

# CHAPTER 40B TRAINING: FUNDAMENTALS

**Chapter of 40B:  
A Training on the Affordable Housing  
Law**

**Spring, 2016**

**Blatman, Bobrowski, Mead  
& Talerman, LLC**

# Reviewing the initial application

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Eligibility and  
Submission  
Requirements

# Statutory Minima/Regulatory Requirements

- Less than 10% of year round housing units
- Municipalities have less than 1.50% of total land area zoned for residential, commercial, or industrial use
- Project involves no more than 0.3% of the total land area zoned in community for residential, commercial, or industrial use or ten acres, whichever is larger



# Safe Harbor Provisions

- **Housing Production Plan**
- **Recent Progress Toward Housing Unit Minimum**
- **Review of Large Projects**
- **Related Applications**



# 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**



# Other 40B Application Submission Requirements

- Preliminary Plans versus Final Plans
- Existing site conditions and locus map
- Preliminary, scaled, architectural drawings
- A tabulation of proposed buildings by type, size and ground coverage
- A preliminary subdivision plan (if applicable)
- A preliminary utilities plan
- A 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 - Within 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
- Civil Engineering, Traffic, Architecture, Financial
- Review of studies prepared on behalf of the Applicant, **not** preparation of independent studies
- All written results and reports are made part of the record



# 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

# 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
- Comply with Open Meeting Law



# Balance Regional Housing Needs with Local Concerns

- Health
- Safety
- Environmental
- Design
- Open Space
- Planning
- Other Local Concerns

# Holding Deliberation Sessions



- 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



# 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





# Appeal of Decision

- Appeals by the Applicant are made with the Housing Appeals Committee (HAC)
- Appeals for other aggrieved parties are made with Superior Court or the Land Court



# ZONING BOARD OF APPEALS OF AMESBURY V. HOUSING APPEALS COMMITTEE –MA. SJC



- Addressed the question of “what is the scope of a local zoning board's authority under 40B
- Defined ZBA’s purview vs Subsidizing Agency.

# Managing the Comprehensive Permit

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- Applicants must submit to the subsidizing agency for Final Approval.
- Final engineering and architectural plans accompany application for a building permit.
- Changes to the Comprehensive Permit must be deemed substantial or insubstantial

# Managing the Comprehensive Permit

- Regulatory Agreement, Deed Riders, and Monitoring Agreement
- Lottery and fair housing
- Income, asset and first time buyer status requirements for affordable units
- Lapse of the permit
- Transfer of the Comprehensive Permit
- Inspections during construction

# OVERVIEW OF CHAPTER 40B FUNDAMENTALS

- Conclusions
- Questions and Answers

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