

Commonwealth of Massachusetts
Department of Housing and Community Development



Chapter 40B
April 4, 2016
Hamilton-Wenham
Public Library.



What is Chapter 40B



- State Statute enacted in 1969 that allows developers to override local zoning in municipalities with 10% or less affordable housing stock.
- Has produced over 65,000 units in over 1,300 developments.
- Produced more Housing than any other single housing program in the Commonwealth.
- Controversial: Massachusetts is a Home Rule state- 351 sets of local zoning laws.
- Ballot Initiative in 2010 preserved 40B 58%- 42%.

How Do Units Count Toward the State's 10% Affordable Housing Goal?



- They must be part of a “subsidized” development built or operated by a public agency, non-profit or limited dividend organization.
- At least 25% of the units in the development must be income restricted to families with incomes of less than 80% of median and have rents or sale prices restricted to affordable levels. These restrictions must run at least 30 years for ownership. 15 years for rentals.
- The development must be subject to a regulatory agreement and monitored by a public agency or non-profit organization.
- Owners must meet affirmative marketing requirements.
- DDS/DMH Group Homes Count (since 2001)
- For sale 40B's subject to 20% profit limitations. 10% per year for rentals.



How does a development qualify under 40B



A Project Eligibility Letter (PEL) is needed. The following can issue a PEL:

- Mass Housing
- Mass Housing Partnership
- Mass Development
- Department of Housing and Community Development

Once a developer has a PEL they can file for a comprehensive permit with the Zoning Board of Appeals (ZBA). Developer also needs evidence of site control.



MHP's 40B Technical Assistance



- MHP provides technical assistance to local Zoning Boards of Appeal (ZBA)
- Grants up to \$15,000
- Qualified third-party consultants
- To request an application for technical assistance contact Laura Shufelt at lshufelt@mhp.net or 617-330-9944 ext. 292





Once a complete application is received ZBA has specific timelines



- 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





Overview



Statutory Minimum:

Achieving 10% 760 CMR 56.03 (a)

- 48 Communities have achieved 10%

General Land Area Minimum 760 CMR 56.03 (b)

- Also known as 1.5% - when low and moderate income housing (units on 40B List) exist on sites comprising 1.5% or more of the total land area zoned for residential or commercial or industrial use.

Annual Land Area Minimum 760 CMR 56.03 (c)

- A community adds more than 0.3% of 1% of low and moderate income housing (units on 40B List) of the city or town's land area or ten acres which is larger,- never used.



The 1.5 General Land Area Minimum



General Land Area Minimum 760 CMR 56.03 (b)- the 1.5%

- Regs were changed in 2008.
- DHCD does not keep inventory of land analysis.
- Not used until 2014. Some cases pre 2008, Weymouth, Watertown, Somerville.
- Recently, Milton, Newton (three times), Norwood, Stoneham and Waltham have invoked the 1.5%.
- DHCD found that the three communities had not achieved the 1.5%.
- Norwood, Newton, Waltham and Stoneham appealed DHCD's ruling to the Housing Appeals Committee (HAC) via an interlocutory appeal. HAC found in favor of the developer in the Newton cases and Stoneham. Norwood and Waltham are in front of HAC as of 4/4/16.



Other Safe harbor (not in 40B Statue)



- Housing Production Plans: Produce SHI units in accordance with plan get one or two year “safe harbor”. Since 2003 over 50 communities have achieved certification. Over 100 plans have been submitted.
- Recent Progress: Produce 2% SHI eligible housing within the last 12 months of Comp Permit filing
- Large Scale Projects: Caps project size limit 150-300 units, depending on the size of the community unless the ZBA chooses to allow a larger project.
- Related Applications: Enables municipalities to reject a 40B application if a developer submitted an application for the same site for a non-40B development within the previous 12 months.



Procedures for Board decisions to invoke all Safe Harbors



- 760 CMR 56.03(8)
- Within 15 days of opening the hearing the Board must provide written notice to the Applicant with a copy to DHCD describing which safe harbor has been achieved with supportive documentation.
- Applicant has 15 days to challenge Board assertion with corresponding supportive documentation. Copies of all material sent to ZBA and DHCD.
- DHCD has 30 days to issue a ruling upon receipt of all materials.
- Failure to act by DHCD within 30 days results in Municipalities favor.
- During DHCD review of safe harbors the hearing shall “toll” the requirement to terminate the hearing within 180 days.
- Either Board or Applicant can file an interlocutory appeal within 20 days of DHCD ruling.
- **“Safe harbor” must be achieved before Comp Permit filing date.**



Drafting and issuing the Comprehensive Permit Decision



The ZBA has three decision alternatives

- Denial
- Approval as submitted
- Approval with conditions

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.



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

Municipality/ ZBA

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

Attleboro



Andover

Westford





40B in Essex and Middlesex District



Town/ City	SHI/ 40B
➤ Boxford	0.8%
➤ Essex	2.7%
➤ Georgetown	11.7%
➤ Groveland	3.3%
➤ Hamilton	3.8%
➤ Ipswich	8.6%
➤ Manchester by the Sea	4.8%
➤ Middleton	5.0%
➤ Newbury	3.4%
➤ North Andover	8.5%



40B in Essex and Middlesex District



Town/ City	SHI/ 40B
➤ Rockport	3.9%
➤ Rowley	4.2%
➤ Wenham	8.7%
➤ West Newbury	2.2%
➤ North Reading	9.5%
➤ Wilmington	10.5%



Housing Production Plans



Community	Date of Plan Approval	Date of Plan Expiration
Boxford	6/3/04	6/2/09
Georgetown	1/12/12	1/11/17
Groveland	1/7/05	1/6/10
Hamilton	7/25/13	7/24/18
Ipswich	12/22/06	12/21/11
North Andover	11/15/07	11/14/12
Rowley	8/27/07	8/26/12
Wenham	9/19/08	9/18/13
West Newbury	10/19/10	10/18/15
Wilmington	8/3/04	8/2/09
Manchester by the Sea	2/17/16	2/16/21



Contact Information



- Contact information

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