



**Commonwealth of Massachusetts**  
**Department of Housing &**  
**Community Development**

Deval L. Patrick, Governor ♦ Timothy P. Murray, Lt. Governor ♦ Tina Brooks, Undersecretary



**Welcome**

# **40B Regulations**

**Berkshire Regional Planning Commission  
City of Pittsfield**

**October 15, 2009**



## Mission

The mission of the Department of Housing and Community Development (DHCD) is to strengthen cities, towns and neighborhoods to enhance the quality of life of Massachusetts residents. We provide leadership, professional assistance and financial resources to promote safe, decent affordable housing opportunities, economic vitality of communities and sound municipal management.

Department of Housing & Community Development  
100 Cambridge Street  
Boston, MA 02114  
<http://www.mass.gov/dhcd/>



## DHCD Key Initiatives

- Working in Partnership with Communities
- Expanding Housing Opportunities
- Improving Public Housing
- Preventing Foreclosure
- Ending Homelessness
- Investing in Community Development and Revitalization
- Building Economic Security and Self-Sufficiency



## Community Assistance Unit

### Working in Partnership with Communities

- Housing Development
- Land Use Planning and Zoning
- Municipal Governance
- Community and Economic Development
- Downtown Revitalization
- Sustainable Development
- Relocation Requirements and Benefits



## Community Assistance Unit

### Technical Assistance and Training:

- One-to-One Staff Support
- Presentations and Workshops
- Professional and Peer Consultants
- Website and Written guides



Acton Community Housing Corporation's Willow-Central



Downtown Hyannis



# Expanding Housing Opportunities

Strategies include:

- Land use and zoning
- Community initiated projects
- Affordable Housing Plans





## Chapter 40B

- Is a state statute
- Enables local ZBAs to approve affordable housing developments under flexible rules
- At least 20-25% of the units have long-term affordability restrictions.



## 760 CMR -56 Presentation Content

- Highlights of regulation and guidelines
- Responsibilities of subsidizing agencies
- Local Hearing & Appeals
- Local Initiative Program
- Non-State subsidy program
- Oversight
- Affirmative Fair Housing Marketing Plan
- Measuring Progress -- SHI , HPP, Use Restrictions



## Organization of the Regulation

- Single set of regulations and guidelines that generally apply across all programs, all subsidizing agencies
- Replaces sections 30.00, 31.00 and 45.00
- Expands regulation “Road Map”
- Defines and emphasizes DHCD oversight role





## Highlights of 40B Regulation

- Creates transparency
- Ensures consistency & predictability
- Reflects HAC & superior court Rulings
- Moves from agency guidelines to regulations
- Clarifies step-by-step process
- Expedites review process at all stages
- Emphasizes planning & production
- Ensures enforcement & compliance

## Definitions:

- Project allows non-residential ancillary uses
  - must be complimentary
- Subsidy includes indirect non-financial assistance





## DHCD Guidelines

- Responsibility of Subsidizing Agency
- Measuring Progress towards local goals
- Affirmative Fair Housing Marketing Plans
- Subsidy other than State
- Local Initiative Program (LIP)

[www.mass.gov/dhcd](http://www.mass.gov/dhcd) Legal Resources,  
Comprehensive Permit Guidelines





# Regulation

## Guidance With Regulatory Enforcement

- Regulation: What needs to happen
- Guideline: How it needs to happen





## Determination of Project Eligibility

- To apply to ZBA for a Comprehensive Permit, developer obtains Determination of Project Eligibility from a Subsidizing Agency



## Subsidizing Agency

### State Subsidizing Agencies:

- DHCD
- MassHousing
- Massachusetts Housing Partnership (MHP)
- MassDevelopment





## Subsidizing Agency

- Project eligibility
  - Thresholds
  - Application
  - Findings
    - Local actions to meet affordable housing needs
    - Site visits to occur during 30 day review period
    - Design Guidelines



## Subsidizing Agency

### Design Guidelines:

- Housing type, mass, density
- Assess site separate from project
- Scrutiny at eligibility stage
- Appropriate & sensitive to context of surrounding neighborhood/area





## Subsidizing Agency

### Cost Examination:

- Developer provides surety; creates certainty for completion
- Imposes profit limitations
  - Defines process & terms
  - Requirements & evaluation
- CPA from DHCD pre-qualified list





## Subsidizing Agency

### Other Responsibilities:

- Secures adequate financial surety from developer
- Defers substantial change
- Holds use restriction – initial term
- Issues final approval





## Subsidizing Agency

### Local Initiative Program

- Provides services and technical assistance as subsidy for LMI housing supported by community.
- Requires Chief Elected Official approval to submit application
- 10,000 units created since 1990



## Subsidizing Agency

### Non-state or non-governmental agency subsidized projects:

- DHCD authorizes public/quasi public entity to act as the Subsidizing Agency
- Project eligibility shall state name of subsidy program
- Use restriction and/or regulatory agreement should provide access to monitor compliance or enforcement



## Subsidizing Agency

### Enforcement of Use Restrictions:

- Subsidizing agency initial holder of restriction
- Local public, quasi-public entity approved by DHCD
- Holder of restriction is responsible for compliance





