

Exhibit C

Chapter 40B – Training Sheet

Technical Assistance for Zoning Board of Appeals - Upton Comprehensive Permit Applications

Overview

G.L. c. 40B, §§ 20-23 – known as Chapter 40B or the Comprehensive Permit Law – is a state law that was enacted in 1969 to facilitate construction of low- or moderate-income housing. It establishes a consolidated local review and approval process (known as a “comprehensive permit”) that empowers the zoning board of appeals (ZBA) in each city and town to hold hearings and make binding decisions that encompass all local ordinances or bylaws and regulations.

Stages of Chapter 40B Project

1. Project Eligibility (Site Approval) (Subsidizing Agency)

Developers cannot apply for a comprehensive permit unless they have received a written Project Eligibility determination from one of the four subsidizing agencies. The community also has a role during the Project Eligibility review process, but ultimately the subsidizing agency that receives the developer’s application is responsible for making the determination.

2. Comprehensive Permit Process (ZBA, and if appealed, Housing Appeals Committee)

Under Chapter 40B, the ZBA has authority to grant all of the approvals that would otherwise trigger separate applications under local bylaws or ordinances. The ZBA also has authority to grant waivers of local requirements if requested by the developer and necessary to construct the proposed project. The ZBA’s mechanism for taking these actions is a single comprehensive (all-encompassing) permit, the purpose of which is to expedite the approval process and facilitate construction of low- or moderate-income housing. The ZBA’s jurisdiction includes zoning, subdivision regulations, and other types of local bylaws or ordinances and regulations, e.g., a local historic district bylaw, earth removal, storm water management, or local wetlands regulations. However, the ZBA does not have the authority to waive state requirements. Therefore, the Conservation Commission retains jurisdiction when a project requires permits under the Massachusetts Wetlands Protection Act, G.L. c. 131, § 40. Similarly, the Board of Health still acts as the permitting authority under Title V of the State Environmental Code, 310 CMR 15.00.

3. Housing Appeals Committee (if required)

Chapter 40B gives the Housing Appeals Committee (HAC) authority to adjudicate appeals arising from the ZBA’s denial or conditional approval of comprehensive permits.

However, the HAC’s discretion to overturn local decisions applies only to cases involving a city or town that has not met its regional fair-share obligations under the statute. If the city or town meets one of the statutory minima, the HAC is required to uphold the decision as “consistent with local needs.” 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

LEGAL STANDARD: When the Board has denied a comprehensive permit, the ultimate question before the Committee is whether the decision of the Board is consistent with local needs. A denial will only be upheld if HAC finds that there was a valid local concern (protect health, safety, open space, and site and building design concerns) that could not be addressed with reasonable conditions.

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4. Final Approval (Subsidizing Agency)

The Final Approval process is the Subsidizing Agency’s responsibility and it occurs after the ZBA has issued a comprehensive permit. Final Approval serves several purposes.

The Subsidizing Agency needs to confirm that the project still qualifies under the Project Eligibility (Site Approval) criteria. Projects do change during the permitting process, not only due to negotiations with the ZBA, but also because of conditions associated with other permits and approvals, e.g., an Order of Conditions from the local Conservation Commission under G.L. c. 131, § 40, a Groundwater Discharge Permit issued by the Department of Environmental Protection, or a determination under the Massachusetts Endangered Species Act (MESA). The Subsidizing Agency also needs to consider a ZBA’s request for a local preference and to confirm that other conditions of the comprehensive permit are consistent with applicable laws, including the requirements of the applicable subsidy program.

The Final Approval process includes review and approval of the affordable housing restriction that will govern the project. The affordable housing restriction is enforceable under G.L. c. 184, §§ 31-32 and its purpose is to keep units affordable over time.

5. Construction and Occupancy (Subsidizing Agency)

Building construction should not commence until the Subsidizing Agency has granted Final Approval and the Regulatory Agreement has been recorded with the Registry of

Deeds. Once the Subsidizing Agency has granted Final Approval, the developer can apply for a building permit to begin construction of the project. Many communities have different pre-construction procedures for large or complicated projects, and it is common to require developers to attend a pre-construction conference with the building inspector, representatives of the police, fire, water, and sewer departments, and other municipal departments that have construction inspection and sign-off requirements.

During the construction period, the developer will begin to market the affordable units under an affirmative fair housing marketing and resident selection plan (AFHMP) approved by the Subsidizing Agency.

6. Post-Occupancy Oversight (Subsidizing Agency)

When the project is finished and occupied, the Subsidizing Agency will assume responsibility for monitoring compliance with the affordable housing restriction and Regulatory Agreement. The monitoring process differs by housing type.

Comprehensive Permit Hearing Process

Safe Harbors

For purposes of Chapter 40B, “safe harbor” refers to conditions under which a ZBA’s decision to deny a comprehensive permit will qualify as consistent with local needs and not be overturned by the HAC, provided the conditions were met prior to the date that the comprehensive permit was filed with the ZBA.

The safe harbors include:

1. The number of low or moderate income housing units in the city or town is more than 10 percent of the total number of housing units reported in the most recent federal (decennial) census;
2. Low or moderate-income housing exists on sites comprising 1.5 percent or more of the community’s total land area zoned for residential, commercial or industrial use;
3. The comprehensive permit before the ZBA would lead to construction of low or moderate income housing on sites comprising more than 0.3 of 1 percent of the community’s total land area zoned for residential, commercial or industrial use, or 10 acres, whichever is larger, in one calendar year.
4. The community has met DHCD’s “recent progress” threshold (760 CMR 56.03(1)(c) and 56.03(5)). This means that within the last 12 months, the community has created new SHI units equal to or greater than 2 percent of the total year-round housing units reported in the most recent federal census. The recent progress threshold can be helpful to a community that does not have a DH-CD-approved Housing Production Plan.
5. The project before the ZBA is a project that exceeds DCHD’s definition of a “large” project under 760 CMR 56.03(1)(d), where the definition of “large” project varies by the size of the municipality (see 760 CMR 56.03(6));

- a. In a community with 7,500 or more year-round housing units: a comprehensive permit application for more than 300 housing units or a number of units equal to 2 percent of the community's total units, whichever is greater. For example, in a community with 10,000 units, the "large project" cap is 300 units, but in a community with 20,000 units, the cap is 400 units.
- b. In a community with 5,001 to 7,499 year-round housing units: a comprehensive permit application to build more than 250 housing units.
- c. In a municipality with 2,500 to 5,000 year-round housing units: a comprehensive permit application to build more than 200 housing units.
- d. In a town with less than 2,500 year-round housing units: a comprehensive permit application to build a number of units equal to 6 percent of all housing units in the municipality. For example, in a community with 2,000 year-round units, a "large project" application would be 120 units.
- e. The community received another application to develop the same site within the previous 12 months (760 CMR 56.03(7)), e.g., the developer sought a special permit or subdivision approval for a nonresidential project or market-rate housing at the same site.

Application Requirements / Contents

- Applicant Status: Public Agency, Non-Profit, or Limited Dividend Organization
- Evidence of Site Control
- Project Eligibility Letter from Subsidizing Agency
- 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

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

Schedule a Site Visit

- Conduct a site/neighborhood visit early in the review process

- 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 should be commenced as soon as possible
- 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
 - o Denial
 - o Approval as submitted
 - o 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