CHAPTER 40B TRAINING: FUNDAMENTALS

Chapter of 40B:

A Training on the Affordable Housing Law

Town of Medfield

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Overview

- A comprehensive permit is a master permit that subsumes all other local permitting requirements
- An applicant can request waivers of local rules and requirements
- At least 25% of the units in a home ownership development must be affordable to households making not more than 80% of Area Median Income

Statutory Minima/Safe Harbors

- Fewer 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



Regulatory 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 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
  - 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



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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