For any individual charting a course to live or remain 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 100 years of local control over how the people of a municipality determine and decide their living environment, 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, take advantage of 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 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. <u>There are at least two reasons voters should vote an emphatic no in the upcoming two weeks.</u>

1. HOW MUCH OF REQUIRED HOUSING IS ACTUALLY TRANSIT-ORIENTED

While touted as a “transit-oriented” development, shoe-boxing more people into communities solely because of an existing rail link is in fact a “traffic-oriented” development. That traffic will wind up on 128. Here’s the reason. Unlike cars and buses, trains are inflexible, and must confine their motion to the rails. In doing so, they are subject to other factors which also limit their passenger capacity. They must fit into every station they serve. They can’t exceed a certain height. A healthy railroad that efficiently moves freight and does what a train does best (move heavy tonnage long distances from point A to point B) is able to pay for infrastructure changes such as more stations or higher over and underpasses because it makes money…No passenger train in the United States does.

Long Term. The rail layout from Rockport to Boston hasn’t changed much since it was completed…around 1845. Over all that time, land development outside the trackage right of way have limited the ability of the railroad to provide routing changes. So even if battery or hydrogen cell motive power can eventually “electrify” the line without huge catenary (overhead electric lines) costs, the line will likely never be rerouted and capacity will stay the same.

Short Term. It seems the only feasible way for the MBTA to increase ridership and have fare collection contribute more towards operating revenues, would be to run six double decker coach cars per train. Each car has a maximum capacity of about 185 seats, so each train can handle about 1,110 riders. If the 3A law was genuinely transit oriented….the housing units demanded in the “by right” multi-family zones would be no more than these trains can accommodate. To ensure equitable use each community should only have as many seats on each train as their relative populations dictate.

A few calculations using 2020 census data indicate that on any given train Gloucester should get 115 seats, based on its 29,729 population. (Using the same census data, Rockport 27 seats, Manchester 21, Beverly 165, Salem 172, Swampscott 59, Lynn 392, and Chelsea 158). With seven commuting-hour trains Gloucester should get (115 x 7) = 805 seats per day. However the state demands 1135 housing units in the station area. So 335 units will have to find some other way of transportation. That means more vehicles on already overloaded route 128.

Passenger railroads are heavily subsidized. Private industry got out of the railroad passenger business over 60 years ago. Competition from planes, cars and buses overwhelmed the railroads. Is anybody thinking of abandoning cars and airplanes in hopes of resurrecting and

substituting 19th century technology? Unless that happens…passenger traffic operations including commuter rail must be subsidized. And they are. Currently, fares on the MBTA account for about 15% of operating revenue. The June 2024 Executive Summary of the MBTA Advisory Board for FY 2025 painted a dismal picture:

"The MBTA provided the following tables of revenue and expenses as a summary of their proposed operating budget for FY25. The budget is in deficit, and only balanced by the liquidation of reserve funds. Without action, the budget deficit for the following fiscal year 13 months from now is projected at just under $700 million. Without external support, the internal ability of the MBTA to close such a deficit is non-existent. In FY21, for example, the MBTA proposed draconian service cuts to realize $142 million in savings. The FY 26 deficit is projected to be nearly 5 times greater. The service cuts and lay-offs needed to close a $700 million deficit suggest an existential crisis for public transportation in Massachusetts."

"The MBTA's funding model is broken, and we see no source of one-time infusions of cash to balance future operating budgets". The MBTA advisory committee is realistic and paints an accurate picture of the challenges. noway3a.org give a link to their informative websites.

It may make some sense to try and add ridership to the decrepit MBTA as Fare recovery ratios were 42.7% in FY 19. However according to the advisory board MBTA ridership has not returned to pre-COVID levels and is not "expected to return 'anytime soon. The millionaires tax keeping the MBTA on life support is money that could be spent better elsewhere. And finally an attempt to obtain higher fare recovery it comes at a tremendous cost. Unlike any other mode of transportation, nearby residents who will never use the MBTA will further subsidize the cost of running it.

2. CONSTITUTIONAL ISSUES

Even more disturbing than the physical environmental problems and a genuine threat to the sovereignty of the people is the lack of regard shown by the Governor and General Court to Massachusetts Constitution. Never has such disregard for their oath of office been so blatant. 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 by one city councilor on podcast "Good Morning Gloucester" in October 2024…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.