## Local Hearing

### Developer:

- Must meet eligibility requirements
- Considers locally identified sites
- Negotiates with community
- Complies with design guidelines
- Pays “reasonable” fees to community for consultant services
- Pay surety to ensure cost certification



## Local Hearing

Developer submits to ZBA:

- Application
- Project Eligibility Letter
- List of Requested Waivers



## Local Hearing

### ZBA:

- Adopts local rules
- Takes applications in order of submission
- Sets “reasonable” fee for consultant services
- Completes hearing within 180 days
- May stay start of hearing if entertaining 3 applications that total its large project threshold.
- Makes decisions based on “consistency with local needs”



## Local Hearing

### ZBA:

- ZBA issued permit applies to all local boards
- Conditions approval to secure state & federal permits
- Requirements applied equally to both subsidized and market rate units in project
- Must adhere to DHCD LMI threshold
- Off-site public infrastructure must relate to development



## Local Hearing

### ZBA Role on Financial Review:

- Focus on issues within scope of review, not profit
- After all other consultant reviews completed
- Proforma revised to address proposed conditions
- After modification of original application
- To demonstrate denial makes project “uneconomic”

## Housing Appeals Committee (HAC):

- Timely hearings
- Early mediation option





## Oversight and Compliance

### DHCD:

- Assumes oversight role
- Monitors for compliance
- Approves affirmative fair marketing plan
- Pre-qualifies CPAs for cost examination
- Issues guidelines





## Measuring Progress

### Early DHCD Review Of “Safe Harbors”:

- ZBA provides notice to DHCD if expects to have safe harbor available
- Developer may challenge finding
- DHCD issues decision within 30 days
- Either ZBA or Developer may appeal DHCD decision to HAC
- If ZBA does not follow procedure, loses right to deny permit



## Affordable Housing Goals/Safe Harbors

- One of the Statutory Minima
- Certified housing production plan
- Recent progress towards the SHI
- Application is for a “large project”
- Related application filed within prior 12 months



## Measuring Progress

### Subsidized Housing Inventory:

- Clarifies criteria for inventory eligibility
- Allows phasing for large projects
- New “large project” definition for small communities
- Removes units from SHI if:
  - Not occupied w/in 18 months of building permit
  - Use restrictions removed/terminated/expired





# Pittsfield Area

(SHI):

<u>Community</u>	<u>SHI %</u>
Adams	7.4%
Alford	--
Becket	--
Cheshire	--
Clarksburg	1.2%
Dalton	5.7%
Egremont	--
Florida	--
Great Barrington	7.0%
Hancock	--
Hinsdale	--
Lanesborough	1.5%
Lee	6.9%
Lenox	7.6%
Monterrey	--
Mount Washington	--

<u>Community</u>	<u>SHI%</u>
New Ashford	--
New Marlborough	--
North Adams	12.4%
Otis	--
Peru	--
Pittsfield	9.6%
Richmond	--
Sandisfield	--
Savoy	4.5%
Sheffield	2.1%
Stockbridge	11.0%
Tyringham	--
Washington	--
West Stockbridge	--
Williamstown	4.8%
Windsor	--

Lenox Approved Housing Production Plan until 2/17/14  
9/29/09



## Affirmative & Fair Housing Marketing

- Addressed by regulations and guidelines.
- Marketing plan must:
  - demonstrate outreach to region
  - be directed to all possible applicants
  - demonstrate fair & open selection process
- Community must demonstrate need for local preference





# Measuring Progress

## Housing Production Plan:

- PLAN
- Build consensus
- Implement local actions to create opportunities for affordable housing
- Negotiate with developers





## Measuring Progress

### Housing Production Plans:

- Lower threshold (down from 0.75% and 1.5%)
- Expand local approval - from Planning Board and Board of Selectmen/City Council before submittal to DHCD from Chief Executive Officer.
- Required information includes implementation strategies, schedule and numerical goals
- DHCD approves plan for 5 years – may be amended





## Housing Production Plans

- Comprehensive needs assessment
  - Local & regional needs
  - Affordable housing goals
  - Strategic plans for local action, including specific sites
  - Proposed production schedules
  - Numerical goals to measure progress



# Housing Production Plans

## Certification of Housing Production Plans

### ■ Thresholds for certification

- 0.50% - 1 year
- 1.00% - 2 years





## Certification

### How Certification Works:

- An approved HPP
- Production of units within the same calendar year
- Request submitted by CEO
- 30 day review period for DHCD
- Certification is retroactive to the date units first became eligible for SHI inclusion.



## Certification

### SHI eligibility: When Do Units Count?

- Earliest of:
  - Final comprehensive permit
  - Building permit (non comp permit)
  - Occupancy permit (existing units)
  - 40R will now count early – like 40B
  - Units count for certification at the same time they count for SHI inclusion
  - Cannot count same project at multiple times for certification. Initial point of eligibility is key



## Certification

### What's The Bottom Line?

- If a community permits and builds affordable housing in accordance with its approved HPP, it can receive DHCD certification
- Exerts greater local control over affordable housing development



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