



One Boston Place
Suite 2600
Boston, MA 02108
617.933.9490

Benjamin B. Tymann
Tel.: 617.933.9490
btymann@tdlegal.com

April 12, 2022

BY E-MAIL

Hamilton Zoning Board of Appeals
Hamilton Town Hall
577 Bay Road
Hamilton, MA 01936

Re: Application for Comprehensive Permit – Asbury Commons

Dear Members of the Board:

On behalf of Harborlight Community Partners (“Harborlight”), the applicant under the comprehensive permit application presently before you for the development of an affordable housing community, Asbury Commons (466 Highland Street/421 Asbury Street), I submit this response to the letter of Daniel Hill, dated April 11, 2022. In his letter, Attorney Hill claims that the Town of Hamilton is eligible for a one-year “safe harbor” under the regulations of the Massachusetts Department of Housing and Community Development (“DHCD”) by virtue of the Town purportedly satisfying the affordable housing unit production target for 2021 set out in its DHCD-approved Housing Production Plan (“HPP”). Specifically, Attorney Hill contends that Hamilton has nineteen (19) approved low- or moderate-income housing units that are eligible to be counted toward the Town’s HPP goal of at least fourteen (14) units annually, and that these 19 units should all be counted for Calendar Year 2021 in order to invoke a safe harbor for 2022.

For these reasons explained below, the claims in Attorney Hill’s letter are incorrect. Hamilton is not in a safe harbor, under DHCD’s HPP rules and regulations or otherwise, and the Zoning Board of Appeals (“Board”) has no legal basis to invoke a safe harbor with respect to the Asbury Commons project.

I. A safe harbor premised on an HPP only applies if DHCD has certified a town’s compliance with its HPP unit production goals, and this has not occurred in Hamilton

First, under the plain language of DHCD’s regulations, the HPP safe harbor is only available if “the Department has *certified* the municipality’s compliance with the goals of its approved Housing Production Plan, in accordance with 760 CMR 56.03(4).” 760 CMR 56.03(1)(b) (emphasis added). The regulations further make clear, under the “Procedure for Board Decision” provisions governing applicability of safe harbors, that during the 15-day opening period of the public hearing when a zoning board of appeal may invoke a safe harbor, it can only do so if,

understandably, that safe harbor has actually been achieved – not that it might be achieved some time in the future. Specifically, the regulations, state, in pertinent part: “If a Board considers that, in connection with an Application, a denial of the permit or the imposition of conditions or requirements would be consistent with local needs on the grounds that ... one or more of the grounds set forth in 760 CMR 56.03(1) have been met, it must ... [w]ithin 15 days of the opening of the local hearing for the Comprehensive Permit ... provide written notice to the Applicant” that it is invoking the safe harbor. 760 CMR 56.03(8)(a).

The relevant “ground set forth in 760 CMR 56.03(1)” here is the HPP safe harbor at 56.03(1)(b) and, again, that safe harbor can only be met upon **DCHD certification of HPP compliance** by a town for the particular year in question. This certification has not occurred in Hamilton and there is thus no HPP safe harbor available. *See also* DHCD’s HPP Certified Communities list (as of March 31, 2022), attached hereto at **Tab A** and available at <https://www.mass.gov/doc/dhcd-certified-communities-march-31-2022/download> (Hamilton not among DHCD’s Certified Communities).

In the *Frequently Asked Questions on Housing Production Plans* DHCD publishes periodically, the agency addresses the key difference between its approval of a town’s HPP versus its certification of the town’s compliance under that plan. “This distinction is very important,” DHCD emphasizes in these FAQs, which state in full:

Q9: *If a community has an approved HPP can it deny a Comprehensive Permit application?*

A: *No, DHCD certification of compliance with the plan is required before a Comprehensive Permit can be denied. If a community has a DHCD approved HPP and is granted a DHCD certification of compliance with the plan, a decision by the ZBA to deny a Comprehensive Permit application will be deemed “Consistent with Local Needs” under MGL Chapter 40B. “Consistent with Local Needs” means the ZBA’s decision will be upheld by the HAC.*

Q10: *What is the difference between approval and certification of a HPP?*

A: *This distinction is very important. Plan approval refers to DHCD’s action of reviewing a HPP and determining that it is complete and contains all the elements required by regulation and accompanying Guidelines. Certification of compliance refers to DHCD’s determination that the community has produced units that are affordable to low- or moderate-income households totaling at least 0.5% of 1% of year round housing units in one calendar year and in accordance with the approved plan. **In order for a ZBA’s decision on Comprehensive Permits to be “Consistent with Local Needs” DHCD must grant certification and not just approval.***

DHCD *Frequently Asked Questions on Housing Production Plans* (Updated March 2021) (emphasis added). A copy of these FAQs is attached hereto at **Tab B** and available at <https://www.mass.gov/doc/frequently-asked-questions-33/download>.

