

## Dinosaur Rowe LLC

8 January 2015

Ms. Chyrstal Kornegay  
Undersecretary for Housing and Community Development

Mr. Phillip DeMartino  
Technical Assistance Program Coordinator

Department of Housing and Community Development  
Commonwealth of Massachusetts  
100 Cambridge Street, Suite 300  
Boston, MA 02114

*Re: Comprehensive Permit Application at 70 Rowe Street, Newton, MA,  
Newton Zoning Board of Appeals #11-14 (the "Application")*

Dear Ms. Kornegay and Mr. DeMartino:

In accordance with 760 CMR 56.03(8), you are hereby notified that the applicant under the above-referenced Application, Dinosaur Rowe LLC (the "Applicant"), wishes to further challenge the assertion of the Newton Zoning Board of Appeals (the "Board") contained in a letter dated December 18, 2014 to the Applicant as well as the subsequent letter from the City of Newton to you dated January 5, 2015 that, as of the date of the Application (November 5, 2014), the General Land Area Minimum in the City of Newton (the "City") was satisfied.

The Applicant brings two claims. First, as previously asserted in our December 29<sup>th</sup> letter, the Applicant believes the Board did not provide "necessary supportive documentation" as required under 760 CMR 56.03(8) to determine the "factual basis" for its position in its December 18, 2014 letter. (For example, *inter alia*, no list of SHI Eligible Housing and its land area was provided so as to determine the factual basis. Moreover, the asserted land area is not beyond reasonable dispute and cannot otherwise be presumed accurate for purposes of 760 CMR 56.03(8).) More important, there appears to be no justification under 760 CMR 56 to allow the Board to subsequently and retroactively supplement its prior assertion. The fact that the Board and City felt the need to provide additional information is prima facie evidence of the insufficiency of its December 18<sup>th</sup> letter to provide "necessary supportive documentation."

Second, even if DHCD agrees to consider this belated supportive documentation from the Board and the City, **the Applicant's necessarily cursory and limited review has uncovered enough errors to not only reduce the City's claimed area dedicated to SHI Eligible Housing by almost 50 acres to below the General Land Area Minimum but thoroughly question the integrity and veracity of the City's entire calculation. The area dedicated to SHI Eligible Housing is just 1.19% of the City's Developable Land Area, not 1.88% as claimed by the City.**

First, whether by simple error or intention, the City incorrectly used the "Gross Acreage" instead of the "Net Acreage" of SHI Eligible Housing in its numerator in several instances where the Newton Housing Authority owns condominium units (which it apparently rents to low income tenants) contained within

homeownership projects to determine whether the General Land Area Minimum has been met. The “Net Acreage” correctly reduces the gross area by the percentage of SHI Eligible Housing pursuant to the express language of 760 CMR 56.03(3)(b), the “gross” does not. Hence, according to the information provided by the City, there are no more than 99 acres of SHI Eligible Housing which is less than its claimed General Land Area Minimum of 108 acres. Hence, by its own calculation, the City has not met the General Land Area Minimum. A list of misclassified projects is attached.

Moreover, a number of significant projects appear to be improperly classified or characterized (and more may be identified by further study):

303-309 Winchester Street – 11.72 acres incorrectly classified. In perhaps the most egregious error, 12.38 acres are included in the City’s calculation when only 0.66 acres should properly be included. This project consists of 20 clustered townhouse condominiums of which the Newton Housing Authority owns 2 SHI Eligible Housing units or 10% of the total. Hence, pursuant to the express language of 760 CMR 56.03(3)(b), only 1.24 acres ( $12.38 \times 10\%$ ) should be included toward the General Land Area Minimum. Hence, the City has overstated the land area occupied by SHI Eligible Housing by 11.14 acres in just this one instance. Furthermore, MassGIS shows 5.76 acres of this parcel are wetlands that are properly excluded as the wetlands are not “impervious or landscaped areas directly associated with SHI Eligible Housing units.” If wetlands are excluded (as was the case in your recent December 31, 2014 Decision on Grounds for Denial of Comprehensive Permit Application --H&W Apartments – Randolph Ave., Milton), the total land area is reduced by 5.76 acres and thus the area associated with SHI Eligible Housing units is only 0.66 acres, 11.72 acres less than claimed by the City.

