

**Rules and Regulations  
for  
Comprehensive Permits**



**Zoning Board of Appeals  
Town of Acton**

**\$15.00**

**Adopted: April 23, 2020**

Acton Planning Division

472 Main Street

Acton, MA 01720

(978) 929-6631

[www.actonma.gov](http://www.actonma.gov)

**COMPREHENSIVE  
PERMIT**

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## SECTION 1

### GENERAL PROVISIONS

#### 1.1 PURPOSE AND SCOPE

These Comprehensive Permit RULES (the “RULES”) establish uniform procedures for submittal and review of an application to the Acton Zoning Board of Appeals (the “BOARD”) for a Comprehensive Permit (an “APPLICATION”) under Massachusetts General Laws, Chapter 40B, Sections 20-23 (the “ACT”) and the regulations promulgated thereunder, at 760 CMR 56.00, et seq. (both attached hereto as Appendices F and G. They are required by Massachusetts General Laws, Chapter 40B, Section 21 and by 760 CMR 56.05(1). The purpose of the Act is to facilitate the development of low- and moderate-income housing in Massachusetts.

#### 1.2 APPLICABILITY

Any person applying for a Comprehensive Permit under the ACT, whether or not governed by any other federal, state, or local regulations, laws, permits, variances, approvals, or programs, unless waived, shall comply with the provisions of these RULES.

#### 1.3 AMENDMENTS TO THE RULES

These Rules may be amended by a majority vote of the BOARD in a public meeting.

#### 1.4 DEFINITIONS

The following defined terms are capitalized in these RULES.

ACT	Massachusetts General Law, Chapter 40B, Sections 20-23
APPLICATION	All plans, forms, reports, studies or other documents which are submitted to the BOARD under these RULES by an APPLICANT.
APPLICANT	Any person or such person's authorized representative who files an application for a Comprehensive Permit under Massachusetts General Law Chapter 40B, Sections 20-23.
BOARD	The Acton Zoning Board of Appeals, established by Massachusetts General Laws, Chapter 40A, Section 12, and acting in its capacity to issue a Comprehensive Permit under the powers granted by the ACT.
LOCAL BOARD	Any local board or official, including but not limited to the Board of Health, Planning Board, Conservation Commission, Historical Commission, Department of Public Works, Fire Department, Police Department, Building Inspector and Board of Selectmen. All boards and commissions performing functions usually performed by locally elected or appointed boards and commissions shall be deemed local boards.
LIMITED DIVIDEND	Any entity which proposes to sponsor housing under the ACT is

ORGANIZATION	not a public agency or a nonprofit, is eligible to receive a subsidy from a state or federal agency after a comprehensive permit has been issued and which, unless otherwise governed by a federal act or regulation, agrees to comply with the requirements of said subsidizing agency relative to a reasonable return for building and operating its proposed housing project.
PARTIES IN INTEREST	The APPLICANT; abutters; owners of land directly opposite on any private or public street or way; and abutters to the abutters within three hundred feet of the property line of the Comprehensive Permit SITE as they appear on the most recent applicable tax list, notwithstanding that the land of any such owner is located in another city or town; the Acton Planning Board; and the Planning Boards of every abutting city or town.
PERMIT	A Comprehensive PERMIT under the ACT.
RULES	The Comprehensive Permit Rules and Regulations as set forth herein.
SITE	The property on which the Comprehensive Permit project is proposed.

**1.5 WAIVER OF RULES**

Strict compliance with these RULES may be waived if the BOARD finds that the waiver is in the public interest or is irrelevant to the project or application, and is consistent with the intent and purpose of the ACT and these RULES.

- 1.5.1 Any request from an APPLICANT for a waiver of these RULES must be submitted in writing as part of the APPLICATION.
- 1.5.2 Such requests must identify the provision/s of the RULES from which relief is sought and be accompanied by a statement setting forth the reasons why, in the APPLICANT'S opinion, the granting of such a waiver would be in the public interest or the specific information required is irrelevant to the project or the application, and why granting a waiver would be consistent with the intent and purpose of the ACT and these RULES.

**1.6 PERFORMANCE GUARANTEE**

The BOARD may require in its DECISION that a performance guarantee be posted with the Town in such form and amount as is required by the BOARD to secure the satisfactory completion of all or any part of the work authorized under a PERMIT. The form of guarantee shall be generally as required in Section 6 of the Town of Acton Subdivision Rules and Regulations.

**1.7 ADVICE FROM TOWN STAFF**

Any advice, opinion, or information given to the APPLICANT by a BOARD member or by any agency, official, or employee of the Town shall be considered advisory only and not binding on the BOARD.

## SECTION 2

### PRELIMINARY REVIEW

#### 2.1 PRELIMINARY CONSULTATIONS

The BOARD encourages APPLICANTS to meet with the Town's professional staff before filing a Comprehensive Permit application under these RULES. Doing so may help prevent delays in processing the application.

