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OVERVIEW OF THE CHAPTER 40B (M.G.L. c. 40B, §§ 20-23) APPLICATION, REVIEW, DECISION AND APPEAL PROCESS

**SUDBURY ZONING BOARD OF APPEALS
October 18, 2011**

CHAPTER 40B INFORMATION RESOURCES

1. 40B Information Available on the Web

Without a doubt, the best and most current information on Chapter 40B is readily available on the Web. The best sources of Chapter 40B information are:

- Citizens' Housing and Planning Association
www.chapa.org
Go to "Housing Policy" on home page and then to "Chapter 40B"
- Massachusetts Department of Housing and Community Development
www.mass.gov/dhcd

Housing Appeals Committee (HAC)

Access the HAC site via the DHCD home page--look for "Housing Appeals Committee" in the left margin. As noted below, you can access a copy of the actual 40B law, 40B regulations and 40B guidelines at this site.

The current Subsidized Housing Inventory (SHI) (6/30/2011) as of 9/8/11 is available at: <http://www.mass.gov/Ehed/docs/dhcd/hd/shi/shiinventory.pdf>

Remember: The SHI is now based upon the 2010 Census.

- MassHousing
www.masshousing.com
Go to "Developers" section on home page and then click on "Comprehensive Permit/40B" (includes detailed Cost Certification information/requirements)

Representative listings of Chapter 40B-related documents available at the CHAPA and HAC websites are provided at the end of this outline.

**BE SURE THAT YOU ARE FAMILIAR WITH THE MASSACHUSETTS
COMPREHENSIVE PERMIT LAW (M.G.L. c. 40B, §§ 20-23), CHAPTER 40B
REGULATIONS ("760 CMR 56.00: COMPREHENSIVE PERMIT: LOW OR
MODERATE INCOME HOUSING") AND "COMPREHENSIVE PERMIT GUIDELINES"
DATED 2/22/08. THE LAW, REGULATIONS AND GUIDELINES ARE AVAILABLE AT
THE REFERENCED HOUSING APPEALS COMMITTEE (HAC) WEB SITE.**

2. Information Re: Funding Available for 40B Technical Assistance

- Massachusetts Housing Partnership Fund
Contact: Dina Vargo (dvargo@mhp.net)
http://www.mhp.net/uploads/resources/ch._40b_ta_guidelines.pdf
- In many instances, Applicants have also been willing to provide funding to ZBAs to retain technical assistance advisors, particularly if they feel that such technical assistance will expedite the review process.

3. Local 40B Resources: Town Counsel/Staff

4. Other Zoning Board of Appeals/Staff from Other Towns or Cities/Developers with 40B Experience

5. Peer Review Consultants [See 760 CMR 56.05(5)]

6. 40B Project Visits. For a valuable learning experience, there's nothing like visiting several representative 40B developments similar to the type of development that is being proposed in your community. Call CHAPA, DHCD, MassHousing or MHP for project locations or call ZBAs in nearby towns/cities.

7. Local Comprehensive Permit Decisions. These are public documents and should be available at the ZBA office or Clerk's office. All 40B documents that are part of a public hearing are public documents. One good way to understand the 40B process is to visit a ZBA office and review the complete project file for a 40B project. You can get a better understanding of the types of conditions that can be required by reviewing some representative Comprehensive Permit decisions.

8. Housing Appeals Committee (HAC) Decisions

- HAC decisions from 1995 to the present are now available on the Web at HAC's web site.
- All HAC decisions are available at Social Law Library in Boston (617 523 0018)

9. Conferences

- Check out MHP's, DHCD's, and CHAPA's web sites for information on any proposed Chapter 40B conferences or other training sessions.

