
To:	Town of Belmont, MA Zoning Board of Appeals	From:	Nels Nelson Stantec 226 Causeway Street 6th Floor Boston MA 02114-2155
File:	Belmont 1.5% Safe Harbor Memo, Exhibits 1-4	Date:	January 15, 2021

Reference: Belmont General Land Area Minimum 1.5% Safe Harbor Calculation**EXECUTIVE SUMMARY**

My name is Nels Nelson. I am a Senior Planner employed by Stantec. I have been retained by 91 Beatrice Circle, LLC for the purpose of reviewing certain documentation prepared and filed by a local community group (Build Wise Belmont) in regard to the issue of whether the Town of Belmont is eligible to claim safe harbor on the basis of General Land Area Minimum according to the DHCD's Guidelines for Calculating General Land Area Minimum. I make the following statements based on my personal knowledge, my work with Geographic Information Systems (GIS), and my review of records.

I have 11 years of professional experience in urban planning, a Master of Science in Urban Environmental Technology, and 7 years of professional experience working with GIS. I have previously done General Land Area Minimum 1.5% Safe Harbor analyses in Weston, Medford, Braintree, and North Reading and have appeared as an expert witness several times at the Housing Appeals Court.

I have reviewed the community group's calculation from January 11, 2021 setting forth its purported land area minimum calculations, allegedly pursuant to 760 CMR 56.03(8).¹ I have made adjustments (A through F as described in this memo below) to the community group's calculation. Each of these adjustments is specifically required by 760 CMR 56.03(3)(b) and the Guidelines. Following the adjustments, I revised the calculation for the numerator of total directly associated SHI Area to be 22.396 acres and the denominator of Total Land Area to be 2,071.80 acres. 22.396 acres divided by 2,071.80 acres is **1.08%**, which means that **the Town of Belmont does not achieve a General Land Area percentage of 1.5% for Safe Harbor.**

1.5% SAFE HARBOR REGULATIONS AND GUIDELINES OVERVIEW

The General Land Area Minimum (GLAM) 1.5% Safe Harbor is a method for measuring progress toward local affordable housing goals. DHCD established standard methods, data sources, and formats for determining GLAM 1.5% Safe Harbor in the "Guidelines for Calculating General Land Area Minimum" and related appendixes (referred to in this memo as the Guidelines).² The Guidelines intend to increase fairness, improve the efficiency of the application review process, and to ensure consistency with the intent of the regulations.

Simply stated, 1.5% Safe Harbor is determined by dividing Subsidized Housing Inventory (SHI) parcel area directly associated with the SHI housing (the numerator) by the municipality's total land area (the denominator). The total land area is generally the sum of private land area (excluding water) that could

¹ I am aware that the community group filed a further letter on January 13, 2021 with minor revisions to the group's January 11, 2021 calculations. I have reviewed these revisions and determined that they do not materially affect the conclusions stated below.

² <https://www.mass.gov/service-details/guidelines-for-calculating-general-land-area-minimum> (Final Rev. 1/31/2020)

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potentially have residential, commercial, or industrial use. Dividing the numerator by the denominator will calculate the General Land Area percentage, which must be at least 1.5% to achieve Safe Harbor.

ADJUSTMENTS TO THE COMMUNITY GROUP'S CALCULATION

In this section I will demonstrate how the appropriate application of 760 CMR 56.03(3)(b) and the Guidelines adjusts the community group's results from 1.75% to 1.08%. I will start with the numerator (Table 1), then the denominator (Table 2), and finally the adjusted determination of General Land Area percentage for 1.5% Safe Harbor (Table 3). In these tables, number values in black text are unadjusted from the community group's calculation, and adjusted values are indicated in underlined red text. The adjustments are labeled A through F and described in the following section.

Table 1: Numerator Adjustments

DHCD ID	Project	Address	Tenure	Owner	Parcel Acres	<u>Directly Associated Acres</u>	<u>Adjusted SHI Area</u>
281	n/a	104 CLARK ST	Rental	INHABITANTS OF BELMONT	0.275		0.275
8460	B Street	17 B ST, UNIT 17	Own	BELLO TE DHIMITIER	0.212		0.212
8461	B Street	28 B ST, UNIT 28	Own	STANTON WILLIAM J	0.171		0.171
8462	B Street	26 B ST, UNIT 26	Own	RENDON TE CARLOS A	0.000		0.000
9945	Acorn Park (Royal Belmont)	375 ACORN PARK DR	Rental	AZURE HGI BELMONT LP ETAL	13.233	<u>6.563 (A)</u>	<u>6.563 (A)</u>
9410	Waverly Woods	2-12 OLMSTED DR	Rental	INHABITANTS OF BELMONT	1.702		1.702
9760	Oakley Neighborhood	6 OAKLEY RD, UNIT 1-3	Own	JANG, KWOK, CHEN	0.356		0.356
280	Waverly Oaks	625-655 TRAPELO RD	Rental	BELMONT HOUSING AUTHORITY	2.918		2.918
279	Sherman Gardens	131-135 SYCAMORE ST	Rental	BELMONT HOUSING AUTHORITY	1.851		1.851
278	Belmont Village	Multiple	Rental	BELMONT HOUSING AUTHORITY	6.906		6.906
n/a	The Bradford	Multiple	Rental	BELMONT RESIDENTIAL LLC	3.090		<u>0.0 (B)</u>
SHI site area subtotal					30.713		<u>20.954</u>

