

OVERVIEW OF CHAPTER 40B FUNDAMENTALS

A Training on the Latest Developments in the Affordable Housing Law

Prepared by:

Massachusetts Housing Partnership

Citizen Planner Training Collaborative

Citizens Housing and Planning Association

Revised 2016

40B Information Available on the Web

- www.chapa.org
- www.mass.gov/dhcd
- www.masshousing.com
- www.mhp.net



Reviewing the initial application

- MHP Grants
- Eligibility and Submission Requirements

Mass. Housing Partnership (MHP)

- MHP provides technical assistance to local Zoning Boards of Appeal (ZBA)
- Grants up to \$15,000
- Qualified third-party consultants
- To request an application for technical assistance contact Laura Shufelt at lshufelt@mhp.net or 617-330-9944 ext. 292

Statutory Minima/Regulatory Requirements

- Less 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



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 (PEL) from Subsidizing Agency



Who is the Subsidizing Agency?

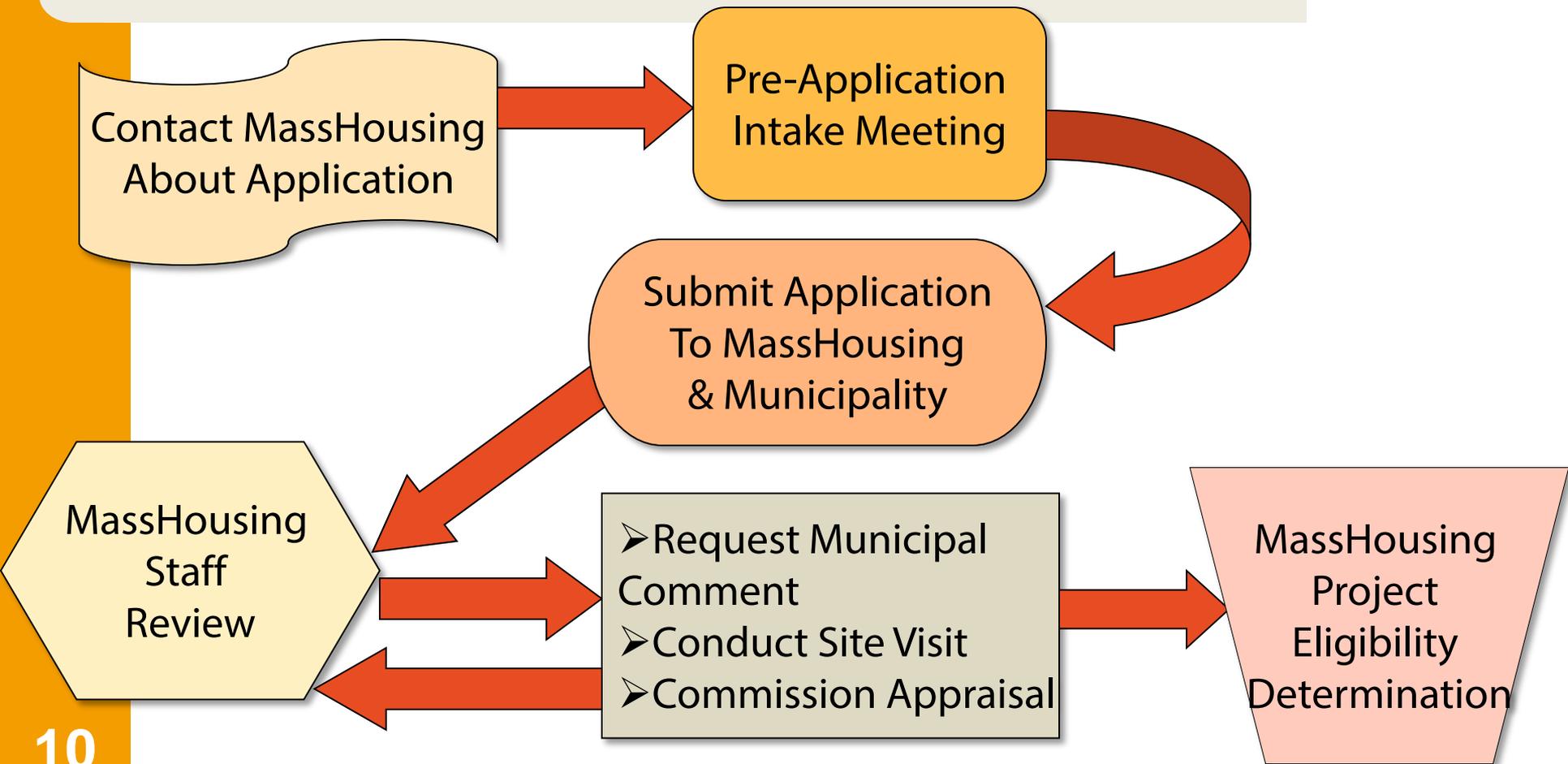
- Department of Housing and Community Development (Local Initiative Program, or LIP)
- MassHousing (New England Fund, or NEF)
- MassHousing Partnership
- Mass Development



What is the PEL?

- Allows Subsidizing Agency to review project for completeness, suitability and feasibility
- Alerts municipality and applicant of possible issues
- Does not include binding conditions
- Are sometimes denied
- Cannot be appealed by developer or municipality

PEL Process



PEL Findings

- Meets requirements of housing subsidy program (affordability, subsidy)
- The Site is appropriate, taking into account previous local action to meet the need for affordable housing
- The design is *generally* appropriate for the Site

PEL Findings

- Financially feasible within market
- Project budget (realistic, limits profit)
- Eligibility of Applicant
- Site Control

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

**7/14/30/15/15/30/180/40/2
0 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 – if necessary
- 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 and calls for additional or more detailed information should be delayed, if possible, until major issues are defined
- 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
- **Check with your Town Counsel**



Balance Regional Housing Needs with Local Concerns

- Health
- Safety
- Environmental
- Design
- Open Space
- Planning
- Other Local Concerns

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 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



ZONING BOARD OF APPEALS OF AMESBURY V. HOUSING APPEALS COMMITTEE –MA. SJC



- Addressed the question of “what is the scope of a local zoning board's authority under 40B
- Defined ZBA’s purview vs Subsidizing Agency.

Managing the Comprehensive Permit

- Final Approval
- Environmental review (MEPA)
- 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

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

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- Conclusions
- Questions and Answers

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