

OVERVIEW OF CHAPTER 40B FUNDAMENTALS

**Massachusetts
Housing Partnership
&
The Pioneer Valley
Planning Commission**

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(slides by CPTC/CHAPA)

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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**

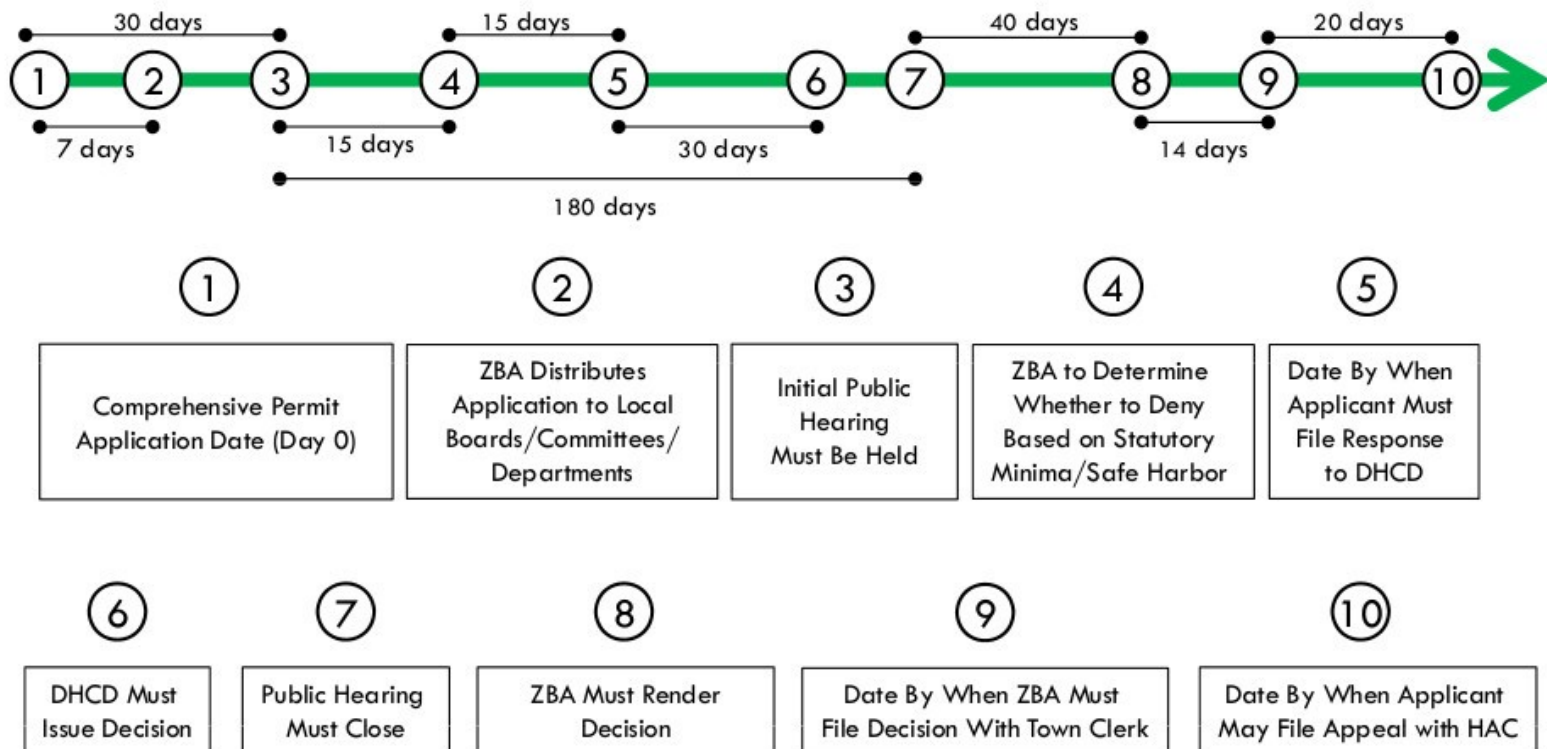
Noticing and Conducting the Required Public Hearing

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



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
 - 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

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)”

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