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Rachel Heller

January 31, 2025

The Honorable Ed Augustus
Secretary
Executive Office of Housing and Livable Communities
100 Cambridge Street, Suite 300
Boston, MA 02114

Re: Proposed Updates to 760 CMR 56.00 – Comprehensive Permit;
Low or Moderate Income Housing

Dear Secretary Augustus:

Thank you for your leadership in growing and diversifying the Commonwealth's housing stock to meet the wide range of needs of current and future residents. We appreciate the opportunity to submit comments on the proposed updates to Chapter 40B regulations.

CHAPA's mission is to encourage the production and preservation of homes that are affordable to people with low and moderate incomes and to foster diverse and sustainable communities through planning and community development. At CHAPA, we believe that everyone should have a safe, healthy, accessible, and affordable home in the community they choose.

Housing is the single best investment we can make for the future of Massachusetts. The Commonwealth needs 200,000 new homes by 2030 to stabilize home prices and rents. To ensure housing for people across income levels, 40,000 of these new homes must be affordable for people with low and moderate incomes and 20,000 of these homes must be affordable for people with extremely low incomes, including 10,000 homes with supportive services.

There has been no tool that has been more effective than Chapter 40B in helping achieve our mission of creating affordable housing.

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Chapter 40B is critical to the production of much needed housing of all kinds, especially outside larger cities. Over 70,000 homes have been created across the state – in urban, suburban, and rural communities. Almost 50,000 homes created by Chapter 40B are rental apartments and nearly 20,000 are homeownership units. Over 36,000 of these homes are dedicated for households with low- or moderate-incomes.

Although the language of Chapter 40B has not changed since 1969, regulatory changes have allowed it to remain a dynamic law that continues to expand affordable and mixed income housing across the Commonwealth. In 2008, comprehensive regulations and program guidelines were adopted to ensure predictability for municipalities and developers. These guidelines, including the interlocutory appeal, have provided a stable base for Chapter 40B, making the rules and processes clear. With definitive processes in place, municipalities and developers can engage in productive conversations to shape developments to meet housing needs and reflect community priorities.

While CHAPA lauds the goal of streamlining the 40B process, eliminating the interlocutory appeal will have negative impacts for municipalities and developers. The interlocutory appeal process separates safe harbor claims from the housing proposals. This is important because these are two separate issues. Establishing whether safe harbor has been established at the beginning of the process allows the community time to make the claim and get a decision before holding public hearings and spending time shaping a development that may not come into fruition if the Executive Office of Housing and Livable Communities (EOHLC) confirms safe harbor status. For developers, resolving this issue early in the process provides critical information about the viability of the proposal. If the developer knows at the beginning that safe harbor has been met, the developer can determine whether to invest time and resources into the project.

Eliminating the interlocutory process will have the unintended consequence of slowing down development and could result in communities forgoing their thorough review of proposals and their ability to impose conditions for developments. If the Housing Appeals Committee (HAC) is unable to remand the case back to the local Zoning Board of Appeals (ZBA), the community will have lost the ability to shape the development if the HAC determines safe harbor has not been met. If the HAC can remand the case back to the ZBA, the process may take even longer due to the amount of time the HAC requires to make their determination. In addition, without interlocutory appeal, municipalities may go through the hearing process and claim safe harbor at the end. Having safe harbor claimed at the end of the process creates great risk for the developer because of the time and money they need to invest that could ultimately result in their project not moving forward. Making this determination early in the process provides important information to developers about whether to invest time and money in a development proposal.

The proposed regulations include the creation of a GLAM inventory that is subject to appropriation. CHAPA lauds the intent of the proposal. A GLAM inventory, much like the Subsidized Housing Inventory, would provide clear information for municipalities, residents, and developers. While well intended, a GLAM inventory requires significant investment. If funds are not appropriated, EOHLC is unable to develop a GLAM Inventory. In addition, the proposed regulations state “the GLAM Inventory shall be

updated periodically by the Department”. Conditions in municipalities could change more quickly than the periodic updates. For instance, communities may increase conservation land or new housing developments may change the calculation. Although the regulations provide communities with the ability to present evidence to the HAC if there is disagreement with the state’s GLAM calculation, this could result in many communities challenging the state regardless of any 40B developments being proposed. These challenges divert attention from planning for production at the local level and could further slow the HAC in making decisions on housing appeals.

CHAPA applauds the Healey-Driscoll Administration for examining multiple strategies to increase much needed housing production. Unfortunately, the changes proposed to 40B regulations have unintended consequences that go counter to the Administration’s goals and would slow down housing production.

We appreciate your team’s thoughtful consideration of our comments and suggestions. If you have any questions or would like additional information, please do not hesitate to contact Matt Noyes, CHAPA’s Director of Public Policy, at mnoyes@chapa.org.

Sincerely,

A handwritten signature in cursive script that reads "Rachel Heller".

Rachel Heller
Chief Executive Officer