These FAQs, like the plain words of the DHCD regulations themselves, leave no doubt that Hamilton is outside of the HPP safe harbor. There is no basis under which the Board could invoke it with respect to Asbury Commons, even if the Board were inclined to make that choice.¹

Finally, even if Hamilton did have more than fourteen (14) countable low- or moderate-income units for 2021 – which, for the reasons explained in the next section of this letter, it does not – it is too late for the Town to seek 2021 certification. See DHCD’s Housing Production Plan Guidelines (Oct. 2020), at Sect. B.6.a (“Requests for certification will be accepted by DHCD at any time during the calendar year in which the units are produced and up to January 10 of the following year”). A copy of the DHCD HPP Guidelines is attached hereto at **Tab C** and available at <https://www.mass.gov/doc/housing-production-plan-guidelines/download>.

II. 59-63 Willow Street’s 9 units are countable toward 2019, not 2021

The safe harbor arithmetic in Attorney Hill’s letter turns on the nine (9) affordable units to be constructed at 59-63 Willow Street being counted in 2021, when a building permit was issued, rather than in 2019, when the project was approved by the Hamilton Planning Board under the Town Zoning Bylaw’s Site Plan Review provisions. This contention, too, is wrong. These units count toward 2019 because the Planning Board’s Site Plan Review approval of this project was, in the words of the DHCD regulations, “a zoning approval under M.G.L. c. 40A,” see 760 CMR 56.03(2)(b)(1), and this approval occurred in December 2019.

While it is true that M.G.L. c. 40A (“Chapter 40A”) does not include discussion of site plan review in its text, “the use of site plan approval as a permissible regulatory tool for controlling the aesthetics and environmental impacts of land use has been recognized since *Y.D. Dugout, Inc. v. Board of Appeals of Canton*, 357 Mass. 25, 31 (1970).” *Dufault v. Millennium Power Partners, L.P.*, 49 Mass. App. Ct. 137, 138-39 (2000). In this same vein, many Massachusetts cities and towns expressly incorporate relevant requirements of Chapter 40A into their zoning by-laws’ site plan review provisions, and these zoning by-laws are fully respected and upheld by Massachusetts courts. See, e.g., *Wildstar Farm, LLC v. Planning Bd. of Westwood*, Mass. App. Ct., No. 11-P-142 (Feb. 15, 2012) (Rule 1:28 Decision); *Willis v. Nelson*, 2019 WL 2180689 (Mass. Land Ct. May 20, 2019) (Foster, J.); *Corner v. Forest Delahunt Development, LLC*, 2019 WL 3893108 (Mass. Land Ct. Aug. 19, 2019) (Speicher, J.).

¹ As Attorney Hill’s letter acknowledges, invoking safe harbors, when they are available, is fully within the discretion of the Town and Board (“The state regulation provides that if town achieves its goal of creating affordable housing equaling .5% of its housing stock in any calendar year, it *can* request certification from DHCD. Once certified, the zoning board *can* invoke the housing production plan safe harbor.” (emphasis added)). In other words, the Board need not invoke it even it did apply, which it does not.

Hamilton is one such town that has embedded Chapter 40A provisions into its Zoning By-laws governing Site Plan Review. For example, your Zoning By-laws make Site Plan Review expressly subject both to Chapter 40A's notice requirements under Section 11 of the statute as well as its appeal requirements under Section 17. *See* Hamilton Zoning Bylaw (Aug. 2021), §§ 10.6.6 & 10.6.15. In sum, Site Plan Review approvals in Hamilton are "approvals under M.G.L. c. 40A" for purposes of the DHCD regulation governing when HPP-compliant housing units become eligible to be counted toward the Town's inventory. 760 CMR 56.03(2)(b). For 59-63 Willow Street and its 9 affordable units, that was 2019.

The DHCD regulations further make clear that the operative date for counting subsidized units created pursuant to such Site Plan Review approvals is when the board's decision is filed with the Town Clerk (as is required for all board decisions made pursuant to Chapter 40A). 760 CMR 56.03(2)(b)(1)(a). My understanding is that the Planning Board's Site Plan Review decision for the Willow Street project was filed with the Town Clerk in December 2019. This further supports the conclusion that those units were countable for 2019, not some later year.

