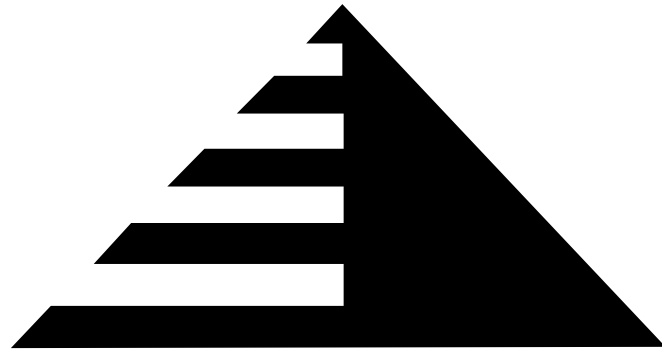


TOWN OF MARION AFFORDABLE HOUSING CONCEPT:

**Report to the Marion Board of Selectmen
and Marion Housing Committee**

Prepared

by



**CENTER FOR POLICY ANALYSIS
UNIVERSITY OF MASSACHUSETTS DARTMOUTH**

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**UNIVERSITY OF MASSACHUSETTS DARTMOUTH
CENTER FOR POLICY ANALYSIS**

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1.00 PURPOSE OF THE STUDY

The Town of Marion's Board of Selectmen is proposing a home rule petition that authorizes an innovative solution to the Chapter 40B affordable housing mandate. A warrant article will be drawn up and proposed to the Town Meeting in April of 2002 based on research conducted by the Selectmen, the town Housing Committee, and the University of Massachusetts Dartmouth Center for Policy Analysis.

1.10 Chapter 40B: A Description

In 1969, the Commonwealth of Massachusetts enacted legislation known as Chapter 40B, which mandates that at least 10 percent of the housing units in every Massachusetts town or city must be "affordable" (see Appendix A). When the legislation was enacted under former Governor Francis W. Sargent, Chapter 40B was designed to encourage the construction of affordable homes by reducing local barriers to dense housing developments such as zoning restrictions requiring one-acre lots. The legislation's supporters point out that an additional 25,000 units of affordable housing have been constructed under the law's provisions, although most of the new affordable housing has been constructed in the state's major cities. Boston alone accounts for one-quarter of the state's affordable housing stock. By October 21, 2001 (the recent data), only 27 of the state's 351 towns and cities had achieved the Commonwealth's goal of 10 percent affordable housing (Commonwealth of Massachusetts 2002b).

Chapter 40B is administered by the Massachusetts Department of Housing and Community Development (DHCD) under procedural regulations defined in 760 *Code of Massachusetts Regulations* (CMR), sections 30-31. To qualify as "affordable," under Chapter 40B, a housing unit must satisfy three criteria. First, a housing unit must "affordable" in terms of its price, which in Marion includes housing units valued at \$154,000 or less in 2001. Second, the housing unit must be occupied by a household whose total annual income is no more than 80 percent of the local area's median household income, which in Marion was about \$42,000 in 2001. Third, a housing unit must receive some type of state, federal, or local subsidy to qualify as "affordable."

Thus, a municipality's affordable housing stock includes all publicly-owned housing developments, but it may also include private housing developments constructed with direct public subsidies or that receive favorable financing from public agencies. Private developers who receive construction or loan subsidies from a government agency must agree to set aside 25 percent of the units as affordable (price and income) and maintain the units as affordable housing for 20 years. After 20 years, the developer can agree to continue the contract with the state, negotiate contract modifications, or elect not to renew the agreement, which removes the units from a municipality's affordable inventory. The DHCD certifies housing units as affordable and maintains a statewide list of each municipality's affordable housing inventory.

Chapter 40 also establishes an administrative process that allows zoning boards of appeals (ZBA) to approve dense developments that have been rejected by the town or city, if 25 percent of the units meet the long-term affordability mandate. If the ZBA rejects such a

project, and less than 10 percent of that community's housing is affordable, the developer can next petition the Massachusetts Housing Appeals Committee (MHAC). The Appeals Committee can overrule a local decision and that of the ZBA unless the development poses serious health or safety concerns. The Appeals Committee can issue a special permit that allows the developer to build more densely in a town than would be allowed by local ordinances – up to 16 units on an acre -- as long as the developer makes 25 percent of the units affordable. If a community turns down a 40B project and the state's Housing Appeals Committee reverses the local decision, a community can lose the right to impose any conditions or restrictions on the development.

1.20 Chapter 40B: The Controversy

In recent years, Chapter 40B has become an object of political and legislative controversy. The appeals process has been criticized by local officials and residents for allowing “reckless, uncontrolled growth at the expense of cash-strapped cities and towns” (Grillo 2001). The law's critics point to the impact of dense developments on schools, water, sewage treatment, solid waste disposal, snow plowing, street maintenance, fire and police protection, and other municipal services. In its current form, the law has been criticized for having “the potential to wreak havoc on roads, sewer systems, and schools” (Helman 2001), particularly in smaller towns, where the additional property tax revenue generated by dense developments is not sufficient to cover the costs of the new infrastructure demand created by these developments.

