

## Evolution of a Chapter 40B Project \*1

Prepared for the January 2023

### MMA Annual Business Meeting and Trade Show

#### 1. Project Eligibility:

- Eligible developer files for a Project Eligibility Letter (“PEL”) with a Subsidizing Agency. The application includes basic components such as site location and description, the proposed buildings and approximate number units, preliminary development pro forma, conceptual site plans, and evidence of site control. To qualify, a development proposal must have at least 25% of the units affordable to households who earn no more than 80% of the area median income. Alternatively, for rental housing, the project can provide 20% of the units to households below 50% of median income.
- After receiving a PEL application, the agency notifies the municipality that it has 30 days to comment. It is recommended that the information is sent to all departments and boards seeking comment within the 30 days and then a comprehensive set of comments can be submitted to the Subsidizing Agency.
- A Site View is scheduled. It is recommended that staff and municipal officials attend the Site View to learn more about the proposed Project.
- During this step, the municipality should verify if it has obtained one of the Safe Harbors found in 760 CMR 56.03.

#### 2. Comprehensive Permit Process:

- Once a PEL is issued, the developer can then file an application for a Comprehensive Permit with the Zoning Board of Appeals (“ZBA”).
- Once an application for a comprehensive permit is filed, the municipality must do the following:
  - Immediately: Determine date of the public hearing (must be within 30 days of the filing of the application) and draft the public hearing notice.
  - Within 7 days, the ZBA then distributes the application to all municipal departments and boards.
  - Within 30 days, open the public hearing.
  - Within 180 days after the opening of the public hearing, close the public hearing.
  - Within 40 days after the close of the public hearing, vote on the Application.
  - Within 14 days after the vote, file the decision with the Town Clerk.
  - Any mutual extension of time must be in writing and must be filed with the Town Clerk!
- Utilize the MassHousing Partnership’s technical assistance program (<https://www.mhp.net/community/technical-support>).

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<sup>1</sup> This document is intended to provide limited information concerning the Comprehensive Permit process and is not, and is not intended to be, a substitute for reading the statutory or regulatory requirements of G.L. c. 40B.

### **3. Public Hearing Process:**

- Open the public hearing, have the applicant offer an overview of the proposed Project, and acknowledge comments from municipal departments and the public.
- Discuss the hiring of peer review consultants. Utilize peer review consultants for: traffic, site civil engineering, environmental impact, and design review. Pursuant to G.L. c. 44, § 53G, the ZBA may solicit proposals from qualified consultants and once a proposal(s) is chosen, the applicant will submit the funds identified in the proposal which will be held in a separate account with the Treasurer. The ultimate selection of a peer review consultant is made by the ZBA. Under G.L. c. 44, §53G the developer may not dictate the selection of the consultant(s).
- Discuss potential design revisions based on comments, conditions and mitigation.

### **4. The Decision:**

- The ZBA must issue a decision on a comprehensive permit within 40 days of the close of the public hearing.
- The decision should contain findings.
- The decision must be approved by a simple majority of the ZBA members.
- The ZBA may deny the comprehensive permit application only if the Town has met one of the “safe harbor” provisions identified in the relevant statute and regulations (for example, 10% of the Town’s total housing stock is already “affordable” as that term is defined by regulation). The ZBA must follow certain procedures for denial under a safe harbor provision. Otherwise, the ZBA must identify a valid health, safety, environmental, design, or other local concern that outweighs the need for affordable housing – a very hard presumption to overcome.
- The ZBA may approve the application with conditions, so long as the conditions do not render the project “uneconomic” as that term is defined by statute and regulations.
- File the decision with the Town Clerk within 14 days.
- File the Decision and applicable forms with the DHCD in order to get the affordable units on the municipality’s Subsidized Housing Inventory (“SHI”).

Please contact Attorneys [Carolyn Murray](#), [George Pucci](#) or [Amy Kwesell](#) at 617.556.0007 with any further questions.

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