

Getting Suburbs to Do Their Fair Share: Housing Exclusion and Local Response to State Interventions



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Massachusetts has engaged in a fifty-year experiment in overriding local zoning to create affordable housing in the suburbs. Studying suburbs as sites of persistent resistance, this work interrogates a local decision-making process to reveal how structures and gaps in the law help to maintain, rather than challenge, the exclusionary status quo. Analysis is based on five years of observations of public hearings across four Boston suburbs. I argue that this decision-making process is characterized by participants' use of narratives and logics to resist, make sense of, and adapt to the law. Further, although the eventual decision is almost always to build housing, this study reveals a structural similarity between zoning and the law as well as a cultural process of sense-making that leads to minimal compliance and a reassertion of the local power over regional housing needs.

Keywords: housing policy, segregation, exclusionary zoning, narratives, institutional logics

In the context of an increasingly diversifying suburbia, this article looks at white affluent suburbs as sites of persistent resistance to race and class integration. Historically, local ordinances and exclusionary practices, such as zoning, have been used to maintain racial and economic exclusion in suburbs. Increasingly, scholars argue that this pattern of segregation was a federal, state, and local governmental practice designed to carve urban and suburban spaces into a racialized geography. By invoking an ideology of citizenship, private property, and market forces as rationales for enabling municipalities to restrict housing, these local land

use and zoning ordinances became tools of racial exclusion while appearing “race neutral” (Faber 2020; Freund 2007; Rothstein 2018; Silver 1997; Trounstein 2018).

Against a backdrop of calls for regional coordination and federal and state interventions into these local exclusionary regimes, this study analyzes a longer than fifty-year experiment in overriding zoning to create affordable housing in the suburbs (Berube 2019; Rothwell and Massey 2009, 2010). In 1969, Massachusetts enacted Chapter 40B, a law that requires every town to have at least 10 percent of affordable housing stock—defined as developments re-

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© 2023 Russell Sage Foundation. Girouard, Jennifer. 2023. “Getting Suburbs to Do Their Fair Share: Housing Exclusion and Local Response to State Interventions.” *RSF: The Russell Sage Foundation Journal of the Social Sciences* 9(1): 126–44. DOI: 10.7758/RSF.2023.9.1.06. Direct correspondence to: Jennifer Girouard, at jennifer_girouard@emerson.edu, 120 Boylston St., 5th Floor, Suite 505, Boston, MA, 02116, United States.

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stricted to families making under 80 percent of the area median income¹—and provides a legal framework and local process to force compliance. Our goal in studying this attempt to override local exclusion is to better understand efforts to alter long-standing patterns of racial and economic segregation and those areas that persistently resist change.

The results produced by 40B and similar Fair Share approaches are mixed. In her thorough comparison of affordable housing programs addressing exclusionary zoning, the urban planning scholar Rachel Bratt studied Massachusetts, New Jersey, Maryland, California, and Rhode Island. She finds that Massachusetts had the highest total, and annual, production of affordable units. Rhode Island (which adopted a version of the Massachusetts statute) had the highest number of municipalities producing affordable housing, and Massachusetts the next highest, showing the effects of requiring every town to participate (Bratt 2012). Indications are that 40B is effective at penetrating exclusive municipalities, given that some of Boston's most affluent suburbs have reached the 10 percent threshold (Bratt and Vladeck 2014).² However, Edward Goetz and Yi Wang (2020) provide an updated accounting of 40B, paying attention to the community-level correlates of housing responsiveness, and find whiter and more affluent municipalities were less likely to produce subsidized housing, the racial composition of a town being a strong predictor of performance. They also find that progress was slow: by 2017, only 18.5 percent of Massachusetts municipalities had reached the 10 percent threshold (466).

The scholarship's focus on policy design and outcome—essentially the inputs into the method of increasing affordable housing in the suburbs and its outputs—have left largely ig-

nored the process by which Chapter 40B is locally understood and implemented. As a result, existing scholarship has understudied how residents and town officials engage with the law, its goals, and its implications for future engagement with affordable housing and exclusionary practices.

This research is the first of its kind on this Fair Share law that opens up the “black box of process” and asks two questions: How do towns make sense of the state law? How do participants in the 40B process interpret, debate, and negotiate the law's goals and mandates? Answering these questions offers two primary contributions to the scholarship on suburban exclusion and land-use policies: first, a better understanding of on-the-ground interpretation and implementation of Fair Share housing laws and, second, an accounting of how suburban spaces work to accommodate legal challenges while maintaining status quo exclusionary approaches. In this way, the work engages in the two axes for studying suburbs that L'Heureux Lewis-McCoy and his colleagues (2023) outline in this issue: a relational understanding in terms of physical proximity to an urban core with flows of people and capital, and the socioeconomic dimensions of inequality.

I first review the key elements of 40B's design, analyzing its structural similarity to the zoning tools it is designed to override, and then turn to the overlooked process, focusing closely on the cultural dynamics of four proposed 40B builds that, after lengthy public hearings and significant local agitation, were all approved. I find that participants in public hearings use stories and narratives to acclimate to and make sense of the legal intrusion of Chapter 40B into their town. Participants then engage in claims-making and -narrowing that, supported by the use of expert's logics, are transformed into a

1. Chapter 40B projects mix affordable and market-rate units. To qualify as affordable, the development designates at least 25 percent of units for those making less than 80 percent of area median income (AMI). Projects can increase affordability by setting aside 20 percent of units for those making 50 percent of AMI. When rental projects follow these guidelines, all units count towards a town's subsidized housing total. Homeownership projects only count affordable units. The 80 percent and 50 percent designations follow U.S. Department of Housing and Urban Development measures for low-income and very low-income households, respectively.

2. A cross-state comparison is beyond the scope of this article. For an excellent resource on comparative analysis, I recommend Bratt and Vladeck 2014.

form that is acceptable to the builder, residents, and town, leading to an approved project. Through attention to this process, we can observe how the local zoning regime makes sense of and contains the legal challenge posed by 40B, ultimately returning to the status quo after the temporary disruption created by the law.

