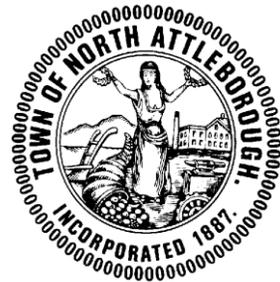


# An Overview of Chapter 40R: Smart Growth Overlay District/Starter Home District

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Carolyn M. Murray, Esq.

# What is Chapter 40R?

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- Chapter 40R is a special statute that would allow the Town of North Attleborough to adopt zoning changes to encourage development of properties located within an **overlay district** for **residential use or mixed-use or for starter homes**. Focus of this presentation is on Smart Growth Zoning District.
- Overseen by the Massachusetts Department of Housing and Community Development (DHCD). Unlike conventional zoning, DHCD approval is needed before zoning adopted or if changed.

# What is Smart Growth Zoning?

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- Implemented via the adoption of a **zoning amendment and overlay district** (zoning map) identifying parcels included.
- Permits **residential or mixed-use development** at **eligible locations** determined by the Town as “highly suitable locations” because near transit station, town center, commercial district or area with safe pedestrian access to at least one frequent destination (school, park, business center, etc.)

# What is Smart Growth Zoning? (Cont.)

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- **Development** must take place near areas of “concentrated development” such as town centers, commercial districts, and rural village districts.
  - Also required to have **safe pedestrian access** to at least one “**destination of frequent use**” (i.e., schools, town center, transit, parks)

# What is Smart Growth Zoning?

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- Residential use must be allowed
- May also allow commercial/business uses consistent with residential uses
- Mixed-use developments require 51% gross floor area dedicated to residential use.
- Establishes minimum density requirements
  - 8 units/acre for single family
  - 12 units/acres for two- or three- family
  - 20 units/acre for multi-family

# What is Smart Growth Zoning?

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- The zoning ordinance shall require the development of housing for **diverse populations**, meaning, households with children, individuals, individuals with disabilities and the elderly.
  - The zoning ordinance **may not impose age restrictions**; however, projects within the district may be exclusively designated for the elderly, as assisted living, or for persons with disabilities.
  - Age-restricted projects shall require 25% affordable units.
  - Projects must comply with federal, state and local fair housing laws.

# What is Smart Growth Zoning?

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## Affordability Requirements

- Residential project with more than 12 units must set aside 20% as affordable units for households at 80% AMI
- Also requires at least 20% of all residential units in the SGOD to be affordable
- Affordability requirement for at least 30 years
- Cannot avoid this requirement by segmenting projects
- Town can require more affordability in terms of % of affordable units or income level provided does not “unduly restrict opportunities for development”

# Further Requirements

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- Chapter 40R zoning ordinances are supposed to be all-inclusive, meaning that they **must be a separate section of the zoning ordinance and contain all of the requirements** applicable to the district.
- The Town may create multiple sub-districts within the overlay district.
- The uses in the overlay district may be allowed by-right or subject to plan approval (similar to Site Plan Approval).

# Further Requirements (Cont.)

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- The total land area of a proposed district (excluding water bodies) **shall not exceed** 15% of the Town's total land area, unless a waiver is granted by DHCD.
  - If the Town has multiple districts, the aggregate total land area of such districts (excluding water bodies) shall not exceed 25% of the Town's total land area.

# What is the Process to Adopt 40R Zoning?

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- 1. Hold a preliminary public hearing** on whether the proposed Chapter 40R zoning should be adopted by the town. Hearing conducted by Town's chief executive officer, the Town Manager.
- 2. Submit an application** to DHCD before adopting the Smart Growth Overlay District (SGOD) or the Smart Growth Zoning Ordinance.
  - The review process can take up to 90 days, as DHCD has to check for completeness and compliance.

# What is the Process to Adopt 40R Zoning? (Cont.)

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- After review, DHCD will issue either:
  - a) Letter of Eligibility** (approval with no conditions)
  - b) Letter of Conditional Eligibility**, listing the items that must be addressed prior to final approval of the application
  - c) Letter of Denial** (the Town may reapply at any time)

# Application Requirements

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- The application **must**:
  1. Identify parcels (**map**)
  2. Identify developable (eligible) land area
  3. Identify opportunities for infill housing on vacant lots or in existing buildings
  4. Include a comprehensive housing plan or housing production plan **and**
  5. A sample ordinance from the Town for review