10. Chapter 40B Consultants

GENERAL LEARNING EXPERIENCES WITH OTHER 40B REVIEWS

- **CONDUCT A SITE/NEIGHBORHOOD VISIT EARLY IN THE REVIEW PROCESS AND MAKE SURE THAT YOU UNDERSTAND BOTH SITE AND NEIGHBORHOOD EXISTING CONDITIONS, THE PROPOSED SITE PLAN AND BUILDING DESIGN, AND THE LOCATION OF ABUTTERS WHO WILL BE MOST AFFECTED BY THE PROPOSED DEVELOPMENT**
- **ZBA, TOWN STAFF, PEER REVIEWERS, AND POTENTIAL OPPONENTS SHOULD IDENTIFY AND FOCUS ON THE PROPOSED PROJECT'S ISSUES/IMPACTS AS EARLY IN THE REVIEW PROCESS AS POSSIBLE AND TRY TO RESOLVE EACH ISSUE IN A LOGICAL, EFFICIENT MANNER THAT RECOGNIZES THE CRITICAL PATH NATURE OF THE RESPECTIVE STEPS IN THE HOUSING DEVELOPMENT PROCESS. SOMETIMES THERE IS A "SILVER BULLET" ISSUE (FOR EXAMPLE, INADEQUATE SOILS FOR A TITLE 5 SEPTIC SYSTEM OR INADEQUATE LINE OF SIGHT DISTANCE FOR ENTERING AND EXITING TRAFFIC) THAT CAN NOT BE RESOLVED AND CREATES A VALID AND SUSTAINABLE ARGUMENT FOR A ZBA TO DENY A PROJECT.**
- **NEGOTIATING WITH DEVELOPERS IS POSSIBLE AND IS FREQUENTLY DONE DURING THE 40B HEARING PROCESS.**
- **WORK SESSIONS WITH THE DEVELOPER CAN OFTEN BE PRODUCTIVE AFTER THE INITIAL SESSIONS OF THE PUBLIC HEARING BUT BE SURE THAT YOU GET LEGAL ADVICE RE: COMPLIANCE WITH OPEN MEETING LAW REQUIREMENTS. ALL DISCUSSIONS DURING WORK SESSIONS ARE ADVISORY IN NATURE: NO DECISIONS CAN BE MADE AND A SUMMARY OF THE SESSION MUST BE BROUGHT BACK TO THE FULL ZBA.**
- **IF NECESSARY, ZBAS SHOULD GET OBJECTIVE AND EXPERIENCED TECHNICAL ASSISTANCE ADVISORS/ PEER REVIEWERS TO SUPPLEMENT ZBA MEMBERS' SKILLS AND EXPERIENCE**
- **DENSITY IS A RELATIVE CONCEPT**

**PRIMARY CONCERNS OF ZBA MEMBERS,
OTHER MUNICIPAL BOARDS/DEPARTMENTS OR COMMITTEES,
ABUTTERS/NEIGHBORS, AND
APPLICANT/DEVELOPMENT TEAM MEMBERS**

GENERAL CHAPTER 40B ISSUES

1. CHAPTER 40B STATUTORY MINIMA/REGULATORY REQUIREMENTS RE: ELIGIBILITY

- Less than 10% of year round housing units in community are qualified “affordable” units [methodology for calculating number of qualified affordable units is provided in 760 CMR 56.03 (3) (a)]. Note: DHCD has stated that the 10% standard is to be measured as of the date the Comprehensive Permit application is submitted.
- Qualified “affordable” units are located on less than 1.50% of total land area zoned for residential, commercial, or industrial use [methodology for calculating land areas is provided in 760 CMR 56.03 (3)(b)]
- Application before ZBA will not result in commencement of construction of qualified “affordable” housing comprising more than 0.3% (three tenths of one percent) of the total land area zoned in community for residential, commercial, or industrial use or ten acres, whichever is larger, in any one calendar year [methodology for calculating annual land area minimum is provided in 760 CMR 56.03 (3)(c)]
- Housing Production Plan (HPP)—under certain circumstances a municipality can deny any Comprehensive Permit application if the municipality has a DHCD-approved Housing Production Plan and is meeting its affordable housing goals [760 CMR 56.03 (4)] or if it has made Recent Progress Toward Housing Unit Minimum [760 CMR 56.03 (5)]. A municipality can grant Comprehensive Permits even it has satisfied these requirements. However, a developer has no right to appeal any ZBA decision if a municipality has satisfied either the ½ of 1% or 1% HPP standards and has been certified by DHCD. These HPP regulations are complicated. If you need help in understanding them, call DHCD.
- Recent Progress Toward Housing Unit Minimum—even without an approved HPP, if a community has created Subsidized Housing Inventory eligible units equal to or greater than 2% of the municipality’s year round housing units, the ZBA can deny an application. See 760 CMR 56.03 (5).
- Review of Large Projects (There are limits on the maximum size of 40B projects. The limits vary based upon the number of year round housing units in each community based upon the latest decennial census data. See 760 CMR 56.03 (6). See table below.

<i>Total Number of Housing Units in Community (as enumerated in current U.S. decennial census)</i>	<i>Maximum Project Size (ZBA can deny project greater than this size and denial "shall be consistent with local needs." However, ZBA can approve larger projects if it so desires.)</i>
Greater than 7500 units	300 units or 2% of all housing units in municipality, whichever is greater (Therefore, if Year Round Housing Units exceed 15,000, the 2% limit becomes the operative control.)
Between 5,000 and 7,500 units	250 units
Between 2,500 and 5,000 units	200 units
Less than 2,500 units	6% of all housing units in municipality

NOTE: Sudbury has 5,921 year round housing units based upon 2010 census data. Therefore, the largest project size that could be proposed would be 250 units.

- Related Applications (Under certain circumstances, a developer can not submit a Comprehensive Permit application within 12 months of the filing of a prior application for a variance, special permit, subdivision, or other approval related to construction on the same land, if that application was for a prior project that was principally non-residential in use, or if the prior project was principally residential in use but did not include at least 10% of its units as Subsidized Housing Inventory Eligible Housing units. Additional information on Related Applications is provided at 760 CMR 56.03 (7).