- 2.1.2 The preliminary consultation process for all Department of Housing and Community Development (DHCD) Local Initiative Program (LIP) affordable housing developments is set forth in the Acton Community Housing Corporation's (ACHC) Guidelines for Affordable Housing Development. This process is required for DHCD LIP projects and strongly recommended for alternative subsidizing agencies such as MassHousing. The Guidelines can be found in Appendix E or online at: <http://www.acton-ma.gov/DocumentCenter/View/3320>.
- 2.1.3 Any action or communication initiated by the APPLICANT before the filing of an application with the Town Clerk and the BOARD shall not constitute a Comprehensive Permit application. To request preliminary consultation, contact the Acton Planning Department: (978) 929-6631 or [planning@acton-ma.gov](mailto:planning@acton-ma.gov).

#### 2.2 FORM OF REQUEST

All materials to be reviewed shall be provided in electronic PDF format to the Planning Department along with a letter requesting a review and include the name, address, and phone number of a person who may be contacted concerning the review. All correspondence and communication must be sent through the Planning Department.

#### 2.3 SCOPE OF STAFF REVIEWS

Town staff will review preliminary materials in an attempt to avoid unnecessary technical deficiencies in the final application and to promote efficiency in the formal review process. Staff will limit its review of such materials to technical issues appropriate to their area of expertise. In general, staff will complete the preliminary review within 30 days. The preliminary review may include a meeting of the prospective APPLICANT with Town staff. The Comprehensive Permit APPLICATION remains the responsibility of the APPLICANT. Staff will not be responsible for assuring the thoroughness, completeness, or correctness of any final APPLICATION. Town staff comments are preliminary, advisory and non-binding.

During the preliminary review, staff will make recommendations for any additional fee deposits that may be appropriate. Note that substantial changes in the project may require the alteration of staff recommendations upon review of the Comprehensive Permit APPLICATION.

## SECTION 3

### CONTENTS OF AN APPLICATION

The BOARD recognizes that proposed projects and plans sometimes may not be at a definitive stage of development or fully designed when the APPLICATION is filed. However, the BOARD is best positioned to evaluate the merits and feasibility of the project, and determine its impacts and benefits if it receives the following information. Providing information and materials promptly with the APPLICATION will result in a quicker process. It is the responsibility of the APPLICANT to assure the accuracy and completeness of all information submitted to the BOARD as part of an APPLICATION. The APPLICANT shall be responsible for factually supporting all points relied upon in the APPLICATION including references for methodologies used in design calculations.

Except as otherwise noted, a complete APPLICATION shall be made in electronic PDF format together with 4 paper copies and shall include the items and information listed in this section 3 and all its subsections, and, where applicable, the information listed in Sections 4 and 6.

Changes made during the course of the APPLICATION review process, and requests for amendments of previously issued PERMITS shall be submitted in the same manner as above with changes and amendments clearly identified.

#### **3.1 A completed APPLICATION form (See Appendix A).**

- 3.1.1 In the case where the APPLICANT is a person other than the record owner of the property, the APPLICANT must obtain the owner's signature on this form indicating that the owner has knowledge of and consents to the APPLICATION.
- 3.1.2 If the APPLICANT is acting in the name of a trust, corporation or company, an authorizing vote shall be attached.

#### **3.2 Certified List of PARTIES IN INTEREST**

List of the PARTIES IN INTEREST as defined in these RULES, taken from the most recent tax list of the Town and certified by the Town Assessor. The APPLICANT shall pay any charges required by the Town Assessor for the list.

#### **3.3 Application For Project Eligibility & Project Eligibility Letter**

A copy of the application for project eligibility submitted to the subsidizing agency, as well as the written determination of project eligibility by said subsidizing agency containing all of the findings required by 760 CMR 56.04(4) including but not limited to: evidence that the APPLICANT is a LIMITED DIVIDEND ORGANIZATION, a copy of the Regulatory Agreement stating the APPLICANT'S profit limitations, proof of eligibility for funding under the applicable subsidy program, and evidence that the APPLICANT controls the SITE.

#### **3.4 List Of Requested Exceptions To Local Requirements & Regulations**

A complete, section by section list of requested exceptions to all applicable Acton bylaws, requirements and regulations, which shall include an analysis of each requirement or regulation for which an exception is sought, the location on the plans for

which the exception is sought (if applicable), and an explanation of why the project will not be economic unless the BOARD grants the requested exception.

### **3.5 Development Impact Report**

A completed Development Impact Report. (See Appendix B)

### **3.6 Use Description**

A brief and general description of the existing and proposed uses on the SITE, including: The proposed distribution of the various land uses; the proposed diversity and cost range for all proposed dwelling units; the proposed form of dwelling unit ownership (complete and include Appendix C - Tabulation Of Buildings – Unit Composition); and the proposed uses and form of ownership of any proposed open space, and common areas or facilities, if any. If the project includes non-residential uses, declare whether or not the proposed uses are expected to generate, store, use, or dispose of HAZARDOUS MATERIALS OR WASTES. All activities on the SITE must comply with the Town's Hazardous Materials Control Bylaw.