EXCLUSIONARY ZONING AND THE FAIR SHARE APPROACH

Scholarship largely focuses on the federal government's role in creating segregated neighborhoods, although recent attention has turned to how municipalities did this work through zoning (Trounstine 2018). Zoning practices are an extension of common law nuisance, which is based on the concept that no one may use their land in such a way as to interfere with their neighbor's rights. Zoning codified spatial practices that attempted to control nuisances by segregating uses and offering buffering zones. For example, an industrial use with its potential pollutant nuisances would not be located near residential uses. Zoning practices specifically relate to the problems of affordable housing by either outright prohibiting multifamily housing (a municipality is not zoned to allow it without exception) or indirectly excluding it through regulations that require large lot sizes and restrict building height. Zoning's history reveals patterns of use to control not only "noxious uses"—such as abattoirs—but also "noxious populations"—often based on race or immigrant status—and then later, as suburbs grew, to control based on class.³

In its 1969 attempt to increase affordable housing in the suburbs, Massachusetts lawmakers targeted zoning as an obstacle to their goal of racial inclusion, noting that many suburbs used zoning to restrict large builds, apartments, and multifamily housing in favor of single-family units. A 1965 report by the Massachusetts Special Commission on Low Income Housing assessed low-income housing problems in the state, finding that many units were substandard, rents were too high, urban renewal and highway development had displaced people, and racial discrimination was widespread (Bratt and Keyes 2003, 2).

The Massachusetts State Senate commissioned the Legislative Research Council to study the factors limiting affordable housing. The council definitively isolated the economic exclusion component of suburban zoning but could not substantiate that these practices were racially motivated, despite widespread belief that they were (Reed 1982; Stockman 1992; Roisman 2001). Although the publication of the Legislative Research Council's report coincided with the federal Douglas Commission's report and mirrored the same housing concerns, especially those influenced by suburban housing and land-use politics, Massachusetts' race-focused policy agenda shifted to identifying economic segregation as the main target for intervention. The report argued that "to the extent that inner suburban communities prohibit multi-family and apartment housing, or attached housing, or attach height or other restrictions which make such housing feasible only on a 'luxury' basis, the modest income housing problems of the entire metropolitan area are aggravated" (Commonwealth of Massachusetts 1968, 118).

Before Massachusetts could enact a law, the federal Fair Housing Act passed and states no longer felt as much pressure to directly challenge housing discrimination. Race was thus removed as an explicit subject when Massachusetts drafted Chapter 40B, but became a "hidden agenda," according to Housing Appeals Committee Chair Werner Lohe (2001).

Dropping race in Massachusetts seems to have been an attempt to contain a combustible political issue under the (presumed) larger umbrella of class: "Some members of the Massachusetts legislature . . . may have thought that they were cleverly disguising the bitter pill of racial integration in a coating of economic integration—coating that might not be regarded as sugar, but would be accepted more readily than racial integration." This proved to be false confidence given that "suburbs equated subsidized housing with minorities" (Roisman 2001, 81).

The 40B statute did not override zoning completely; it introduced a "housing appeals regime" that views affordable housing from a regional perspective and shifts the burden of

3. *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926).

supply from the urban core to towns throughout the state (Krefetz 2001). Every municipality would have to do its “fair share.” Given that a large majority of Boston suburbs were not even zoned to allow multifamily housing, 40B—and its ability to override that zoning—was a key mechanism to produce affordable housing in the suburbs. As a result, many early reports on 40B included the phrase “open up the suburbs,” a term used much less frequently today because discussion of the law has changed to highlight the general need to create low- and moderate-income housing, especially rental options, but minimizes the more radical idea of spatial parity. Today, suburbs are still the primary locus for 40B activity, largely because urban cores already exceed 10 percent affordable housing and rural locales lack the frequent housing builds and appealing markets that would otherwise attract developers to towns beneath the statutory minimum.

On its face, the state pressure and intervention into local governance seem strong, especially in a state with a strong home rule tradition (Danielson 1976). In many ways, however, 40B did not overreach. The law asserts state control over land use and maintains that the police power resides at the state level, thus legitimizing the state’s right to intervene, yet does not wholesale take over local control. It shifts jurisdictional control occasionally and only until a town reaches at least 10 percent affordable housing.⁴ The policy design is incentive-focused rather than punitive, each town’s goal being to reach the minimum threshold, immunizing them to state overrides of local decisions. A key feature that shapes implementation is that status quo local powers and practices continue between 40B applications and can continue indefinitely once the town has reached the 10 percent minimum. Similar to zoning itself, exemptions driven by 40B do not create precedent and do not accumulate as a challenge to local zoning powers.

The administrative aspect of zoning segregates land use through a set of bylaws and then creates a zoning board to allow exemptions. Crucially, these exemptions or variances are viewed as necessary only when hardship stems from the land itself—such as a sloping hill causing difficulty in meeting frontage requirements. Variances are not meant to create personalized exemptions based on economic hardship or preference. In this way, zoning administrators see their role not as addressing historical segregation or planning for inclusion, but as applying standardized tools with exceptions for property irregularities. As David Freund (2007) argues, zoning’s legacy is built around de-raced language and administration by its focus on property rather than people. I pick up this theme to underscore how it reveals zoning legitimating its practices through a techno-rational logic that obscures its exclusionary roots, as well as structural similarity to the 40B law itself.

Legal interventions like Fair Share housing offer the potential to reframe local zoning as a barrier to regional spatial access (Cowan 2006). Examination of the law, however, reveals that although it does require towns to open up the suburbs for inclusion, it narrowly constructs the process, leading towns to quickly revert to established land-use approaches. I argue that slow compliance and local resistance are understood through an analysis of how the law structured the on-the-ground decision-making process. Because developers must bring their proposed affordable builds before the very local zoning boards that 40B overrides, the stage is set for a combustible public hearing process. Because the future residents of the affordable housing are not participants in the process, and because profit-interested developers frequently initiate 40B builds, no one represents the law’s larger integrative and spatial equality aims. This allows proposed builds to be treated as one-off impositions to be managed as much

4. The law offers three categories of statutory minima, of which 10 percent of total housing is one. The others include land-area minima that occurs less frequently given that none of the cases studied or news accounts referenced towns using this approach. For example, by 2014, only four towns statewide met the 1.5 percent land-area standard (Citizens’ Housing and Planning Association 2014). Additionally, the Massachusetts Department of Housing and Community Development does not keep an inventory of town information on this as they do with the subsidized housing inventory.

as possible according to local status quo terms and tools. I argue that attention to the mechanics of this decision-making process shows that although the eventual decision is almost always to build housing, the process is an unsettled arena that resolves itself with existing exclusionary tools: storytelling that reasserts the power of the local over the state and technological logics about the property to resolve debates.

METHODS: ARE YOU A SPY?