By mid-2001, towns and cities in Massachusetts were facing Chapter 40B applications for the construction of more than 6,000 housing units with 25 percent of the units set aside for affordable housing. For example, in 2001:

- The City of Taunton faced the prospect of a 471-unit development that will require the construction of two new schools (Grillo 2001),
- 2,000 new housing units were proposed for the Town of Milton within a two year period (Grillo 2001),
- A contractor in Billerica has threatened to put more than 300 units on a 10-acre site if the town refuses to rezone the land from residential to industrial use (Grillo 2001)
- a 112 unit apartment complex is proposed for Hudson,
- Georgetown, Andover, Woburn, and Abington all face more than one Chapter 40B proposal with many of them calling for the construction of more than 300 units each. Woburn has a 640 unit development on 75 acres under consideration (Mooney 2001).
- Saugus faces a 70 unit development, which will create a need for three new over-sized classrooms.

When faced with such developments, many of the Chapter 40B's critics argue that the appeals process "tips the scale toward developers," who can use the law as a "hammer" against small cities and towns, who after rejecting smaller conventional proposals are threatened with large Chapter 40 development (Helman 2001). In this context, the appeals process under Chapter 40B has been called "an instrument of coercion" against towns and cities (*Boston Globe*, June 10, 2001).

1.30 Chapter 40B: Proposals to Amend

In the last session of the Massachusetts legislature (January to June 2001), thirty-one bills were introduced into the Massachusetts House of Representatives proposing various amendments to Chapter 40B (Grillo 2001). The proposed changes include:

- an amendment that reduces the affordable housing threshold from 10 percent to 5 percent of a municipality's housing inventory. If adopted, this amendment would bring an additional 83 communities into compliance with Chapter 40B, although opponents of the amendment argue that it artificially brings communities into compliance without creating any additional long-term affordable housing (Rowland 2001a):
- an amendment to count the state's 30,000 mobile homes as part of a municipality's affordable housing,
- a proposal to count Department of Mental Health and Mental Retardation units as part of a municipality's affordable housing inventory,
- an amendment to count prison cells as part of a municipality's affordable housing inventory,
- an amendment to count section 8 vouchers used by low- and moderate-income people in market-rate housing toward a municipality's affordable housing inventory,
- an amendment to prevent any town or city with between 5 and 10 percent affordable units from being forced to take another 40B project until all towns without affordable housing boost their inventory percentage,
- a proposal to shift \$365 million in state funds that is currently allocated to the Massachusetts Housing and Finance Agency from affordable housing subsidies to developers for construction to direct assistance for first-time home buyers.

The failure to win any significant changes to Chapter 40B has even spawned a nascent movement among local officials to amend Chapter 40B through a grass-roots initiative petition (Rowland 2001b). However, none of the current proposals, if adopted, would substantially alter the Town Marion's compliance with the 10 percent affordable mandate.

1.40 Chapter 40B: Regulatory Changes

Effective August 31, 2001, the Department of Housing & Community Development introduced several amendments to the *760 Code of Massachusetts Regulations* (CMR), sections 30-31 that modify the implementation of Chapter 40B. The regulatory changes include a minor addition to the definition of affordable housing and three provisions dealing with so-called recent progress, large-scale projects, and a 12-month cooling-off period. The 760 CMR 30.02 was amended by DHCD so that “Low or moderate-income housing shall include housing subsidized by the federal or state government to provide long-term housing for individuals who are mentally ill or mentally retarded.” Under this definition, Department of Mental Health and Mental Retardation units are now counted as part of a municipality’s affordable housing inventory. This change has little to no impact on the Town of Marion.

The DHCD also amended *760 Code of Massachusetts Regulations* to allow local communities to deny or delay the issuance of permits based on specified “local needs.” The local needs provision is specified in terms of recent progress, large-scale projects, and a 12-month cooling-off period. The change to 760 CMR 31.07 (1)(d) concerning recent progress states that if a municipality has increased its affordable housing inventory by 2 or more percent within the last twelve months, it may deny a comprehensive permit or impose conditions on a permit consistent with local needs:

“...a decision by a Board to deny a comprehensive permit or grant a permit with conditions shall be consistent with local needs if the municipality has made recent progress toward its housing unit minimum. Recent progress towards its housing unit minimum shall mean that the number of housing units that have been created during the twelve months prior to the date of the comprehensive permit application and that count toward the housing unit minimum described in 760 CMR 31.04(1) is equal to or greater than 2% of the municipality’s total housing stock” (760 CMR 31.07 (1)(d)).

The change to 760 CMR 31.07 (1)(g)(iii) concerning large-scale projects that if a municipality has less than 2,500 housing units it can deny a comprehensive permit for developments of more than 150 housing units consistent with local needs:

“...a decision by the Board to deny a comprehensive permit or grant a permit with conditions shall be consistent with local needs if... (iv) in a municipality which has less than 2,500 housing units, as so enumerated, the application for a comprehensive permit involved construction of more than 150 housing units.”

The change to 760 CMR 31.07 (1)(h)(i-iv) establishes a 12-month cooling-off period between the time an initial permit is denied and the time a Chapter 40B application is submitted as follows:

“...a decision by the Board to deny a comprehensive permit or grant a permit with conditions shall be consistent with local needs if twelve months has not elapsed between the date of application and any of the following:

- (i) the date of filing of a prior application for a variance, special permit, subdivision or other approval related to construction on the same land if that application included no low or moderate income housing,
- (ii) any date during which such an application was pending before a local permit granting authority,
- (iii) the date of disposition of such an application, or
- (iv) the date of withdrawal of such an application.