III. Conclusion

Over the past year, Harborlight has been working cooperatively and in good faith on the Asbury Commons proposal with Town officials as well as neighbors, including those at the Village at Canter Brook Farm. This active engagement began last summer with public meetings before the Planning Board. That process was voluntary on Harborlight's part, but it was glad to participate in it. It yielded important revisions to the Asbury Commons proposal based on constructive comments by Town officials and neighbors, including some at Canter Brook Farm.

Of course, the notion of an HPP safe harbor never came up during these extensive public meetings over the past year. That is because no Hamilton official believed it was applicable, and they were right.

Harborlight respectfully requests that the Board, after carefully reviewing the facts and the law as summarized herein, reject this ill-founded safe harbor argument and proceed in its public hearing to an evaluation of the project's merits. Those merits to the Town of Hamilton and its residents are considerable, and Harborlight looks forward to making that case to the Board.

Very truly yours,

Benjamin B. Tymann

Benjamin B. Tymann

Enclosures

cc: Andrew DeFranza
Daniel Hill, Esq.
Dennis Murphy, Esq.
George Pucci, Esq.
Patrick Reffett

Tab A

March 31, 2022 / HPP Certified Communities

Effective Date Expiration Date

<i>ACTON</i>	<i>8/10/20</i>	<i>8/9/22</i>
<i>ARLINGTON</i>	<i>9/17/21</i>	<i>9/16/22</i>
<i>ASHLAND</i>	<i>8/3/21</i>	<i>8/2/23</i>
<i>BELLINGHAM</i>	<i>9/4/20</i>	<i>9/3/22</i>
<i>GRAFTON</i>	<i>3/7/22</i>	<i>3/6/24</i>
<i>IPSWICH</i>	<i>7/22/21</i>	<i>7/29/23</i>
<i>MEDFIELD</i>	<i>5/8/20</i>	<i>5/7/22</i>
<i>MILTON</i>	<i>12/15/21</i>	<i>12/14/23</i>
<i>NANTUCKET</i>	<i>12/16/21</i>	<i>12/15/22</i>
<i>NEWBURYPORT</i>	<i>3/3/22</i>	<i>3/2/24</i>
<i>NORFOLK</i>	<i>9/24/20</i>	<i>9/23/22</i>
<i>PLYMOUTH</i>	<i>2/22/21</i>	<i>2/21/23</i>
<i>SHERBORN</i>	<i>6/18/21</i>	<i>6/17/23</i>
<i>STERLING</i>	<i>1/12/21</i>	<i>1/11/23</i>
<i>TRURO</i>	<i>2/5/21</i>	<i>2/4/23</i>
<i>WALPOLE</i>	<i>4/27/21</i>	<i>4/26/23</i>
<i>WAYLAND</i>	<i>5/18/21</i>	<i>5/17/23</i>
<i>WESTON</i>	<i>11/24/20</i>	<i>11/23/22</i>

If the city or town is certified compliant with its plan, DHCD will notify the chief elected official in writing. Regardless of the date of the certification notice, the certification period will be deemed effective on the date upon which the municipality achieved its numerical target for the calendar year in question (see 56 CMR 56. 03 (2)).

Contact Information: For questions or further information, please call 617-573-1357 or e-mail Phillip.DeMartino@mass.gov

Tab B

HOUSING PRODUCTION PLANS

760 CMR 56.03(4)

Frequently Asked Questions

Commonwealth of Massachusetts

**DEPARTMENT OF HOUSING &
COMMUNITY DEVELOPMENT**

Updated March 2021



Housing Production Plans Frequently Asked Questions (FAQs)

These FAQs are designed to assist you with a greater understanding of the Housing Production Plan (HPP) requirements. They are a complement to [Housing Production Plan Guidelines](#), available at www.mass.gov/dhcd.

If you have any questions or need assistance, contact Phillip DeMartino, Technical Assistance Coordinator, at (617) 573-1357 or at Phillip.DeMartino@state.ma.us.

Q1: What are Housing Production Plans (HPPs)?

A: A HPP is a community's proactive strategy for planning and developing affordable housing. Through a HPP a community: 1) creates a strategy to enable it to meet its affordable housing needs in a manner consistent with the Chapter 40B statute and regulations, and 2) produces housing units in accordance with the HPP.

Q2: When were the HPP requirements established?

A: The HPP regulation became effective on February 22, 2008 when the DHCD promulgated 760 CMR 56.00, Comprehensive Permit; Low or Moderate Income Housing. The HPP regulation is contained in 760 CMR 56.03(4). HPPs replace Planned Production under 760 CMR 31.07(1)(i).

Q3: Why should a community submit a HPP?