### **3.7 Development Schedule**

A completed Development Schedule showing the sequence of completion of affordable and market rate units. An acceptable schedule will place the completion of affordable units ahead of the completion of market rate units, in phases as appropriate.

### **3.8 Recorded Plans and Deeds**

A copy of the most recently recorded plan(s) and deed(s) for the SITE on which the work will take place bearing the book number(s), page number(s), and date(s) of recording(s) or registration(s).

### **3.9 Letter Authorizing Completion of Improvements**

A letter authorizing Town representatives to enter on the SITE to complete the STREETS and WAYS, services and other aspects of the plan or plans for which the APPLICANT seeks a PERMIT, if the developer does not complete them according to their obligations.

### **3.10 Legal Documents**

As applicable, the proposed condominium master deed and trust documents, or documents intended to govern a homeowners association; and any other legal documents intended to restrict future buyers and tenants of lots or dwelling units. In addition:

3.10.1 A proposed condominium or homeowner's association budget with supporting estimates from a property management service provider.

3.10.2 The affordable units' condominium or homeowner's association fee and its calculation basis – by unit value or by unit square footage.

### **3.11 Drainage Calculations**

Section 3.11 An adequate storm drainage design shall be provided meeting the design standards and submission requirements of Acton General Bylaw Chapter X and the Rules and Regulations adopted thereunder.

### **3.12 Water Balance Calculations**

The portion of the SITE in each GROUNDWATER Protection District Zone (as delineated in the Acton Zoning Bylaw and Maps) shall be noted. Compliance with Section 4.3 of the Acton Zoning Bylaw shall be demonstrated.

### **3.13 Earth Removal Calculations**

Calculations for determining the amount of earth to be removed or the amount of FILL to be brought to the SITE shall be prepared by and show the seal of a Registered Professional Engineer.

### **3.14 Subdivision**

If the proposed development constitutes a subdivision as defined in M.G.L. c. 41, § 81L, the APPLICATION shall include the following items in addition to all other materials required in these RULES:

- 3.14.1 A completed Designer's Certificate (see Acton Subdivision Rules and Regulations, Appendix A – Form DC)
- 3.14.2 A statement from the APPLICANT that he will retain the fee in the streets shown on the plan and upon construction of the streets and installation of services will, at the request of the Town, grant to the Town the fee (or an easement for all purposes for which streets are used or for their maintenance) in such streets; and will, at the request of the Town, grant to it any drainage and other EASEMENTS shown on the plan. In order to retain the fee in the streets, the APPLICANT must clearly define lot lines when selling individual lots, to make clear that the LOT stops at the street layout. Otherwise, the owners of individual LOTS will, by convention, own the street to the centerline. If this occurs, the Town cannot accept the street, since any conveyances of the street from the developer to the Town are meaningless.
- 3.14.3 A statement declaring the proposed method of providing the Town with a performance guarantee under Section 6 the Acton Subdivision Rules and Regulations.

### **3.15 Traffic Study**

A traffic impact study may or may not be required depending on the BOARD's assessment of the circumstances at or near the SITE. However, a traffic impact study will be required for all APPLICATIONS where the proposed uses will, in the opinion of the BOARD, be likely to produce an average of 400 additional trip ends per weekday based on the most recent edition of the Institute of Transportation Engineers' publication "Trip Generation". To avoid lengthy delays in the processing of an APPLICATION, consultations should be made by the APPLICANT with Town STAFF during the preliminary review to determine the scope of the traffic impact study. In general, a traffic study shall examine and include the following:

- 3.15.1 Existing traffic conditions including roadway geometries, traffic volumes, safety, accident data, delays, and levels of service for roads and intersections (whether in Acton or another town) affected by the proposed development.
- 3.15.2 Accurate traffic generation estimates of future traffic conditions including trip generation, trip distribution, volume to capacity ratios, and levels of service for existing roads and intersections (whether in Acton or another town) affected by the proposed development

five years beyond anticipated completion. Impacts of other previously approved projects and of projects pending approval shall be taken into consideration. Approach and departure route assignments shall be based on existing traffic patterns, minimum time paths, "journey to work" data, market studies, or a combination thereof.

