

# **Devens Reuse Committee**

## **Report to the Town of Harvard**

### **On**

## **Devens Five-Year Review**

### **Background**

In 1917, Camp Devens was established as a military base in Massachusetts. The Army purchased tracts of land over a period of years from the area's landowners and farmers. As often pointed out by local historians<sup>1</sup> the acquisition of the land was an unpopular process. The Army purchased the land by eminent domain, arriving at the amount to be paid by averaging out the value of all lands. The result of this arrangement meant those holding "sprout" land (deforested land often also called "stump" land) were paid more than the going rate for their properties and those owning farmland were paid less. Descendents of these earlier farmers still reside in the area, among them: Farwell, Farnsworth, Longeley and Willard.

At first, the post was entirely temporary barracks of wood or tents. It was not until the mid-thirties that the permanent brick buildings were constructed coinciding with the establishment of Fort Devens. This new "permanent" phase did not however change the somewhat flexible boundaries over the years. It was the habit of the Army to divest some of its land during periods of relative peace and to increase its holdings at other times. In Harvard for example the Army sought permission to open and close a connecting road according to its necessity. The local selectmen, who were responsible for the roads, complied. The area known as Devens Crest in Ayer was military housing until the Army decided to sell the properties to private owners.

All during the years that the Federal Government owned town lands, it recognized the original town boundaries and never removed the boundary markers despite many construction projects. This recognition is due to the fact that in most cases divested lands are returned to the local jurisdiction. This is not the same as ownership. Nor does it preclude the federal agency from selling land it is divesting. It has been the policy of the Federal Government to use a hierarchical procedure when divesting land parcels. First, other federal agencies may bid for the land; second, states may request lands; and then local municipalities may bid for land. Finally, the land is offered on the open market. However, in most instances, the land returns to the original local jurisdiction.

When the Army began to close military bases during the early 1990s Base Realignment and Closure Acts (BRACs) governed the procedure by which lands were returned to local jurisdiction. Before the BRACs, the military sold off its holdings while local jurisdiction and local zoning governed new development. Often this led to massive economic losses. Stripped of all federal in-kind payments and support (for schools, for example) local communities were rocked by unemployment and lowered tax bases

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<sup>1</sup> Elvira Scorgie, Harvard and Ralph Richardson, Ayer.

until resold land was developed – a process that took years and from which many communities have never recovered.

The BRACs were designed to alleviate this problem by supplying redevelopment funds to local communities that created Redevelopment Authorities to oversee and plan for the orderly disposition of lands.

Except Devens.

Upon the announcement of the Fort Devens closing, then Governor Weld declared by executive order (#215) that the Redevelopment Authority for Devens would be a state agency, the Massachusetts Government Land Bank (the Land Bank)<sup>2</sup>. From that moment on, all negotiations for Devens lands had to be made through the Land Bank.

The three towns were asked to ratify this arrangement in December of 1992. Also established by this vote is the Devens Enterprise Commission, which holds all local permitting authority: health, conservation, planning board, zoning board of appeals and more. Fearful of the possibility of bankruptcy the towns concurred having been assured they would be permitted to participate in the redevelopment decisions.<sup>3</sup>

As a state agency, and therefore second in the hierarchical order mentioned above, the Land Bank bid for and acquired all the land not previously spoken for by other federal agencies. Thus, Massachusetts Government Land Bank became the landowner as well as the Redevelopment Authority. As part of the process prior to the vote, all three towns had placed bids for municipal land; only Shirley's request appears to have been honored to date.

### **History of the Devens Reuse Committee**

The Devens Reuse Committee (DRC) was established by the March 1998 Town Meeting, acting on a Citizens' Petition. The Warrant Article cited concern that the Reuse Plan was not being followed by the State as the reason to establish a committee—appointed by the Town Moderator—to review the Reuse Plan and its implementation, with the obligation to report periodically to the Selectmen and Annual Town meeting.