2. BALANCING REGIONAL HOUSING NEEDS WITH THE FOLLOWING LOCAL CONCERNS

- Health
- Safety
- Environmental
- Design
- Open Space
- Planning
- Other Local Concerns

3. ROLE AND RESPONSIBILITIES OF ZBA MEMBERS

4. CHAPTER 40B PERFORMANCE REQUIREMENT DEADLINES

7/14/30/15/15/30/180/40/20 DAYS

Although the author believes that the information presented below has been derived from reliable sources, it is subject to errors and omissions and no warranty is made as to its accuracy.

The ZBA must confirm with its own Town Counsel, other advisors, and/or applicable public agencies each of the following Chapter 40B performance requirement deadlines.

THE FOLLOWING DEADLINES ARE VERY IMPORTANT!

CHAPTER 40B PERFORMANCE REQUIREMENT DEADLINES

TIME PERIOD	ACTION
<p>7 DAYS FROM RECEIPT OF CP APPLICATION</p>	<p>Within 7 days of the receipt of the Comprehensive Permit application, the ZBA needs to distribute copies of the Comprehensive Permit application to all Local Boards, departments, and committees (E.g., Planning Board, Conservation Commission, Board of Health, DPW, Affordable Housing Partnership, etc.) If in doubt, it is always better to include any Town entity that might have an interest in the project.</p> <p>The Applicant should be required to provide a sufficient number of copies to simplify this distribution requirement. Each copy must include a copy of the list of Waivers required by 760 CMR 56.05(2) (h).</p> <p>The ZBA should request in writing that each Local Board review the application and submit written comments by a date certain (preferably by the date of the initial public hearing). Unfortunately, this rarely happens and the ZBA often needs to follow-up with each entity to assure that written comments are received.</p> <p>SEE 760 CMR 56.05(3)</p>

<p>NO MORE THAN 14 DAYS FROM RECEIPT OF CP APPLICATION</p>	<p>The initial public hearing must be advertised with proper legal notice and proper notice to abutters such that the initial public hearing can be opened within 30 days of the receipt of a complete Comprehensive Permit (CP) application by the town.</p> <p>Therefore, the ZBA must place all necessary legal ads and notify all abutters of the initial public hearing in accordance with the normal ZBA public hearing advertising requirements. The Applicant is required to include a certified list of abutters within the application.</p> <p>A second legal notice may be required in some jurisdictions.</p> <p>The initial public hearing must be opened within 30 days of the receipt of a complete Comprehensive Permit application unless the Applicant gives written permission to hold the initial public hearing at a later date.</p> <p>SEE 760 CMR 56.05(3)</p>
<p>30 DAYS FROM RECEIPT OF CP APPLICATION</p>	<p>The ZBA must open the initial public hearing within 30 days of receipt of a complete Comprehensive Permit application. Even if the ZBA feels that the Comprehensive Permit application is incomplete, some ZBAs take a conservative approach and schedule and open the initial public hearing. At the initial hearing, the ZBA can explain why it feels that the Comprehensive Permit application is incomplete, request any additional required information, and with input from Town Counsel, make a decision as to what the appropriate next step should be.</p> <p>Note: A ZBA may stay the commencement of an initial hearing if three or more Comprehensive Permit applications are concurrently undergoing hearings before the ZBA, and the total number of housing units in the pending projects exceeds the numerical threshold for a Large Project within that municipality, as set forth in 760 CMR 56.03(6).</p> <p>SEE 760 CMR 56.05(3)</p>
<p>15 DAYS FROM INITIAL PUBLIC HEARING</p>	<p>Within 15 days of the initial public hearing, the ZBA must make a determination as to whether or not it wants to deny an application on one or more of the grounds set forth in 760 CMR 56.03(1) in accordance with the procedures set forth in 760 CMR 56.03(8). The ZBA must provide written notice to both the Applicant and DHCD.</p> <p>SEE 760 CMR 56.05(3) and 760 CMR 56.03(1) and 760 CMR 56.03(8).</p>