# Steps After Initial DHCD Determination

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- After DHCD's preliminary determination, the following **must** take place within 3 years of receipt:
  1. Adoption of the Chapter 40R overlay district and zoning ordinance following the process for adoption of any zoning ordinance under G.L. Chapter 40A, Section 5
  2. The Planning Board must hold a **public hearing** and offer a recommendation to the Town Council, which must hold **public hearing** to adopt the map and zoning ordinance under Chapter 40A.
  3. Submit the final application to DHCD (review 30-60 days)

# Steps After Initial DHCD Determination

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DHCD either:

- Issues Letter of Approval or Letter of Conditional Approval
- Town will be eligible for one-time Zoning Incentive Payments (or partial payment following Conditional Letter of Approval) based on number of units in SGOD that can be developed over number of units that could be developed under existing/underlying zoning
- Payment ranges from \$10,000 - \$600,000 depending on number of units created

# Role of the Planning Board

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- The Planning Board may be authorized to grant waivers from dimensional or other restrictions, **except the affordable unit restriction.**
- The Planning Board may adopt design standards (either in the body of the ordinance or through separate regulations) with the approval of DHCD.
  - The design standards must be **clear, fairly applied and allow for flexibility.**
  - The design standards may not “unreasonably impair” the development of projects in the district.

# Role of the Planning Board (Cont.)

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- No building moratorium or rate of development ordinance shall apply to projects within the district.
- Planning Board **must** hold public hearings on applications requiring plan approval pursuant to CH. 40A, Sec. 11.
- The Planning Board's decision must be filed w/in 120 days of receipt of application, unless extended.
- Constructive Approval if no decision after 120 days.

# Role of the Planning Board (Cont.)

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- Planning Board approves subject to conditions if:
  - The project substantially complies with SGOD **and if**
  - “Extraordinary adverse impacts” of project on nearby properties can be mitigated.
- Planning Board can deny only if:
  - Project does not meet requirements of SGOD **or**
  - Applicant has failed to submit info or fees for peer review did not allow for timely review of design or impacts of project **or**
  - It is not possible to mitigate extraordinary adverse impacts.

# Role of the Planning Board (Cont.)

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- Appeals must be filed in 20 days per Chapter 40A, Sec. 17
  - Plaintiff seeking to reverse approval of project must post bond
  - Bond amount 2X annual carrying costs plus defendant's attorney's fees.
  - Bond forfeited to defendant property owner if Plaintiff does not prevail on appeal
  - Repetitive petition process of Ch. 40A does not apply to a denied application.

# Payments to the Town for Adopting SGZ

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- **Density Bonus payment:** Town receives \$3,000 for each unit when bldg. permit issued for a housing unit created in the Smart Growth Overlay District (SGOD).
- **Zoning Incentive Payment:** One-time payment to Town after DHCD issues letter of approval or conditional approval following adoption of 40R zoning, ranges from \$10,000 to \$600,000 depending on number of units to be created.
- Chapter 40S School reimbursement available



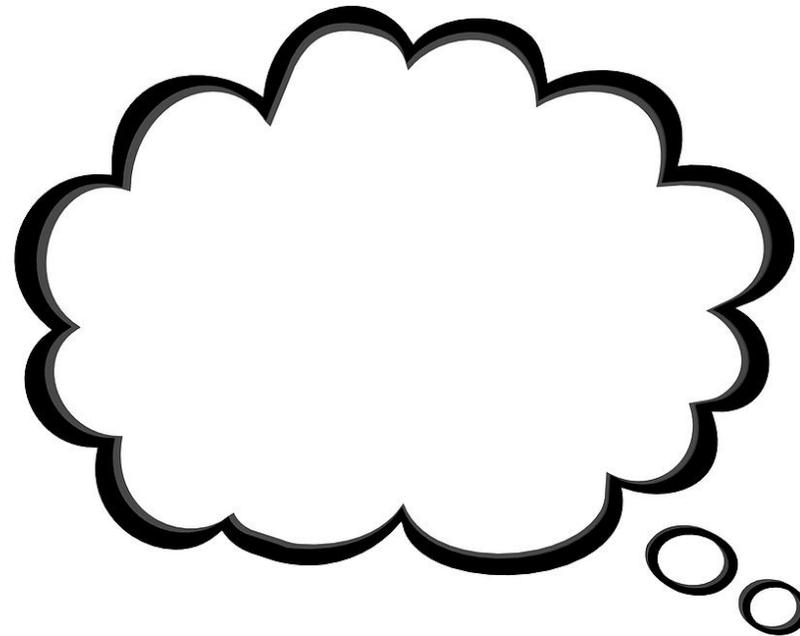
# Payments to the Town for Adopting SGZ

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- **Any Changes to SGOD require DHCD approval:**
  - If SGOD is amended to reduce number of units or repealed, Town will have to repay proportionately Zoning Incentive Payment.
  - If no construction begun w/in 3 years of an approved project, Town may have to repay.