- 3.15.3 All traffic information shall include data for AM and PM peak hours, weekend peaks, as well as average daily data. Sight distances for turning movements to and from the SITE as well as within the SITE must be analyzed using AASHTO (American Association of State Highway and Transportation Officials) standards. The adequacy of vehicular queuing storage at the SITE entrances shall also be demonstrated. The impact of any planned phasing of the project shall be discussed.
- 3.15.4 Mitigation measures that could be taken to reduce the impacts of the proposed development and their estimated cost. These should include capacity enhancements such as added turn lanes, bike lanes, pedestrian facilities, signalization, and improvements to intersections and medians. The traffic study shall make specific proposals for mitigation measures to be implemented by the APPLICANT. The potential for driveway connections to neighboring LOTS must be explored. The study should take into account those improvements that are planned and/or currently implemented by the Town or the State, and any proposed improvements should be consistent with the Town's Master Plan.

### **3.16 Site Plan**

Project SITE plans with the form and contents as set forth below shall be legibly drawn to fully detail and explain the intentions of the APPLICANT. SITE plans shall be submitted in electronic scalable PDF and CAD formats and registered to the Massachusetts State Plane Coordinate System; plus 2 full size plans printed on 36" x 24" sheets at a suitable standard scale (1 inch = 20, 30, 40, or 50 feet) except when noted otherwise, and 5 copies thereof reduced to fit legibly on 11"x17" or 8.5"x11" sheets.

All plans shall include a reasonable numbering system for lots, buildings, and dwelling units. Each plan sheet shall feature

- a north arrow,
- a legend identifying any representative symbols used on the sheet in question,
- an appropriate title block in the lower right hand corner, and
- the seal of a Registered Professional Engineer, Registered Land Surveyor, Registered Landscape Architect, Registered Professional Architect, or some combination of these as appropriate to the data on the sheet (all professional registrations must be in Massachusetts).

Topography and all elevations shall meet the design standards and submission requirements of Acton General Bylaw Chapter X and the Rules and Regulations adopted thereunder.

The individual SITE plan components as listed below (i.e. Master Plan, Natural Features and Existing Conditions Plan, etc.) may be presented on one or more plan sheets as necessary to present clear and legible plans. Match lines shall be placed in plan locations that feature a minimum of information. Sufficient overlap between plan sheets shall be provided to permit easy reading of plans across match lines. Unless other arrangements are made with staff during the Preliminary Review, the project SITE plan shall consist of the following:

3.16.1 A **Title Sheet** showing:

- 3.16.1.1 A locus map showing an area of at least one mile diameter around the SITE at a scale of 1" = 1200' with major streets, buildings, brooks, streams, rivers and other landmarks, public facilities, recreation facilities, and open spaces, displayed with sufficient clarity to show the relationship of the proposed project to the community, its facilities and major features.
- 3.16.1.2 The general layout of the project drawn to a scale suitable to fit the entire SITE onto the title sheet and showing existing and proposed approximate layouts of streets and ways, lot boundary lines, lot numbers, existing street names and identification of proposed streets and ways, areas to be developed, designated open space, other areas to be left undeveloped within the project boundaries, and all zoning district boundaries within or adjacent to the SITE.
- 3.16.1.3 Names and addresses of the owner of record, the APPLICANT, the engineer and the land surveyor, the book and page number of the recording of the deed or the Land Court certificate for the SITE.

3.16.2 A **Master Plan** drawn at a scale of not smaller than 1" = 100' showing:

- 3.16.2.1 The proposed lot layout and project boundaries with ownership of abutting properties indicated.
  - 3.16.2.2 The proposed distribution of the various land uses by parcels, lots, and buildings. Identify the proposed affordable units.
  - 3.16.2.3 Access and utility easements.
  - 3.16.2.4 All zoning district boundaries, including the boundaries of the Flood Plain, Affordable Housing, and Groundwater Protection Districts, if applicable, shown in their proper location.
  - 3.16.2.5 Access streets or ways to the project including intersections with existing streets, and access driveways and intersections within 200 feet of the access driveways or streets serving the proposed development, with centerline offsets dimensioned.
  - 3.16.2.6 Locations of all permanent monuments, structures, buildings, streets, roads, driveways, intersections, parking lots, walkways, fire lanes and other improvements, easements and rights of way, locations of any special SITE features including, but not limited to, waterways, wetlands, bridges, dams, drainage courses, stone walls, fences and wells, properly identified as to whether existing or proposed.
  - 3.16.2.7 A table showing the zoning requirements for the SITE and the actually proposed dimensions or calculations.
  - 3.16.2.8 A table showing the proposed dwelling unit density, floor area ratio, building coverage, and total coverage of the SITE with buildings and other impervious materials (driveways, walks, parking lots, etc.).
  - 3.16.2.9 If the project is to be built in phases, the proposed boundaries of each development phase.
  - 3.16.2.10 Proposed general layout of drainage and wastewater disposal systems.
- 3.16.3 A **Record Plan** suitable for recording at the Middlesex South District Registry of Deeds or the Land Court showing:

- 3.16.3.1 The project name, names of streets and ways within the project and immediately adjacent to it, the project perimeter and lot boundaries, open space boundaries (if any), north point, date, scale and legend and the Town Atlas Map and Parcel Number(s).
- 3.16.3.2 Names and addresses of the owner(s) of record, and the APPLICANT, the engineer and land surveyor, the book and page number(s) of the recording of the deed(s) or the Land Court certificate(s) for the SITE.
- 3.16.3.3 Location of abutting property lines with ownership indicated.
- 3.16.3.4 All zoning classifications and zoning district boundaries, including the boundaries of the Flood Plain, Affordable Housing and Groundwater Protection Districts, if applicable, shown in their proper location.
- 3.16.3.5 Sufficient data to easily determine the location, direction, width and length of every street line, easement, right of way, way or path, lot line and boundary line, and to reproduce these lines on the ground. All bearings shall be true, magnetic or grid, and the north arrow used on the plan shall clearly indicate this.
- 3.16.3.6 House or dwelling unit numbers on each lot as determined by the Town Engineer, clearly distinguishable from the lot numbers.
- 3.16.3.7 A clear indication, by proper symbols, markings, dates or other notes, after a thorough search has been made, of permanent monuments or boundary markers as were found in the traverses and/or perimeter surveys, and of wetlands, watercourses and other significant features.
- 3.16.3.8 If the project involves a division of land, sufficient space for the date and the signatures of the Acton Planning Board or its designee indicating subdivision approval, or, if not a subdivision under M.G.L. c. 41, § 81L, with the statement "Approval under the Subdivision Control Law not Required".
- 3.16.3.9 A statement that the plan is subject to a Comprehensive Permit granted by the BOARD with conditions and limitations, dated \_\_ (date) \_\_.
- 3.16.3.10 A reference to all covenants and restrictions applying or relating to the land, and their purpose.
- 3.16.4 A ***Natural Features and Existing Conditions Plan*** showing (this plan sheet may be prepared using as a base an up-to-date and scaled aerial photograph with good resolution):
  - 3.16.4.1 Site features such as, but not limited to flood plains, waterways, drainage courses, ponds, wetlands, ledge outcroppings, soil characteristics, existing vegetation, and any species occurring on the SITE that is listed by the Massachusetts Natural Heritage Program as endangered, threatened and/or of special concern, or as rare native plants.
  - 3.16.4.2 All existing monuments and improvements such as, but not limited to buildings, structures, roads and ways, paved areas, stone walls, underground and above ground storage tanks, wastewater disposal systems, wells, historic structures, historic buildings, archeological sites, and scenic vistas; indicate final disposition of any existing building, structure and other improvements, whether they are to remain or to be removed.

- 3.16.4.3 Existing contours of the land shown at two-foot intervals, and at one-foot intervals within the Flood Plain District.
- 3.16.4.4 If the project is located in Zones 1, 2 or 3 of the Groundwater Protection District, the contours of the Maximum Groundwater Elevation as defined in the BYLAW shall be shown in sufficiently close intervals along with the location and results of adequate field investigations to easily determine the separation of the existing and proposed land surfaces to the Maximum Groundwater Elevation.
- 3.16.4.5 The perimeters of all proposed improvements such as, but not limited to buildings, structures, roads, and paved areas superimposed on the natural features plan in a faded or screened back mode.
- 3.16.5 A ***SITE Development Plan*** showing proposed SITE conditions for the following characteristics:
  - 3.16.5.1 SITE boundary lines and proposed lot lines within the project.
  - 3.16.5.2 All zoning classifications and zoning district boundaries, including the boundaries of the Flood Plain District (with elevations), the Affordable Housing Overlay District, and the Groundwater Protection District, if applicable.
  - 3.16.5.3 Proposed topography at 2-foot intervals, at 1-foot intervals within the Flood Plain District.
  - 3.16.5.4 Proposed dimensions for setbacks, parking lots, and other features whether or not regulated under the BYLAW, to allow an easy evaluation of the project in general and relative to standard zoning requirements.
  - 3.16.5.5 Location of any special SITE features including, but not limited to waterways, wetlands, bridges, dams, drainage courses, stone walls, fences, and wells, with indication of any proposed alterations if feature is existing.
  - 3.16.5.6 All wetlands and wetland buffer area boundaries defined as those areas subject to the provisions of the Wetlands Protection Act, MGL, Chapter 131, Section 40, and the Acton Wetlands Bylaw.
  - 3.16.5.7 The proposed layout and area of the open space, if any, showing proposed ownership and intended use, with percent of total project area.
  - 3.16.5.8 All proposed improvements to be located on the open space, including but not limited to, buildings, structures, sidewalks, walkways, trails, and other recreation facilities.
  - 3.16.5.9 The location of affordable housing lots and units.
  - 3.16.5.10 Locations, layouts, widths, and names of all existing (on SITE and abutting, approaching, or within reasonable proximity of the SITE) and proposed streets, roads, ways, access and interior driveways, common driveways, walkways, sidewalks, parking lots, fire lanes, loading areas and other impervious covers with proposed finished grades along the center line or as appropriate, including project access streets or ways and intersections with existing streets.
  - 3.16.5.11 The size of the largest truck expected to use a SITE shall be noted and all turning radii must be sufficiently sized to accommodate that size. The smallest size for the design shall be the SU-30 design vehicle so that fire trucks will have adequate maneuvering space.