During my observations, the time invariably came when a participant would ask, “Are you a spy?” or some variation of that. It was a useful moment of data collection. How participants responded to me, a new person entering the field, told me how the actors were arrayed and how they expected to interact with each other. For instance, during a short break in a public hearing, I passed by a developer’s team, deep in conversation. One leaned in and half whispered, “Are you here to spy on us? Whose side are you on?” He laughed, appearing to use the line to ease tension while also gathering information. In another town, a citizen approached me during a hearing when she saw I was taking notes. After finding out that I was studying 40B, she asked what information I could share about other towns that could help her local case.

These interactions revealed the 40B public hearing setting as adversarial, fragmented, and lacking in information. Additionally, I interpreted the spy question as part of a vetting and credentialing process. Actors wanted to know my qualifications for being part of the 40B process and whether to engage in further dialogue. Vetting is a common issue when researching fields with actors of status. I was talking with distinguished lawyers, professionals, and town officials many years my senior. What increased rapport and trust depended on the participant and how they viewed my position: lawyers and experts assessed my academic credentials and were eager to have someone to debate minute aspects of 40B long after family and friends stopped caring; developers and town officials often viewed me as a friendly and objective ear

to whom they could grouse about the difficulty of the process; citizens frequently began our interactions hoping I could help them during the hearing but continued inviting me to their homes and citizen meetings long after as one resident lamented, half-jokingly, “we thought you would be useful to us and that turned out not to be true!”

This article corrects the literature’s inattention to process through a multi-town ethnography studying the 40B process over time and across multiple cases. This allows me to assess how residents interpret and act upon the state law, and to study town officials and local decision-makers, which is debated in the literature but not fully studied (Dillman and Fisher 2009; for an exception, see interviews with high-ranking local officials in Goetz and Wang 2020).

My analysis of 40B draws on five years (2011–2013, 2018–2020) observing public hearings across seven greater-Boston suburbs. Towns were selected for study based on the ability to watch the entire process from opening of public hearings to final decision. I observed more than 140 40B public hearings, and town and neighborhood meetings, totaling approximately 320 hours.

This article focuses on Norton, Norwood, Littleton, and Norwell, observed from 2011 through 2013. The later fieldwork, and three additional towns, were studied but not included here because the purpose was to confirm data saturation and seek examples or phenomena inconvenient to my analysis. This included attending hearings for 40Bs being revised, speaking to officials about processes different from my primary cases, and observing a “friendly 40B.” In friendly 40Bs, towns and developers collaborate on the proposal to create a less-adversarial process for developers and grant towns more control over outcome. Thus, friendly 40Bs represent a proactive approach to the law and would not follow patterns seen here, though other research shows them to be protracted and complicated (for an account of Weston, see DeGenova et al. 2009).⁵

At the time of data collection, three towns

5. I did not observe any projects rejected by towns and appealed to the state. Scholarship indicates that this occurred more frequently in the early years of 40B. Goetz and Wang (2020) find one case in which a planner

were more than 90 percent white, according to the 2010 Census, with Norwood at 84 percent. All towns were above the state median household income, from just slightly above, around \$80,000 (Littleton and Norwood), to \$90,000 to \$110,000 (Norton and Norwell). All proposed projects involved from 126 to 262 rental units. All four proposals were approved at reduced size or, in the case of Littleton, substantially revised to include a mix of apartments and single-family homes.

The majority of 40B projects proposed statewide, including the four studied here, originate with for-profit, limited dividend corporations. Public housing authorities propose 32 percent of projects; nonprofits only propose 15 percent (CHAPA 2003). During my research time frame, I was unable to find any projects proposed by nonprofits. Given the lack of data, the impact of nonprofit-origin projects on the process is ripe for further exploration.

The observed demographics of public hearing participants appeared to be almost all white, with participants frequently speaking as homeowners, matching what Katherine Einstein, Katherine Levine, David Glick, and Maxwell Palmer (2019) find in their larger quantitative study of participation in Massachusetts land-use public hearings. As a white researcher, my presence contributed to and did not challenge the hearings' racial homogeneity of the public hearings and likely facilitated interactions with participants.

Because these cases were chosen to reveal variations and patterns in public hearing discourse over time, I do not address town-level variation or generalize to all 40B cases. Instead, my research goal was to capture the full range of public discourse and decision-making to assess patterns in response to the law. Notably, for these process findings, no noteworthy differences emerged in the patterning across the four towns. Given the focus on interactions and claims-making through the process, it was the similarities that were striking, as I discuss.

The observation phase, I conducted thirty-one interviews with key participants, including developers, zoning board of appeals members,

citizen participants, lawyers, and engineering and conservation experts. The data were collected and analyzed through open and thematic coding according to the principles of grounded theory whereby emergent codes were tested and refined throughout the research process (Glaser and Strauss 1967; Charmaz 2006).

Public hearing participants do not have expectations of privacy and most towns' procedural rules include having each speaker state their full name and, if they are a resident, their address. However, to maintain confidentiality, I refer to participants using their role in the process (resident, zoning board member, developer, and so on) rather than by names or pseudonyms. Additionally, for analysis of patterns and themes across public hearings, it is not necessary to publicly identify the participants or analyze their individual contributions.

“Isn't This Just NIMBY?”

The most common question posed to me during my fieldwork was about being a spy, but by far the most frequent comment in academic settings was “Isn't that just NIMBY?” They meant simply that opposition to Chapter 40B could be explained as a case of Not In My Backyard, a term used to label citizen opposition to siting as defensive and regressive. I frequently struggled with NIMBY's presence, in popular and scholarly knowledge. I argue that NIMBY is not the end point of analysis, but merely the starting point for interrogation. Increasingly, scholars are refining or maneuvering away from this labeling (Gibson 2005; Lake 1993; Takashi 1997). It has long been assumed that town officials and residents are mobilizing against a build in their “backyard,” but the explanations for why they do so lack depth and nuance. Crucially, focusing on the content and interactions in these settings can help explicate types of participation and its impact on the process (Goetz and Wang 2020).