# Questions/Comments?

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# 582 KELLEY



# AGENDA

- Team Intros
- 40R Overview
- Project Overview & Program
- Mitigation Efforts
- Timeline

# TEAM

## **Marcus Partners, Developer**

- *Caitlin Walker*, Senior Development Manager
- *Yuri Blazar*, Vice President

## **LDS Consulting Group, 40B/40R Consultant**

- *Lynne Sweet*, Principal

## **BBH Law**

- *Mark Bobrowski*, Land-Use Council

## **Cube 3 Architects**

- *Eric Samuelson*, Project Manager
- *Ahmed Aly*, Project Manager

## **Bohler, Civil Engineers**

- *Matt Mrva*, Principal
- *Keith Curran*, Senior Project Manager

## **MDM, Traffic Consultant**

- *Robert Michaud*, Principal

## **LEC, Wetlands Consultant**

- *Claire Hoogeboom*, Wetland Scientist

## **Whitestone, Geotech Engineer**

- *Ryan Roy*, Vice President
- *Hannah Zydanowicz*, Assistant Project Manager

# 40R OVERVIEW

	40R
Subsidized Housing Inventory (w/project)	6% ↑
MBTA Community Credit	YES*
Housing Choice Community & State Grants	YES
Adoption of 40R Zone (40R fee to town)	\$350,000
Building Permit Issuance (40R fee to town)	\$900,000
3BDs - 10% Requirement	NO
Annual Real Estate Taxes	\$1.18M
Annual Excise Taxes	\$100,000
One-time Building Permit Fee	\$170,000

\* This project would count towards the 50 acre and 15 units per acre minimum under 40R



# PROGRAMMING

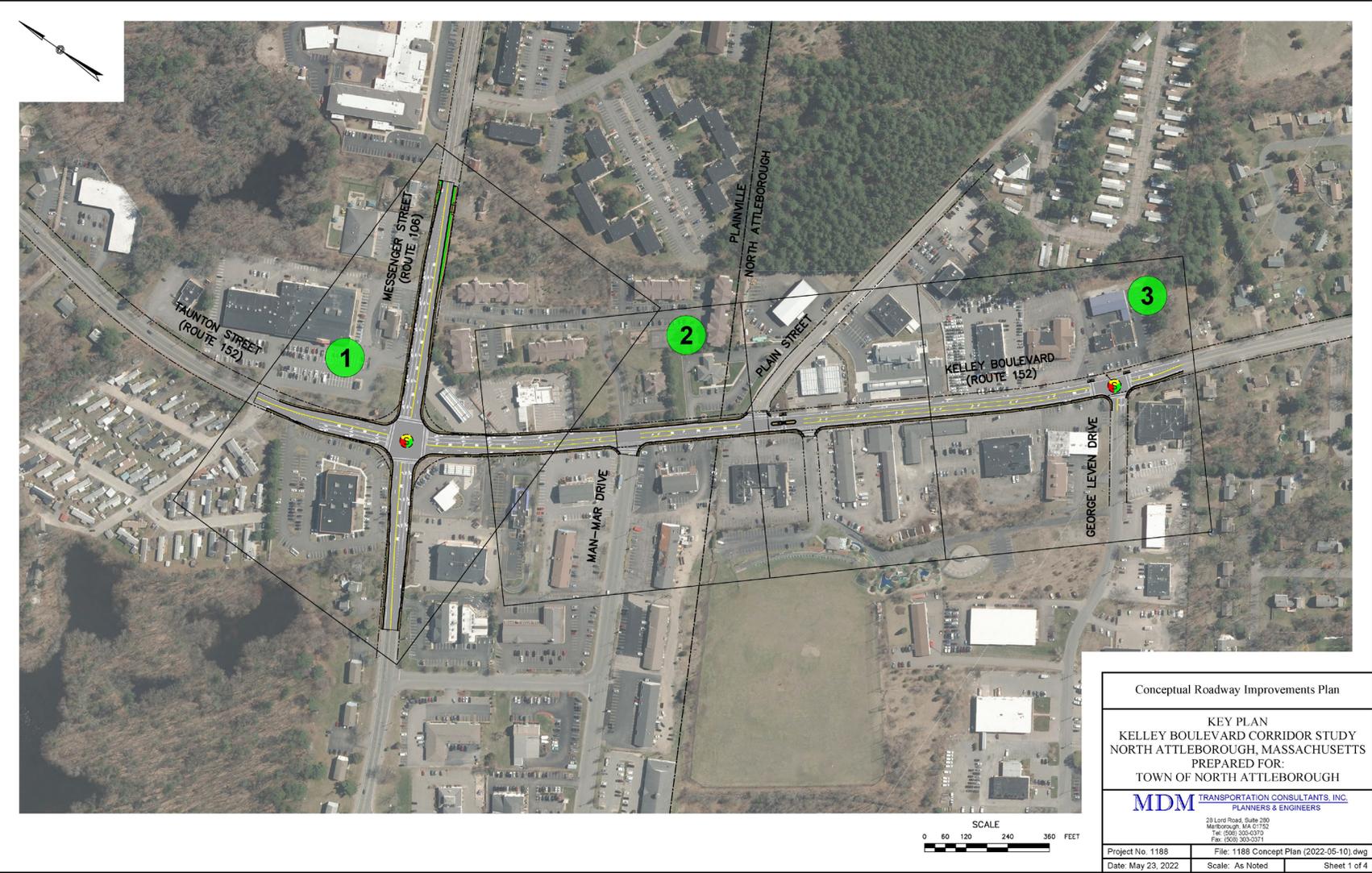
- Units: 311
  - 11% Studios, 48% 1BDs, 38% 2BDs, 3% 3BDs
- Buildings: 3 Bldgs @ 4 Stories (w/ Elevators)
- Parking: 461 (1.48/unit)
  - Includes 80 fully enclosed parking garages
- Indoor Amenities:
  - Clubhouse, Fitness Center, Co-working Spaces, Secure Package Room(s), Pet Wash, Bike Storage
- Outdoor Amenities:
  - Pool, Grills, Garden Plots, Tot Lot, Dog Park, Sidewalks