West Suburban YMCA-SRO – 5.40 acres incorrectly classified. This is a 28-unit SRO housed in (according to the Newton Assessors’ database) a 9678 square foot condominium (“Unit 2”) owned by Newton Corner Place LP on the third floor of a mixed-use YMCA building sited on a 6.02 acre site that includes a multi-use playing field and track and approximately two acres of unbuildably steep hillside. According to the Newton Assessors’ database, the gross building area of Unit 1 (the YMCA premises) is 80,784 square feet. Hence, Unit 2 is just 10.7% of the total mixed use property. At most then, its allocated land area should be  $10.7\% \times 6.02$  or 0.64 acres. However, given the unuseable and unbuildable nature of 2.08 acres, it should be further reduced to 0.42 acres.

John W. Weeks House – 3.69 acres incorrectly classified. The affordability restrictions expired on this project prior to November 5, 2014, so its 3.69 acres should not be included.

ArborPoint at Woodland Station – 6.88 acres incorrectly classified. This is a mixed use project constructed on a portion of a larger parcel containing a public parking garage and access to the Woodland Green Line T Station all owned by the MBTA, a political subdivision of the Commonwealth. According to 760 CMR 56.03 (3)(a)3., land owned by the Commonwealth or any political subdivision shall be excluded from the total land area. Hence, the entire 6.88 acres should be excluded. Or if it is deemed to be properly included, only that portion of the mixed use project dedicated to SHI Eligible Housing, 42.9% or 2.95 acres should be included, resulting in an overstatement of 3.93 acres.

Riverside Station – 3.89 acres incorrectly classified. A Special Permit was granted by Newton’s Board of Alderman on October 7, 2013. However, no building permit was issued by October 7, 2014, one year later. Therefore, per 760 CMR 56.03(2)(c), the units are ineligible for the SHI until the date that the

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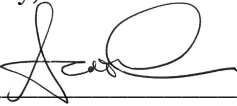
building permit is issued. Hence, 3.89 acres have been incorrectly included. In addition, this project is proposed to be constructed under a land lease on land owned by the MBTA, a political subdivision of the Commonwealth. According to 760 CMR 56.03 (3)(a)3., land owned by the Commonwealth or any political subdivision shall be excluded from the total land area.


Our brief review reveals 49.25 acres of land incorrectly classified as containing SHI Eligible Housing. Closer review may reveal further errors. This places the percentage of developable land occupied by SHI Eligible Housing at just 1.19%, well below the Statutory Minimum – and in line with the City's own calculations prior to December 17, 2014 as outlined in our December 29, 2014 letter.

Please find that the City of Newton has not satisfied its General Land Area Minimum.

Thank you for your thoughtful consideration.

Sincerely,

By:   
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Scott I. Oran, Manager