<p>15 DAYS FROM ZBA ACTION</p>	<p>If the Applicant wishes to challenge the ZBA’s assertion that it can deny the application on one or more of the grounds set forth in 760 CMR 56.03(1), the Applicant must file its written response with the Massachusetts Department of Housing and Community Development (DHCD) within 15 days of its receipt of the ZBA’s notice. The Applicant must also provide a copy of challenge to the ZBA.</p>
<p>30 DAYS FROM FILING OF APPLICANT’S CHALLENGE</p>	<p>DHCD must issue its decision within 30 days of the receipt of all materials. Any failure of DHCD to issue a timely decision shall be deemed a determination in favor of the municipality.</p> <p>SEE 760 CMR 56.03(8).</p>
<p>180 DAYS FROM INITIAL PUBLIC HEARING</p>	<p>Except with the written consent of the Applicant, the public hearing shall not extend beyond 180 days of the initial public hearing. The 180 day limit presumes that the Applicant has made timely submissions of materials in response to reasonable requests of the ZBA.</p> <p>SEE 760 CMR 56.05(3)</p>
<p>40 DAYS FROM CLOSING OF PUBLIC HEARING</p>	<p>The ZBA must “render a decision” (Denial, Approval, or Approval with Conditions), based on a majority vote of the Board within 40 days of the closing of the public hearing, unless such time period is extended by written agreement of the ZBA and Applicant. The ZBA shall file its decision within 14 days in the office of the city or town clerk and forward a copy to the Applicant or its designated representative, and to DHCD. ZBAs often schedule posted meetings to deliberate on the decision, potential conditions and potential waivers following the closing of the public hearing.</p> <p>Note: Although the regulations state that the ZBA needs only to “render a decision” within 40 days, most ZBAs take a conservative approach and file the written executed decision itself within 40 days of the closing of the public hearing.</p> <p>SEE CMR 760 56.05(8).</p>
<p>20 DAYS FROM DATE ZBA DECISION IS FILED WITH TOWN CLERK</p>	<p>If the ZBA denies the permit or approves the permit with unacceptable conditions or requirements, the Applicant may appeal the ZBA decision to the Housing Appeals Committee within 20 days after the written decision has been filed in the office of the city or town clerk.</p> <p>SEE 760 CMR 56.05(9)(b) and 760 CMR 56.06(4)(g)</p> <p>If the ZBA approves the Comprehensive Permit, any person aggrieved may appeal within the time period and to the court provided in M.G.L. c. 40A, §17. The court would be either the Land Court or Superior Court.</p> <p>SEE 760 CMR 56.05(9)(a)</p>

5. ROLE AND RESPONSIBILITIES OF OTHER MUNICIPAL BOARDS/
DEPARTMENTS OR COMMITTEES
6. LOCAL RULES
7. PUBLIC HEARING FORMAT/CONTINUANCE OF PUBLIC HEARING/PUBLIC
NOTICE
8. ZBA VOTING REQUIREMENTS (MULLIN RULE)
9. **CRITICAL 40B APPLICATION SUBMISSION REQUIREMENTS**

- **Applicant Status: Public Agency, Non-Profit, or Limited Dividend Organization**
- **Evidence of Site Control (Deed, Lease, Option, or P&S Agreement)**
- **Project Eligibility Letter from Subsidizing Agency (primarily MassHousing, DHCD, Massachusetts Housing Partnership (MHP), and MassDevelopment). The Subsidizing Agency must make the following findings in accordance with 760 CMR 56.04 (4):**

(a) that the proposed Project appears generally eligible under the requirements of the housing subsidy program, subject to final approval under 760 CMR 56.04(7);

(b) that the site of the proposed Project is generally appropriate for residential development, taking into consideration information provided by the municipality or other parties regarding municipal actions previously taken to meet affordable housing needs, such as inclusionary zoning, multifamily districts adopted under M.G.L. c.40A, and overlay districts adopted under M.G.L. c.40R, (such finding, with supporting reasoning, to be set forth in reasonable detail);

(c) that the conceptual project design is generally appropriate for the site on which it is located, taking into consideration factors that may include proposed use, conceptual site plan and building massing, topography, environmental resources, and integration into existing development patterns (such finding, with supporting reasoning, to be set forth in reasonable detail);

(d) that the proposed Project appears financially feasible within the housing market in which it will be situated (based on comparable rentals or sales figures);

(e) that an initial pro forma has been reviewed, including a land valuation determination consistent with the Department's guidelines, and the Project appears financially feasible and consistent with the Department's guidelines for Cost Examination and Limitations on Profits and Distributions (if applicable) on the basis of estimated development costs;

(f) that the Applicant is a public agency, a non profit organization, or a Limited Dividend Organization, and it meets the general eligibility standards of the housing program; and

(g) that the Applicant controls the site, based on evidence that the Applicant or a related entity owns the site, or holds an option or contract to acquire such interest in the site, or has such other interest in the site as is deemed by the Subsidizing Agency to be sufficient to control the site. The Subsidizing Agency shall provide copies of its written determination of Project Eligibility to the Department, the Chief Executive Officer of the municipality, and the Board

