

**Acton Community Housing Corporation**  
**Nancy Tavernier, Chairman**  
**TOWN OF ACTON**  
Acton Town Hall  
472 Main Street  
Acton, Massachusetts, 01720  
Telephone (978) 263-9611  
[achc@acton-ma.gov](mailto:achc@acton-ma.gov)

---

TO: Clint Seward  
FROM: Nancy Tavernier, Chair, ACHC  
SUBJECT: Response to questions about affordable units in Acton  
DATE: January 15, 2011  
cc Mary Ann Ashton, Chair, Finance Committee

**Questions submitted by Clint Seward to Nancy Tavernier on 1/11/11**

First, is it correct to say that Acton has a significant inventory of affordable housing today that might qualify today as "40B" compliant, except for the one reason that they are not deed restricted?

Second, if that is true, is there a way to identify these units?

Third, in your opinion, could Acton find a way to deed restrict already affordable units in order to meet 40B requirements?

**Introduction to discussion:**

I must apologize up front for providing so much information to you but it should demonstrate that this is a very complicated subject that does not lend itself to easy answers or solutions. I could give you simple answers to your questions such as Maybe, Yes, Yes, but that is not my style. The following is a compilation of data from the Acton Assessors and information on programs, regulations and guidelines from the MA Department of Housing and Community Development (DHCD), US Housing and Urban Development (HUD), and the Acton Community Housing Corporation (ACHC).

Because you have specifically asked about deed restricted units, I will focus this discussion on affordable home ownership units only. I have eliminated affordable rental units from the mix. I have attached two documents that revise the charts previously received by the FinCom. These have been revised to remove the rental units which always skew the statistics because all rental units in a 40B development count when in fact only 20-25% are affordable. These charts show the total number of deed restricted affordable home ownership units is 48. Of these, only 25 (52%) have been constructed using the 40B comprehensive permit process.

**Definitions:**

We need to start with some definitions to provide common understanding of the terms.

**Affordable unit:** A deed restricted unit that is listed on the DHCD Subsidized Housing Inventory (Town's 10%) and can only be sold to an income and asset eligible household at a price determined by DHCD as affordable.

**Asset Limits:** Household asset limits shall not exceed \$75,000 in value. Assets include cash value of bank accounts, stocks, real property, savings, bonds, retirement funds, and capital investments. The value of personal property such as furniture and automobiles shall be excluded.

**Comprehensive Permit:** a permit for the development of Low or Moderate Income Housing issued by the Zoning Board of Appeals pursuant to the M.G.L. c. 40B §§ 20 through 23.

**40B:** Chapter 40B is a state statute (M.G.L. c. 40B §§ 20 through 23), which enables local Zoning Boards of Appeals (ZBAs) to approve affordable housing developments under flexible rules if at least 20-25% of the units have long-term affordability restrictions.

**Deed rider and property restrictions:** All of the deeds for the affordable units will have a Deed Rider, which the owner will sign and record at the Registry of Deeds. The deed rider will ensure that the unit will stay affordable in perpetuity. The purchaser must agree to occupy the unit as a principal residence. It cannot be leased nor the mortgage refinanced without the written consent of DHCD and the Town. When the owner wishes to sell his house he must notify the Town and DHCD who will set the maximum resale price. Under no condition can the unit be sold for more than the price set by DHCD. The Deed Rider cannot be put in place until a sale is made of the affordable unit and it is purchased by an income eligible household approved by DHCD.

**DHCD LIP (Local Initiative Program):** The Local Initiative Program (LIP) is a state housing program that was established to give cities and towns more flexibility in their efforts to provide low and moderate-income housing. It is administered by the Department of Housing and Community Development (DHCD).

**DHCD LIP Local Action Unit (LAU):** Local Action Units (LAU) reflect a DHCD program component that gives communities the opportunity to include housing units on the state's Subsidized Housing Inventory (SHI) that were built without a Comprehensive Permit but which meet LIP criteria and are suitable for inclusion in LIP. Such units may have been built pursuant to a local action such as a zoning provision, a condition of a variance or special permit issued by the planning board or zoning board of appeals, or an agreement between the town and a Developer to provide affordable housing.