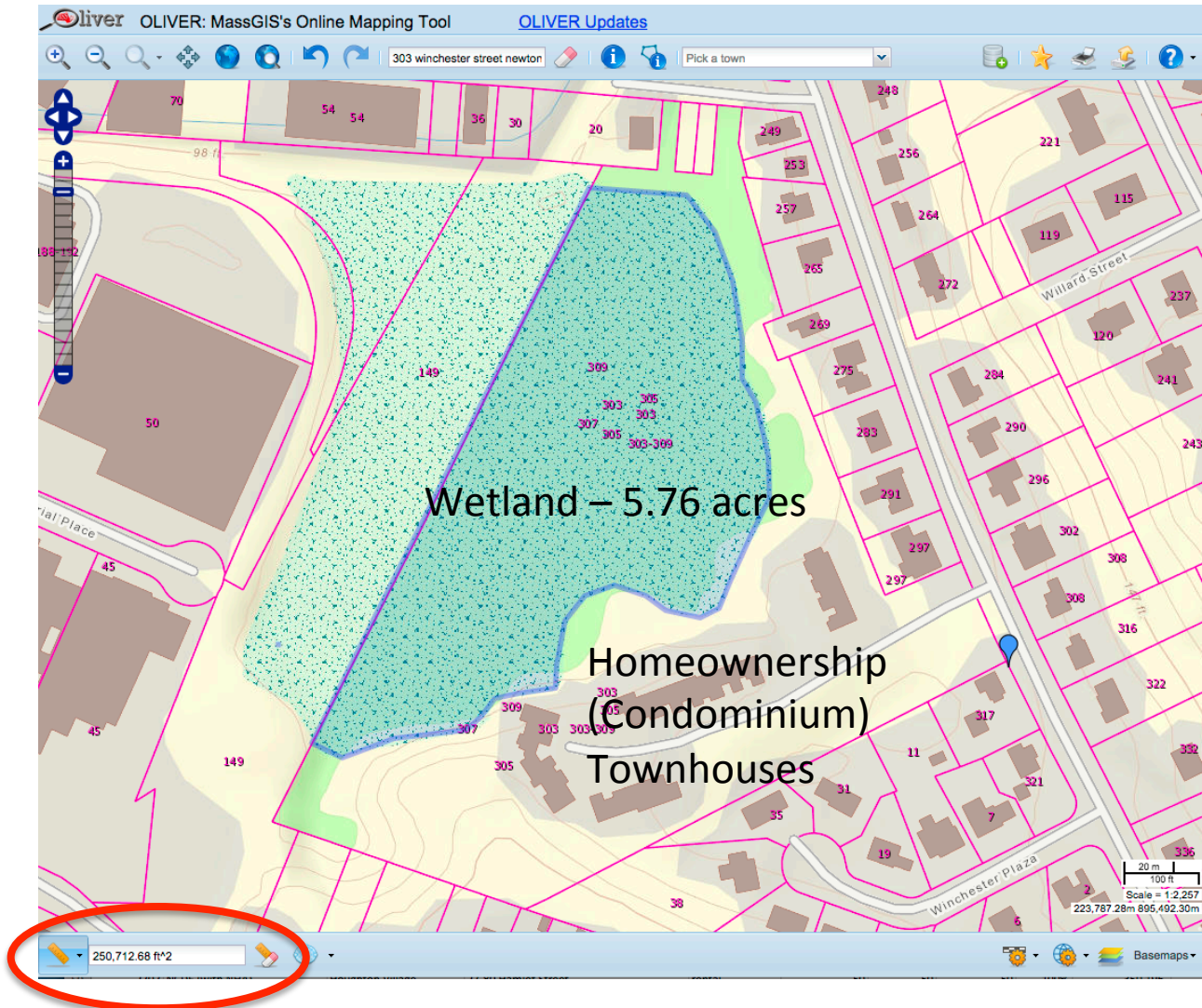
  
\_\_\_\_\_  
Mark T. Dufton, Manager

cc: Brooke K. Lipsitt, Chairman, Zoning Board of Appeals, City of Newton, Massachusetts  
Donnalyn B. Lynch Kahn, Esq., City Solicitor, City of Newton, Massachusetts  
Leverett Wing, Associate Director, DHCD Division of Community Services