In its initial report to the Town in March 1999, the Committee noted the MassDevelopment (MassDev) and Devens Enterprise Commission (DEC) failed to incorporate necessary safeguards to protect the quality of life of our town, in conformance with the sustainable and balanced reuse called for by the Reuse legislation (Chapt. 498) and Plan. This report detailed the Committee's belief that MassDev. proposals to site potentially environmentally threatening projects—the sludge processing plant and North American Van Lines warehouse—adjacent to a Harvard residential area reinforced the need for a change in the relationship between the Town and Devens. The committee emphasized the need for a stronger Town role

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<sup>2</sup> Massachusetts Government Land Bank was merged with the Massachusetts Government Finance Agency (MDFA). The new agency is referred to as MassDevelopment.

<sup>3</sup> It is to be noted here, that almost immediately after the announcement of the closing, the Town of Lancaster and the U. S. Fish and Wildlife entered in to an agreement that the portion of Devens in Lancaster would become part of an expansion of the Oxbow National Wildlife Refuge. Also a one hundred-acre parcel has been set aside for that town's future needs when the Army divests itself of the South Post.

in decisions affecting the Town. The efforts of this committee and strong, well-organized community opposition resulted in the withdrawal of the sludge plant proposal and moving the North American Van Lines site. The Town has urged a buffer zone be established between Devens and neighboring Harvard properties.

The recently completed Tri-Town Five-Year Review of the Reuse Plan incorporates many of the issues raised by the Harvard DRC in its initial report to the Town. It details areas of progress and accomplishment. Unfortunately many of the problems identified in 1999 continue, suggesting that MassDev and the DEC have remained insensitive to many of the Town's interests and needs. Multiple requests for critical financial information including one filed under the Freedom of Information Act remain unanswered. The Secretary of State's Office, without reviewing the actual report, accepted the opinion from MassDev's Counsel that the information was privileged.

MassDev and the DEC continue to develop and permit projects without seeking timely town input.<sup>4</sup> The following list are some examples of such projects:

- The Anheuser-Busch warehouse. Buildings in the Rail-Industrial Zone are required to show a need for a rail facility. Although the proponent exhibited no such need, the proposal was accepted based upon the company lawyer's statement, requested by the DEC, that declared a vague possibility of a future need. Furthermore, only one of the Devens Enterprise Commissioners rejected this proposal based upon the legal advice that it offers no "added value," another requirement of the Reuse Plan.
- Housing has been proposed for the central business-services district although the area is not zoned for housing.
- MassDev has been suggesting that it may use the Chapter 40B process as a means of putting housing where it is not allowed, and possibly to exceed the 282-unit limit imposed by the legislation.
- Attempt to amend PL 498 to expand the number of liquor licenses in the Harvard part of Devens without consultation with the Town
- DEC proposal to make changes in the regulations amount to actual bylaw changes which cannot be accomplished without the approval of the towns.
- Vicksburg Square Request For Qualifications<sup>5</sup> has had no Town review prior to publication. This is an example of a missed opportunity. MassDev could have enlisted input from the towns prior to publication of the request to garner support for its efforts rather than confrontation.

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<sup>4</sup> Public Law requires the Commission to hold hearings for public input prior to final deliberations. Yet, Commissioners have reprimanded town officials for speaking on behalf of their communities, ignored written comments and otherwise flouted the purpose of public hearings.

<sup>5</sup> A Request for Qualifications differs from a Request for Proposals in that the former is a way to select a developer before a completed plan evolves through negotiation.

The DRC hopes that the Tri-Town Five-Year Review recommendations for increased participation by the Towns in planning and decision-making will be implemented.

### **The Devens Focus Group**

The Devens Focus Group is a new committee created by the Harvard Board of Selectmen to bring the different parties/perspectives of Harvard residents together to develop information, methodologies, analysis, and share perspectives on the issues of concern to Harvard with the development of Devens. Though the work of the Devens Reuse Committee and the Devens Focus Group is related, the Focus Group has a broader and different mission than the Reuse Committee.