Increasing attempts to better understand public hearing participation especially in land-use cases tell us more about the who of participation and the kinds of claims offered, as scholars often track comments supporting or

discussed a town with three 40B proposals. After accepting the first two, the town “had their fill of 40B” and resisted the third.

opposing proposals (see Einstein, Glick, and Palmer 2019; Whittemore and BenDor 2019). These scholars tend to rely heavily on large data sets of meeting minutes, which, though useful for identifying broad patterns, especially in terms of coding (many match my findings such as debates over density, neighborhood character, and impacts such as traffic), lack the dynamism that can only come from careful observation of the process over time. This includes the potential that claims made during public hearings can change and include multiple, contested meanings. For instance, Jeremy Levine (2017) observed public meetings in Boston and thus was able to track the complexity underlying the use of *community* in the public discourse, analyzing its different meanings when used by residents versus town officials. In this issue, Willow Lung-Amam (2023) describes the complexity underlying NIMBY in school board meetings where language barriers, information gaps, and lack of political acuity shaped how Asian immigrant claims were heard, negatively labeled, and frequently dismissed.

Understanding public hearing interactions requires close analysis of the structural and cultural forces affecting the 40B process. I analyze structural forces through how 40B's policy design arrays actors and shifts rules and procedures, noting its similarity to zoning, the very process the law is designed to override. The local actors then must make sense of the law and engage in interpretative work to mediate the state law with local, on-the-ground interaction. I analyze cultural dynamics through how actors draw on stories and institutional logics to both understand the law and navigate their position in the discursive site of the 40B public hearing.

WHEN LAW COMES TO TOWN

The 40B process is initiated when a developer submits a comprehensive permit application to build a housing development to a town zoning board of appeals (ZBA). This application brings with it the full force of Massachusetts statute and regulations. Chapter 40B confronts towns infrequently enough that zoning board members feel ill equipped to administer it and citizens generally have no previous knowledge of or experience with it, leading to uncertainty about how to interpret and apply the law. The

law is experienced as a disruption and the public hearing participants engage over the course of many months to make sense of the law and learn how to maneuver within it.

I find that public hearings had certain, predictable patterns. They begin with outrage, featuring polarizing, adversarial, and seemingly intractable language. Attendance at early meetings is large and sometimes spurred on by local newspaper reports on the new housing project. Attendance diminishes over the next few months, dwindling to a core group that generally includes abutters to the property and town officials from various departments who do not vote on the project but sometimes provide recommendations or condemnations. In an interview, one citizen summarized this early temporal dynamic:

At the beginning of the hearings, everyone is up in arms, everyone is fighting, you got the crowds! People were standing in the meeting room three rows deep with every seat full. [Our lawyer] said, "that is today and as it goes on, it gets less and less until you have your core group of fifteen to twenty and even that will wane at times." And he was right, that is exactly how it played out. I bump into people in town and they say, "well, that issue is dead. It died, right?" I tell them to come with me once a month to the meetings . . . [our lawyer] said don't get depressed about it, just keep that core group together.

Once the core group of citizens, developers, and town actors coalesce, a filtering or sorting process commences whereby broad claims and concerns, and many specific claims and concerns (largely from the economic, environmental, and social domains), are narrowed or discarded. The filtering process occurs through the interactions between the contentious mix of the ZBA, developers, citizens, and subject or domain experts. At this stage, information asymmetries are key, in that participants try to learn from developers and experts who, in most cases, have more familiarity with 40B. The tension over attempts to broaden deliberation or revisit previously narrowed topics, however, is constant.

In the final stages of the public hearing, de-

velopers, experts, town officials, and citizens collaborate on a draft decision that represents their arguments and contributions to the project. During interviews, citizens pointed to conditions in the decision that they shaped, as one citizen shared, with pride: “my name is actually in one of those conditions.” The tinkering over the various conditions contributes to a public hearing process that includes not only the typically studied adversarial argumentation with self-interested strategic positioning, but also a good deal of group learning, coalescing around shared meanings and positions, and moments of collaboration and negotiation. Zoning boards then render their decision based on the negotiated conditions and mitigations for the town, usually allowing the housing build to proceed.

Let me return for a moment to the phrase “when law comes to town,” which is a misnomer, though an intentional one. Law already exists, of course, in the form of various bylaws, statutes, and regulations governing housing and land use. However, this form of law is not “felt” by residents of the town. It is experienced as natural, part of the status quo, and is only brought into their awareness by the intrusion of a state law that challenges local law by redefining rules, procedures, and common understandings. As a research site, the public hearing offers the unique analytic perspective of an unsettled arena capable of revealing taken-for-granted beliefs previously unspoken, as well as tracking the contentious interaction of local actors as they attempt to make sense of and control the legal intervention. My findings show that to understand why the law has come to their town, how the law works, and how the town can contend with it, participants in the public hearing rely on stories and narratives.

PUBLIC HEARING EARLY STAGES: MAKING SENSE OF THE DISRUPTION

“It’s a farce!” “The deck was stacked against us from the start.”

—citizens on the 40B process

If you sit in 40B public hearings long enough, you are certain to encounter the phrase “the deck is stacked against us,” or its alternate ver-

sions “it’s all rigged” or “it’s a shell game contractors and builders are playing” or “it’s a farce!” Follow 40B coverage in the media and you will read a similar description of 40B as a trump card played by developers when they are denied construction permits. The game and card-playing metaphors are cognitive shortcuts used by residents to invoke the longer, more complicated analysis of the ways 40B has stripped the town of discretion and control and, in their view, unjustly privileged developer interests over local ones. The invocation of “the deck is stacked” usually comes early in the public hearing as citizens and town officials become cued to new constraints the law places on them.

Observation of the hearing process shows local narratives help make sense of the disruption of, and eventual return to, the status quo (Ewick and Silbey 2003). The dominant narrative that I coded as *The Deck is Stacked* prepares participants for the state’s inevitable success in overriding local zoning regulations, emphasizing the power shift from local to state. My observations found discourse centering on a sense of victimization, towns becoming “vulnerable” to “predatory developers.” These findings match Goetz and Wang’s interview study in which town officials viewed the law as an intrusion into their governing process (2020). Crucially, this narrative sense-making occurs even in towns with other recent 40B projects, indicating that the law does little to change residents’ and town actors’ perception of the need for affordable housing or address exclusionary practices. In the majority of the towns studied, each new 40B permit and build was treated as the first encounter with the law and its aims.

Stories are a rhetorical device to provide explanations (Tilly 2006) but differ from other discursive devices in that they rely on the sequencing of events that link cause and effect (Polletta et al. 2011). Components of a narrative include temporally ordered events or sequencing, and character traiting, frequently along a good or evil axis whereby characters are linked to ongoing events, often in the context of opposition or struggle (Franzosi 1998; Ewick and Silbey 1995; Polletta 2006). The storytelling at the heart of 40B cases aligns closely with what

Steinberg and Ewick call origin stories: “They are narratives of inequity or injustice in which the identities of protagonists and antagonists are clearly distinguished and morally marked concerning an issue that requires resolution” (Steinberg and Ewick 2013, 156).