- 3.16.5.12 Parking spaces must be identified as either standard size or handicapped parking spaces with a parking space typical for each type showing actual dimensions. The location of any signs intended to be used for identification of handicapped parking spaces must be shown.
- 3.16.5.13 Location and outline or footprint of all buildings or structures including garage spaces with finished floor elevation and dimensions.
- 3.16.5.14 Any areas intended for open (outdoor) storage with purpose identification label and dimensions.
- 3.16.5.15 Any proposed features designed for energy and water conservation and pollution control.
- 3.16.5.16 Lot, building, and dwelling unit numbers.
- 3.16.5.17 All access and utility easements.
- 3.16.5.18 Proposed boundaries of each development phase clearly showing the specific limits of construction for each phase and detailing the work to be accomplished in each phase; interim curbing, pavement, and landscaping shall be shown as needed between phases.
- 3.16.5.19 Proposed location and type of stormwater drainage facilities, including notes on the construction materials of pipes, culverts, catch basins, and any other system component unless clearly depicted on the Construction Details Plan. Sufficient information relating to placement of the drainage system components (rim and invert elevations, pipe slopes, amount of cover, etc.) shall be shown so that the operation of the system can be evaluated. Any retention and/or detention ponds intended to be constructed shall be shown fully dimensioned.
- 3.16.5.20 Location of underground storage tanks for fuel or other chemicals or hazardous materials or waste storage, including the tank types, capacities, age, and condition.
- 3.16.5.21 Location and type of existing and proposed water services including wells. If the SITE is to use an on-SITE well, its proposed location must be shown in addition to its setbacks from any buildings, structures, or wastewater disposal systems. If public water services are to be utilized, show the proposed water main and service lines, properly dimensioned to meet the requirements of the Acton Water District.
- 3.16.5.22 All fire hydrants on the SITE or off the SITE but within 500' of any building within the project. If no fire hydrants are located within such distance, then a note shall appear clearly explaining how the APPLICANT will provide fire protection to the SITE. The location of any proposed municipal fire alarm boxes or other warning systems and any proposed fire lanes shall be clearly shown and identified. Any underground conduit for municipal fire alarm connections shall be shown.
- 3.16.5.23 The proposed location and type of any other underground utilities including but not limited to electric, gas, telephone, or cable television services. Emergency power facilities, if any are proposed, should also be shown.
- 3.16.5.24 Location of dumpsters with appropriate screening specified.
- 3.16.5.25 Location and perimeter outline of any on- or off-SITE, existing or proposed wastewater treatment and disposal system including any required reserve areas. The type of the wastewater disposal system shall be identified by a simple notation.

Actual design and construction specifications for a wastewater disposal system are not required. The proposed location of sewer lines must be shown.

- 3.16.5.26 The locations of any proposed stump dumps.
- 3.16.5.27 Plan notes that: 1) forbid the use of fill containing hazardous materials or waste; 2) require the marking of the limits of work in the field prior to the start of construction or site clearing; 3) require the cleaning of catch basin sumps and storm water basins following construction and annually thereafter; 4) restrict the hauling of earth or construction debris to or from the SITE to the hours between 9 AM and 4 PM on weekdays if such materials are intended to be removed from or brought to the SITE; 5) describe the materials to be used in the construction of impermeable surfaces such as streets, sidewalks, and driveways; 6) any other notes, as appropriate and necessary.
- 3.16.6 **Plan and Profile** of streets and ways showing:
  - 3.16.6.1 Design and layout of streets and ways at a horizontal scale of 1" = 40' and a vertical scale of 1" = 4'.
  - 3.16.6.2 Existing grades along the centerline and both sidelines of the street or way with centerline dimensioned.
  - 3.16.6.3 Proposed finished centerline grades with elevations at every 50-foot stations, location of vertical curves and gradient of even grades.
  - 3.16.6.4 Profiles tied to a stationed base line.
  - 3.16.6.5 The proposed sidewalk layout.
  - 3.16.6.6 Proposed layout of storm drainage system, water supply system, fire hydrants, fire call box system, sewer lines, and all other utilities.
  - 3.16.6.7 Identification, location, inverts, slopes, grades, stations, and sizes of all utilities and appurtenances.
  - 3.16.6.8 If streets are proposed for acceptance as public ways, show a table that itemizes where the proposed streets do not comply with the design and construction requirements of the Acton Subdivision Rules and Regulations.
- 3.16.7 A **Construction Details Plan** showing:
  - 3.16.7.1 Typical stormwater details meeting the design standards and submission requirements of Acton General Bylaw Chapter X and the Rules and Regulations adopted thereunder.
  - 3.16.7.2 Typical cross section and construction materials of proposed streets and ways, driveways, walkways, parking and loading areas, and fire lanes.
  - 3.16.7.3 Typical detail with dimensions of each type of parking space to be used on the SITE.
  - 3.16.7.4 Outdoor lighting details.
- 3.16.8 A **Landscape Plan** showing:
  - 3.16.8.1 General SITE and project features such as lot lines, buildings, structures, parking areas, curbs, walkways, loading areas, land contours, water bodies, wetlands, streams, ledge outcroppings, and large boulders so that it may be easily related to the other plans.