# MITIGATION EFFORTS

# ROUTE 152 IMPROVEMENTS (MASSWORKS)



Conceptual Roadway Improvements Plan	
KEY PLAN KELLEY BOULEVARD CORRIDOR STUDY NORTH ATTLEBOROUGH, MASSACHUSETTS PREPARED FOR: TOWN OF NORTH ATTLEBOROUGH	
 <b>MDM</b> TRANSPORTATION CONSULTANTS, INC. PLANNERS & ENGINEERS <small>20 Lord Road, Suite 200 Marlborough, MA 01752 Tel: (508) 303-0170 Fax: (508) 303-0171</small>	
Project No. 1188	File: 1188 Concept Plan (2022-05-10).dwg
Date: May 23, 2022	Scale: As Noted
	Sheet 1 of 4

# ROUTE 152 IMPROVEMENTS - ROUTE 106



Conceptual Roadway Improvements Plan

KELLEY BOULEVARD CORRIDOR STUDY  
NORTH ATTLEBOROUGH, MASSACHUSETTS  
PREPARED FOR:  
TOWN OF NORTH ATTLEBOROUGH

**MDM** TRANSPORTATION CONSULTANTS, INC.  
PLANNERS & ENGINEERS

28 Lord Road, Suite 202  
North Attleborough, MA 01962  
Tel: (508) 303-0370  
Fax: (508) 303-0871

Project No. 1188

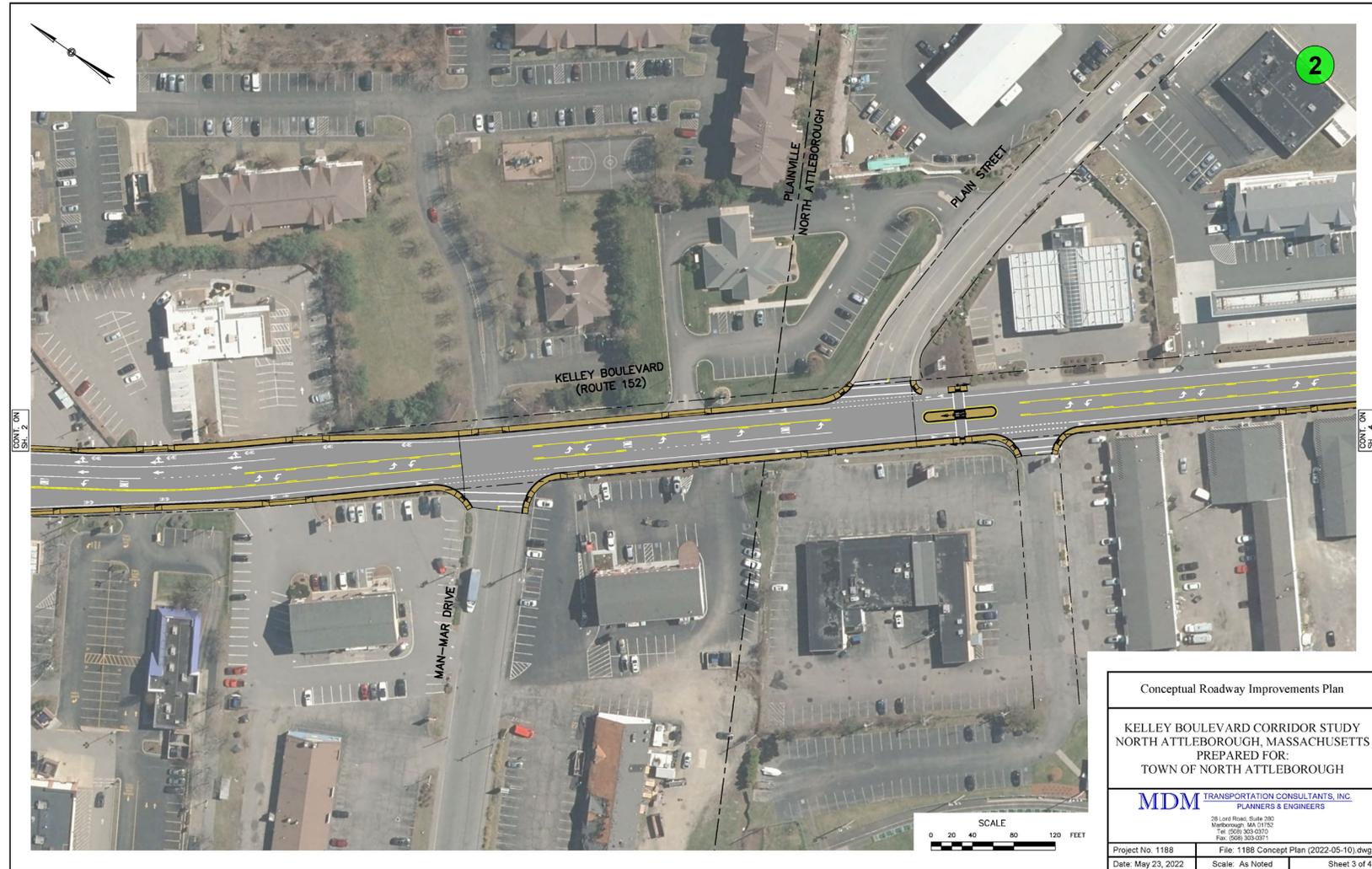
File: 1188 Concept Plan (2022-05-10).dwg

Date: May 23, 2022

Scale: As Noted

Sheet 2 of 4

# ROUTE 152 IMPROVEMENTS - KELLEY BLVD



Conceptual Roadway Improvements Plan