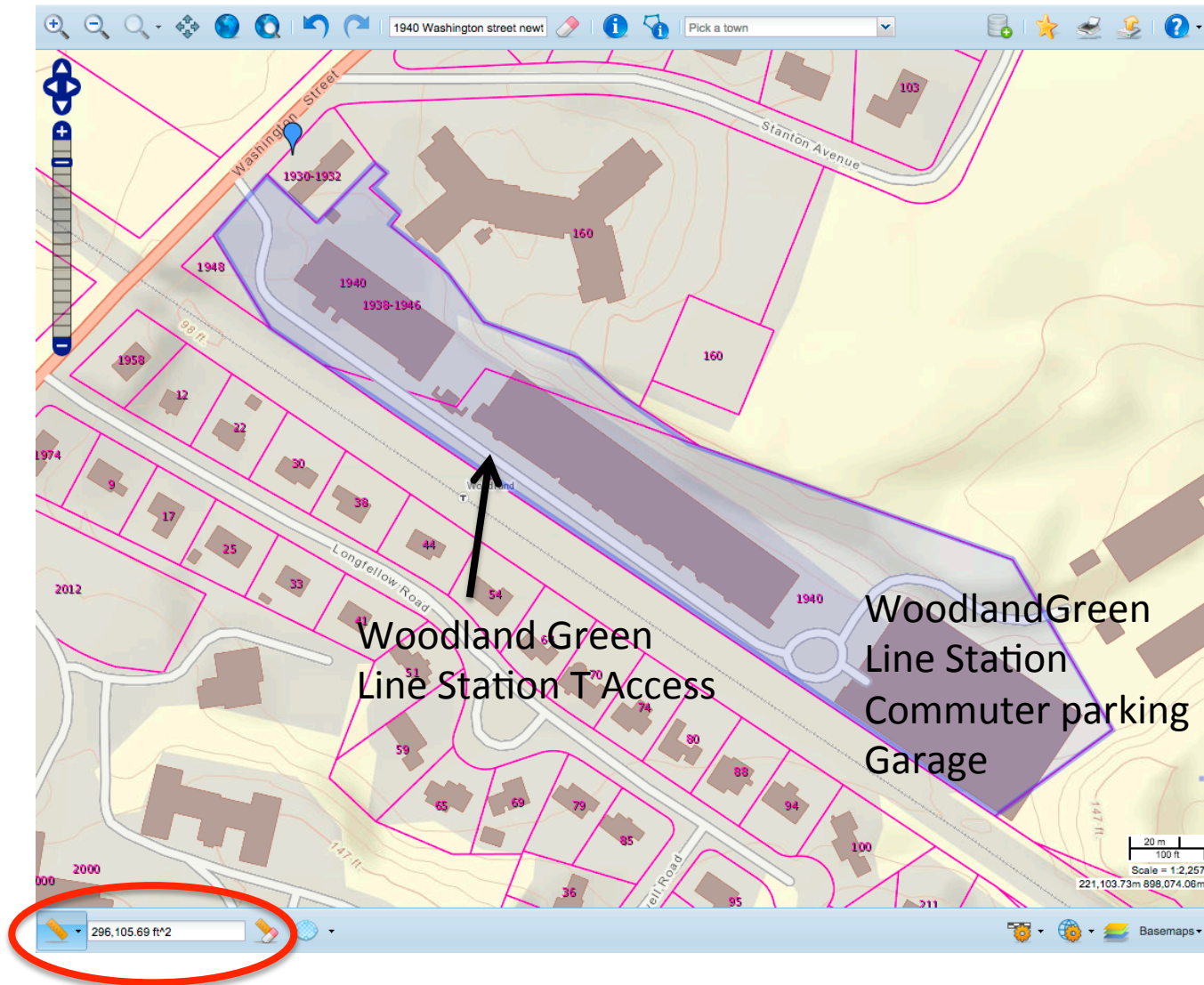
## Analysis of "City of Newton Numerator calculation 12-17-14"