Additionally, an inversion or reversal is often essential to the story, in which the elements of the narrative are not just related by succession, but also transformation. In the case of 40B, a key reversal presents the situation as a legal injustice (the state overriding the town) rather than the amelioration of a prior social injustice (the town’s exclusionary zoning rules) that moves toward greater justice (increased affordable housing). In narrative accounts, this inversion is put into motion through a disruption that upsets the status quo, thus requiring actors to explain the new situation, resolve the tension, and move toward a moral consequence (Franzosi 1998).

For example, public hearings across all the towns featured spirited discussions on limiting the height of buildings because all of the proposed builds exceeded local building-height zoning bylaws. This led to frequent explanations that 40B overrides local bylaws and that developers are not restricted to the lower height. Accepting a “stacked deck” seems similar to Erving Goffman’s (1952) discussion of “cooling the mark out,” or attempts to define a situation that allows one to accept a loss or an unjust experience. In this case, pronouncements that the deck is stacked against the town helped calm some of the early indignations, especially at meetings attracting two hundred angry citizens, and oriented them to the need to work toward accepting the build application with detailed conditions.

For suburban residents, an overall narrative coalesces to include a predatory or irresponsible developer taking advantage of the town through the law. In an interview, one citizen elaborated on the relationship between the main characters in the narrative: “They are predatory developers because they have full knowledge of everything—the rules, how the game is played—and they are going up against a bunch of innocents.” Frequently, the story ended by emphasizing the high-stakes moral consequence of letting a developer radically

change the character of their community, drawing on vocabularies of the severity and urgency of the situation (Benford 1993). As a citizen said when addressing the Zoning Board in one town’s second public hearing, “I have lived in this town for many years and have seen nothing like this before. There are a lot of things to consider and the more I hear, the more I think 40B is being used for the wrong purposes. Take a deep breath and look at every issue. This will write another chapter in the historic landscape of [the town] and may not be reversible. Thanks for stopping irresponsible development. [loud clapping by participants]”

As others note, narrative elements are not created out of whole cloth, but instead resonate in larger discursive fields and systems of meanings (Polletta et al. 2011). Specifically, in this case, Massachusetts is a strong home rule state, where state intervention in town affairs and autonomy is generally disfavored. Additionally, the character traiting of suburban residents as elitist snobs reaches back to the early 1969 colloquial name for Chapter 40B: the Anti-Snob Zoning law. On the other side, casting developers as predatory and greedy is relevant in light of the 2008 housing crisis and economic downturn, popular discourse focusing on the housing market and those who profit from it.

Narratives are not entirely fabricated, and character traiting uses culturally available symbols and meanings. It is difficult for groups to work against this traiting because the alternative roles—developer as good neighbor, homeowner as representative of the larger public good—are not as culturally available. Although neither character position is absent, both are less common in the larger discursive field. Attempts by developers or citizens to move from profit to social good, or from polarized self-interest to public-mindedness, are contested and policed by the other group. This dynamic interaction and resistance to character traiting is the result of each group trying to legitimize their claims in the public hearing while delegitimizing the other’s position.

Overall, narratives focus squarely on the law’s relocation of power to the state and its statutory requirements rather than on its goal of spatial equity and overcoming exclusion.

This narrowed scope of sense-making is exemplified by participants' frequent invocation of the term *safe harbor*. This phrase is used by actors from all sides of the issue to indicate that a town has met the statutory minimum and thus is free from the "assault" of developer proposals. In one town, the board of selectmen sent a letter to the state in which they described being "under siege" by numerous 40B developments. Staying compliant, meaning that a town has met its 10 percent Fair Share obligation, is never guaranteed because once the town authorizes the 40B permit the project may not be built due to market changes or issues with the developer.

Each town studied here discussed this during public meetings and attempted to forecast population growth and housing growth. If a town can show reasonable progress toward compliance with a state-certified Housing Production Plan that sets aside land for affordable builds or beginning to build a small amount, the town moves into safe harbor. Otherwise, the town must struggle with not only reaching but also maintaining 10 percent subsidized housing stock, a target that can shift based on the ratio of subsidized to total housing. Because total housing stock can shift year to year, some towns feel that, in the words of one ZBA chair, "we are a train that just keeps chugging uphill for compliance and can't get there." This finding overlaps with Goetz and Wang's (2020) proposal that there was a 'threshold effect' impacting town orientations to 40B whereby minimal compliance—the statute's 10 percent target—was a dominant response.

I view "the deck is stacked" as a metaphor oriented to the disruption of law (rules, roles, procedure) and pragmatic action toward the immediate project, increasing the likelihood of a shared dialogue between public hearing actors. Specifically, a gaming metaphor is used as shorthand for how the law has reshuffled the rules and players, favoring developer control over local control. This helps explain to residents why local procedures and bylaws do not hold and why, if contested at the state level, they will be overturned. This narrative ends with the towns and residents understanding that although they cannot block this build, they can still influence the immediate outcome. The

shock of the law is settled, the outrage is channeled into an affirmation of the local over the intruding state, and the participants turn their attention to the specifics of the proposal. As the public hearing moves beyond its early stages, and as participants accept the momentarily changed power dynamics of the stacked deck, participants shift from narratives to control over the agenda and decision-making.

MIDDLE TO LATE STAGES: FROM DEBATE TO DECISION-MAKING

"Every project is a negotiated project."

—ZBA chair

As local actors grapple with the new law and project, the start of the public hearing features the initial airing of concerns and grievances, which are likely to be both multidirectional (targeting developer, town, and state law) and inchoate, as well as too specific and irrelevant. Over the months of 40B meetings, these claims transform from arguments centered on experiential knowledge and concern over a changing neighborhood to actionable issues matching the legal and technical expertise of industry professionals.

To explain this process of transformation, I draw on new institutionalism in organizational sociology that studies the cultural work of organizations through their use of institutional logics to guide action (Friedland and Alford 1991; Thornton, Ocasio, and Lounsbury 2012). In general, this work frequently studies large data sets and adopts a macro perspective, such as when studying organizational processes of isomorphism or field mimicry to explain how organizations adopt others' practices in bids for legitimacy. Recent research by Chad McPherson and Michael Sauder (2013) tackles the micro-level of organizational action and analyzes how assumed institutional logics operate on the ground through everyday interaction, asking how, if organizations have internal scripts and vocabularies to make sense of their world, everyday actors enact these logics, especially in sites of contestation?