10. ADDITIONAL INFORMATION THAT CAN BE REQUESTED FROM APPLICANT (MAKE SURE YOU HAVE SUFFICIENT INFORMATION TO BE ABLE TO MAKE AN INFORMED DECISION—DON'T HESITATE TO ASK FOR GRAPHICS THAT HELP CLARIFY HEIGHT, MASSING, SETBACKS AND OVERALL RELATIONSHIP TO NEIGHBORS.)
11. LAND VALUE APPRAISAL BASED UPON EXISTING “BY-RIGHT” ZONING PREPARED BY AN APPRAISER LISTED ON MASSHOUSING’S APPROVED APPRAISER LIST. THIS APPRAISAL IS A REQUIREMENT FOR PROJECT ELIGIBILITY LETTER (PEL) APPLICATION.
12. PRELIMINARY VS. “FINAL” INFORMATION AND TIMING OF SUBMISSIONS
13. TIMELY REVIEW OF APPLICATION BY ZBA
14. TIMELY IDENTIFICATION OF “CRITICAL” ISSUES
15. TIMELY IDENTIFICATION OF AREAS WHERE PEER REVIEW CONSULTANTS WILL BE REQUIRED. PEER REVIEWERS REVIEW STUDIES PREPARED ON BEHALF OF APPLICANT. PEER REVIEWERS CAN NOT PREPARE INDEPENDENT STUDIES. ALL WRITTEN RESULTS AND REPORTS ARE INCLUDED IN THE PUBLIC RECORD. PEER REVIEW SHOULD BE DELAYED UNTIL CRITICAL ISSUES ARE DEFINED.
16. FINANCIAL REVIEW (PRO FORMA REVIEW). SEE 760 CMR 56.05 (6) FOR DETAILED GUIDELINES ON WHY AND WHEN A FINANCIAL REVIEW SHOULD BE DONE.
17. TIMELY PROCUREMENT OF PEER REVIEW CONSULTANTS
18. TIMELY COMPLETION OF PEER REVIEWS
19. COOPERATION AMONG ZBA/DEPARTMENTS/COMMITTEES/APPLICANT
20. OPEN MEETING LAW
21. 40B SUBSIDIZED HOUSING INVENTORY (SHI) “CREDITS” AND PROJECT REQUIREMENTS FOR INCLUSION OF UNITS IN SHI

22. ZBA IS AUTHORIZED TO GRANT EXCEPTIONS (AKA WAIVERS) TO ZONING BY-LAWS AND OTHER **LOCAL** RULES BUT NOT TO STATE WETLANDS PROTECTION ACT, TITLE V REQUIREMENTS, AND OTHER **STATE** REQUIREMENTS. ZBA CAN NOT GRANT EXCEPTIONS TO ANY STATE BUILDING CODE REQUIREMENTS.

23. ZBA DECISION ALTERNATIVES

- DENIAL OF COMPREHENSIVE PERMIT APPLICATION

Not common unless ZBA feels that there is a clear reason to deny based upon statutory minima requirements, safe harbor provisions, or local health, safety, environmental, design, open space or planning local concerns that outweigh regional housing needs. Prior to denying a comprehensive permit application, the ZBA should consult with its Town Counsel and other advisors to assess the validity and strength of its arguments for denial given the Applicant's likely appeal of the denial to the Housing Appeals Committee (HAC).

- APPROVAL OF COMPREHENSIVE PERMIT APPLICATION AS SUBMITTED

Rarely, if ever, occurs

- APPROVAL WITH CONDITIONS

Most common ZBA action in recent 40B history

Conditions should not make the project "uneconomic." If they do, Applicant may have reasonable grounds for an appeal to the HAC.

24. CONDITIONS TO DECISION: A RECENT MASSACHUSETTS SUPREME JUDICIAL COURT (SJC) DECISION IN THE ZONING BOARD OF APPEALS OF AMESBURY V. HOUSING APPEALS COMMITTEE , SJC-10637, September 3, 2010 CASE ADDRESSES:

"What is the scope of a local zoning board's authority under c.40b, s. 21 (s. 21) to impose conditions on the issuance of a comprehensive permit to construct low or moderate income housing; and what is the extent of authority vested in the Housing Appeals Committee (HAC) of the Department of Housing and Community Development (department) under c. 40b, s.23 (s.23), to review any conditions that have been imposed?"

All ZBAs and their Town Counsels should familiarize themselves with this Amesbury decision. The decision is available at:

www.caselaw.findlaw.com/ma-supreme-judicial-court/1537430.html

25. APPEAL PROCESS FOR APPLICANT: HOUSING APPEALS COMMITTEE
(HAC)

APPEAL PROCESS FOR OTHER AGGRIEVED PARTIES: SUPERIOR COURT
OR LAND COURT

AN APPEAL OF AN HAC, SUPERIOR COURT OR LAND COURT DECISION
MAY ULTIMATELY BE DECIDED BY THE MASSACHUSETTS SUPREME
JUDICIAL COURT (SJC), AS WAS THE CASE IN THE AMESBURY DECISION.