- 3.16.8.2 Landscape treatments planned for the SITE and existing vegetation to be retained.
- 3.16.8.3 A planting table with the botanical and common name of each species, its height (at planting), its spread (at maturity) and the quantity intended to be planted, along with the symbols used to represent the plants on the plan.
- 3.16.8.4 A typical detail of a tree well, tree planting, and specialty planting area if applicable.
- 3.16.8.5 The limits of work beyond which no disturbance during construction will be permitted; a plan note shall require that the limits of work be staked out at the SITE and they must be maintained at all times; in the vicinity of trees the limits of work shall follow the drip line of the trees.
- 3.16.8.6 The perimeter of any existing wooded areas on the SITE shall be shown; existing wooded areas intended for preservation shall be noted.
- 3.16.8.7 The location of outdoor lighting installations and signs.
- 3.16.9 An erosion and sedimentation control plan meeting the design standards and submission requirements of Acton General Bylaw Chapter X and the Rules and Regulations adopted thereunder.
- 3.16.10 **An *Architectural Floor and Elevations Plan* showing:**
  - 3.16.10.1 Floor plans for each floor, including basement, of each building, proposed or to remain; if buildings will be constructed repetitively a typical floor plan shall suffice. Each floor plan must illustrate how individual residential units are to be combined to form a residential building, including any accessories to the building (i.e.: solarium, patio, foyer, staircase, etc.). The Floor Plans shall be drawn at a scale of 1/4" = 1'.
  - 3.16.10.2 Elevations for the front, sides, and rear of each building and structure including the proposed architectural treatments of the buildings such as roofing, siding, and fenestration, at an appropriate scale generally not less than 1/8" = 1'.
  - 3.16.10.3 An outline summary in tabular form for each principal residential building, or by type of building, finished basement and floor elevations, floor area (total per building and by dwelling unit), outside dimensions including height, number of units, number of bedrooms by unit, etc.

### **3.17 Three Dimensional Architectural Rendering**

The Applicant shall provide three dimensional architectural renderings.

### **3.18 Affordable Dwelling Units**

To the extent not evident from the Tabulation of Buildings – Unit Composition (Exhibit C) The APPLICATION shall include the following information for the proposed affordable dwelling units:

- 3.18.1 The proposed types of affordable dwelling units - homeownership units with initial sale prices; rental units with initial monthly rents.
- 3.18.2 The present minimum and maximum income of households qualifying to buy or rent the proposed affordable units.
- 3.18.3 The proposed methods of selecting qualified purchasers or tenant of the affordable units, including local preference criteria.
- 3.18.4 Proposed subsidies from qualifying State and Federal programs, if any.

3.18.5 Draft legal documents for the affordable units in compliance with the Local Initiative Program or other applicable subsidy programs.

### **3.19 Development Pro Forma**

A copy of the development pro-forma as submitted to the subsidizing agency with the application for project eligibility.

### **3.20 Delivery of Units**

It is the board's expectation that the delivery of the affordable units shall be 1 affordable unit for every 3 market rate units.

### **3.21 Market Study**

A copy of the market study as submitted to the subsidizing agency with the application for project eligibility.

### **3.22 Location of Affordable Units**

Affordable units shall be proportionately distributed throughout a Project. The affordable units shall be listed by address and by unit number on the plan. Configurations in which a higher proportion of affordable units are adjacent to a busy road, or further from common area amenities, or middle units in a townhouse style project are not acceptable.

### **3.23 Proportionality of Affordable Units**

Affordable units shall have the same proportion of unit sizes as the market rate units. For example: If there are 20% market rate 3BR units, then there shall be 20% affordable 3BR units, but never less than one unit. Also, proportionality is expected on square footage, garage sizes, finished basements, duplex units, unit styles, etc.

### **3.24 Rehabilitation**

In projects that involve the reuse and rehabilitation of one or more existing dwelling units, the rehabbed market rate units will be provided at the same or higher rate as rehabbed affordable units.

### **3.25 Affordability**

Affordable units shall be affordable in perpetuity and the affordable units shall be priced and sold so that they count towards Acton's Subsidized Housing Inventory (SHI). The Board may consider exceptions to the SHI inclusion for situations where it is necessary to meet one or more specific local housing needs.

