For any individual charting a course to live in Gloucester, or for that matter, anywhere in Massachusetts itself, the upcoming vote to accept or reject the city council/planning board answer to state mandated zoning….is likely the most important vote you will ever cast. Usurping over a century of local control and decades of home rule over how the people of a municipality determine and decide their living environment and protect their rights via constitutional amendments LX (1918) and LXXXIX (1966) the state has forced 177 communities served by public transportation to adopt a poor one-size-fits-all solution to the states housing woes. Instead of imaginative proposals to develop less dense areas west of Boston, taking advantage of technology, economical transportation, and less expensive real estate, the state has decided to further congest the most densely situated areas of the most densely populated regions of the state. It does so, not with any carrots, but a stick of unimaginable weight….and an apparent willingness and ability to telescope and stretch the stick with penalties far beyond original legislative intent. It has done so with scant consideration to the physical factors involved and even less to the constitutional protections which should have prevented such a law from ever even getting out of state legislature committee, let alone becoming a public law.

There are good reasons any attempt to increase population density by relying on mass transit to provide necessary transportation is foolish, but the additional units of housing required by 3A in comparison to the actual capacity of the commuter rail to provide it goes beyond plain simple insanity to the realm of the physically impossible. With six double decker coaches each train can hold a total of about 1,110 passengers. Each MBTA community along the line has to allow its ridership a seat. Larger communities such as Salem and Lynn need more seating than Rockport and Manchester. Based on 2020 census population data, Gloucesters' fair share is 115 seats per train, or 805 seats per day for the seven commuter trains supposedly the basis for station development. Yet the 3A regulation calls for 1135 housing units in the "walk-to-mass transit" station area. Unless Massachusetts decides to adopt the India State Railroad model with passengers holding on to running boards, riding the roofs, and crammed into every vacant space in the coaches….MBTA coaches simply can not handle the required 3A "population boom". Railroads can't just add coaches either. Stations and crossings must be considered. Finally, rail lines have limited rights of way…the Rockport Boston line is essentially the same as when the train first made it to Rockport in 1861, single tracks remain the order of the day, because even if it was practical, double or triple tracking is not possible given the cost of acquiring the adjacent land.

Relying on century old transportation technology which can barely exist without subsidized life support is problematic.. but a genuine threat to the sovereignty of the people is the lack of regard shown by the Governor and General Court to Massachusetts Constitution in enacting and enforcing 3A.. Never has such disregard for their oath of office to support the constitution been so blatant, nor apparently, in some parts, so welcome. Some history is in order.

The original state Constitution, approved as the states highest and most fundamental law, was approved in 1780. It made no mention of zoning….because…contrary to an opinion offered on Good Morning Gloucester last October, by one current city councilor…zoning has never "always been from the state down". In Massachusetts the first actual attempts to regulate use of private property came in the fourth constitutional convention in 1917-1919, after the advent of industrial development across the country started threatening residential enclaves. People wanted protection from the Rockefellers, Carnegies and Henry Fords of the day.

The city of Cambridge pushed to enact local zoning ordinances beginning with a statewide effort to draft and adopt Amendment LX to the Massachusetts Constitution. On the path to its adoption, proponents of Amendment LX outlined their vision for the promise of zoning and addressed critics who warned of the potential consequences - intentional or not - that policies

aimed at separating people might create. Notwithstanding some of those concerns, Massachusetts voters overwhelmingly adopted the constitutional amendment on November 5, 1918, and granted to legislature, known as the General Court, for the first time the "power to limit buildings according to their use or construction to specified districts of cities or towns." In the century since its adoption, this twenty-two word amendment has formed the legal and constitutional basis for zoning across the Commonwealth. {History of Zoning in East Longmeadow - Historical Commission}

Official and Unofficial Records of the Convention are important because they form the basis for determining whether any future action of the legislature based on the passage of Amendment LX is constitutional. In 1923 the House of Representatives requested an opinion regarding changes to the constitutional method in the election of the state treasurer…In response, the Massachusetts Supreme Court advised the Legislature its had reviewed the changes and then continued as follows, all seven of the justices signing. "The constitution as originally adopted and all its amendments form together one instrument. It declares briefly and comprehensively the fundamental principles government. It ordinarily is not detailed or complicated and does not deal in minute particulars appropriate to a statute. Its words and phrases ought to be interpreted in the sense most obvious to the common understanding, because they were proposed for adoption by all the people entitled to vote.