A. There are many advantages for a community to create a HPP. It provides an opportunity to understand current housing conditions and then to determine both the projected housing needs of both the current population and the growth/change in composition of the population (e.g. more families, more elders). For example:

- Are there enough "starter homes" for those forming new households?
- Is there adequate workforce housing?
- What are the options in the community for empty nesters?
- How are the needs of the elderly and the frail elderly being met?
- Are there options for residents with physical and mental disabilities?
- Are there options for both rental and home ownership?

Communities need to look at the amount, type, and condition of the current housing stock to determine whether there is a sufficient variety of supply to meet projected housing demands and preferences in the years ahead.

The projections of future need serve as a starting point for examining suitable locations for housing development. Generally such sites will be in proximity of

existing water and sewer lines. Perhaps they will be in proximity of downtown. This HPP articulates the community's rationale for a diverse housing supply responsive to projected needs and preferences. It serves as the community's pro-active strategy in determining the type and pace of housing growth. Specifically,

- by identifying housing needs in the community and identifying sites for development, the community will be providing guidance and direction for the kinds of development most responsive to local conditions;
- the HPP can serve as the housing element of an overall comprehensive plan ("master plan") and/or capital improvement plan that may be required as a companion to the HPP in order to attract the types of development and housing opportunities the community needs; and
- if a community has a DHCD approved HPP and is granted a DHCD certification of compliance with the plan, a decision by the Zoning Board of Appeals (ZBA) to deny a Comprehensive Permit application will be deemed "Consistent with Local Needs" under MGL Chapter 40B. "Consistent with Local Needs" means the ZBA's decision will be upheld by the Housing Appeals Committee (HAC).

The specific components of the HPP are described in the Guidelines. The HPP requires an explanation of the specific strategies by which the community will achieve its housing production goal, and a schedule for implementing the strategies in order to produce the units that will achieve this goal.

Q4: What resources are available to assist with development of an HPP?

A. DHCD encourages communities to examine approved HPPs that are on the DHCD website. Also, regional planning agencies may have regional plans, statistical information, and mapping data, of use when undertaking the preparation of the plan. Basic census information can be found at www.census.gov.

Q5: What are the housing production goals for my community?

A. A list for production goals can be found as Appendix II.B.1 to the HPP Guidelines, in the previous section of this Guide. The chart indicates the number of Subsidized Housing Inventory (SHI) eligible units that a community would need to produce to achieve a 0.5% increase or a 1% increase in SHI eligible housing units.

Q6: What is an *approved* HPP?

A. A HPP is approved once DHCD staff determines that the plan meets the Regulation and Guidelines. An approved HPP is a prerequisite to a certified plan (see Q10).

Q7: What is the duration of an approved HPP? Do they have to be renewed?

A: A HPP is valid for a five year period from the approval date by DHCD. Upon expiration, HPPs may be renewed. The community must decide whether to update/revise the existing plan or write a new HPP.

Q8: My community already has an approved affordable housing plan under the former Planned Production Program. Is it still valid?

A: It is valid only if it was approved **after** February 22, 2003. All other previously approved plans will need to be updated/renewed because of the five year approval duration.

Q9: If a community has an approved HPP can it deny a Comprehensive Permit application?

A. No, DHCD certification of compliance with the plan is required before a Comprehensive Permit can be denied.

If a community has a DHCD approved HPP and is granted a DHCD certification of compliance with the plan, a decision by the ZBA to deny a Comprehensive Permit application will be deemed "Consistent with Local Needs" under MGL Chapter 40B. "Consistent with Local Needs" means the ZBA's decision will be upheld by the HAC.

Q10: What is the difference between approval and certification of a HPP?

A: This distinction is very important. Plan approval refers to DHCD's action of reviewing a HPP and determining that it is complete and contains all the elements required by regulation and accompanying Guidelines.

Certification of compliance refers to DHCD's determination that the community has produced units that are affordable to low- or moderate-income households totaling at least 0.5% of 1% of year round housing units in one calendar year and in accordance with the approved plan. **In order for a ZBA's decision on Comprehensive Permits to be "Consistent with Local Needs" DHCD must grant certification and not just approval.**

Q11: What is the duration of DHCD certification?

A: Certification lasts for one year if the community has produced 0.5% of year round housing units or two years if it has produced 1.0%.

If the city or town is certified compliant with its plan, DHCD will notify the chief elected official in writing. Regardless of the date of the certification notice, the certification period will be deemed effective on the date upon which the municipality achieved its numerical target for the calendar year in question (see 56 CMR 56. 03 (2)). Thus, certification starts at the time of initial eligibility for the SHI and not the date DHCD receives such requests.

Q13: How long does DHCD have to approve a certification request?

A: Requests for certification may be submitted at any time, and the Department shall determine whether a municipality is in compliance within 30 days of receipt of the municipality's request.

