OVERVIEW OF CHAPTER 40B
The Comprehensive Permit Law
What is Chapter 40B?

- The Commonwealth’s regional planning law
- In 1969, the legislature added the affordable housing part - Sections 20-23 - to address *regional* housing disparities
- Law assumes communities have met their regional “fair share” if at least 10% of their housing stock is included in the *Subsidized Housing Inventory (SHI)*, affordable to low-income people, and subsidized by a federal or state program
What is “Affordable Housing”? (capital A)

Counts towards the state’s 10% affordable housing goal for every community

Affordable to households with income at or below 80% of the area median income (AMI)

How are those income limits determined?
Income limits

Most federal housing programs use percentages of Area Median Income (AMI) for income limits.

AMI accounts for differences in wealth and recognizes that housing prices have an impact on choices available to homeowners and renters.

For the Vineyard: Dukes County
What does 80% AMI mean?

FY2019 HUD Income Limits

Dukes County

$54,350

$62,100

$69,850

$77,600
Fair Housing

To “count” on the SHI, affordable housing must be made available to all income-eligible people in a large area - at least the area used to set income limits.

Housing must be offered for sale or rent under a state-approved Affirmative Fair Housing Marketing Plan.

Some “local preference” may be allowed.

Not within the Board’s jurisdiction!
Statutory Minima/Regulatory Requirements

- Less than 10% of year-round housing units
- The 1.5% rule
- The 0.3% (in one calendar year) rule
## SHI Actual & 2020 Adjusted

<table>
<thead>
<tr>
<th>Town</th>
<th>2010 Census Year-Round Units</th>
<th>Percent Subsidized 2010 Base</th>
<th>Adjusted SHI January 2020**</th>
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</thead>
<tbody>
<tr>
<td>Aquinnah</td>
<td>158</td>
<td>25.95%</td>
<td>20.89%</td>
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<tr>
<td>Chilmark</td>
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<td>0.72%</td>
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<td>Edgartown</td>
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<td>Gosnold</td>
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<td>Oak Bluffs</td>
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<tr>
<td>Tisbury</td>
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<td>4.27%</td>
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<td>West Tisbury</td>
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<td>1.84%</td>
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<td>Dukes County</td>
<td>7,935</td>
<td>5.3%</td>
<td>4.11%</td>
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Safe Harbor Provisions

- Housing Production Plan (HPP)
- Recent Progress Toward Housing Unit Minimum
- Review of Large Projects
- Related Applications

These are regulatory options not found in the statute.
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
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 at the applicant’s expense
- Civil Engineering, Traffic, Architecture (typical)
- Financial - only if necessary
- Review of studies prepared on behalf of the Applicant, not preparation of independent studies desired by the Board
- All written results and reports are made part of the record
Getting Relevant Information

- Focus on the “real” project issues/impacts early in the review process
- If needed, request additional information from the Applicant as long as the information involves matters within the Board’s jurisdiction
- Don’t hesitate to ask for graphics that help clarify height, massing, setbacks and overall relationship to neighbors
Comprehensive Permit: Scope

• Board of Appeals has jurisdiction over all approvals under local regulations, such as:
  • Zoning
  • Subdivision Control
  • Local wetlands, septic system regulations
  • Historic district
  • Scenic roads

• Waivers necessary to allow construction of proposed development

• For DRI, MVC has superseding authority
Comprehensive Permit: Scope

- *Not within ZBA’s purview:*
  - Impact on municipal & school services available to all residents of the community (but direct impact on nearby infrastructure may be within ZBA’s purview)
  - Fiscal impact studies
  - Tenant/homebuyer selection
  - Profit monitoring
  - Market study
  - Income limits, affordability
Negotiation and Work Sessions

- Negotiating with developers is possible
- Work sessions with developers can often be productive after initial more formal public hearings.
- All discussions during the session are advisory in nature.
- No decisions can be made
- Comply with Open Meeting Law
- Check with your Town Counsel
Balance Regional Housing Needs with Local Concerns

*Planning that includes facilitating affordable housing development in specific areas and the plan has been implemented.*
Holding Deliberation Sessions

- Deliberate in a logical and orderly fashion
- Discuss potential conditions
- Review the requested waivers
- Ideally, discuss before closing the public hearing so applicant and public know what to expect
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 may 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
Post-Comprehensive Permit

Applicants must submit to the subsidizing agency for Final Approval.

Final engineering and architectural plans accompany application for a building permit.

Changes requested to the Comprehensive Permit must be deemed substantial or insubstantial within 20 days of receiving applicant’s request.
Post-Comprehensive Permit, cont’d

- 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
Questions?

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