**40B unit:** All units in a development that has used a comprehensive permit under the 40B law could be called 40B units. For purposes of this discussion, we will assume the term 40B unit only refers to the affordable units in such a development.

**Income Eligible Household:** a household of one or more persons whose maximum income does not exceed 80% of the area median income, adjusted for household size.

80% Area Median Income	1 person household	\$45,100
	2 persons household	\$51,550
	3 person household	\$58,000
	4 person household	\$64,400
	5 person household	\$69,600

**Non-40B units or Local Action Units:** Through the use of the DHCD LIP for Local Action Units, units that are not part of a 40B development are allowed to count toward the Town's 10%. More detail on this program will follow.

**Subsidized Housing Inventory (SHI):** DHCD maintains a list of subsidized housing in the Town to count toward the Town's 10%. The SHI is not limited to housing units developed through issuance of a Comprehensive Permit. It may also include Eligible Housing units developed under other statutes, regulations, and programs, so long as such units are subject to a Use Restriction (Deed Rider) and an Affirmative Fair Marketing Plan, and they satisfy the requirements of guidelines issued by the Department.

**Responses to your questions.** The answers to the first two questions are linked so I am combining them.

**Question #1:** Is it correct to say that Acton has a significant inventory of affordable housing today that might qualify today as "40B" compliant, except for the one reason that they are not deed restricted?

**Question #2:** If that is true, is there a way to identify these units?

**Response:** The Town Assessor provided a count of all residential home ownership units with an assessed value of \$175,000 or less. I chose the value of \$175,000 because that is the current maximum affordable selling price allowed by DHCD for two and three bedroom units. The total count was **1067** units. I adjusted that by removing the deed restricted units for ACHC and the Acton Housing Authority plus the units in age restricted developments. The adjusted count is **990** units. All but three of these are condominiums; the other three are single family houses. If I use the Acton 2020 count of 6500 residential units (there are an additional 1900 apartments), then 15% of the Town's non-apartment units are valued at \$175,000 or less. I will leave the definition of "significant" to you. The median value of these properties is \$110,500. Without viewing each assessor record on these properties, I cannot say specifically what the square footage of the units is and how many bedrooms but given the low values of more than half of them, I would speculate they are small one bedroom units that were converted to condos from apartments built in the 1960's.

I was quite interested to note that 500 (50.5%) of these units are owned by absentee landlords, 100 of them living in the Town of Acton, while the other 400 live all over the country. That leaves only 490 that are owner occupied. That becomes a major factor later on in the discussion of Question #3.

**Question #3:** In your (my) opinion, could Acton find a way to deed restrict already affordable units in order to meet 40B requirements?

**Response:** Yes. ACHC has been a pioneer in adding non-40B affordable units to the SHI. As the previously mentioned chart shows, 23 of the 48 deed restricted ownership units are non-40B units. They are eligible to be listed on the SHI by using the DHCD LIP Local Action Unit program. Our most recent effort is the Condo Buydown program.

### **The Condo Buydown Program**

Rather than attempt a lengthy explanation of this program, I am merging three documents into an attachment entitled Condo Buydown information. You should read these carefully to see how we have gone about attempting to acquire more units. Please keep in mind we are an all volunteer board and

this is a labor intensive activity. We initiated this program in 2007, had very limited success and suspended it in 2009. We are in the process of determining whether or not to try again.