The DHCD's changes to the *Code of Massachusetts Regulations* do not have any current impact on the Town of Marion's compliance with the affordable housing mandate or on any existing permitted developments.

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2.00 Home Rule Petition

The Town of Marion has 2,095 year round housing units (U.S. Census 2000) and 31 Chapter 40B units in its affordable housing inventory. The Town of Marion ranks 275th among the commonwealth's 351 towns and cities with 1.48 percent of its housing units deemed affordable (DHCD 2002). However, based on an extensive analysis of Marion's property values and assessments, it is estimated that approximately 25 percent (523) of the existing homes in Marion would qualify as affordable under DHCD guidelines based on their market value.¹ Because these units are not subsidized by the state, federal, or local government, they cannot be counted toward the town's affordable housing inventory.

2.10 Proposed Home Rule Petition

The Marion Board of Selectmen and the town's Housing Committee are proposing an innovative strategy, using a home rule petition, to bring the town into compliance with Chapter 40B's 10 percent mandate. The proposal involves granting a property tax exemption (local subsidy) in exchange for affordability deed restrictions as follows:

1. Tax Exemption. The Town of Marion will offer a local government subsidy through a 100 percent property tax exemption for housing units: (1) with qualifying market values and (2) which are occupied by persons with a household income of 80 percent or less of the area's median household income. Housing units eligible for the tax exemption include:

- a) owner occupied single family homes, if the owner meets the income qualification,
- b) renter occupied single family homes, if the renter meets the income qualification,
- c) apartment units and boarding houses, if the renter(s) meet the income qualification,
- d) a person who owns multiple affordable units (e.g., apartments, duplexes, boarding houses, single-family homes), based on price, may qualify for participation in the program so long as the units are inhabited (rented) by persons who meet the income qualification.

2. Deed Restriction. The tax exemption (subsidy) will be offered in return for deed restrictions to keep these units affordable as defined in DHCD guidelines. The deed restrictions will also require the owner to keep the home and property in good condition (to meet DHCD guidelines) as determined by a periodic inspection by the town building inspector.

3. Changes in Household Income. Once a housing unit is qualified for the program by deed restriction, it is possible for the occupants' household income to occasionally exceed the eligibility threshold due to unique circumstances. In those years when household income exceeds 80 percent of the area's median household income, taxes will be due on the

¹ In September of 2001, there were 523 single-family homes in Marion assessed at \$125,000 or less.

property and it will not count toward the town’s affordable housing inventory for that year. If the household’s income falls below the threshold the following year, the 100 percent tax exemption will again apply to the property for that year. Thus, it is possible for housing units to move “in and out” of the program’s tax exemption status on a yearly basis once the property is deed-restricted.

4. Sale or Transfer of Property. When a deed-restricted unit is sold:

- a) The unit must be offered and marketed on a fair and open basis under DHCD guidelines for affordability, which means that the unit(s) will be sold at its original price (i.e., price at the time it enters the program), plus an annual adjustment for inflation.
 - i) if a deed-restricted home has a new addition constructed that puts the valuation of the home above the price affordability threshold then it will come out of the program and lose its tax exemption.
 - ii) if the new addition to a deed restricted home (e.g., a \$20,000 addition to an \$80,000 home) does not exceed the price affordability threshold, then the future sales price will be calculated in two or more ‘lines’, rather than on the new total assessed value as illustrated in the example below:

	Year 1	Year 2	Year 3**	Year 4	Year 5
CPI	3%	4%	2%	3%	2%
Original Value*	\$80,000	\$82,400	\$85,696	\$87,410	\$90,032
Addition*	\$0.00	\$0.00	\$20,000	\$20,400	\$21,012
Future Sales Price (Original + Addition)	\$80,000	\$82,400	\$105,696	\$107,810	\$111,044

*Future sales price based on value + previous year’s consumer price index (or other inflation index elected for calculating future sales price).

**\$20,000 addition made in Year 3 of unit’s participation in the program.

- b) The new owner of an owner occupied deed-restricted housing unit must meet median household income requirements as established by DHCD for the unit to continue in the program.
- c) First preference in the sale of owner occupied units in the program will be given to immediate family members of the current owner, if their income is no more than 80 percent of the area’s median household income at the time of sale. A deed-restricted owner-occupied single family home may be transferred to an heir by will and continue in the program so long as the new occupant (renter or heir) meets the income qualification.

- d) Second preference in sale may be given to prospective qualified buyers taken from a Town of Marion waiting list; that is, persons who are qualified Marion residents and/or who have been full-time employees of the town for a period of 2 years or longer and whose income is no more than 80 percent of the area 's median household income at the time of sale.
- e) The owners of deed-restricted properties may exit the program at the time of sale, (e.g., if the sales price appreciates above inflation), subject to the provision that the owner/seller pay all back (exempted) taxes, plus interest and a penalty to the town. (For example, a person owning a \$125,000 home might sell it 10 years later for \$400,000. Under this scenario, it would be worthwhile to repay \$30,000 in back taxes, plus \$5,000 in interest and a penalty to exit the affordability agreement).

5. Administration and Enforcement. The program will be administered by the town building inspector and the town's tax collector:

- a) The building inspector will be responsible for periodically certifying that deed-restricted properties have been maintained in good condition consistent with DHCD guidelines.
- b) The occupants of deed-restricted properties will be certified as income qualified based on the occupants' most recent federal tax return, which shall be presented to the town tax collector on an annual basis.

