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 lowincome 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

\$77,600

\$54,350

\$62,100

\$69,850









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

Town	2010 Census	Percent Subsidized	
	Year-Round Units	2010 Base	January 2020**
Aquinnah	158	25.95%	20.89%
Chilmark	418	0.72%	0.00%
Edgartown	1,962	4.54%	3.72%
Gosnold	41	0.00%	0.00%
Oak Bluffs	2,138	6.83%	5.85%
Tisbury	1,965	5.55%	4.27%
West Tisbury	1,253	1.84%	0.88%
Dukes County	7,935	5.3%	4.11%

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.



Health



Safety



Environmental



Design



Open Space



Planning*

Holding Deliberation Sessions



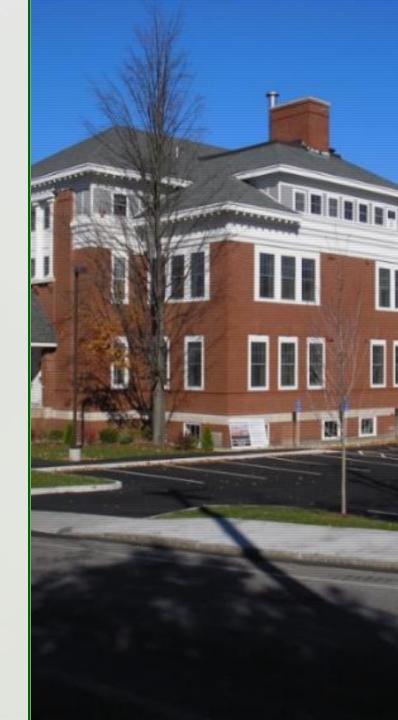
- Deliberate in a logical and orderly fashion
- Discuss potential conditions
- Review the requested waivers
- Ideally, discuss before closing the public hearing so applicant and public know what to expect

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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