



Commonwealth of Massachusetts
DEPARTMENT OF HOUSING &
COMMUNITY DEVELOPMENT

Charles D. Baker, Governor ♦ Karyn E. Polito, Lt. Governor ♦ Jennifer D. Maddox, Undersecretary

To: Zoning Boards of Appeals and Applicants of Proposed Chapter 40B Projects
From: Louis Martin, Associate Director
Subject: Electronic Submission of Safe Harbor Assertions and Challenges Pursuant to 760 CMR 56.03(8) and Extended Deadline for DHCD Decisions During COVID-19 State of Emergency
Date: August 6, 2020

Electronic Submission of Safe Harbor Assertions and Challenges Pursuant to 760 CMR 56.03(8)

Due to the COVID-19 State of Emergency declared by the governor under Executive Order No. 591, “Declaration of a State of Emergency to Respond to COVID-19,” and closure of DHCD offices pursuant to COVID-19 Order No. 13 (as extended and modified), DHCD has promulgated, effective August 6, 2020, emergency amendments to 760 CMR 56.00.

These emergency amendments require that, during the State of Emergency, notice of “safe harbor” assertions by Zoning Boards of Appeals (“Boards”) and responsive challenges by Comprehensive Permit applicants (“Applicants) pursuant to 760 CMR 56.03(8)(a), including supporting documentation and required copies to DHCD and parties, must be submitted electronically to ensure timely receipt by the regulatory deadlines set forth in 760 CMR 56.03(8)(1). During the State of Emergency, DHCD will deem such notice submitted electronically by the regulatory deadlines under 760 CMR 56.03(8)(a) to have been provided in accordance with these regulatory deadlines.

While hard copies should continue to be mailed to DHCD at 100 Cambridge Street, Suite 300, Boston MA 02114, notice/copies with supporting documentation must be provided electronically to DHCD by the regulatory deadlines. Due to large file sizes, electronic submissions to DHCD for General Land Area Minimum (GLAM) safe harbor assertion matters are to be uploaded to an electronic folder that will be created by DHCD for the matter. In order for either party to access and upload documents to this folder, the party must notify DHCD, via email to DHCDGLAMsubmission@mass.gov, of the matter and the e-mail address by which the party wishes to receive a weblink enabling folder access. File sizes up to 15 GB may be uploaded. Electronic submissions to DHCD for other types of safe harbor assertions are to be sent to phillip.demartino@mass.gov. Hard copies of all submissions should also continue to be sent by mail between the parties in addition to being sent electronically. In addition to following the Technical Instructions of the General Land Area Minimum Guidelines (Appendix A, available at <https://www.mass.gov/service-details/guidelines-for-calculating-general-land-area-minimum>) for Board submittals, documentation submitted electronically should be provided in a searchable format and in color where color is relevant.

NOTE: submissions are limited to a Board’s initial safe harbor assertion and the Applicant’s responsive challenge; in rendering a decision, DHCD will not take into account rebuttals, replies, or other

supplemental submissions except for submission of new evidence when there is a question of fact as to whether procedural requirements were met. Such limited review is consistent with the regulatory provisions under 760 CMR 56.03(8)(a), which do not provide for a Board rebuttal or supplemental responses by either party, as well as the regulatory intent to provide for an expedited (30 day) DHCD review prior to a party's interlocutory appeal before the HAC pursuant to 760 CMR 56.03(8)(b).