6. Tax Title Properties. It will be the policy of the Town of Marion that any price-qualifying properties taken through tax title will be sold by the town as deed-restricted properties for either owner occupied or rental properties for income qualified persons.

2.20 Costs and Benefits to the Town of Marion

Based on preliminary estimates by the Finance Committee and the Housing Committee, the cost to the town will be similar to the cost of the town's land bank, which will be more than offset by savings in growth-related spending on schools, streets, snow plowing, water and sewer infrastructure, and other municipal services.

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3.00 RESIDENT SURVEY AND FOCUS GROUPS

The Marion Board of Selectmen and the town Housing Committee retained the UMass Dartmouth Center for Policy Analysis to conduct a short survey to measure residents' willingness to participate in the proposed Marion housing program. The purpose of the survey was to assist the Selectmen and the Housing Committee in designing a program acceptable to homeowners. The survey was followed up with several neighborhood focus groups that allowed individual home owners to convey any concerns in more detail and to receive answers to questions they might have about the proposed housing program.

3.10 Mail and Telephone Survey

The Center for Policy Analysis designed a short survey that was mailed to 523 households in the Town of Marion, whose homes are assessed at \$125,000 or less in 2001. The survey was preceded by a press release to local media outlets for the purpose of informing residents about the purpose of the survey and to increase resident participation in the survey. News stories appeared in the Marion *Sentinel* (11-21-01), the Wareham *Courier*, and the New Bedford *Standard-Times* (11-18-01) (see Appendix B).

The press release was followed by a letter from the Marion Board of Selectmen on November 19, 2001, which provided information about the proposed program and asked eligible residents to participate in the survey. The letter was mailed to the 523 households, whose homes are assessed at \$125,000 or less (see Appendix C). The surveys were mailed to the same households on November 19, 2001, with a cover letter and a self-addressed stamped return envelope (see Appendix D). Residents were asked to return their surveys by November 30, 2001. The Center for Policy Analysis received 111 surveys by return mail for an initial response rate of 21.2 percent or double the normal capture rate on mail surveys.

The mail survey was followed by a telephone survey conducted by the Center for Policy Analysis. The telephone survey used the same survey instrument as the mail survey so that results from the two surveys could be merged into a single file. The telephone survey was conducted by Center for Policy Analysis staff from December 10, 2001 through January 18, 2002. All residents who had not returned the mail survey were called seven times before considered unreachable. The telephone survey was conducted at different times from 9:00am to 8:00pm on weekdays and from 12:00noon to 3:00pm on Saturdays (see Appendix E). The telephone survey yielded an additional 82 responses. Thus, 36.9 percent of all households in Marion with single family homes valued at \$125,000 or less responded to the survey.

Less than half (46.6%) of those participating in the survey provided information about their household income. Among those who provided information about their household income, 42.2% (48 households) have incomes that are less 80 percent or less of the area median household income of \$42,000. Statistically, it is possible that as many as 105 of the price eligible properties may be occupied by households that also income eligible, but based on the pattern of returns, it is estimated that the actual number is between 48 and 60 properties that are both price and income eligible to participate in the proposed tax exemption. The reason for the more conservative estimate is that many individuals who

refused to participate in the survey indicated they were not income eligible or were not interested in the program. The Center contacted 69 persons during the telephone survey who fall into this category. Likewise, every person who responded “yes” to signing a deed restriction did so in the initial mail survey, while no positive responses were obtained from the telephone survey. This trend leads us to believe that most individuals who are both income-eligible and interested in participating in the program responded to the initial survey. It is not likely therefore that a large pool of potential participants exists among the 261 price-eligible households that were unreachable to the survey.

Would consider signing a deed restriction?		
	Frequency	Percent
Yes	26	13.5
No	120	62.2
Unsure/Need more information	44	22.8
Missing data	3	1.6
<hr/>		
Contacted, but refused to participate/Not eligible	69	
<hr/>		
TOTAL CONTACTS	262	50.1

The survey results indicate that the proposed tax exemptions, if approved by town meeting and the state legislature, would increase Marion’s affordable housing inventory by 1.24 percent at the low end (26 participants) of estimates and by up to 1.52 percent at the high end (32 participants) of estimates.

3.20 Focus Groups

The Center for Policy Analysis convened 5 neighborhood focus groups to further gauge the level and intensity of interest in the proposed program. Focus groups were on two Saturday afternoons (1pm – 3pm) and three weekday evenings (6:30pm - 8:00pm). The mail and telephone survey included a question asking respondents whether they were interested in meeting with UMD staff to discuss the program or obtain additional information. Fifty-four (54) persons, including some who are opposed to the program, indicated that they would be willing to meet with CFPA staff to discuss the proposed housing program. These persons were contacted and offered an opportunity to attend one of the five scheduled focus groups. The focus groups were scheduled as follows:

FOCUS GROUPS		
Date	Location	Attendance
09-Jan-02	Marion Music Hall	3
12-Jan-02	Sippican Elementary School	1
14-Jan-02	Marion Music Hall	2
16-Jan-02	Sippican Elementary School	0
23-Jan-02	Sippican Elementary School	2
	Total	8

Only 8 persons actually attended the focus groups, but all of the attendees seemed well-informed about the program and were positive about the proposal to varying degrees. all of the focus group participants agreed to be contacted at a later date if the home rule petition is adopted at town meeting and approved by the state legislature.