### **Zoning**

An important recent development has been the DEC's effort to rewrite its regulations. The Bylaws were enacted by Town Meetings in 1994 and can only be changed by town meeting votes. The Rules and Regulations, however, were developed by the DEC in 1994/1995, and were modified in 1999.

A review of the original Zoning Bylaws and Regulations by DRC found them to be very thorough and detailed. They reflect the highly promoted (on MassDev website) one-stop, fast track permit policy. Unfortunately this policy is at the expense of the Towns' opportunity to provide input or influence development decisions.

There are several major areas recommended for change that would greatly improve this situation.

- Since the DEC is the sole permitting board, the bylaws should be changed to insure the board makeup includes expertise in Health, Conservation, Planning, Zoning, Finance, and Environment. (See page 7, Devens Enterprise Commission.)
- Due to the very narrow (traditional) definition of abutter, individuals adjacent to the Devens property are essentially eliminated. The definition should be changed such that all property owners adjacent to Devens are considered abutters and therefore receive all notifications to which an abutter is entitled and are given standing at all hearings.
- The 30-day public comment period is far too short to allow the Towns, which have limited resources, a reasonable opportunity to respond. The public comment period must be increased to at least 60 days.

None of these issues are addressed in the proposed changes to the Zoning Bylaws and Regulations.

The DEC decided to rewrite its Regulations in response to feedback from engineers, utilities, and developers, as well as from its own experience in seeing the results of development that satisfied the bylaws and regulations, but were less than desirable and did not fulfill the intent of the regulations. The DEC also considers the lack of regulations for residential development to be a critical missing component of the regulations.

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Members of the DRC and Planning Board have analyzed the proposed changes to the regulations. Some changes to the regulations have the intent of improving industrial development standards by more stringently regulating such elements as signage, dimensional requirements, landscaping, and design standards.<sup>6</sup> In principle, we find these proposed changes to be a refinement of the regulations and should result in buildings and development that better serve their neighbors and the region.

Many of the proposed regulation changes, however, actually are amendments to Bylaws. The Town is challenging the legality of the changes to the regulations based on this discrepancy. These bylaws cannot be changed without Town Meeting vote, which the DEC would be bypassing by including bylaw changes in the regulations.

The Board of Selectmen sent a strongly worded letter to the Director of the DEC stating that the proposed new regulations "exceed the authority of the Commission and violate [s] the terms of the Devens Reuse Plan and Zoning Bylaws". They go on to state the proposed regulations on residential development deviate from the Reuse Plan and Bylaws. "The proposed regulations on residential development venture into areas that are established by the zoning bylaw or should be incorporated in the zoning bylaw."

Furthermore, the DRC believes that amended regulations should include changes that will benefit the Town, incorporating new language relating to buffers, landscape standards, preservation of open space and compliance with open space and recreation plans, and minimizing traffic impacts on the Town.

#### **Devens Reuse Committee Recommendations:**

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<sup>6</sup> It is worth noting that the Industrial Development Area is almost completely developed. These regulations would cover future redevelopment.

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## **Housing**

Phase I of the housing development at Devens is nearing completion, with a significant percentage of the housing units sold to new residents. Phase II of the housing development has not yet been designed, but the DEC is promoting a “new urbanist” style of development that encourages interaction between residents and vitality of the neighborhoods. This is achieved through a greater density than is possible through the current regulations. This proposed change in our opinion also represents a change in the bylaw requiring town meeting vote. The Planning Board generally supports the spirit of the changes that are being promoted. Phase II housing is expected to contain a significant percentage of units designated as affordable, possibly exceeding 25%. This is considered to be a benefit to the Town and region by providing more affordable options for our residents, and better insulates the Town from the risks of an unfriendly “Comprehensive Permit” or Chapter 40B developments.