SPECIFIC PROJECT REVIEW ISSUES

1. SITE CONTROL
2. QUALIFICATIONS/EXPERIENCE OF DEVELOPMENT TEAM. FLEXIBILITY AND COOPERATIVENESS OF DEVELOPMENT TEAM.

3. **DENSITY**

- **New Density Guidelines for Chapter 40B developments (effective February 22, 2008)**

“Density—Appropriate density of residential dwellings depends upon a myriad of interconnected factors and must be determined case by case. However, the following guidance indicates a range of density (units per buildable acre) that can be achieved for each building typology while maintaining appropriate ratios of dwelling space to parking and open space across a broad range of local development patterns.”

Building Type	Units Per Buildable Acre
Low Rise/Town Houses	8-40
Garden Style Apartments	25-70
Midrise	40-160

4. **SCHOOL-AGE KIDS**

5. **WETLANDS/RESOURCE AREA IMPACTS**

6. **SITE PLAN AND BUILDING DESIGN**
(Building massing, building height, exterior building design, ADA compliance, tree cutting, new landscaping, screening/buffering , road/sidewalk design, parking, public safety vehicle access, exterior lighting, setbacks, impacts on adjacent and nearby properties, open space, etc.)
7. **ENGINEERING**
(Storm drainage, sewer, domestic water, fire protection, grading, road design, blasting, erosion control, wetlands protection, wetlands replication, construction specifications, etc.)
8. **TRAFFIC SAFETY AND TRAFFIC VOLUME**

9. OTHER IMPACTS ON NEIGHBORHOOD/TOWN
10. MITIGATION OFFERED/REQUIRED TO LESSEN ADVERSE IMPACTS
11. PRO FORMA REVIEW **(See 760 CMR 56.05(6) for new regulations explaining when and why pro forma reviews should be done)**

REPRESENTATIVE CHAPTER 40B-RELATED DOCUMENTS AVAILABLE AT CHAPA'S WEBSITE

[CHAPA Home](#) » [Housing Policy](#) » [Chapter 40B](#)

Chapter 40B

Looking for 40B and other affordable homeownership lotteries? [Click here](#).

[Link to Massachusetts Department of Housing and Community Development 40B Web Site](#)

[Link to Massachusetts Housing Partnership Web Site](#)

[DHCD's Chapter 40B Subsidized Housing Inventory \(PDF file\) Updated Monthly](#)

[Link to 40B Facts Web Site](#)

[HUD's 2010 Area Median Income Limits for Massachusetts – May, 2010](#)

[Berquist Appellate Court Decision July 2009](#)

[Reviewing 40B: What Gets Proposed, Approved, Appealed and Built? \(PDF file\) Lynn Fisher, Department of Urban Studies and Planning and the Center for Real Estate MIT November 2008](#)

[New 40B Guidelines March 20, 2008](#)

[HUD's 2008 Area Median Income Limits for Massachusetts \(PDF File\) February 20, 2008](#)

[MIT Center for Real Estate, Housing Conference Materials \(Ch. 40B, affordability index, land density\) June 11, 2007](#)

[DHCD's website](#)

 [Fact Sheet \(prepared by CHAPA\) Updated October 2009](#)

 [DHCD Design Guidelines – March, 2011](#)

 [Out of Reach 2010 – National Low Income Housing Coalition](#)

 [H. 4455 – Initiative Petition to Repeal Ch. 40B January 2010](#)

 [Berquist Appellate Court Decision July 2009](#)

 [Chapter 40B Housing Production Update prepared by CHAPA \(PDF File\)](#)

 [On the Ground: 40B Developments Before and After Alexandra DeGenova, Brendan Goodwin, Shannon Moriarty, and Jeremy Robitaille Ur](#)

 [CHAPA Report: The Faces of 40B: Profiles of Families Living in Affordable Housing](#)

 [Governor's Task Force Report on 40B](#)

 [CHAPA's Analysis of the 2005 Subsidized Housing Inventory \(40B\)](#)

 [40B Production and Pipeline Report](#)

 [Guidance on Holding Lotteries for NEF](#)

 [Housing Appeals Committee Mediation Program](#)

 [DHCD Powerpoint Presentation on New Regulations](#)

 [NewDHCDComprehensivePermitGuidelines.pdf](#)

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• Fax: 617-742-3953

REPRESENTATIVE CHAPTER 40B-RELATED DOCUMENTS AVAILABLE AT HOUSING APPEALS COMMITTEE WEBSITE

The mission of the Housing Appeals Committee is to provide, within the parameters of the comprehensive permit process established by G.L. c. 40B, §§ 20-23, an impartial forum to resolve conflicts arising from the siting of new affordable housing. In doing so, it will carefully balance the need for such housing and legitimate local concerns—planning, environmental, open space, design, health, safety, and other local concerns.