				Total Units (According to Assessor's Database)	Units on SHI (As of 2/20/14)	Total Affordable Units (deed restricted)	% SHI Eligible Units	Lot Size Total Sq Ft (GIS Data)	Gross Acreage	Net Acreage	Acreage (Ownership Prorated)	Affordability Expires	
Organization	Property	Property Address	Tenure										
NHA	Winchester Street (scattered site under 2184)	303-309 Winchester Street	rental in homeownership	20	2	2	10%	539,294	12.38	1.24	12.38	Perpetuity	
NHA	Grove Street (scattered site under 2184)	406-416 Grove Street	rental in homeownership	9	1	1	11%	16,214	0.37	0.04	0.37	Perpetuity	
NHA	Jackson Street (scattered site under 2184)	43 Jackson Street	rental in homeownership	12	1	1	8%	65,328	1.50	0.12	1.50	Perpetuity	
NHA	Falls Ridge (scattered site under 2184)	51 Pettee Street	rental in homeownership	33	4	4	12%	74,836	1.72	0.21	1.72	Perpetuity	
NHA	Lowell Avenue (Claflin School Studios) (scattered site under 2185)	465 Lowell Avenue (447-44)	rental in homeownership	17	3	3	18%	171,090	3.93	0.69	3.93	Perpetuity	
NHA	Florence Street (scattered site under 2185)	116 Florence Street Unit B	rental in homeownership	9	1	1	11%	18,083	0.42	0.05	0.42	Perpetuity	
NHA	The Gazebo (scattered site under 2185)	160 Pine Street	rental in homeownership	28	3	3	11%	144,619	3.32	0.36	3.32	Perpetuity	
NHA	Alden Place (scattered site under 2185)	18 Alden Place	rental in homeownership	10	1	1	10%	30,319	0.70	0.07	0.70	Perpetuity	
NHA	Chestnut Grove (scattered site under 2186)	1175 Chestnut Street	rental in homeownership	35	4	4	11%	201,840	4.63	0.53	4.63	Perpetuity	
NHA	Village Falls (scattered site under 2186)	181 Oak Street/Chestnut St	rental in homeownership	123	14	14	11%	146,108	3.35	0.38	3.35	Perpetuity	
									32.32	3.69			
Misclassified NHA rental units in Homeownership Projects										(28.63)	Acres		
YMCA	West Suburban YMCA-SRO	276 Church Street	rental	28	28	28	100%	262,079	6.02	0.42	6.02		
Condominium unit in mixed use project with unbuildable land										(5.60)	Acres		
NCDF	John W. Weeks House	7 Hereward Road	rental	75	75	42	100%	160,519	3.69	-	3.69	2014	
Affordability expired prior to November 5, 2014										(3.69)	Acres		
Nat'l Dev. of N	Arbor Point at Woodland Station	1940 Washington St	rental	180	180	36	100%	299,809	6.88	-	6.88	Perpetuity	
Mixed use project constructed on land leased from the MBTA (a political subdivision of the Commonwealth) and includes a T owned public parking garage and public surface parking and station access										(6.88)	Acres		
BH Normandy	Riverside Station	Riverside Station	rental	294	44	44	15.0%	1,131,137	25.97	-	0.00		
Special Permit granted by Newton Board of Alderman on October 7, 2013 As no building permit was issued by October 7, 2014, per 760 CMR 56.03 (2)(c), the units are ineligible for the SHI until the date that the building permit is issued										(3.89)	Acres		
NHA	Winchester Street (scattered site under 2184)	303-309 Winchester Street	rental in homeownership	20	2	2	10%	539,294	12.38	1.24	12.38	Perpetuity	
Wetlands that are not "impervious or landscaped areas directly associated with the SHI Eligible Housing"										(0.57)	Acres		
Total SHI land area claimed by City										135.21 Acres			
Area Incorrected Included										49.25 Acres			
Correct Area of SHI Eligible Housing										85.96 Acres			
Developable Land Area claimed by City										7208.08 Acres			
Percentage of Developable Land Area occupied by SHI Eligible Housing										1.19%			