## **Housing in the Downtown Devens zone?**

Another troubling development has been the suggestion of additional housing above the 282 cap stated in the legislation. An RFQ soliciting proposals for the Business and Community Services Zone did not result in any bids that included housing. Residential uses are not permitted in this zone under the current bylaw, and to include housing would have required a change in the bylaw.

The Town would also object to the addition of language in the DEC regulations to cover Chapter 40B applications unless the towns voted to change the Bylaws.

The proposed downtown business zone will have a large impact on the character of Devens and requires a high level of scrutiny. Having a residential component may have some benefits - creating a vital district while supporting a greater diversity of business types. Whether housing in this zone should contribute toward the 282 cap currently limited by the legislation needs examination. Costs of providing services to an increased population must be carefully calculated prior to agreeing to exceed the 282-unit cap.

## **Disposition Plan**

Returning lands to the jurisdictions conforming to exact original municipal boundaries is only one of several options. Because the variables are under study, all of the entities involved in the Devens Reviews – the Joint Boards of Selectmen, the DEC, and MassDev are recommending that the planning process resume to allow for several additional disposition possibilities to be considered:

2. Devens land reverts to one or more of the three original municipalities, but not necessarily to exact pre-Camp Devens (or pre-Fort Devens) municipal borders.

3. A portion of Devens becomes its own municipality while peripheral areas revert to the three original municipalities.
4. A portion of Devens becomes its own municipality while peripheral areas revert to one or more of the three municipalities, but not necessarily the municipality in which it now lies.
5. Devens lands remain a community governed by an agency of the Commonwealth and the DEC.
6. The Devens Enterprise Zone becomes its own separate municipality within those current boundaries.
7. The Commonwealth through various state agencies assumes jurisdiction over portions of Devens lands – example, the Mirror Lakes – no boundaries are changed, but the jurisdiction of those lands essentially remains with the state. (Walden Pond)

Any combination of the above examples is possible. The planning process ended more than 5 years ago and all participants are recommending that the process resume.

Transfer of development rights refers to a method for protecting land by transferring the "rights to develop" from one area and giving them to another. This places conservation easements on property in sensitive areas (sending zones) while allowing for an increase in development density, "bonuses" or other zoning relief in other areas (receiving zones). The costs of purchasing the easements are recovered from the developers who receive the building bonus.

As part of that planning process, the Harvard Planning Board is in agreement with the recommendations outlined in the Tri-Town five-year review that a Transfer of Development Rights methodology needs to be discussed. Sending and receiving zones as well as mechanisms for creating a broker needs to be identified.

The Harvard Planning Board also agrees that ongoing monitoring of traffic impacts should be undertaken during the evolution of Devens.

### **Financial Issues**

The 5-Year Review does not provide any detailed recommendations for financial analysis. It merely states that the following be accomplished:

- Determine cost and benefits to Towns and Commonwealth of different jurisdiction scenarios
- Evaluate MassDevelopment's cost and income structure
- Evaluate MassDevelopment's agreements with commercial land owners and their effect on potential town or joint entities
- Establish long term capital plan(s) for land, infrastructure, facilities, and operational needs

To date the most ambitious attempt to assess the financial impact of Devens jurisdiction returning to Harvard is the MMA report [commissioned by Harvard's Devens Financial/Legal Committee](#). George McKenna of that committee's [\(Harvard Devens Finance Committee\)](#) contends the report still is representative of the scenarios (best case, worst case) examined. And while it is useful in addressing the

factors resulting in the worst case, the possibility of quantifying other scenarios remains to be accomplished.

Other scenarios would consider changes to:

- Number, type, and timing of housing units
- On-going liabilities and debts
- Future infrastructure and other capital improvements
- Increased build-out
- Joint jurisdiction or inter-town contracting of services

To obtain a reasonable estimated financial picture, a suggested approach would be to attempt to identify find another town in Massachusetts that would resemble the new Harvard, and request their budget for analysis.

Since we will never have complete information, the best we can do is attempt to identify the potential scenarios, be clear about any assumptions, and influence the remaining build-out toward the most favorable outcome.