General Information

[Chapter 40 B - Massachusetts Comprehensive Permit Law Overview](#) **RTF**
[Chapter 40 B - Massachusetts Comprehensive Permit Law](#) **RTF** (M.G.L. c. 40 B, §§ 20-23)
[Regulations - 760 CMR 56.00 \(Comprehensive Permit; Low or Moderate Income Housing\)](#)
[Comprehensive Permit Guidelines](#)
[Handbook: Approach to Chapter 40B Design Reviews](#) **PDF**
[Guidelines for Local Review of Comprehensive Permits](#) **RTF**
[Massachusetts Comprehensive Permit Law Technical Assistance Guide](#)

760 CMR 30.00 - Procedural Regulations of the Housing Appeals Committee - Superseded by 760 CMR 56.00

760 CMR 31.00 - Housing Appeals Committee - Criteria for Decisions - Superseded by 760 CMR 56.00

[Initial Pleading Cover Sheet](#) **PDF**
[Interlocutory Appeal Initial Pleading Cover Form](#)

Conference of Counsel Materials:

- [Conference of Counsel Cover Sheet](#) **PDF**
- [Typical Housing Appeals Committee Schedule](#) **PDF**
- [Housing Appeals Committee Practice Guidelines](#) **PDF**
- [Forms for Pre-Hearing Orders](#) **RTF**
- [Standing Order 04-02; Prefiled Testimony](#) **PDF**
- [Standing Order 05-01; Service](#) **PDF**
- [Standing Order 05-02; Stockard & Engler & Brigham, LLC](#) **PDF**
- [Standing Order 05-03; Payment of Filing Fees](#) **PDF**
- [Standing Order 07-01; Mediation](#) **PDF**
- [Standing Order 08-01; Payment of Filing Fees](#) **PDF**
- [Standing Order 10-01; Interlocutory Appeals - Safe Harbor](#) **PDF**

Contact Information

Housing Appeals Committee
100 Cambridge St., Suite 300
Boston, Massachusetts 02114
617-573-1520

Werner Lohe, Chairman
Werner.Lohe@state.ma.us

Shelagh A. Ellman-Pearl, Hearing Officer
Shelagh.Ellman-Pearl@state.ma.us

Lorraine Nessar, Docket Clerk
Lorraine.Nessar@state.ma.us

Housing Appeals Committee - Decisions

All decisions of the Housing Appeals Committee are available on searchable databases at Lexis.com, WestLaw.com, SocialLaw.com, and LandLaw.com. *Recent* decisions appear below.

[Reading, Salamone v.](#) **RTF**

[Reading, Salamone v.](#) **PDF**

Decision - 08/08/11

[Norwell, White Barn Lane LLC v.](#) **RTF**

[Norwell, White Barn Lane LLC v.](#) **PDF**

Decision - 07/18/11

[Sandwich, Sandwich Housing Partners II v.](#) **RTF**

[Sandwich, Sandwich Housing Partners II v.](#) **PDF**

Decision - 06/13/11

[Middleborough, Haskins Way LLC v.](#) **RTF**

[Middleborough, Haskins Way LLC v.](#) **PDF**

Decision - 03/28/11

[Groton, Mattbob, Inc. v.](#) **RTF**

[Groton, Mattbob, Inc. v.](#) **PDF**

Decision - 12/13/10

[Scituate, Herring Brook Meadow, LLC v.](#) **RTF**

[Scituate, Herring Brook Meadow, LLC v.](#) **PDF**

Ruling - 12/13/10

[Lunenburg, Hollis Hills, LLC v.](#) **RTF**

[Lunenburg, Hollis Hills, LLC v.](#) **PDF**

Ruling - 09/27/10

[Wenham, Burley St., LLC v.](#) **RTF**

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Overview of the Massachusetts Comprehensive Permit Law, G.L. c. 40B, §§ 20-23

Effective Date: November 21, 1969
(Chapter 774 of the Acts of 1969, H5681)

Purpose

To increase the supply and improve the regional distribution of low and moderate income housing by allowing a limited suspension of existing local regulations which are inconsistent with construction of such housing.

Who May Apply for a Comprehensive Permit?

A public agency
A non-profit organization
A limited dividend organization

How is an Application Made?

Prior to applying for a comprehensive permit, a proposal to build affordable housing must receive preliminary approval (normally a Project Eligibility or Site Approval letter) under a state or federal subsidy program. The application, containing the eligibility letter and preliminary development plans, is then filed with the local zoning board of appeals. The board then notifies and seeks recommendations from other local boards, including, as appropriate, the following:

Planning Board
Survey Board
Board of Health
Conservation Commission
Historical Commission
Water, Sewer, or other commission or district
Fire, Police, Traffic, or other department
Building Inspector or similar official or board

The zoning board of appeals holds a public hearing to ensure that local concerns are properly addressed. Local concerns include health, safety, environmental, design, open space, and other concerns raised by town officials or residents. In making its decision, the board acts on behalf of all other town boards and officials, but only with regard to matters where local restrictions are more stringent than state requirements. The board can issue a single comprehensive permit, which subsumes all local permits and approvals normally issued by local boards. It can also issue a comprehensive permit with conditions or deny the permit. If a comprehensive permit is granted, the applicant, prior to construction, must normally present final, detailed construction plans to the building inspector or similar officials to ensure that the plans are consistent with the comprehensive permit and state requirements.