3.30 Focus Group Findings

Several questions and concerns emerged in the course of the focus groups, which were facilitated by Clyde W. Barrow, Director of the Center for Policy Analysis, Luis F. Dias, Research Associate of the Center for Policy Analysis, and Marion Selectman Ben Bryant. The following were the major issues that required modification of the original proposal or that required further clarification before residents were willing to commit themselves to participate in the proposed program.

1. Exit Clause – The focus groups expressed some reservation about making an irrevocable commitment:

- a. Real estate prices are impossible to predict over the long-run and, consequently, it is impossible to make an informed or rational cost-benefits calculation about the deed restrictions and tax exemptions.
- b. However, residents view Marion real estate as “golden” and expect it to continue appreciating at a rate well above inflation. Thus, it is impossible to predict over the long-run, whether the tax savings will equal or exceed the future sales price minus inflation.

It was agreed that the affordable housing proposal would be more attractive to residents if it includes an “exit clause” that would allow an owner to exit the agreement upon sale of the home, if the sales price appreciates above inflation, subject to repayment of all back (exempted) taxes, plus interest on back taxes. For example, a person owning a \$150,000 home might sell it 10 years from now for \$400,000. Under this scenario, it would be worthwhile to repay \$30,000 in back taxes, plus \$5,000 in interest. All focus group participants were receptive to this idea, including the payment of back taxes, and interest.

2. Inter-generational Transfer – There was concern that inter-generational transfer of property be protected:

a. Some people were concerned that the physical property – not the proceeds from its sale – be transferred to children. Consequently, they wondered if children continue to occupy a home even if their income is above the 80 percent of median income threshold?

(i) It was decided that a child or immediate relative could occupy the home and remain in the affordable housing program so long as they meet the median income threshold.

(ii) Deed restricted property can be transferred to a child or immediate relative, but if they fail to meet the median income threshold, several scenarios are possible: (a) if the non-qualified heir resides in the property, it will come out of the program and become subject to property taxation, (b) the non-qualified heir could rent the home to an income-qualified tenant and have the dwelling remain in the affordable housing program, (c) the non-qualified heir could sell the home to a non-qualified buyer, subject to the deed restriction, with the home coming out of the affordable housing program, (d) the non-qualified heir could sell the home to an income-qualified buyer, subject to the deed restriction with the home remaining in the affordable housing program with the new owner.

3. Mortgage Holders – Some focus group participants asked about the need for banks or other mortgage holders to sign off on the deed restriction, since the deed restriction would clearly affect the home's collateral value. These questions were as follows:

- a. will banks allow the deed restriction, where a home is not owned free and clear?
- b. what happens if a property is foreclosed on by a mortgage holder?

It is anticipated that most banks will agree to sign-off on deed restrictions, since their financial interest in the home is not its future value, but the value of the outstanding mortgage. The deed restriction should not affect the mortgage holders' interest in the property or the owner's ability to make payments on the existing mortgage. Nevertheless, it was recognized that the town may need to work with mortgage holders to explain the proposed affordable housing program.

If a home is foreclosed due to non-payment of the mortgage, then the home comes off the affordable housing inventory unless it is sold to an income-qualified buyer.

4. Owners of Multiple Properties – There may be persons who own multiple "affordable" units, based on price, that are currently inhabited (rented) by persons who qualify under the 80 percent median threshold. The questions raised on this point were as follows:

- a. Can more than one property be deed restricted by a single owner?
- b. Can a deed restricted property be rented to a moderate- or low-income household and still qualify for the tax exemption?

It was decided that in both situations “a” and “b,” the property would qualify for the affordable housing program. The answer to both questions is yes and yes.

5. Rental Properties – There were questions raised about rental properties as follows:

- a. Can existing rental properties, such as boarding houses and apartments, be deed restricted under the proposal if units are rented to low- and moderate-income households/persons?
- b. If a property was converted into rental units (e.g., elderly units) and rented to low- and moderate-income could it apply for and receive a deed restriction/tax exemption?

It was decided that in both situations “a” and “b,” the property would qualify for the affordable housing program. The answer to both questions is yes and yes.

6. Administration/Enforcement – The focus group participants all asked questions about how the affordable housing program will be administered and enforced by the town. For example, would it be overseen by an existing local agency, such as the Housing Committee or the Planning Department or would it require the creation of a Public Housing Authority? It was asked whether home inspections would involve both the inside and outside of the dwelling? Finally, there were questions about the frequency of home inspections?

It was decided that the proposed program could be efficiently administered and effectively enforcement by existing town departments and personnel. The program could be administered by the town building inspector and the town’s tax collector:

- a) The building inspector will be responsible for periodically certifying that deed-restricted properties have been maintained in good condition consistent with DHCD guidelines. It was agreed that inspections involved both the interior and exterior of the home, but ***the frequency of inspections (e.g., annual, biennial, triennial) has not been resolved at this time.***
- b) The occupants of deed-restricted properties will be certified as income qualified based on the occupants’ most recent federal tax return, which shall be presented to the town tax collector on an annual basis.

7. Tax Title Properties – Some focus group participants asked if it would be possible for the Town of Marion to convert properties taken by tax title into affordable housing under the program:

- a. The town could retain ownership of tax title properties and rent them out to qualified households as affordable housing.
- b. The town could deed restrict tax title properties and then sell them as

affordable housing under its own program.