But still lacking would be any knowledge of the amount ~~of~~ [of redevelopment impact funds](#) received by MassDevelopment from the federal government ~~for redevelopment impact funds~~ and other sources relating to Devens reuse. While not germane to discussion of future needs, it is pertinent when state officials make claims about “investments” not made by the towns. We must assess how much the state invested in the redevelopment that was actually passed through federal legislation as straight grant or as reimbursement and how much investment was unreimbursable state expenditure.

### **Devens Enterprise Commission**

Since its first report to the Town, the Harvard Reuse Committee has maintained that qualifications for Commission appointments should be specified more fully. The language of the legislation (Chapter 498) suggests qualifications for commissioners: “proven expertise in one or more of the following areas: industrial development, housing, finance, business, real estate, environment, planning, transportation or municipal government.” The composition of the commission does not require a balance of expertise. The Governor appoints the commissioners. The towns may each recommend two nominees to the Governor for appointment. So far the Governor has rejected none of the Towns’ nominees. The three Towns by mutual consent attempted to balance the backgrounds of their nominees while making their initial recommendations to the Governor. Since that time, no attempt has been made to maintain that balance. Nor has there been a consensus on which areas of expertise might be more beneficial. Thus, the commission might become all real estate interests or all environmental interests and neither scenario would benefit the towns.

### **Additional Planning Issues**



The fast-track permitting process provides little opportunity for towns to provide input and that results in considerable tension between MassDev (or the DEC) and the towns. All the town participants in the Five-Year Review have stated firmly that they wish to see a more open process, with much earlier opportunity for community input. A more cooperative relationship with MassDevelopment and the DEC is the goal.

At the time of the announcement that Fort Devens was closing, the towns initiated a planning charrette sponsored by the Boston Society of Architects (BSA) and the Boston Society of Landscape Architects (BSLA).<sup>7</sup> Together, the two Societies created a team of professional volunteers along with the BSA staff to fund and support a multidisciplinary team to study sustainable development of Devens. The goal was to help the communities and the governing agencies – local, state and federal – to arrive at a sustainable mix of economic, cultural and social factors for near-term and long-term future. They sought innovative short-term strategies to achieve the long-term goals.

More than 150 professional planners, landscape architects and other land planning and real estate professionals met over an intense three days to help the towns develop a vision and plan for the future of Devens. This process was unique in the redevelopment of military bases. Subsequently, after the passage of Chapter 498, the newly educated townspeople requested that the planning process continue. The premise behind the passage of Chapter 498 was that the towns lacked the finances and the expertise to conduct the major enterprise of the redevelopment of Devens. It was assumed, and so stated in the legislation and Reuse Plan, that the towns would have full involvement throughout the tenure of the process (until 2033 or sooner). It was acknowledged that only the State could issue bonds for the massive regional infrastructure and other major financial needs necessitated by the loss of the base.

From the beginning, the Towns' position has been based upon the recognition that the residents of the local communities have the most to win or lose from the results of the Reuse Process. The towns voted to accept state oversight of the reuse of Devens based upon their belief that the process would be cooperative. Their goal as stated in their Reuse Plan was sustainable redevelopment.

Once the Governor, by executive order (#215) prevented the towns from creating their own redevelopment authority, the only financial assistance available to the towns for planning purposes had to come from the state. Federal impact money could only be distributed through a Redevelopment Authority and the Governor's executive order had declared MassDev as the Redevelopment Authority. Thus it was never possible for the towns to "make a financial investment" in Devens as critics now contend.

By openly [eliding-ignoring](#) or attempting to override the towns' interest in their right to have local control over their own destiny, adversarial relationships develop.

Two examples of conflicting viewpoints follow.

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<sup>7</sup> BSA is a chapter of the American Institute Architects and BSLA is a chapter of the American Society of Landscape Architects.

