OVERVIEW OF CHAPTER 40B FUNDAMENTALS

Massachusetts Housing Partnership &
The Pioneer Valley Planning Commission

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(slides by CPTC/CHAPA)
Introduction to 40B

• History of Chapter 40B
• 2008 Regulation revisions
• 2010 Census and Updates to Subsidized Housing Inventory
• Recent Mass SJC court case clarifies municipal role
40B Information Available on the Web

- www.chapa.org
- www.mass.gov/dhcd
- www.masshousing.com
- www.mhp.net
  - Technical Assistance for ZBA review of 40B

Harwich
Statutory Minima/Regulatory Requirements

- Municipality has:
  - Less than 10% of year round housing units on SHI
  - Less than 1.50% of total land area zoned for residential, commercial, or industrial use
  - Project will not result in > 0.3% of the total land area zoned for residential, commercial, or industrial use, or ten acres (whichever is larger) developed for affordable housing in any 1 year
Safe Harbor Provisions

- Housing Production Plan
- Recent Progress Toward Housing Unit Minimum
- Review of Large Projects
- Related Applications

Franklin
Critical 40B Application Submission Requirements

- Applicant Status: Public Agency, Non-Profit, or Limited Dividend Organization
- Evidence of Site Control
- Project Eligibility Letter from Subsidizing Agency

Westford
OTHER 40B APPLICATION SUBMISSION REQUIREMENTS

- Preliminary Plans
- Existing site conditions and locus map
- Preliminary, scaled, architectural drawings
- Tabulation of proposed buildings by type, size and ground coverage
- Preliminary subdivision plan (if applicable)
- Preliminary utilities plan
- List of requested waivers
Noticing and Conducting the Required Public Hearing

7/14/30/15/15/30/180/40/20
Chapter 40B Performance Requirement

Deadlines

- Distribute Application - 7 Days
- Notice of Public Hearing - 14 Days
- Open Public Hearing – 30 Days
- Safe Harbor Notification - 15 Days
- Applicant Appeal Safe Harbor - 15 Days
- DHCD Answer - 30 Days
- Close Hearing - 180 Days
- Decision - 40 Days
- Appeal - 20 Days
Timeline

1. Comprehensive Permit Application Date (Day 0)
2. ZBA Distributes Application to Local Boards/Committees/Departments
3. Initial Public Hearing Must Be Held
4. ZBA to Determine Whether to Deny Based on Statutory Minima/Safe Harbor
5. Date By When Applicant Must File Response to DHCD
6. DHCD Must Issue Decision
7. Public Hearing Must Close
8. ZBA Must Render Decision
9. Date By When ZBA Must File Decision With Town Clerk
10. Date By When Applicant May File Appeal with HAC

*Not to scale*
Scheduling a Site Visit

- Conduct a site/neighborhood visit early in the review process

- Understand...
  - Site and neighborhood existing conditions
  - The proposed site plan and building design
  - The location of abutters who will be most affected by the proposed development
Retaining Peer Review Consultants

- Employment of outside consultants
- Review of studies prepared on behalf of the Applicant, **not** of independent studies
- All written results and reports are made part of the record

Belchertown
Securing Sufficient Project Information To Make An Informed Decision

- Focus on the “real” project issues/impacts early in the review process
- Peer review and calls for additional or more detailed information should be delayed until major issues are defined
- If needed, request additional information from the Applicant
- Don’t hesitate to ask for graphics that help clarify height, massing, setbacks and overall relationship to neighbors.
Balance Regional Housing Needs with Local Concerns

- Health
- Safety
- Environmental
- Design
- Open Space
- Planning
- Other Local Concerns
Negotiation and Work Sessions

- Negotiating with developers is possible
- Work sessions with developers can often be productive after initial more formal public hearings.
- Neighbors can be invited to these sessions.
- All discussions during the session are advisory in nature, **no decisions can be made**
- Must comply with Open Meeting Law
Holding Deliberation Sessions

- The Public Hearing is closed
- Deliberate in a logical and orderly fashion
- Discuss potential Conditions
- Review the requested waivers.

Andover
Drafting and Issuing the Comprehensive Permit Decision

- The ZBA has three decision alternatives
  1) Denial
  2) Approval *as submitted*
  3) Approval *with conditions*

Newton
Approval with Conditions

- The conditions should not make the Project Uneconomic
- Conditions and/or requirements must be consistent with Local Needs
- The Board shall not reduce the number of units for reasons other than evidence of Local Concerns within the Board’s purview
- Local Preference

Attleboro
Appeal of Decision

- Appeals by the Applicant are made with the Housing Appeals Committee (HAC)
- Appeals for other parties are made with Superior Court or the Land Court.

West Barnstable
The SJC noted at the outset of its decision that it was addressing the question of “what is the scope of a local zoning board's authority under c. 40B, s. 21 (s. 21)”
## Managing the Comprehensive Permit

<table>
<thead>
<tr>
<th>Subsidizing Agency</th>
<th>ZBA/Municipality</th>
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<tbody>
<tr>
<td>Final Approval</td>
<td>Final engineering and architectural plans accompany application for a building permit</td>
</tr>
<tr>
<td>Regulatory Agreement, Deed Riders (if ownership), and Monitoring Agreement</td>
<td>Inspections during construction</td>
</tr>
<tr>
<td>Lottery, fair housing and local preference</td>
<td>Cost Certification review</td>
</tr>
<tr>
<td>Eligibility of owners/tenants</td>
<td>Lapse of the permit</td>
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<tr>
<td>Limited Dividend Restriction and Cost Certification</td>
<td>Transfer of the Comprehensive Permit</td>
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<td>Changes to Permit – substantial or insubstantial</td>
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