As a field, the actors in the 40B public hearings are arrayed in a contested site where, crucially, legitimacy is hard to come by. The zoning

board is forced to be multivocal for both the state law and its town. Because it is forced to speak simultaneously to these two audiences from seemingly opposing perspectives, the ZBA faces severe legitimacy challenges. Developers enter the arena as hybrid organizations containing both market and social welfare logics, given their argument that their housing serves a larger public good.⁶ Citizens are keenly aware not only that the issues directly affect their backyard, but also that neighborhood logics will fall on deaf ears and are dangerous claims to make given that they can be rejected as snobbery or racial bias.

Take, for instance, the density of a proposed 40B project. Density is a common starting point for debate across all the observed towns as it was a stand-in for the ways that the proposed project was too large, incongruous with surrounding single-family homes, and overall out of place in the suburban neighborhood. In the scholarship of logics, this becomes a filtering moment of cognition: is the debate over density an issue of economic viability due to decreased total infrastructure costs or an issue of how a building fits in with the vernacular and feel of the surrounding community? For the former claims, an economic or market logic is deployed to make sense of the project; in the latter, a community logic is used. Logics are not used mechanically and an actor is not relegated to only using the reasoning and claims-making native to their stakeholder group, known as their home logic. Similar to other studies that find embedded actors shaping decision-making in settings with multiple institutional actors by manipulating choice points (Heimer 1999) or drawing on others' language and logic (McPherson and Sauder 2013), this study finds that those who are highly embedded in the affordable housing field (lawyers, engineers, con-

sultants) play a crucial role in the public hearings.

Closely tracking the claims-making and debate across years of public hearings revealed that in this unsettled site of multiple logics, participants eventually coalesced around the techno-rational logics offered by professional experts focused on various industry standards: engineering, traffic, property management, environmental, and architecture. Notably, this is the dominant language, logic, and purview of the zoning board itself and reflects zoning's focus on property rather than on people. So, although the law aimed to override zoning by locating it within this board with many competing bids for legitimacy and no clear voice for an enlarged legal logic, logics coalesced around something the town administration was already well versed in.

Although all hearings included sustained focus on many topics of local concern—including the builds' impacts on schools, the environment, public services—we can observe the overall pattern of how logics shift and eventually move toward borrowing from the professional field of expert engineers through an extended example of debating traffic in one town's public hearing.⁷ This process for citizens was the most difficult as they were often the least informed on these topics and not used to engaging in this mode. The data across towns revealed an overall pattern of citizens moving from a community-based logic supported with experiential knowledge and evidence, to challenging the experts, and then finally borrowing and adopting the expert language. In this case, the discussion of traffic increased after citizens and ZBA members shared their experiential knowledge of the problems of a street and the nearby highway entrance/exit ramps. The town hired a traffic peer reviewer to assess the devel-

6. The 40B permitting process can be used by nonprofit and for-profit developers, as well as local government agencies. All projects studied here were initiated by for-profit developers, the most common mode for 40B. I would anticipate that nonprofit developers or local agencies would be able to better deploy a public-good logic, though this is a question for future research.

7. Claims mentioned in this article, such as on traffic or density, are selected to demonstrate the process and are not comprehensive regarding the kinds of arguments put forward in the public hearing. Field notes recorded a range including environmental concerns, increased burden on town services and schools, and aesthetics. Following the pattern described, unless these claims could be addressed and translated by experts, they lost power throughout the process and had less impact on final decisions.

oper plans and traffic impact. About the resulting report, the reviewer said, “The developer did a standard traffic study. It is all appropriate. One other area of concern is sight lines—they are constrained at this point and when there is widening it will be better. You have to meet sight lines since it’s a safety concern and at this point, it’s hard to prove that they will be met. The peak hours they looked at were appropriate. The future projections were appropriate. They conducted their assessment the same way I would have done it.”

With the peer reviewer offering an industry-standard logic, the citizens in turn alternated between drawing from experiential knowledge and neighborhood logics and attempting to engage in the industry-standard logic. For example, one citizen described how he gets off the highway ramp every day and sees the traffic backed up. His voice increased in volume and in an angry tone he said, “I’m concerned about my safety since my car is backed up onto the highway. Cars backed up onto the highway!” Another recalled witnessing a recent accident caused by cars coming off the overpass at a high speed. The mounting claims by citizens pressured the town to inquire about whether the traffic impacts should be studied beyond the surrounding neighborhood of the project. The peer reviewer reminded the hearing participants that her role was to assess only the developer’s traffic study, not propose or conduct her own. Although citizens attempted to open the world of inquiry on traffic, the peer reviewer continued to narrow the relevant domain. As tensions mounted, the citizens argued that the ZBA was not listening to them and the developer sat back and occasionally rolled his eyes at members of his team. The ZBA chair stepped up to reaffirm the role of the peer reviewer:

ZBA CHAIR: No one is denying that there is going to be extra traffic because of this project. We are trying to drill into how much traffic, and if its effects move out beyond the radius of the 40B project. [The traffic peer reviewer’s] job is to look at numbers and see if the methodology is correct. I don’t want to put words in her mouth, but it’s done right and it’s livable.

CITIZEN [voice rising in volume and with an angry tone]: All the other building projects had to comply with town regulations. This one doesn’t. We are presenting you with safety. There are not many issues under 40B that you can decide on, but one is safety. So if we bring this concern to you, you have the duty, the obligation to act on safety. We have elderly people here and that street is dangerous [audience claps].

The ZBA chair responded that he wanted to get additional traffic information, but expressed uncertainty as to whether it would alter the proposal given that the town could be viewed “as making harsh decisions in an unfavorable manner. If we denied this project on safety and the applicant appealed it—justifiably so—then we have the cost of litigation.” This exchange reveals the complications of reconstituting 40B amid competing actors from different organizational backgrounds. The ZBA chair attempted to forecast the legal repercussions of pushing forward on this issue and eventually looked to the peer reviewer to help “close off” the issue by asking whether they could request from the developer more traffic information and expand the scope of their traffic flow study. Later, another ZBA member chimed in to support the chair and remind participants of the stacked deck, the risk of appeal, and their goal of a negotiated build.