## 303-309 Winchester Street – MassGIS – Wetland Area Improperly Included

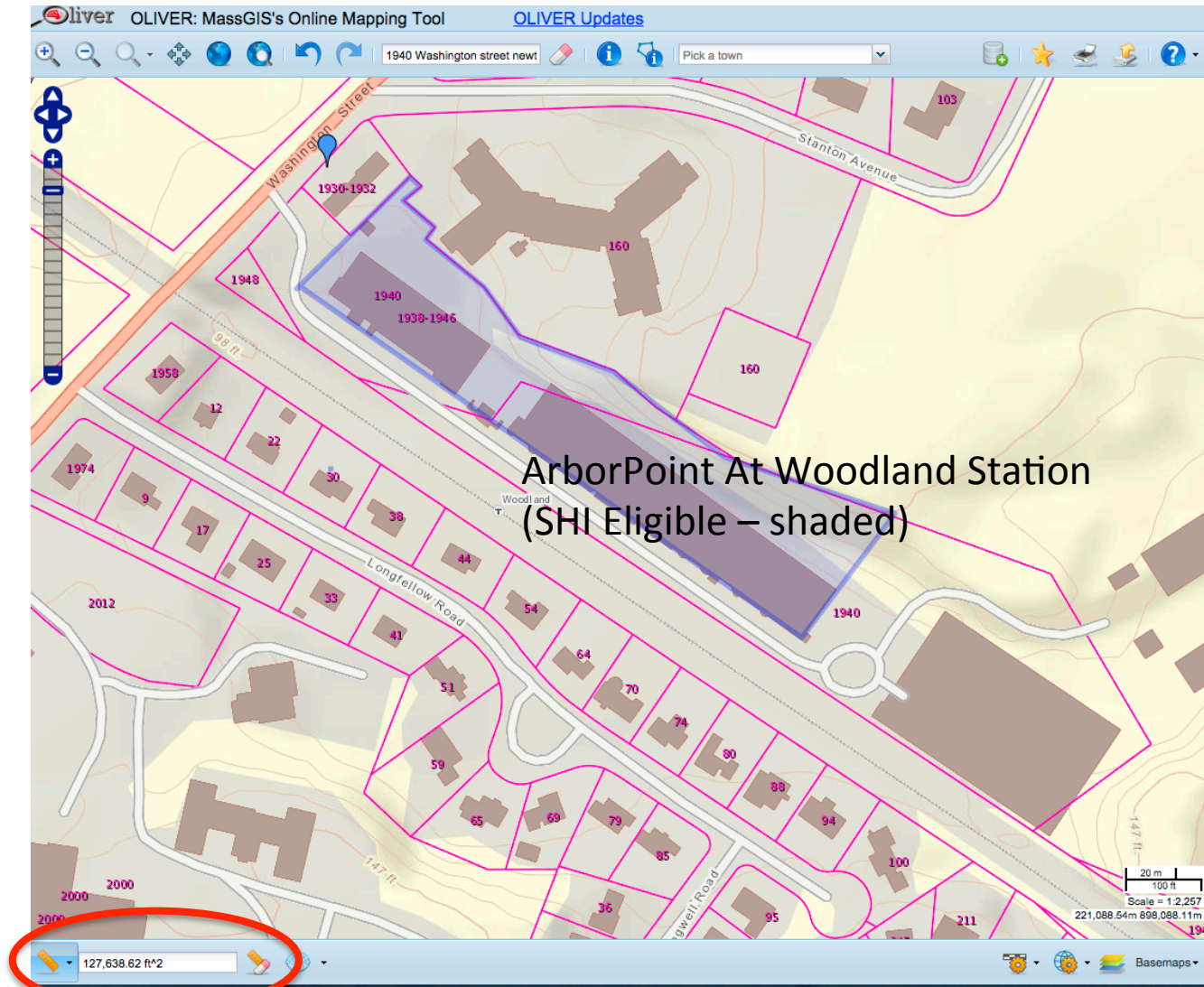


## ArborPoint at Woodland Station – MassGIS – Mixed Use Area Improperly Included





## ArborPoint at Woodland Station – MassGIS -- Improperly Included



# West Suburban YMCA SRO Housing – MassGIS – Mixed Use Area and Unbuildable Improperly Included Area