KELLEY BOULEVARD CORRIDOR STUDY  
NORTH ATTLEBOROUGH, MASSACHUSETTS  
PREPARED FOR:  
TOWN OF NORTH ATTLEBOROUGH

**MDM** TRANSPORTATION CONSULTANTS, INC.  
PLANNERS & ENGINEERS

28 Lord Road, Suite 202  
North Attleborough, MA 01962  
Tel: (508) 303-0370  
Fax: (508) 303-0371

Project No. 1188

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Date: May 23, 2022

Scale: As Noted

Sheet 3 of 4

# ROUTE 152 IMPROVEMENTS - KELLEY BLVD



# MARCUS PARTNERS COMMITMENT

- MassWorks Grant
  - 10% Design To-Date, Committed to 25% Design (~\$220K Total)
  - Grant Writer (\$75K)
  - Additional \$500K Towards Total Traffic Mitigation
- Public School Mitigation
  - Annual Reporting
  - \$5K Per Child In Excess of 10 Each Year

# 40R TIMELINE

June '22

- **Next Step: Submit 40R application with zoning to DHCD**

June -  
Aug. '22

- DHCD review application and zoning
- Approves 40R zone

Aug. '22 -  
Sept. '22

- Public hearing to adopt zoning amendment
- Town council vote

Oct. '22

- Planning Board review and approval of site plans

DISCUSSION/QUESTIONS