And these fundamental principles have relevance to today, because Mayor Verga, the chief executive of the city….has publicly pronounced he is voting yes, and urges others to do so, based on the Massachusetts Supreme Court ruling that the law is constitutional. (GDT LTE, Why Verga is voting 'yes' on 3A, 4-9-25)

But what did the Supreme Court actually say? In its' ruling the Supreme Court explained "Here we are asked to determine whether the act and its corresponding guidelines are constitutional and valid, and whether the Attorney General has the authority to sue in equity to enforce 3a. We conclude that the act is constitutional and that the Attorney General has the power to enforce it."

In Milton…the constitutional issue focused a separation of powers doctrine. Milton argued that 3A was unconstitutional because the legislature delegated fundamental policy decision power reserved to the legislature….to the executive. Essentially the court ruled the legislature did not delegate the making of fundamental policy decisions, did provide adequate direction for implementation and did provide safeguards such that abuses of discretion could be controlled. Satisfying those three criteria was enough to resolve the dispute as to separation of powers and the court ruled the 3A law had done so, and was constitutional. But this ruling only concerned a separation of powers issue…not whether the law was constitutional itself.

I'm no lawyer, I draw my conclusions by research wherever I can.

A few weeks ago, my search led me to the website of National Constitution Center in Philadelphia. This center was created by Public Law 100-433, the Constitutional Heritage Act and signed into law in 1988. They have a course, constitution 101, and it explains how judges reach decisions regarding Constitutional Interpretations. As part of their education modules they describe how judges use seven methods of Constitutional Interpretation:

There are seven widely accepted methods of interpretation that shed light on the meaning of the Constitution but only two apply to the 3A statute, Text and Historical context.
Text - A judge looks to the meaning of the words in the Constitution, relying on common

understandings of what the words meant at the time the provision was added.
History - A judge looks to the historical context of when a given provision was drafted and ratified to shed light on its meaning.

Amendment LX was a simple amendment to the state constitution. Nothing more than the Text and the History is necessary to interpret it. The Amendment reads: "Power of the General Court to establish Building Zones or Districts. The General Court shall have power to limit buildings according to their use or construction to specified districts of cities and towns." The key verb is limit and the key noun is use. Then General Court was never given authority to prescribe or quantify among equivalent uses which is what 3A attempts..

Any doubts to its true meaning are resolved by looking at the historical context. In August 1918, at the end of the convention the closing address was delivered by former governor John L. Bates, the President of the Convention. Believing that an explanatory statement of the Amendments to be submitted to the people might aid the voters, the Convention ordered the address be printed and sent to the registered voters of the Commonwealth. The message to the voters was that "The adoption of this amendment will make it possible to divide cities and towns into building zones, and to limit the use and construction of buildings therein….and thereby protect residential districts from invasions by manufacturing and mercantile business.

About two years later, Lawrence B. Evans, technical adviser to the convention, wrote an article for The American Political Science Review, May 1921. He wrote, "The reasons for this amendment are obvious. One has only to observe the condition of any city in the United States to perceive the need for placing some restrictions on the freedom of land owner as to the character of the building which they may erect or the used to which buildings may be put."

In 1926, the US Supreme Court took up a landmark case and decided the issue of whether property owners could be denied the right to to use their land however they chose. But how the state could dictate land usage to property owners was through the passage of amendment LX to the state constitution eight years earlier….and only involved competing uses, which infringed upon one use or the other.

No matter how you slice it or dice it…3A is not constitutional in any broader sense than the narrow concerns of the Milton separation of powers argument Every decision from the landmark US Supreme Court case of Euclid vs Ambler (1926) to every argument or debate that took place in the Massachusetts Constitutional convention centered on protection of residential areas from encroachment by property-value-lowering competing non-residential interests, nothing more and nothing less.

I implore Mayor Verga, the city attorney and whoever else wants facts to visit Noway3A.org. There is extensive and comprehensive documentation of the constitutional proceedings, the constitutional intent and the acceptance by the only real sovereign entity of a democracy…its' people..

A week ago invitees State Senator Tarr and State Representative Ferrante were asked at the latest "committee to vote no on 3A" " meeting if there was any hope of repealing the law (and its ballooning executive threats) by action of the General Court itself. From his perspective Senator Tarr responded that there was "little appetite" in the legislature to overturn any issue, once the public had voted upon it favorably.

That is why Gloucester voters concerned about enormous state overreach, draconian threats, and loss of fundamental constitutional protections should and must vote "NO" on the upcoming ballot question.

Zenas Seppala
Rockport