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}

The records of the Constitutional Convention are extensive with both official and unofficial documents left to posterity. In the category of the latter, the best might be "The Massachusetts Constitutional Convention of 1917: its causes, forces and factions; its conflicts and consequences." Published in 1923 it was the work of Raymond L. Bridgman. Bridgman wrote in the foreword of the book "This volume is designed to be a people's history of the constitutional convention of Massachusetts which met first in 1917. It is written with the belief that the convention will assume more importance in history than it had at the time, owing to the absorption of the people in the World War.

He continues, "Sufficient reason for this history is the fact that the voluminous official record necessarily fails to reveal the forces which caused the convention and shaped its results. Unofficial activity determined official action. Invaluable information for the voters and for students of Massachusetts history will be lost if the history is limited to official records."

"Personal observation, with presence in the convention every hour of its sittings in 1917, 1918, and 1919, with constant personal contact with the delegates, which the author enjoyed, in addition to close touch with controlling persons and events prior to, during and after the convention, is the source of knowledge wholly outside of the official journal and of the verbatim reports of the debates."

On page 110, Bridgman summarizes the discussion on Building Limitations. He wrote," Limitation on the construction of buildings in certain districts of cities and towns was the next amendment on the ballot. This originated with Mr. Walcott of Cambridge and in its first from meant 'the regulation of smells, sights and sounds and the enactment of regulations limiting buildings according to their use and construction to certain zones or districts of cities and towns.' "

"The committee on social welfare reported that it should be rejected. But the convention substituted a shorter form relating to buildings alone, refused to reject it and sent it along with no opposition of importance. Mr. Pillsbury of Wellesley, of famous anti-slavery lineage and of personal political opinions and courage to correspond, made the point that the amendment in it present form was liable to be taken as permitting segregation of negroes, but that was a matter which the convention did not take as seriously bearing on the purpose of the amendment to protect residential parts of cities and towns. Mr. Clapp of Lexington was the mover of the substitute and it was carried by a voice vote. There were less than fifty members present when this vote was taken. There was neither debate nor opposition after the first brief discussion."

Bridgman summarized the proceedings with a 13th chapter called "PERTINENT POINTS'. He wrote "As the convention takes its place in the history of the state, to have its effect upon the opinions of the people and upon their political progress, its true place ought to be understood. In a very true and considerable sense it was not a deliberative convention, but a phase of a political campaign. As such, it had an advantage over the usual campaign because there was no drawing of party lines of republicans and democrats. It was not a convention of statesmen elected to deliberate upon the fundamental principles of political institutions of a self-governing people. It was an assembly of partisans of various causes who locked horns over the methods of advantage for particular classes vital interested in the struggle."

"This was true of the anti-aid amendment, the election of judges and recall of their decisions, the question whether labor is a commodity or a personal right, biennial elections, the conservation of natural resources, the public trading resolution, taxation reforms, revocation of public grants and so on, —- whatever may be true of some of the less contested subjects. In the absence of party lines, the real cleavage over these questions had better opportunity than when complicated with party passion, pride and prejudice, or with personal ambition for public

office or itching for public money. From that point of view the convention had its value."

The preceding is a long read…but the point is simply how a constitutional amendment of enormous breadth (statewide) but narrow application….protecting existing residential areas from unrestricted commercial development….can be morph into a law of narrow breadth (177 of 351 municipalities…but enormous application (overturning 100 years of local zoning and nearly 70 years of constitutionally granted home rule.)

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While the above is an unofficial record of the proceedings there is also a wealth of official documentation, forming the official records of the convention. These are important because they would form the basis for determining whether any future action of the legislature based on the passage of Amendment 60 is constitutional. And these 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. But what did the Supreme Court actually do? The Supreme Court explained in its decision, "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 on 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 law had done so. But this ruling only concerned a separation of powers issue…not whether the law was constitutional itself.

I've never studied law so I find my way to reasonable conclusions by research in whatever way I can.

My search led me to the National Constitution Center in Philadelphia. This was created by Public Law 100-433, the Constitutional Heritage Act, and signed into law in1988. 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 Constitution Interpretation:

"There are seven widely accepted methods of interpretation that shed light on the meaning of the Constitution.