Q14: Can we count units created in different years towards certification?

A: No. All units have to be produced in the same year for which certification is requested.

Q15: When do units count for certification?

A. Units count for certification as soon as they are **initially** eligible to be counted on the SHI at the earliest of the following:

1. For units that require a Comprehensive Permit under M.G.L. c.40B, §§ 20 through 23, or a zoning approval under c.40A or completion of plan review under M.G.L. c.40R, the date when (a) the permit or approval is filed with the municipal clerk, notwithstanding any appeal by a party other than the Board, but subject to the time limit for counting such units set forth at 760 CMR 56.03(2)(c), or (b) on the date when the last appeal by the Board is fully resolved.
2. When the building permit for the unit is issued.
3. When the occupancy permit for the unit is issued.
4. When the unit is occupied by an Income Eligible Household and all the conditions of 760 CMR 56.03(2)(b) have been met (if no Comprehensive Permit, zoning approval, building permit, or occupancy permit is required.)

Q16: Are all pending cases at the HAC affected if a community achieves certification?

A: No. If a development was under appeal before a certification period, certification will have no impact on the case.

Q17: Are all projects now subject to the new thresholds of 0.5% and 1.0%?

A: The previous Planned Production thresholds of 0.75% (1 year) and 1.5% (2 years) remain in effect if affordable housing units (40B or other) are filed with the ZBA prior to February 22, 2008. All projects filed with the ZBA after February 22, 2008 are subject to the 0.5% and 1.0% thresholds.

Q18: When a community has achieved certification, can they automatically deny a new Comprehensive Permit without holding a public hearing?

A: No. The local ZBA must open a hearing within 30 days of receiving an application even when the community has achieved yearly certification. The ZBA must issue a decision within 40 days after termination of the hearing. DHCD suggests that the certification letter be read at the public hearing to demonstrate the community's current compliance with certification requirements. This compliance is the standard for the ZBA's decision to "deny" or "approve with conditions" any Comprehensive Permit applications will be deemed "Consistent with Local Needs" under MGL Chapter 40B.

Q19: How does a ZBA notify an Applicant (developer) if they are certified?

If a community has achieved certification within 15 days of the opening of the local hearing for the Comprehensive Permit, the ZBA shall provide written notice to the Applicant, with a copy to DHCD, that it considers that a denial of the permit or the imposition of conditions or requirements would be consistent with local needs, the grounds that it believes has been met, and the factual basis for that position, including any necessary supportive documentation.

If the Applicant wishes to challenge the ZBA's assertion, it must do so by providing written notice to the Department, with a copy to the Board, within 15 days of its receipt of the ZBA's notice, including any documentation to support its position. DHCD shall thereupon review the materials provided by both parties and issue a decision within 30 days of its receipt of all materials. The ZBA shall have the burden of proving satisfaction of the grounds for asserting that a denial or approval with conditions would be consistent with local needs, provided, however, that any failure of the DHCD to issue a timely decision shall be deemed a determination in favor of the municipality. This procedure shall toll the requirement to terminate the hearing within 180 days.

Q20: My community's housing plan under the former Planned Production Program was approved over five years ago. Can we submit an updated version?

A: Yes. A community is strongly encouraged to submit an updated HPP for approval by DHCD. This policy also applies to all approved affordable housing plans submitted under the prior Planned Production regulations 760 CMR 31.07. Information submitted to update such affordable housing plans must comply with requirements of 760 CMR 56.03(4), including information not required under previous Planned Production Regulations and Guidelines.

Q21: Are any public funds available for the development of HPPs?

A: Many communities have used Community Preservation Act funds to hire a consultant to develop a HPP. In addition, communities should contact DHCD about additional resources such as the Peer-to-Peer and Community Development Block Grant programs. Also, please visit www.mass.gov/dhcd.

Q22: How many communities have approved HPPs? Where can I find a list of Certified communities?

A: A list of communities with approved plans and a listing of Certified communities is continuously updated at www.mass.gov/dhcd.

Q23: Does the HPP need a simple majority or a super majority vote by the local boards required by the HPP regulations?

A: A simple majority is required. Not a supermajority (2/3 vote).

Q24: Where can I mail a certification request or a new/ amended HPP?

A: HPPs, amendments, updates and requests for certification should be sent to:

Jennifer Maddox, Undersecretary
Department of Housing & Community Development
100 Cambridge Street, Suite 300
Boston, MA 02114
Attn: Phil DeMartino

Electronic copies **must** also be submitted by e-mail
Phillip.demartino@mass.gov

Department staff is available to answer questions on any matter related to HPPs. Please call 617-573-1357. The Department's website at www.mass.gov/dhcd also contains information that may be useful to municipalities in creating an HPP.