To summarize the problems:

- Buyers are not interested in buying small garden style condos, previously apartments
- Buyers cannot get mortgages for a condo in a complex unless it is 51+% owner occupied, only a handful of Acton complexes meet this restriction
- The current credit climate discourages and even prevents low and moderate income buyers from getting financing. It is not clear when that situation will change.
- The deed restricted affordable price of small condos is roughly equal to the market price due to the depressed housing market. A deed restricted unit is less desirable than a market unit because of the multiple restrictions placed on it. A market buyer can sell his unit to anyone, any time, and take out the equity should there be any. For a few thousand dollars more, buyers can purchase a market rate unit in the current housing market.
- ACHC needs to generate a new Ready Buyer list by hiring a lottery agent because DHCD requires a full Fair Affirmative Marketing process to be done and our original list has expired. This will cost \$5000 at least. Last time, after a great deal of outreach, we only attracted 12 people to the list and half were single person households.

Should we decide to go forward, ACHC may try a different model for condo buydowns after measuring buyer interest. We would provide a grant of \$60,000 for a 2 bedroom unit and \$80,000 for a 3 bedroom unit and have the buyers find their own unit. ACHC currently has \$200,000 and has requested another \$150,000. We would be able to commit \$200,000 to this program which would subsidize a few units. ACHC would only consider 2 and 3 bedroom units. If buyers want or need a 1 bedroom unit, there are plenty of inexpensive market rate ones for sale.

I have included the talking points that were presented to the Community Preservation Committee this year in support of ACHC's request for \$150,000 to be added to our Community Housing Program Fund. This is a fund that we are allowed to spend under powers given to us by Home Rule Petition, always with the approval of the Selectmen. I carefully explained to the CPC the challenges of the program so they can be better prepared to answer the questions at town meeting which always arise. I hope after reading this material, you will now understand how difficult and super-regulatory this program is.

### **Real Time Condo Market**

The final attachment is a listing of all the condo units on the market today that are selling for \$175,000 or less. These are all 1 and 2 bedroom units. I have calculated the affordable selling price and the amount of a subsidy that would be needed. We would only consider the 2 bedroom units and, of those, only 3 are in complexes that have owner occupancy rates of 51% or more. Out of the 990 units valued at \$175,000 or less, only 23 are currently on the market.

### **Moving forward**

I believe the intent of your questions is to highlight the opportunity of acquiring more affordable units by making existing ones deed restricted in lieu of 40B's. ACHC has always supported this as one tool in the affordable housing toolbox. It is not a substitute for 40B development. If ACHC were to renew our program and found sufficient buyer interest, we believe we could subsidize 2 or 3 purchases each year assuming ongoing CPA financial support. Any progress is positive no matter how small.

During the Fall 2010 Repeal 40B campaign, a lot of concerns about 40B were aired, some valid and some not. The electorate of the Commonwealth chose not to repeal one of the more effective tools we have for producing affordable housing. 40B is here to stay, now we need to make it a better public policy. Throughout the campaign, there were calls and promises to make changes to the law and I have a list of ideas that I will put forth when the Legislature decides to take this up. But your questions, Clint, highlight one of my major proposals and I was glad to have a chance to quantify it with real time numbers.

One third of Acton's housing units are multi-family dwellings whether condos or apartments. That is an impressive number and one we should not only be proud of but should be rewarded for. I believe credit toward the Town's 10% should be given to towns that are zoned to allow a diversity of housing types. Surely 990 units at an affordable price or lower is worthy of a couple of percentage points on the Town's SHI? When you compare Acton's diversity in housing to nearby suburban towns, we provide economic diversity choices that many others do not. This dovetails very nicely with one of the emerging goals in the Acton 2020 process, the Core Value of Inclusion and Diversity.

**Goal: To foster respect, promote interaction and actively support inclusion and diversity in Acton's population.**

## **Conclusion**

The bottom line for success of the Condo Buydown program is:

1. We need to have eligible and interested buyers who are able to get financing
2. We need desirable units to entice them
3. We need sellers to agree to a deed restriction, only if there is a ready buyer because otherwise the deed rider would perhaps make their unit impossible to sell due to the restrictions.
4. We need a steady flow of CPA funds each year
5. We need dedicated members who are willing to hand hold prospective buyers, help them through the real estate transaction process, provide legal guidance, and financial support.