Text - A judge look 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.
Tradition - A judge looks to any laws, customs, and practices established after the framing and ratification of a given provision
Precedent- A judge applies rules established by precedents - taking rulings in old cases and applying them to new cases.
Structure- A judge infers structural rules (power relationships between institutions, for instance) from the relationships specifically outlined in the Constitution
Prudence /Consequences - A judge seeks to balance the costs and benefits of a particular

ruling, including its consequences and any concerns about the limits of judicial power and competence
Natural Law/Morality - A judge draws on principles of moral reasoning - whether embodied in the natural law tradition or drawn from a judge's own independent, present-day moral judgements."

Amendment LX (60) 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, only limit.

Any doubts to its meaning are resolved by looking at the historical context. At the end of the convention a closing address was delivered on August 21, 1918 by by John L. Bates, former Governor of Massachusetts, and 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. In his address Bates stated to the convention and the people of Massachusetts, "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."
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In 1926 the U. S. Supreme Court took up the matter of private property rights in the case of Euclid vs Ambler. The Landmark case revolved around the extent of private property rights as defined in the United States Constitution and when and whether police powers for the protection of public safety, health, morals and welfare could restrict unlimited private rights. The Suburban Clevelander's of Euclid were trying to protect their homes from the gritty environment in Cleveland that produced the market for a new kind of suburban community they were living in: "All those steel mills and refineries along the Cuyahoga River sat next to the city's heart, spewing out dark clouds of varied colors, odors, and chemical content: beyond them on three sides were plants turning out all manner of industrial and consumer products. And moving through it all were hundreds of coal-fired steam locomotives and lake freighters, all adding their own rich mix of black bituminous smoke. Then there were the people -those immigrants and their cloistered neighborhoods, destabilizing property values. And finally there was the delicate problem of odors - put more bluntly, the stench. The industrial air and the unwashed human bodies were not the only problem. Horses still moved all the goods and many of the people around the city; thousands of them and their inevitable by-products were all dumped into the streets." {The Zoning of America, Euclid vs Ambler -Michael Allan Wolf}.

So it was about 140 years after the U.S. Constitution was ratified that the Supreme Court defined the balance between individual and society's rights of land usage.

Returning to Massachusetts and the issue of constitutionality today…
In an opinion of the Massachusetts Supreme Court to the Legislature March 21, 1923 the court wrote: "The Constitution as originally adopted and all its amendments form together one

instrument. It declares briefly and comprehensively the fundamental principles of government. It ordinarily is not detailed or complicated and does not deal in the minute particulars appropriate to a statute - It's 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." Mayor Verga….No matter how you slice it….3A isn't constitutional. No statewide ballot ever asked the people to vote on allowing the the general court power to decide where single family, multi-family or zero family buildings have to be located.

As a final note…much is made about the relative modesty of the 3A endeavor. That it will only be a slow process and involve areas where by right housing will work helping modest income folks enter into home ownership. But zoning always creates a line of demarcation. If enacted one homeowner will supposedly pay for a building permit. Fifty feet away….the homeowner will incur legal fees, special permit fees etc etc. How long before some deep pocket developer sues for equal protection. Opening one are for development at minimum cost…opens a door for the entire city to succumb.

There does not seem to be any reason why Gloucester could not summon the political will to allow OWNER-OCCUPIED buildings to convert to three deckers and mitigate the housing shortage in a way that benefits a resident owner. But allowing by right development with absolutely no way to compel affordable housing or constrain to the limits of local water and sewer capacity is a recipe for disaster.

Given the incomplete facts regarding the laws' constitutionality, but with the states' highest court having narrowly ruled and, inadvertently or not, confusing the issue further, the best, and perhaps only avenue left, is getting the legislature itself to repeal the law. At the most recent meeting of the Committee to Vote No on 3A, invitees State Senator Tarr and Representative Ferrante were asked about the prospects for getting the 3A state Law repealed. Mr. Tarr replied there was "no appetite" in the state legislature for overturning a law once the people had voted in support thereof. That is why those who truly wish for Gloucester to remain in control of its local zoning should and must vote NO.