Tab C

**Housing Production Plan Section II. B of
“MG.L. c. 40B Comprehensive Permit /Projects
Subsidized Housing Inventory.”**

GUIDELINES

Updated October 2020

For the entire Chapter 40B Guidelines, they are posted at
www.mass.gov/dhcd

Regulatory Authority: see 760 CMR 56.00



B. Housing Production Plans

1. Introduction

a. What Is the Plan?

A Housing Production Plan (HPP) in 760 CMR 56.03(4) is a proactive strategy for planning and developing affordable housing. It should be developed with opportunities for community residents to become informed of the planning process and the plan, and to provide input. The HPP will assist communities to plan for low and moderate income residents by providing a diverse housing supply. The community should:

- (1) Develop a strategy which will be used to meet its affordable housing needs in a manner consistent with the Chapter 40B statute and implementation regulations; and
- (2) Produce housing units in accordance with its HPP.

The HPP identifies the housing needs of a community and the strategies it will use to make progress in facilitating the development of affordable housing. The HPP must be consistent with the regulation and these Guidelines. HPPs approved by DHCD are posted at www.mass.gov/dhcd.

b. Why produce a Plan?

By taking a proactive approach in the adoption of a HPP, cities and towns are much more likely to achieve both their affordable housing and community planning goals. HPPs give communities that are under the 10% threshold of Chapter 40B, but are making steady progress in producing affordable housing on an annual basis, more control over comprehensive permit applications for a specified period of time.

2. Elements

a. Comprehensive Housing Needs Assessment

It is important to understand who currently lives in the community, demographic trends affecting future growth, existing housing stock and future housing needs. The HPP must establish a strategic plan for municipal action with regards to housing, based upon a comprehensive housing needs assessment that, at a minimum, examines:

- (1) The most recent available census data of the municipality's demographics and housing stock. Reviewing census data is the starting point for a community's analysis and information may be found at <http://www.census.gov/>. Regional Planning Agencies, realtors and the media are also sources of information that may be used in an HPP.
- (2) A projection of future population and housing needs, taking into account regional growth factors, that covers the entire period of the plan. The projections should address, specifically, the housing needs of the projected population at various income levels including: not more than 30% AMI, more than 30% but not more than 80% AMI, and more than 80% but not more than 120% AMI, taking into account the likely family composition of such households.
- (3) Development constraints and limitations on its current and future needs should be clearly articulated. Maps can be helpful in identifying steep slopes, watershed areas or brownfields.

- (4) The municipality's plans to mitigate such constraints. Can any of the factors be mitigated to support development?
- (5) The capacity of the municipality's infrastructure to accommodate the current population and anticipated future growth, including plans for enlargement or expansion of existing infrastructure systems to ensure that both current and future needs are met. The infrastructure analysis should evaluate the capacity of water and sewer systems, roads, utilities, public transit, schools, and any other public facilities that will impact or be impacted by future housing development.

It may not be necessary for a community to create an entirely new plan to meet these requirements. Many communities have already adopted a plan or a series of plans that contain some or all of the required elements. Current master plans, consolidated plans, or other housing strategies may contain some or all of the elements of a HPP. Municipalities may contact DHCD's Office of Sustainable Communities for assistance in converting such plans to an HPP.

However, municipalities must ensure that the existing plans or data are up-to-date. DHCD will request that a community update its former Affordable Housing Plan/Planned Production Plan, consistent with the requirements of these Guidelines, if the affordable housing plan was approved five or more years ago.

b. Affordable Housing Goals

In addition to its needs assessment, when formulating its affordable housing goals, the community should also consider the types of housing most likely to be needed and, generally, its fair housing obligations. What is the projected population of: working age? new household formation? special needs? elderly? frail elderly? What percentage of these populations is projected to be at not more than 30% AMI? at more than 30% but not more than 80% AMI? At more than 80% but not more than 120% AMI? Does the existing housing supply match the needs of these populations? Does the community expect that there will be a range of housing types which will be affordable to each income group? Therefore, the HPP must address, at a minimum, the following matters:

- (1) A mix of types of housing, consistent with community and regional needs that:
 - (a) Is affordable to households at not more than 30% AMI, more than 30% but not more than 80% AMI, and more than 80% but not more than 120% AMI;
 - (b) Provides for a range of housing , including rental, homeownership, and other occupancy arrangements, if any, for families, individuals, persons with special needs, and the elderly; and,
 - (c) Is feasible within the housing market in which they will be situated.
- (2) A numerical goal for annual housing production, pursuant to which there is an increase in the municipality's number of SHI Eligible Housing units by at least 0.50% of its total units (as determined in accordance with 760 CMR 56.03(3)(a)) during every calendar year included in the HPP, until the overall percentage exceeds the Statutory Minimum set forth in 760 CMR 56.03(3)(a). There should be a direct link between the setting of these goals and the results of the needs assessment. The numerical goal should be based on the total year round number of housing units. The total year round housing units is the total number of units for the community in the latest U.S. Census including any changes due to demolition or new construction.

c. Implementation Strategies

The HPP shall include an explanation of the specific strategies by which the municipality will achieve its housing production goals as well as a time frame/schedule for achieving the housing goals identified. Each goal should include several specific milestones to indicate progress, including all of the following strategies, to the extent applicable:

- (1) The identification of zoning districts or geographic areas in which the municipality proposes to modify current regulations for the purposes of creating SHI Eligible Housing developments to meet its housing production goal. Zoning indicates a community's interest in the types of uses to be encouraged. The zoning strategy should identify points where the zoning needs to be changed to accommodate additional dwelling units: Can density be increased? Can accessory apartments be accommodated? Are upper story residential units allowed in commercial districts? In identifying geographic areas, communities must ensure that any constraints can be overcome in a timely and cost effective manner. Additionally, communities should consider the Commonwealth's Sustainable Development Principles at: <http://www.mass.gov/hed/docs/dhcd/cd/smartgrowth/sdprinciples.pdf>.
- (2) The identification of specific sites for which the municipality will encourage the filing of Comprehensive Permit applications. Identification of specific sites should be consistent, to the greatest extent possible, with Sustainable Development Principles. Strategies should include any proposed zoning changes, advantages to construction on the site, an acknowledgement of site constraints, and the costs to overcome such constraints.
- (3) Characteristics of proposed residential or mixed-use developments that would be preferred by the municipality for example, infill development, cluster developments, adaptive re-use, transit-oriented housing, mixed-use development, and/or inclusionary zoning. Preferred characteristics should take into account the surrounding context of the built and natural environment. Characteristics placing special restrictions on the development of affordable housing, such as limiting size of affordable units, limiting diversity in types of housing, or applying other zoning constraints, will not be approved. In addition, affordable housing plans must be in compliance with all state and federal fair housing laws.
- (4) Identification of municipally owned parcels for which the municipality commits to issue requests for proposals (RFP) to develop SHI Eligible Housing, including information on appropriate use of the site, and a timeline for the issuance of an RFP. DHCD can provide some assistance in the development of such an RFP.
- (5) Participation in regional collaborations addressing housing development. Communities are encouraged to contact the Regional Planning Agencies for insight into establishing regional collaborations.

3. Review and Approval

Communities may submit a HPP developed in accordance with the regulation and these Guidelines to DHCD at any time.

a. Review Standards

HPPs are reviewed to see that they contain all the required elements, in accordance with the regulations and these Guidelines; and that the elements of the HPP are consistent with each other, such as whether the goals address stated needs. Reviewers pay special attention to the analysis of data, numerical goals, mix of housing proposed, production schedules, deed restrictions, and preferred sites for affordable housing development.

b. Review Process

The Department shall conduct an initial 30-day completeness review, and it will notify the municipality of any deficiency and offer an opportunity to remedy the deficiency. Within 90 days after the Department's finding that the HPP is complete, the Department shall approve the HPP if it meets the requirements specified herein; otherwise, it shall disapprove the HPP. The Department shall notify the municipality of its decision to either approve or disapprove a HPP in writing. If the Department disapproves a HPP, the notification shall include a statement of reasons for the disapproval. If the Department fails to mail notice of approval or disapproval of a HPP within 90 days after its receipt, it shall be deemed to be approved. A municipality that originally submitted a HPP that had been disapproved may submit a new or revised HPP to the Department at any time.

4. Amendments

A community may amend its HPP at any time to reflect changes in local circumstances. DHCD does not require that communities submit amendments when specific projects change, such as in size or location. However, communities are encouraged to submit amendments for DHCD approval, to document the change(s) if the overall goals or strategies are revised. If, in the discretion of DHCD, the amendment is considered to be a major change, such as the incorporation of new census data, the Department may require the full 90 day review process. Amendments shall not change the effective date of an HPP.

5. Term of a Plan; Renewal

The term of an HPP shall be five (5) years from the date of its approval by the Department. All HPPs shall be updated and renewed within five (5) years of the date of its approval by the Department, through the full 90-day review process set forth above, or as the Department may otherwise require. The Department may, at its sole discretion, elect to treat a major amendment as a renewed HPP.