What if the Comprehensive Permit is Denied?

If an application for a permit is denied or granted with conditions which would make building uneconomic, the applicant may appeal the board's decision to the Housing Appeals Committee, which consists of three members appointed by the Massachusetts Secretary of Communities and Development (one of whom must be an employee of Department of Housing and Community Development), and a city councilor and a selectman, both appointed by the Governor.

Hearing and Appeals Procedure:

The local zoning board of appeals must open a hearing within thirty days of receiving an application, and render a decision within forty days after termination of the hearing. Any appeal of the local decision to the Housing Appeals Committee by the applicant must be taken within twenty days of the notice of the decision. A decision of the Housing Appeals Committee may be appealed to the Superior Court.

Consistency with Local Needs:

The general principle governing hearings before the local board and the Housing Appeals Committee is that all local restrictions, as applied to the proposed affordable housing, be "consistent with local needs." General Laws c. 40B, § 20 defines consistency with local needs as being reasonable in view of the need for low and moderate income housing balanced against health, safety, environmental, design, open space, and other local concerns. If less than ten percent of municipality's total housing units are subsidized low and moderate income housing units, there is a presumption that there is a substantial housing need which outweighs local concerns. See 760 CMR 31.07(1)(e); Board of Appeals of Hanover v. H.A.C., 363 Mass. 339, 367, 294 N.E.2d 393, 413 (1973).

CHAPTER 40B BASIC NUMBERS IN SUDBURY, MA (OCTOBER 18, 2011)

TOTAL NUMBER OF YEAR ROUND HOUSING UNITS IN SUDBURY BASED ON YEAR 2010 CENSUS DATA	5,921
SUBSIDIZED HOUSING INVENTORY (SHI) ELIGIBLE UNITS IN SUDBURY BASED UPON DATA PROVIDED BY TOWN	344
% OF SHI ELIGIBLE UNITS IN SUDBURY	5.81%
NUMBER OF ELIGIBLE SHI UNITS REQUIRED IN SUDBURY TO REACH THE 10% 40B REQUIREMENT	593
ELIGIBLE SHI UNITS IN SUDBURY	344
DEFICIT (ADDITIONAL SHI ELIGIBLE UNITS REQUIRED TO REACH THE 10% 40B REQUIREMENT)	249
DHCD PLANNED PRODUCTION REQUIREMENTS (DHCD-APPROVED HOUSING PRODUCTION PLAN REQUIRED)	
1/2 OF 1% OF YEAR ROUND HOUSING UNITS = ONE YEAR ZBA DENIAL PERIOD	30
1% OF YEAR ROUND HOUSING UNITS = TWO YEAR ZBA DENIAL PERIOD	60
RECENT PROGRESS TOWARD HOUSING UNIT MINIMUM (DOES NOT REQUIRE DHCD-APPROVED HOUSING PRODUCTION PLAN)	
2% OF YEAR ROUND HOUSING UNITS = ONE YEAR ZBA DENIAL PERIOD	119
<i>NOTE: SUDBURY HAS A DHCD-APPROVED HOUSING PRODUCTION PLAN. THEREFORE, THE LESS DEMANDING 1% STANDARD DESCRIBED ABOVE APPLIES.</i>	
MAXIMUM CHAPTER 40B PROJECT SIZE ("LARGE PROJECT") FOR A CHAPTER 40B PROJECT IN SUDBURY. THE MAXIMUM PROJECT SIZE FOR TOWNS WITH 5,000-7,500 YEAR ROUND HOUSING UNITS IS 250 UNITS. ANY PROPOSED PROJECT LARGER THAN 200 UNITS CAN BE DENIED BY THE ZBA AND THE APPLICANT HAS NO RIGHT TO APPEAL THE DENIAL.	
	250
MAXIMUM NUMBER OF BEDROOMS OR UNITS BEFORE A WASTE WATER TREATMENT PLANT (WWTP) WOULD BE REQUIRED. A WASTEWATER TREATMENT PLANT IS REQUIRED BY THE MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION (DEP) FOR ANY PROJECT GENERATING MORE THAN 10,000 GALLONS PER DAY OF SEWERAGE.	
AGE-RESTRICTED PROJECT (55+) (150 GALLONS PER DAY PER UNIT)	66 Units
UNRESTRICTED OCCUPANCY PROJECT (110 GALLONS PER DAY PER BEDROOM)	90 Bedrooms