



The Commonwealth of Massachusetts
Office of the Inspector General

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The Honorable James B. Eldridge, Chair
Committee on Housing
State House, Room 413A
Boston, MA 02133

The Honorable Kevin G. Honan, Chair
Committee on Housing
State House, Room 38
Boston, MA 02133

Dear Chairman Eldridge and Chairman Honan,

I write to you relative to the issues surrounding the Comprehensive Permit Law, commonly referred to as Chapter 40B. My office has conducted a number of investigations into Chapter 40B developments and made numerous recommendations to improve the oversight process. Though some changes have been made through regulations and guidelines, in my opinion these changes do not adequately protect municipalities and their taxpayers from developer abuse of the process. The issues identified by my office in the past are still pervasive today. I wish to reiterate my recommendations here.

First, I believe that the issue of “reasonable profit” needs to be better defined. At the moment there is nothing concrete in the law to define reasonable profit. The Legislature should insert into the law a strong definition of reasonable profit that takes into account the multiplier effect density has on generating profits. If a developer goes over the reasonable profit, then the municipality should share in that excess profit. Without a strong definition the abuses identified in Chapter 40B will continue.

Second, the issue of density for Chapter 40B must be addressed. As currently constituted through law, regulation and guidelines, there is almost no cap on density. This, combined with the loose definition of reasonable profit, makes for almost limitless profit at the expense of municipalities. A standard measure, such as four times the underlying density that was formerly the de facto standard, or another, such as 16 units per acre, should be employed.

Third, a major overhaul of the oversight process is needed. The regulations and guidelines promulgated by the Department of Housing and Community Development (DHCD) do not provide enough mechanisms to hold developers accountable. Lack of a strong oversight

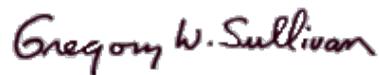
process adversely impacts the amount of affordable housing that can be developed. Increased oversight should include:

- Memorialize a municipality's right to act as a party of interest in the Chapter 40B process.
- Municipalities should have access to all project financial information from the beginning of the process. This would provide another layer of oversight which would help DHCD identify potential fraud issues in individual projects from the outset.
- The law should explicitly state that excess funds must go to the municipality.
- Any transfer of comprehensive permit or project ownership should trigger the requirement for a full cost certification.
- Cost certifications should be conducted through a detailed audit following the more rigorous Government Auditing Standards as opposed to the current position of an examination.
- Appraisers and CPAs should be pre-qualified by DHCD and chosen by the municipality.
- The allowable land value should be based on the lower of the "as-is" appraised value or the actual purchase price of the land.
- Related-party transactions should be disclosed at the beginning of the process and full documentation should be required to justify the costs incurred. All related party transactions should reflect bona fide generally accepted accounting and taxable transactions between the related entities and should reflect actual costs incurred.
- In addition to the cost certification report, all Chapter 40B documents (such as project eligibility/site approval applications, pro formas, land valuations, and comprehensive permit, etc.) should be submitted under pains and penalties of perjury.

I have communicated to the administration the Chapter 40B abuses uncovered by my office's investigations and have provided recommendations to ensure proper oversight is in place. I will continue to advocate for changes to strengthen the current system to protect the interests of the taxpayers. I have invested a number of resources to identify ways that Chapter 40B can continue to produce affordable housing in Massachusetts while also ensuring compliance with the law through a strong oversight process. The recommendations above will help to diminish the incidences of fraud and abuse perpetrated under Chapter 40B.

If I can be of any further assistance, please do not hesitate to contact my Office.

Respectfully,



Gregory W. Sullivan
Inspector General