Numerator Adjustment A, Directly Associated Area: The community group's calculation incorrectly included the entire parcel area for all SHI sites without applying discounts required by 760 CMR 56.03(3)(b) and the Guidelines. 760 CMR 56.03(3)(b) states that only the "proportion of the site area...that is occupied by SHI Eligible Housing units (including impervious and landscaped areas *directly associated with such units*" (emphasis added) shall be counted toward the numerator. Furthermore, the Guidelines make explicit what does and does not constitute Directly Associated Areas. Non-Actively Maintained wooded areas and wetlands, as found on the Acorn Park site, are specifically defined as ineligible. The term Actively Maintained

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is defined as “Wooded or vegetated areas will be considered Actively Maintained if they require and receive care and maintenance on a regular basis, including tasks such as planting, seeding, pruning, trimming, watering, mowing, weeding, and irrigation.” In my review of imagery from 2017, 2019, and 2020, I included any areas that were Actively Maintained, and excluded areas where no maintenance is visible, including the habitat restoration area to the north of the northern parking area. Regarding stormwater management areas, including “both conventional and low-impact BMPs (Best Management Practices)” as per the Guidelines, Stantec’s licensed Civil Engineering P.E. Antonio S. Moura reviewed the site’s grading and drainage plan and identified all surface and subsurface stormwater management areas. His professional determination of stormwater facilities included the site’s underground basins, infiltration chambers, and the vegetated wetland to the south of the southernmost parking lot along Acorn Park Drive and the Cambridge-Belmont boundary and excluded the general woodlands surrounding the site. My calculation accounted for the stormwater management areas identified. Exhibit 1 is a map of the Directly Associated Area calculation for Acorn Park (aka Royal Belmont). After the non-Directly Associated Area has been removed from the SHI Area for the purpose of the numerator calculation, Acorn Park’s area is reduced from 13.233 acres to 6.563 acres.

Numerator Adjustment B, SHI Inventory: 760 CMR 56.03(3)(b) states that “Only sites of SHI Eligible Housing Units inventoried by the Department...as of the date of the Applicant’s initial submission to the Board, shall be included toward the 1 ½% minimum”. Here, the date of filing was November 24, 2020, so only properties contained on the SHI as of that date are eligible to be counted toward the calculation of the GLAM numerator. The inventory from that date does not list The Bradford, and still does not as of January 11, 2021. As such, this area (3.09 acres) is not applicable for including in the numerator, and it has been adjusted to zero. Exhibit 2 is the DHCD SHI list from January 11, 2021 that does not include The Bradford.³

Numerator Result: After these two adjustments, the adjusted SHI site subtotal of the numerator is 20.954 acres, a change of 9.759 acres from the community group’s numerator of 30.713. At this point, I do not challenge the community group’s group home area estimate of 1.442 acres.

³ Even if The Bradford could be included in the numerator despite not being inventoried by the DHCD at the time of the Applicant’s initial submission, 760 CMR 56.03(3)(b) makes clear that only the “proportion of the site area...that is occupied by SHI Eligible Housing units” would be eligible to be counted. In addition, Step 3.3 of the Guidelines requires the eligible acreage of SHI sites to be pro-rated based on the percentage of SHI-eligible units located at the site. In the case of The Bradford, only 12 of 112 units are SHI Eligible Housing units. DHCD policy considers all of the units within a rental development to be SHI Eligible Housing units if and only if at least 25% of the units are affordable. In the case of The Bradford only 10.7% of the units are affordable, which is less than 25%, so only the proportion of the site occupied by those 12 units would be eligible to be counted toward the land area minimum. Therefore, even if it could be included, at most only 10.7% of the Bradford site area, or 0.33 acres, would be counted toward the numerator.