6. Certification of Municipal Compliance with the HPP

- a. Requests for certification will be accepted by DHCD at any time during the calendar year in which the units are produced and up to January 10 of the following year. A community will be certified in compliance with an approved HPP if, during a single calendar year, it has increased its number of low- and moderate-income year round housing units (as counted on the SHI) in an amount equal to or greater than that enumerated in the approved HPP (0.5% or 1.0%). See Appendix II.3, "HPP Certification Thresholds by Municipality" for current certification thresholds.
- b. Units counted for certification must be produced after the effective date of a plan (i.e., the date DHCD approved the plan).
- c. SHI Eligible Housing units shall be counted for the purpose of certification when they are first eligible for inclusion in the SHI in accordance with the provisions set forth in 760 CMR 56.03(2).
- d. If a community issues a permit between December 20th and December 31st (inclusive), of a given year, the request may be submitted prior to the end of the 20-day appeal period.
- e. The Department shall determine whether a municipality is in compliance within 30 days of receipt of the municipality's request and notify the Chief Executive Officer in writing of its decision.

7. Effective Date of a Plan

An HPP shall be effective as of the date that DHCD approved the plan. The effective date of an approved plan shall not change as a result of amendment to the plan.

8. Effective Date of Certification

Regardless of the date of the certification notice, the Certification shall be deemed effective as of the date that the municipality achieved its numerical target for the calendar year in question, in accordance with the rules for counting units on the SHI set forth in 760 CMR 56.03(2).

9. Term of Certification

So long as the units produced are SHI Eligible Housing units (see 760 CMR 56.03), a certification shall be in effect for a period of one year from its effective date if the community has increased its SHI Eligible Housing units 0.5% of the total year round housing units, or two years from its effective date if it has increased its number of SHI Eligible Housing units 1.0% of total year round housing units. If the units by which the municipality achieved its certification become ineligible for the SHI, then the certification shall lapse as of the date that the units became ineligible for the SHI. If such units become eligible for the SHI during the remaining term of the certification period, then the certification shall be re-instated for such remaining term.

For example, if a community's HPP is certified by DHCD on June 13, 2019, for affordable units that became eligible for the SHI on February 13, 2019 totaling 0.5% of housing units, the certification period begins on February 13, 2019, and ends on February 12, 2020. If the request was based on an increase of 1.0% of housing units, the certification period would end on February 12, 2021.

10. Relation to "Local Needs"

If a community is certified compliant, decisions made by the Board to deny a comprehensive permit will be deemed Consistent with Local Needs under the Act by the HAC, and the Board's denial of a comprehensive permit application will be upheld as a matter of law, provided that the Board complies with the requirements of 760 CMR 56.03(8).

11. Submission Requirements

a. HPPs

HPPs, amendments and updates must be accompanied by:

(1) a letter signed by the Chief Executive Officer that states that the document:

- (a) Was adopted by the municipal planning board and select board or city council (the Chief Executive Officer, is the mayor in a city and the chair of the board of selectmen in a town, unless some other municipal office is designated to be the chief executive officer by the local charter);
- (b) Constitutes the community's affordable housing plan (for the HPP), or is an amendment or an update; and
- (c) Requests approval from DHCD.

- (2) A cover letter that includes a municipal contact name, telephone number and email address. They may be submitted in either hard or electronic copy. Following the Department's approval, an electronic copy must be submitted for posting on the agency's website.

b. Requests for Certification

- (1) Requests for certification must be accompanied by a letter signed by the Chief Executive Officer and contain any required documentation (e.g. comp permits and/or the "Requesting New Units Form for the Subsidized Housing Inventory"). These documents are evidence that the required number of housing units has been produced during a calendar year and:
 - (a) Have been newly produced pursuant to the approved HPP and in the same year for which certification is requested;
 - (b) Are, for the first time, eligible to be counted on the SHI (e.g., are not the subject of a modified or amended permit from a prior year); and
 - (c) Are produced pursuant to the affordable housing plan.
- (2) The town manager or administrator may submit the certification request if given signatory authority by a local charter.

c. HPPs, amendments, updates and requests for certification should be sent to:

Jennifer Maddox, Undersecretary
Department of Housing & Community Development
100 Cambridge Street, Suite 300
Boston, MA 02114
Attn: Phil DeMartino

In addition to hard copies, please email all documents during the Covid 19 State of Emergency to: phillip.demartino@mass.gov

12. Technical Assistance

Department staff are available to answer questions on any matter related to HPPs. Please call 617-5731357. The Department's website at www.mass.gov/dhcd also contains information that may be useful to municipalities in creating an HPP.