Over time, citizens shifted from claims about traffic and the dangerous placement of the exit and entrance to the project to claims about water runoff and extensive discussion of improvements to the street, laying thicker sewer piping, and straightening the dangerous curve of the road. These shifting claims were facilitated by drawing on other circulating logics. In particular, citizens borrowed from the peer engineer’s logics of industry standards and town administrative procedures; as one citizen asked, “What guarantees will the board have that the road will be straightened and flattened? Is there a way to bond this so if the board gives the developer the permit there is an assurance, they will do it?” This was received more favorably, the developer responding that “we understand and we are comfortable that this road is the price of admission and

we'll finish it before occupancy." The ZBA noted they would add that to the list of conditions for the project. In this way, citizens engaged in logic borrowing to increase their legitimacy while contributing to a narrowing focus of legal application to the technical specifications of the project. This finding is notable in light of Einstein and colleagues' (2019) assessment that public commenters in land-use meetings displayed a high level of knowledge of complex regulations. Their large data set of meeting minutes led them to assume this knowledge might be due to citizens' professional background (which I also found), but my close observation over time further revealed a process of learning and claim transformation due to expert presence in the public hearing and logic borrowing.

When a citizen group asked to make a formal presentation to the board, both the developer and ZBA were reluctant to accommodate the request. The ZBA wanted to move forward, a member saying they had "been at this for thirty years and [had] never seen citizens make formal presentations." The board chair added that he was "uncomfortable with the whole thing since you have been asking questions the whole time and don't need a whole block of time." The ZBA chair, however, ultimately agreed and the citizens borrowed logics and language from the developer and experts in presenting their concerns. The citizens' opening statements highlighted the shift away from broad, emotional claims: "We propose to bring new information, a new perspective, to amplify and provide new evidence that substantiates our concerns. I want to make it clear that we as a community are not opposed to the development in general, but we have specific concerns. We will discuss density, but it is not the focus of our presentation. Methodologically we aim to provide evidence and compare and contrast it with other bodies of facts."

The citizen presentation included many issues and cited state guidelines for a smart growth project to contest the developer's claims, as well as language from the Conservation Committee to critique the buffer size of a wetlands area. For the traffic issue focused on here, the ZBA responded by asking the traffic peer reviewer whether placing the buildings

close enough to the road would naturally slow traffic. The citizen audience sighed loudly and expressed disapproval of the question, but the traffic engineer offered an industry logic that massing close to the road was a natural slowing mechanism. The engineer also noted that a guardrail could be put in place if a concern was identifiable but cautioned that guardrails are largely considered eyesores. Citizens picked up on this issue in future meetings and promoted an integrated stone wall barrier instead of a guardrail. This claim held currency throughout the process and, by the end, was translated into a slight setback of the buildings from the road and the addition of a row of trees to discourage residents from getting too close to the passing cars.

Over the course of the public hearings, citizens flexibly adjusted to incorporate expert discourse in their claims-making activity. I build on the institutional logics literature to show how it is advantageous for actors to borrow or hijack logics at different times. For example, appeals to scientific or industry standards and the efficiency or rationality of professions are mimicked by citizens trying to distance themselves from emotionality and snobbery and to appear legitimate before the board. The developer is similarly motivated to speak in the techno-rational language of experts because they not only employ their own experts and are well versed in this language but their attempts to use other logics are stymied. For example, developers frequently engaged in the neighbor logic of residents by noting how they would be good neighbors who would add to the community rather than harm it. Citizens heavily policed these claims. Developers were also reluctant to invoke a market logic because it seemed to harm their rationale for building size and design. They often tried to put forth a good engineering practice logic to defend these proposals, but were also often reluctantly pushed to acknowledge the market logic motivating their plans. In one case, the ZBA and the developer went back and forth for thirty minutes over lowering the second floor of a building plan. The developer offered reasons that reducing the height would call for a different roof that was less aesthetically appealing and would not fit in as well with the surrounding neigh-

borhood. An exasperated ZBA chair sighed, leaned across the table, and said, “This is about money, isn’t it? It will cost you more and won’t be as profitable if you reduce the height?” The developer then said that, yes, they would incur the same building and infrastructure costs, but with a reduced height could not offer additional loft spaces and would collect less rent.

My work complicates scholarship on the borrowing-hijacking process with data showing that actors also police the use of these non-home logics. The main examples in the public hearing were the policing by citizens of the good neighbor logic used by developers and the developer policing town and citizens engaging in market logic. The contestation over developers’ use of neighbor logic was policed in every 40B case under study and was often done by yelling directly at the developer and marshaling evidence that the developer would, in fact, not be a good neighbor due to the project’s detrimental effects on other properties and not fitting in with the rest of the neighborhood. A crucial part of this policing is the argument that the developers are drawing from knowledge and legitimacy that are not a part of their group. Developers are not residents of that neighborhood and town and thus could not have the necessary experiential knowledge of the issues facing, and what is best for, the neighborhood. Part of the frustration for citizens was that they felt limited in their ability to use neighborhood logic to contest 40B and thus were quick to police the developer trying to use such claims. Additionally, both citizens and town officials pointed out the ways this nonhome logic for developers was actually at odds with and contradicted other developer logics, such as the market-economic logic that positions developers as profit-maximizing private entities who respond to shareholders, not to neighbors or the larger community. As the protracted public hearing moved to its later stages, the switching and contesting of logics transitioned to the professional industry logics of peer engineers and other experts. This domain of understanding and knowledge held both great legitimacy under the 40B statute and was within the purview of the zoning status quo. Drawing on the industry logic enabled the

public hearing to move toward a refined and negotiated housing proposal that was accepted at the local level, leading the affordable housing to be built in all cases under study.

CONCLUSION: A RETURN TO THE STATUS QUO

“I don’t know, maybe we are all snobs.”

—town resident

Near the end of a lengthy interview that covered a complex analysis of the law, building proposals, and the interplay of claims through the public hearing, a citizen suddenly said, “I don’t know, maybe we are all snobs.” The individual was voicing frustration prompted by the distance between the law, its goals, and her practical experience. Sometimes she felt powerless in the public hearing; at others she felt empowered by the support of her fellow residents and town officials. Fighting the project seemed both hopeless and entirely possible. She accepted its inevitability but was also disgusted at how the developer could override local concerns for personal profit. In the end, all of the projects were accepted and, in the words of many participants, ended up as negotiated projects. This encapsulates the paradox of the law demonstrated by my fieldwork: local negotiation and approval contrasted with state-level indicators showing slow overall movement toward housing goals. The public hearing filtered discourse toward the specifics of the project but continued to animate frustration and disapproval of the law. The town largely accepted the stacked deck, maneuvered within it, and produced a bitter pill—the negotiated housing build—they were willing to swallow.