It was decided that any price-qualifying properties taken through tax title could be sold by the town as deed-restricted properties for either owner-occupied or rental properties for income-qualified persons.

8. Income Qualification – Several focus group participants asked if the income qualification threshold (\$37,040 in 2001) would be graduated on the basis of size of household. In other words, is there a different income qualification threshold for households with one, two, three, etc. persons? If so, what is the scale? ***This question has not been resolved at the present time.***

9. New Additions – One focus group participant asked how the future sales price of a home would be calculated under the deed restriction if an owner builds a new addition to the home. It was decided that:

i) if a deed-restricted home has a new addition constructed that puts the valuation of the home above the price affordability threshold then it will come out of the program and lose its tax exemption.

ii) if the new addition to a deed restricted home (e.g., a \$20,000 addition to an \$80,000 home) does not exceed the price affordability threshold, then the future sales price will be calculated in two or more 'lines', rather than on the new total assessed value (see section 2.10, 4(a)(ii).

**APPENDIX A
GENERAL LAWS OF MASSACHUSETTS**

**PART I.
ADMINISTRATION OF THE GOVERNMENT.**

**TITLE VII.
CITIES, TOWNS AND DISTRICTS.**

CHAPTER 40B. REGIONAL PLANNING.

Chapter 40B: Section 20. Definitions.

Section 20. The following words, wherever used in this section and in sections twenty-one to twenty-three, inclusive, shall, unless a different meaning clearly appears from the context, have the following meanings:-

“Low or moderate income housing”, any housing subsidized by the federal or state government under any program to assist the construction of low or moderate income housing as defined in the applicable federal or state statute, whether built or operated by any public agency or any nonprofit or limited dividend organization.

“Uneconomic”, any condition brought about by any single factor or combination of factors to the extent that it makes it impossible for a public agency or nonprofit organization to proceed in building or operating low or moderate income housing without financial loss, or for a limited dividend organization to proceed and still realize a reasonable return in building or operating such housing within the limitations set by the subsidizing agency of government on the size or character of the development or on the amount or nature of the subsidy or on the tenants, rentals and income permissible, and without substantially changing the rent levels and units sizes proposed by the public, nonprofit or limited dividend organizations.

“Consistent with local needs”, requirements and regulations shall be considered consistent with local needs if they are reasonable in view of the regional need for low and moderate income housing considered with the number of low income persons in the city or town affected and the need to protect the health or safety of the occupants of the proposed housing or of the residents of the city or town, to promote better site and building design in relation to the surroundings, or to preserve open spaces, and if such requirements and regulations are applied as equally as possible to both subsidized and unsubsidized housing. Requirements or regulations shall be consistent with local needs when imposed by a board of zoning appeals after comprehensive hearing in a city or town where (1) low or moderate income housing exists which is in excess of ten per cent of the housing units reported in the latest federal decennial census of the city or town or on sites comprising one and one half per cent or more of the total land area zoned for residential, commercial or industrial use or (2) the application before the board would result in the commencement of construction of such housing on sites comprising more than three tenths of one per cent of such land area or ten acres, whichever is

larger, in any one calendar year; provided, however, that land area owned by the United States, the commonwealth or any political subdivision thereof, the metropolitan district commission or any public authority shall be excluded from the total land area referred to above when making such determination of consistency with local needs.

“Local Board”, any town or city board of survey, board of health, board of subdivision control appeals, planning board, building inspector or the officer or board having supervision of the construction of buildings or the power of enforcing municipal building laws, or city council or board of selectmen.

Chapter 40B: Section 21. Low or moderate income housing; applications for approval of proposed construction; hearing; appeal.

Section 21. Any public agency or limited dividend or nonprofit organization proposing to build low or moderate income housing may submit to the board of appeals, established under section twelve of chapter forty A, a single application to build such housing in lieu of separate applications to the applicable local boards. The board of appeals shall forthwith notify each such local board, as applicable, of the filing of such application by sending a copy thereof to such local boards for their recommendations and shall, within thirty days of the receipt of such application, hold a public hearing on the same. The board of appeals shall request the appearance at said hearing of such representatives of said local boards as are deemed necessary or helpful in making its decision upon such application and shall have the same power to issue permits or approvals as any local board or official who would otherwise act with respect to such application, including but not limited to the power to attach to said permit or approval conditions and requirements with respect to height, site plan, size or shape, or building materials as are consistent with the terms of this section.

The board of appeals, in making its decision on said application, shall take into consideration the recommendations of the local boards and shall have the authority to use the testimony of consultants. The board of appeals shall adopt rules, not inconsistent with the purposes of this chapter, for the conduct of its business pursuant to this chapter and shall file a copy of said rules with the city or town clerk. The provisions of section eleven of chapter forty A shall apply to all such hearings. The board of appeals shall render a decision, based upon a majority vote of said board, within forty days after the termination of the public hearing and, if favorable to the applicant, shall forthwith issue a comprehensive permit or approval. If said hearing is not convened or a decision is not rendered within the time allowed, unless the time has been extended by mutual agreement between the board and the applicant, the application shall be deemed to have been allowed and the comprehensive permit or approval shall forthwith issue. Any person aggrieved by the issuance of a comprehensive permit or approval may appeal to the court as provided in section seventeen of chapter forty A.