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Table 2: Denominator Adjustments

	Community group's calculation	<u>Adjusted calculation</u>
MassGIS Town Survey Boundary (acres)	3,017.35	3,017.35
Public Land (acres)	504.32	<u>464.57 (C)</u>
Public ROW (acres)	465.01	465.01
Rail ROW (acres)	13.03	13.03
Water - excludable (acres)	4.55	4.55
Private Land - Conservation Restrictions (acres)	53.56	<u>0.0 (D)</u>
Private Land - Mass Audubon (acres)	86.73	<u>0.0 (D)</u>
Private Land - McLean (acres)	57.75	<u>0.0 (E)</u>
Town Boundary minus exclusions	1,832.41	<u>2,070.19</u>
Total Land Area, GIS-calculated (denominator)	n/a	<u>2,071.80 (F)</u>
Safe Harbor 1.5% numerator threshold	27.486	<u>31.077</u>

Denominator Adjustment C, Public Land: I followed the Guideline's methodology for calculating the public land area and validated the resulting list of parcel ownership. The overall difference between the community group's calculation and the adjusted calculation is 39.748 acres. Because the community group's calculation does not include a parcel-by-parcel tabulation or an explanation of their methodologies and data sources, it is difficult to identify the exact discrepancies, but my experience leads me to believe that the community group's incorrect calculation might be explained in part by their mistaken inclusion of parcels that have a public-related land use code but are actually privately owned.⁴

Denominator Adjustment D, Conservation Restrictions: The community group's calculation inappropriately excludes 140.28 acres of private land subject to conservation restrictions. The Guidelines' Appendix A: Technical Instructions is clear that conservation restrictions on private land are not sufficient for exclusion from the Total Land Area (page 8): "Non-zoning restrictions such as conservation restrictions, easements, Chapter 61 land, or deed restrictions do not qualify as an eligible rationale for exclusion."

Denominator Adjustment E, Zoning Uses: The community group's calculation inappropriately excludes 57.75 acres in the McLean District on the grounds that zoning allegedly prohibits residential, commercial, or industrial uses. All subdistricts in Section 6A McLean District allow one or more of those uses, including the Open Space Subdistrict, which allows commercial uses in the Pleasant Street Lodge and Mill Street Lodge facilities. Allowable uses that trigger inclusion to the Total Land Area per McLean Subdistrict are as follows.

1. Residential Subdistricts: Residential
2. Senior Living Subdistrict: Residential
3. Research and Development Subdistrict: Office, lab

⁴ Due to its late filing, I have only had an opportunity to briefly review the community group's January 13 supplemental filing, but I was able to confirm that the community group's calculation of public land mistakenly includes 1100R Concord Ave, a 31.856 acre parcel owned by Metropolitan St Hospital, which has a public-related land use code but registered private ownership, which may have contributed to most of the difference.

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4. McLean Institutional Subdistrict: Office, lab, services
5. Open Space Subdistrict: Commercial uses in Pleasant Street Lodge and Mill Street Lodge facilities
6. Cemetery Subdistrict: Office, maintenance building

The community group's claim that the McLean Research and Development Subdistrict and McLean Institutional Subdistrict completely prohibit residential, commercial, or industrial uses is unsupportable. The Research and Development subdistrict expressly permits "offices for and laboratories for research and development". Similarly, the Institutional Subdistrict expressly permits "clinics, educational facilities, outpatient services, research and development laboratories and other types of hospital uses and residential programs and professional offices for doctors and other hospital professionals or paraprofessionals." The description of allowed uses in the Town of Belmont Zoning By-Law Section 6A. McLean District is included as Exhibit 3.

Denominator Adjustment F, GIS Calculation: To prevent double counting exclusion types that overlap, such as public land and water bodies, the Guidelines require that all of the exclusions be deleted from the Town boundary area to arrive at a geometric calculation of the eligible Total Land Area. When I executed this calculation, the denominator increased marginally from 2,070.19 to 2,071.80 acres, which reflects a slight overlap in excludable areas.

Denominator Result: After these four adjustments, the adjusted Total Land Area of the denominator is 2,071.80 acres, a change of 239.39 acres from the community group's numerator of 1,832.41 acres. Exhibit 4 is a map of the GIS denominator calculation.

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ADJUSTED DETERMINATION OF GENERAL LAND AREA MINIMUM

Table 3: Adjusted Determination of General Land Area Minimum

	Community group's calculation	<u>Adjusted calculation</u>
SHI site area subtotal (acres)	30.713	<u>20.954</u>
Group home, Community Group's Estimate (acres)	1.442	1.442
Numerator total (acres)	32.155	<u>22.396</u>
General Land Area percentage with community group's denominator for total land area (1,832.4 acres)	1.75%	<u>1.22%</u>
<u>General Land Area percentage with adjusted denominator for total Land Area (2,071.8 acres)</u>		<u>1.08%</u>

The General Land Area percentage of **1.08%** is calculated based on the adjusted numerator and denominator. If the adjusted numerator is applied with the unadjusted community group's denominator, the General Land Area percentage would be 1.22%, which is still below the 1.5% threshold.

CONCLUSION

In sum, based on my review of the applicable Guidelines and the documents filed by the community group, I conclude that the affordable land area in the Town of Belmont that may be counted towards general land area minimum is significantly below 1.5% and that the Town is therefore ineligible to claim this safe harbor.

Due to time constraints associated with the last-minute filing of the community group's GLAM calculation, I have been unable to do a full and complete analysis of every aspect of that calculation within the deadline for the project proponent's response. Upon further review of the community group's filing, it may be the case that additional adjustments to the community group's calculation are required.

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Attachment: Exhibits 1-4