

TO: Board of Selectmen  
FROM: Nancy Tavernier  
SUBJECT: 40B semantics and programs  
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At your July 18 meeting, there will be 3 agenda items dealing with affordable housing. In an effort to help the Board understand the complexity of 40B projects, I will try to define the two main programs used in Acton. They are LIP and MassHousing. A third program is MassDevelopment. That is the agency being used by The Woodlands at Laurel Hill and not a typical residential development agency. In the case of MassHousing and MassDevelopment, the agencies usually also provide the financing for the project. With a LIP project, private financing is secured by the developer.

The Local Initiative Program (a.k.a. LIP) is a state DHCD program, administered by the private housing division of DHCD. The Local Initiative Program (LIP) is also called a **Friendly 40B** but it still requires a Comprehensive Permit from the ZBA. It is called "friendly" because local approvals prior to the application filing must come from the Board of Selectmen and the ACHC before the application is filed. The Chairs of both boards must sign the application. That requires numerous meetings and negotiations, usually by the ACHC, and votes of support from the BOS and ACHC.

ACHC has had a long standing policy of *encouraging* developers to utilize LIP and that is a recommendation also made in the "To Live in Acton" housing plan. Under LIP projects, the BOS and ACHC have more say in the design and site plan that is most appropriate for the community. This is why ACHC prefers the LIP procedure, we have little control over MassHousing developments. There is always a risk in pushing too hard on a local developer who is interested in doing a LIP and causing him to switch to MassHousing instead. *It is this risk that ACHC is very aware of in dealing with the Blanchard Place proposal. In my opinion it is in the Town's best interest to have LIP be the program used for this development.*

Acton projects that have used LIP are: Westside Village, Harris Village, Dunham Park, Acorn Park and Bellows Farm (off-site LIP units), Fort Pond Brook Place, and Blanchard Place (proposed on Prospect St.).

Here are more detailed descriptions of these programs, you can compare the differences, they may look subtle but they are not:

**Department of Housing and Community Development**  
**Local Initiative Program (LIP)**

The Local Initiative Program is a state housing program that was established to give cities and towns significantly more flexibility in their efforts to provide low and moderate-income housing. The program provides technical and other non-financial

assistance to housing that is developed through the initiative of local government to serve households below 80 percent of the median household income.

Two types of housing are supported by the program: Local Initiative Units, which are developed through a city or town's conventional zoning process, and Comprehensive Permit Projects, which are developed through the comprehensive permit process according to M.G.L. Chapter 40B. All low and moderate income units developed through the Local Initiative Program are "counted" on the Subsidized Housing Inventory toward a community's stock of low and moderate income housing for purposes of Chapter 40B.

- The LIP program allows a developer to count state technical assistance concerning the proposed project as a subsidy (eligibility for obtaining a subsidy is a prerequisite to **seeking a comprehensive permit**). 760 CMR 45.00.
- A prerequisite to participation in LIP is **support by the board of selectmen**. 760 CMR 45.03.
- Once an applicant has obtained a letter of support from the Board of Selectmen, the applicant **may apply to DHCD for LIP approval**.
- DHCD will conduct a site visit and determine whether the development meets LIP requirements.
- A comprehensive permit project must contain at least **twenty-five per cent** low and moderate-income housing. 760 CMR 45.04.
- Additionally, the developer must **impose deed restrictions** on the affordable units to ensure units will be affordable for at least 30 years. 760 CMR 45.03(5).
- Furthermore, the developer must provide a **fair-marketing plan** to ensure equal opportunity for all families to obtain the housing units. 760 CMR 45.03(7).
- Communities may provide for **“local preferences”** (residents or town employees may have priority for purchasing or renting the affordable units) of up to seventy per cent of the units, as long as the preferences are not discriminatory.
- LIP units are counted toward a town’s compliance with the **“ten percent standard”** as long as the approved use restrictions remain in effect.

## MassHousing, formerly New England Fund

### Housing Starts - Massachusetts Housing Finance Agency

This is the second type of 40B program used by local communities. Acton projects that used MassHousing are: Crossroads Condos (K-Mart) and Franklin Place.

Builders and developers wishing to develop housing in Massachusetts with a comprehensive permit under Chapter 40B must receive a **designation of project eligibility before applying to a local Zoning Board of Appeals (ZBA) for a comprehensive permit.** In order to receive such a designation under the Housing Starts program, MassHousing must determine whether the proposed housing development is suitable for the subject site and that the proposal meets the guidelines of Housing Starts. MassHousing's Home Ownership Division will coordinate the review of all applications for project eligibility under this program. An outline of the project eligibility process is as follows:

- Developer contacts MassHousing's Home Ownership Division for a project eligibility application package or visit our website at [www.masshousing.com](http://www.masshousing.com) to download an application.
- Developer formally submits the project eligibility application, an application fee of \$5,000, plus \$30 per unit of housing proposed, and related exhibits to Masshousing. **A copy of the project eligibility application must be delivered to the chief elected official in the community. During the Site Eligibility Process the developer is encouraged to work cooperatively with community officials regarding any questions or concerns that may arise.**
- Once a complete project eligibility application has been received, MassHousing will **send a letter to the chief elected official in the community seeking their input** on the proposed housing development.
- A MassHousing representative will conduct a site visit accompanied by a representative of the development team to determine the appropriateness of the site for residential development.
- Developer notifies the Department of Housing and Community Development in writing of their submission of an application for project eligibility to MassHousing.
- MassHousing's review will **focus on compliance with the affordable housing requirements of the program**, review of the Purchase and Sale Agreement or Offer to Purchase\*, the reasonableness of proposed development costs, the experience of the development team, the

availability of utilities (water, sewer etc.) to the site, proximity to public transportation, any environmental issues on or adjacent to the site, the proposed number of housing units, the proposed density of the project and issues raised by the community. \*Note: An appraisal of the property is required if the purchase transaction is not arms length.

- Upon completion of **an extensive internal review**, MassHousing will issue a written decision to either approve or deny the project eligibility application. Project eligibility letters are valid for 2 years from the date of issuance – valid beyond if application made for Comprehensive Permit.
- Once a project eligibility letter has been issued, the developer is eligible to apply for a comprehensive permit with the local ZBA. It should be noted that MassHousing does not participate in the negotiations between the developer and the ZBA regarding an application for a comprehensive permit.
- If an application is denied, the developer may not submit another application for the same site until 90 days has elapsed and the reasons for denial have been resolved to MassHousing's satisfaction.
- Once a comprehensive permit has been issued and MassHousing is not the construction lender, the developer must apply for Final Approval. Please refer to the Housing Starts Program Guidelines for information on how to obtain a Final Approval letter from Masshousing.