Citizens seemed to be largely unaware of the law before developers entered with their proposals, but within weeks, residents of all four towns were able to articulate and retell a similar version of the 40B story. I argue that the larger 40B narrative, with its cognitive shortcuts, enters the town with the law and is then used by the various actors to help make sense of this legal incursion. The law represents a disruption of status quo procedures and rules, creating an unsettled field of action. Local actors try to resettle the field with cultural tools, in-

cluding the dominant narrative, localized stories, and logic borrowing. Crucially, the larger the-deck-is-stacked injustice narrative proved incredibly durable given that it continued through to the end of the public hearing process even as negotiation and collaboration on the specifics of the project increased. A key finding is that these shared narratives do the important work of shaping understanding by emphasizing this is a momentary loss of local control.

Another significant factor shaping the process—a factor whose inclusion could alter the process and outcome of 40B public hearings, better accomplishing the fair share aims of the law—is the role for residents of the affordable units. In the case of 40B and its mechanism as largely a developer’s tool, there is a complete absence of the affordable housing population. This population may be among the beneficiaries of the law, but they enter the 40B public hearings as a fictional, potential future population and thus are not present as a constituency in the process. Literature on law as a tool for social change emphasizes the necessity of effective mobilization of rights (McCann 2006; Rosenberg 1991), but the law’s structural design and process provides no avenue for this population. I never encountered a potential resident in the hundred-plus meetings I attended. Their physical absence is mirrored in their absence from the public debate over the development; mobilization for their right to suburban space is nearly nonexistent. The debate instead moves from affordable housing as a public good with an inclusive suburban population to a mediated technocratic exchange between zoning board members, developers, citizens, and building and land use professionals. The high degree of collective sense-making about the law plus the degree of claims-shifting suggests the potential impact of increasing representation in the public hearings. Essentially, building into the process a stronger voice for the law’s goals and beneficiaries would force the often-unanswered question of how we became vulnerable to be answered, rather than

being merely rhetorical or used in service of a victim narrative.

The reliance on experts and logic switching also indicates room for offering alternative claims, such as those more focused on the need to address racial and economic exclusion or increase affordable housing. This potential was observed, though rarely, in the few times a town administrator or other official might report on the current lack of low-to-moderate-income housing or give specific examples of how the town is growing and thus needs more rental options. In these instances, the point went unrefuted but remained unelaborated. Without the presence of the law’s beneficiaries or proponents to speak to the need, the response was the nodding of heads and resumption of the previous discussion. In some cases, the town set aside some units for local preference, meaning current residents in need of housing, family members of current residents, municipal workers, or employees of local businesses.

An enlarged role for advocacy groups could also counter the information asymmetry. One such group, Citizens’ Housing and Planning Association (CHAPA), works at state and community levels, testifies and meets with officials at the federal level, and is a source of training, informational materials, and studies by scholars. CHAPA was not an active participant in the hearings studied here, though further analysis could include how such a body might provide training and support for towns, and free the developer from being the untrustworthy representative of the law, thus potentially further reducing contentiousness and allowing room to acknowledge the law’s equity aims.⁸

The larger absence of race from the process and discussion, however, is a thornier problem, as I argue that the absence is baked into not only the land-use practice of zoning but also the 40B law itself, thus enabling a silence that extends to the public hearing. Research has established this dynamic of elephants in the room as “conspiracies of silence” (Zerubavel 2006, 2018), in which actors engage in color-

8. CHAPA publishes fact sheets on 40B that are distributed to towns and can be a useful resource for citizens. Public hearing participants studied here could have used these materials, although they were not referenced in meetings or interviews.

blind discourse to minimize or disregard the impact of race through a repertoire of rhetorical moves (Bonilla-Silva 2002; Bonilla-Silva, Lewis, and Embrick 2004; Mueller 2018; Pollock 2009). A one-on-one interview with a lawyer representing the developers confirmed the silence and avoidance of race observed in the public hearings. Seemingly more free to speak in this private setting, he noted that although “[the residents] will never say it . . . you can tell it is fear of the other, someone who is not like them, that the [affordable housing] residents will be a different color, religion, have too many kids and pushing strollers.” Class status was occasionally broached and debated as towns moved toward decisions about affordable builds, but, as the lawyer suggested, race was never openly discussed and only occasionally observable through coded language (for a discussion on the rhetorical moves of coded racial language, see Lung-Amam 2023). A notable limitation of the scholarship thus far is its attention to what is actually spoken, usually by paying attention to the moments when the silence is breached and actors say what is otherwise not said. In other work, I track the “collaborative silence” around race where, despite contested debates around almost every issue (as seen in this article), the public hearing participants tacitly work to avoid addressing race. In that work, I argue that the discourse is dominated by elliptical gaps that involve active participation from listeners to fill in the unspoken gaps (Girouard 2021).

This collaborative silence is ever more relevant as suburbs become increasingly diverse in race and class (see Lewis-McCoy et al. 2023, this issue; Lichter et al. 2023, this issue). It is important to fully understand persistently resistant spaces and the tools used to maintain or control white, affluent neighborhoods (Murphy and Allard 2015; Goetz, Williams, and Damiano 2020; Wyndham-Douds 2023). My research suggests that override tools such as 40B create a momentary challenge to these exclusionary spaces that generate minimal compliance but continued resistance. The deraced nature of zoning and the strategic racial silence of 40B match white views that racial segregation is either a feature of the past or associated with individual prejudice, rather than reconciling the

ways it is part of our everyday local governance (Hughey 2018). This can continue what Angela Simms (2023) calls “color callous” racism, that is, an ongoing evading of reckoning with the processes that facilitate white economic advantage.

Chapter 40B has driven the construction of affordable housing in suburban areas that otherwise would not allow it. In that respect, it is a success. However, my research asks us to pause as we consider interventions into regimes of local land-use exclusion. Chapter 40B maintains the local regime of inequality by leaving zoning ordinances untouched and uses a process that confirms the legitimacy of exclusionary zoning rather than challenges it. Fifty years on, towns treat Fair Share 40B as an exception, an imposition to be endured, rather than a way to create a fairer or more just locale.

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