricted developments in the jurisdiction, study market absorption, and track against demographic trends.**

One of the major limitations facing municipalities and all actors involved in the production of ARAACs is the lack of reliable and regularly updated public data on the supply of ARAACs. This makes diagnosis of and action on specific market-area problems difficult and contributes to a cycle of ill-will and recrimination between municipalities and developers in times of market crisis. Municipalities should take the lead on documenting current supply levels and absorption rates and make this data public, preferably through a regional or state agency like the Metropolitan Area Planning Council or Department of Housing and Community Development.

2. **Develop and use a planning framework such as that proposed in Chapter Three to guide decisions on current and future ARAAC proposals as well as to vet appeals for lifting of age restriction.**

The lack of a planning framework around ARAACs has proved disastrous for municipalities and developers alike. Despite the constraints imposed by state laws

and pre-emption, municipalities must take a more active role in elaborating planning principals based on dimensions of performance that they can use to evaluate future ARAAC proposals and appeals to lift age restrictions in times of market crisis. Some key performance dimensions, namely a mix of types, accessibility and mobility, and creating opportunities for intergenerational interaction and succession, were offered in Chapter 3, though communities should tailor their planning approach to ARAACs to suit their own needs.

3. Revisit and revise zoning overlay districts to allow for more of a range of possible housing and community types.

One of the major factors responsible for ARAAC oversupply was the prevalence of specialized retirement community overlay districts that bound legal municipal recognition of a development's age restriction to construction of a particular type of housing and site pattern, usually a cluster development of single family attached or detached homes. The thesis called the wisdom of this approach into question by dividing the supply question into quantitative and qualitative dimensions and finding that the wording of such laws led to a high degree of formal homogeneity among ARAACs. Municipalities should consider either dropping such overlay districts, adding new overlays to apply explicitly to different residential types in the zoning code, or writing separate bylaws addressing the community's expectations for ARAAC development regardless of type.

4. Consider intergenerational housing when and where appropriate as an alternative to traditional age-restricted communities

Intergenerational housing could become a new direction for ARAACs if planned and designed properly. It is already happening in some areas in the Northeast, as developers of slow-selling age-restricted communities in the recent market crisis have found design, legal, and programmatic solutions for converting parts of developments to non-age restricted use while still preserving core community

character. By encouraging and requiring as much mixing as possible, in terms of demographics, type, and so on, municipalities will be better prepared for the end of the active adult housing bubble, while those places where a glut of specialized housing exists with not enough people to replace boomers will face a much larger and more painful adjustment than that which is unfolding now.

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