Chapter 40B: Section 22. Appeal to housing appeals committee; procedure; judicial review.

Section 22. Whenever an application filed under the provisions of section twenty-one is denied, or is granted with such conditions and requirements as to make the building or operation of such housing uneconomic, the applicant shall have the right to appeal to the housing appeals committee in the department of housing and community development for a review of the same. Such appeal shall be taken within twenty days after the date of the notice of the decision by the board of appeals by filing with said committee a statement of the prior proceedings and the reasons upon which the appeal is based. The committee shall forthwith notify the board of appeals of the filing of such petition for review and the latter shall, within ten days of the receipt of such notice, transmit a copy of its decision and the reasons therefore to the committee. Such appeal shall be heard by the committee within twenty days after receipt of the applicant's statement. A stenographic record of the proceedings shall be kept and the committee shall render a written decision, based upon a majority vote, stating its findings of fact, its conclusions and the reasons therefore within thirty days after the termination of the hearing, unless such time shall have been extended by mutual agreement between the committee and the applicant. Such decision may be reviewed in the superior court in accordance with the provisions of chapter thirty A.

Chapter 40B: Section 23. Hearing by housing appeals committee; issues; powers of disposition; orders; enforcement.

Section 23. The hearing by the housing appeals committee in the department of housing and community development shall be limited to the issue of whether, in the case of the denial of an application, the decision of the board of appeals was reasonable and consistent with local needs and, in the case of an approval of an application with conditions and requirements imposed, whether such conditions and requirements make the construction or operation of such housing uneconomic and whether they are consistent with local needs. If the committee finds, in the case of a denial, that the decision of the board of appeals was unreasonable and not consistent with local needs, it shall vacate such decision and shall direct the board to issue a comprehensive permit or approval to the applicant. If the committee finds, in the case of an approval with conditions and requirements imposed, that the decision of the board makes the building or operation of such housing uneconomic and is not consistent with local needs, it shall order such board to modify or remove any such condition or requirement so as to make the proposal no longer uneconomic and to issue any necessary permit or approval; provided, however, that the committee shall not issue any order that would permit the building or operation of such housing in accordance with standards less safe than the applicable building and site plan requirements of the federal Housing Administration or the Massachusetts Housing Finance Agency, whichever agency is financially assisting such housing. Decisions or conditions and requirements imposed by a board of appeals that are consistent with local needs shall not be vacated, modified or removed by the committee notwithstanding that such decisions or conditions and requirements have the effect of making the applicant's proposal uneconomic.

Marion Affordable Housing Concept

The housing appeals committee or the petitioner shall have the power to enforce the orders of the committee at law or in equity in the superior court. The board of appeals shall carry out the order of the hearing appeals committee within thirty days of its entry and, upon failure to do so, the order of said committee shall, for all purposes, be deemed to be the action of said board, unless the petitioner consents to a different decision or order by such board.

APPENDIX B

[Insert newspaper stories here]

**APPENDIX C
LETTER FROM BOARD OF SELECTMEN**

Dear Marion Resident:

The town's Board of Selectmen is requesting your participation in a short survey that will be conducted by mail and telephone in the coming weeks. The survey will be administered by the UMass Dartmouth Center for Policy Analysis for the purpose of measuring residents' willingness to participate in an innovative affordable housing program that is currently being discussed by the Board of the Selectmen and the town's Housing Committee.

The Commonwealth of Massachusetts Affordable Housing Mandate

1969 state legislation established a goal that at least 10% of the housing units in every Massachusetts town or city must be "affordable." The Department of Housing and Community Development (DHCD) has established specific guidelines. In our part of the state an affordable single-family house is defined as one that has a market value of around \$200,000 in 2001. And, it must be occupied by a household whose total income is something around \$42,000 in 2001 (that is 80% of our area median household income).

These housing units must be subsidized by some form of state or federal or local subsidy in order to qualify as "affordable."

It must be noted, however, that only 25 of the State's 351 towns and cities have achieved the Commonwealth's goal of 10% of affordable housing.

Massachusetts affordable housing legislation requires that if the quota of affordable housing is not met, developers may invoke a section of the legislation referred to as Chapter 40B which empowers them to build affordable housing developments that can override all local zoning, environmental and health regulations.

Marion's Present Status

Right now, of approximately 2,100 year-round residences, Marion has only a total of 31 receiving a subsidy and thus qualifies as "affordable" based on DHCD guidelines. Marion appears to be nonconforming on the record.

However, based on an extensive analysis of our property, values and assessments, over 20% of existing homes in Marion, based on their market value, will likely qualify as affordable under DHCD guidelines. But because they are not subsidized, because they do not have market and pricing restrictions in the deed, they cannot be counted as affordable.

Proposed Concept To Resolve the Issue By Means of a Home Rule Petition

2. Marion would offer a subsidy in the form of property tax exemptions to certain homes with qualifying market values which are occupied by persons with household income of 80% or less of our area median household income.
3. This subsidy would be offered in return for permanent deed restrictions, keeping these units "affordable." It would also be required that the home and property must be maintained in condition meeting DHCD guidelines, and periodically inspected.
4. When these deed-restricted and owner-occupied homes are sold:
 - a) The home must be offered and marketed on a fair and open basis under DHCD guidelines designated affordable - which means prices as adjusted for inflation.
 - b) The new owner must meet median household income requirements as established by DHCD.
 - c) We propose the first preference in sale be given to immediate family members of the current owner, family members whose household income is no more than 80% of our area median as outlined above.
 - d) We propose that second preference be given to prospective qualified buyers taken from a town of Marion waiting list - persons who are qualified Marion residents and/or have been full time employees of the town for a period of 2 years or longer.

