

# **OVERVIEW OF CHAPTER 40B FUNDAMENTALS**

**The Next Chapter of 40B:  
A Training on the Latest  
Developments in the  
Affordable Housing Law  
Fall 2011**

Presented by CPTC  
In Cooperation  
with CHAPA

# Introduction to 40B

- History of Chapter 40B
- 2008 Regulation revisions
- 2010 Census and Update to SHI
- Recent Mass SJC court case clarifies municipal role

# 40B Information Available on the Web

- [www.chapa.org](http://www.chapa.org)
- [www.mass.gov/dhcd](http://www.mass.gov/dhcd)
- [www.masshousing.com](http://www.masshousing.com)
- [www.mhp.net](http://www.mhp.net)
  - Technical Assistance for ZBA review of 40B
  - Contact Dina Vargo [dvargo@mhp.net](mailto:dvargo@mhp.net) or (617) 330-9944 Ext. 260



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 doesn't result in 0.3% of the total land area zoned in community for residential, commercial, or industrial use or ten acres, whichever is larger, **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  
DAYS**





# 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**

# 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



Sudbury

# Holding Deliberation Sessions



Andover

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

# Drafting and Issuing the Comprehensive Permit Decision

- The ZBA has three decision alternatives

Denial

Approval as submitted

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

## Zoning Board Of Appeals Of Amesbury v. Housing Appeals Committee –Mass. SJC



Falmouth

- 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)”
- Separate handout

# Managing the Comprehensive Permit

## Subsidizing Agency

- Final Approval
- Regulatory Agreement, Deed Riders (if ownership), and Monitoring Agreement
- Lottery, fair housing and local preference
- Eligibility of owners/tenants
- Limited Dividend Restriction and Cost Certification

## ZBA/Municipality

- Final engineering and architectural plans accompany application for a building permit
- Inspections during construction
- Cost Certification review
- Lapse of the permit
- Transfer of the Comprehensive Permit
- Changes to Permit – substantial or insubstantial