1. The following excerpt from a letter written to the DEC by the Harvard Board of Selectmen expresses one viewpoint.

“On page six of the Devens Reuse Plan, the Heading “Strong Local Control of Development” reads as follows: “The reuse planning process has provided the communities with the ability to determine the future of Devens, while leaving the cost of implementation to the state. The open, participatory planning process of monthly community workshops, task forces, and public outreach, has allowed tremendous public involvement in the preparation of the Plan. Based on detailed site information mapped for a variety of factors (habitat, wetlands, slopes, etc.), the public has not only selected the general land uses, but has also directly participated in more detailed master plan decisions about open space, recreation, roadways, infrastructure, environmental protection and quality of development. This level of input and control is unprecedented in local zoning controls, and the Reuse Plan has benefited from it. Once the Reuse Plan and related Bylaws are approved at the Super Town Meeting, substantial changes to the Reuse Plan and Bylaws cannot be made without further town meeting approval.”....

2. A front page (Section A page 1) Boston Globe article about affordable housing, written by Anthony Flint, and published December 23, 2002 expresses another.

“ ‘The process for disposing of state assets is badly broken, ‘ said Michael Hogan, president of MassDevelopment, the state’s economic development authority, which took control of the Devens project, ‘ Special legislation is drafted that dictates what can and can’t be done. You end up with a master plan that the local community drives. The decisions aren’t being made on the basis of good land-use policy – they’re being made based upon ‘What does it do to the local budget?’”<sup>8</sup>

### **Community Development Issues**

Issues concerning the so-called “Resident and Business Services area” and housing have been discussed above. What remains to be analyzed under community development issues are the concerns about education. It is important that the School Committee examines the issue of the education of Devens children. The financial impacts and the community impacts will require much discussion.

Harvard’s Devens Environment Committee took on the task of monitoring the cleanup as well as demanding the pesticide removal be negotiated before the housing areas could be developed.

Still to be addressed are open space and recreation issues. Why has the planned for conservation restriction not been completed for the Mirror Lakes and surrounding area? The Reuse Plan calls for “no net loss” of recreation and open space. There has already been loss of open space and possible recreational

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<sup>8</sup> There were 2,100 units of housing on the former military base. The towns’ considerable concern about absorbing that number of into the communities without assistance was well founded. The cost of education was the basis for the cap on the number of housing units to be included in the Reuse Plan and mentioned in the law. Initially, MassDevelopment requested a cap on the number of children. When the State Attorney General declared (At a League of Women Voters Meeting in Harvard) that he would rule capping the number of children as unconstitutional, MassDevelopment opted to limit the number of houses. MassDevelopment now claims the towns asked for that limit. The Four-Town Housing

land. This is as important to a sense of community as any other amenity. Attention must be paid to recovering lost lands or compensating for lost land and facilities due to improper monitoring of developing parcels.

A new dimension to the discussion about the future of Devens has been added as the housing continues to be rehabilitated and purchased ~~by resident homeowners~~. The question remains whether the Devens community can exist as another one of Harvard's distinctly different neighborhoods or as a new addition to Shirley or Ayer or even as an entirely separate entity or "town."

History provides us with many examples. As one of our Mother towns, Lancaster didn't object in the early years when its outlying sections petitioned to become new towns because of the financial burden of maintaining so many bridges and other services. Then as time went on, Lancaster began to object to loss of land and revenue. The last spin off from Lancaster was the Clintonville section that could not garner enough votes among its Lancastrian neighbors to create a new town until a bargain was struck. The wealthy industrialists of the proposed new town of Clinton agreed to compensate the Mother town for loss of revenue for a number of years.

#### **Reuse Committee members**

Bill Ashe

Bruce Blain

Donald Boyce

Marge Darby

Mort Miller ~~D. Ritchie (?)~~

Marc Sevigny

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Alliance formed to address the housing issue actually suggested 600+ units of housing over a 30-year period to be developed in stages. This proposal was rejected by MassDevelopment