Many current homeowners who meet the guidelines above may be having difficulty paying their property taxes. The Town of Marion would offer these owners a subsidy in the form of a property tax abatement in return for deed restrictions on their property. The value of the home would be maintained as "affordable," rising no more than established guidelines permit. Since some of these homes may be in need of maintenance, the town may under some circumstances advance financing to bring the property to an acceptable condition as required by DHCD guidelines.

Cost to the Town of Marion

Based on preliminary estimates by the Finance Committee and the Housing Committee, the cost to the town will be similar to the cost of the land bank and will be more than offset by savings in growth related spending (schools, infrastructure, sewers, services, etc.).

If enough qualified owners agree to this arrangement, it will preclude future 40B real estate developments in the Town of Marion. The purpose of the UMass Dartmouth survey is to determine whether enough homeowners are likely to agree to the program to enable Marion to meet the state requirement that 10 percent of its housing stock be affordable.

Marion Affordable Housing Concept

We ask that you participate in this process given its importance to the town's future when you are called or receive a survey in the mail between November 15th and November 21st. Thank you.

Sincerely

APPENDIX D
Mail Survey Questionnaire

The Marion Board of Selectmen is considering a home rule petition that would allow the town to comply with the state's affordable housing mandate while preserving the town's unique character. If approved, this petition would allow the Town to negotiate voluntary agreements with owners of private dwellings whose homes meet state guidelines for affordability. The program proposed in the home rule petition would allow the Town to offer a 100% property tax exemption to qualified residents in exchange for affordable housing deed restrictions. **The deed restrictions would keep qualified housing units affordable by limiting the future sales price of deed restricted homes to the current price plus a rate of inflation, and require the owner to sell the home to a person whose household family income is 80 percent or less of the area's median household income.**

Your responses will be strictly confidential. Please return the survey no later than November 30.

1. If your home qualifies, would you consider signing a deed restriction in exchange for a permanent 100% property tax exemption?

Yes No Unsure/Need more information

2. Would you be willing to meet with UMass staff to discuss the proposal?

Yes No

Demographics:

3. Age _____

4. Sex

- male
- female

5. What is your race/ethnicity?

- White Caucasian
- African American
- Hispanic
- Asian
- American Indian
- Are you another race that I have not mentioned (Other)?

- Refused

[Please turn page over]

6. Could you please tell me what your family income for the past year is?

- Less than \$25,000
- \$25,000 to \$42,000
- \$42,000 to \$75,000
- \$75,000 to 150,000
- \$150,00 or more
- don't know/refused

7. Comments:

If you have any questions, please call the Center for Policy Analysis at 508-999-9265 or 508-999-9264.

Thank you for participating in the survey.

APPENDIX E

Telephone Survey Questionnaire

Interview Time: _____

ID #: _____

Interviewer: _____

Date: _____

Hi, my name is _____ and I'm calling from UMass Dartmouth. We are making a follow-up call regarding a survey that was sent to your household a couple of weeks ago. The survey concerns a home rule petition that would allow the town to comply with the state's affordable housing mandate through property tax exemptions for private dwellings that qualify as affordable under state guidelines.

1. Did you receive the survey regarding the tax exemption program?

Yes No

[If no, confirm address. If address is correct . . . Then surveyor can proceed to question 3]

[If yes, proceed to question 2]

2. Did you understand the survey?

Yes No

[If yes, proceed to question 3]

[If no], Would you like us to explain the survey? Yes No

[If yes, read description of proposal, then proceed to question 3]

[If no, terminate interview]

The Marion Board of Selectmen is considering a home rule petition that would allow the town to comply with the state's affordable housing mandate while preserving the town's unique character. If approved, this petition would allow the Town to negotiate voluntary agreements with owners of private dwellings whose homes meet state guidelines for affordability. The program proposed in the home rule petition would allow the Town to offer a 100% property tax exemption to qualified residents in exchange for affordable housing deed restrictions. The deed restrictions would keep qualified housing units affordable by limiting the future sales price of deed restricted homes to the current price plus a rate of inflation, and require the owner to sell the home to a person whose household family income is 80 percent or less of the area's median household income.

Marion Affordable Housing Concept

3. Given what you now know, if your home qualifies, would you be likely to sign a deed restriction in exchange for a permanent 100% property tax exemption?

Yes No Unsure/Need more information

4. Would you be willing to meet with UMass staff to discuss the proposal?

Yes No

5. Do you mind telling me your age? _____

6. Sex

- male
- female

7. What is your race/ethnicity? **[Read choices]**

- White Caucasian
- African American
- Hispanic
- Asian
- American Indian
- Are you another race that I have not mentioned (Other)? _____
- Refused

8. Could you please tell me your family income for the past year? **[Read Choices]**

[This needs a cut off at the median level for the program to be useful]

- Less than \$25,000
- \$25,000 to \$45,000
- \$45,000 to \$75,000
- \$75,000 to 150,000
- \$150,00 or more
- don't know/refused

Thank you for participating in the survey.

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