### **3.26 Parking**

In rental projects, the Applicant shall provide (1) parking space to each unit for no charge. The applicant may charge a rental fee for additional spaces, provided that the affordable units shall be offered, without obligation to accept, a second space at no charge or at a reduced charge of no more than 60% of the lowest fee charged for a second space to any market rate unit renter.

### **3.27 Interior Features & Appliances in Affordable Units**

Appliances and lighting installations shall be at a minimum Energy Star rated. Flooring, bath fixtures and kitchen cabinetry shall be "builder grade" quality and durability or better. In general, all interior finishes of the affordable units shall be the same type and quality as of the baseline market rate units before adding any optional upgrades for

additional charge. For instance, if hardwood flooring is a basic feature in market rate units, affordable units shall have the same quality hardwood flooring. Any differences shall be specifically identified.

Affordable units shall contain complete living facilities and appliances including a stove, kitchen cabinets, sink, plumbing fixtures, washer/ dryer (or standard washer/dryer hook-up), a refrigerator, a microwave and HVAC system, in the same quantity and quality as the base-price market rate units. Both the base market rate and affordable units shall have the same amount of kitchen counter space and sink size & type. Any differences shall be specifically identified.

### **3.28 Condominium Considerations**

Affordable unit owners shall be given one vote per unit throughout the project. The unit condominium fees shall be calculated based on the square footage, the aim being that this results in an equal or similar condo fees for the affordable units and the market rate units, and more equitable burdens and responsibilities in the affairs of the condominium. It is understood that this generally results in lower affordable unit sales prices.

### **3.29 Additional Information**

The APPLICATION may contain whatever additional information the APPLICANT feels is necessary to properly inform the BOARD about the proposed development. The BOARD may request that the APPLICANT submit additional information that is necessary to properly act upon the APPLICATION in question.

**SECTION 4**  
**FILING PROCEDURES**

**4.1 WHO MAY FILE AN APPLICATION?**

Anyone may file an APPLICATION for a PERMIT. However, the APPLICANT and the proposed development SITE must fulfill the jurisdictional requirements of 760 CMR 31.01:

- a) The APPLICANT shall be a public agency, a non-profit organization, or a LIMITED DIVIDEND ORGANIZATION; and
- b) The project shall be fundable by a subsidizing agency under a low and moderate income housing subsidy program (Site Approval/Project Eligibility Letter from State or Federal Funding Agency); and
- c) The APPLICANT shall have full control of the SITE.

The property owner of record shall sign the APPLICATION form thereby granting consent to the filing of the APPLICATION.

**4.2 FILING FEES**

An APPLICATION shall be accompanied by a fee in check form and made payable to the “Town of Acton”. The filing fee shall be the amount established by the Board of Selectmen in accordance with MGL Ch. 40, S. 22F. The fee schedule is in Appendix D of these RULES. The filing fee is not refundable.

**4.3 SUBMISSION TO THE TOWN CLERK AND THE BOARD**

Two complete copies of the APPLICATION shall be submitted to the office of the Acton Town Clerk. The Clerk will certify the date and time of filing on both copies, keep one of the copies, and return the other to the APPLICANT. The copy returned by the Clerk and all remaining APPLICATION copies with the required filing fee shall then be filed forthwith by the APPLICANT with the Planning Department during normal business hours. The APPLICANT may request and shall be entitled to a written receipt for the materials submitted.

**4.4 REVIEW OF APPLICATION**

Within 7 days the Planning Department will transmit a copy of an APPLICATION to various other Town departments, boards, committees, agencies, or independent consultants in order to ensure full and qualified review of the APPLICATION. The Planning Department will specify the comment due date, which, in the absence of other arrangements with the APPLICANT, will be not more than twenty-five (25) days from the APPLICATION filing date. Failure to submit comments on the APPLICATION by the due date shall be deemed an approval by the reviewing party. All comments are public information.

If significant information that was not included in the APPLICATION is presented at a later time or at the public hearing, the hearing may be continued to allow for staff review of the new material. Additional materials shall be submitted to the Planning Department in the same manner and form as the original APPLICATION.

## **SECTION 5**

### **USE OF OUTSIDE CONSULTANTS**

#### **5.1 ASSISTANCE OF CONSULTANTS**

When reviewing an APPLICATION for, or when conducting inspections in relation to, a Comprehensive Permit, the BOARD may determine that the assistance of outside consultants is warranted because the necessary expertise is unavailable from Town employees. An APPLICANT may then be required to pay an amount into an escrow account established pursuant to M.G.L. c. 44, § 53G (the “Escrow Account”), said amount to be determined by the BOARD in its sole discretion and to be used for outside professional consultant services of the BOARD’S choice to review the APPLICATION in accordance with 760 CMR 56.05(5), as may be amended. If necessary, the BOARD may require that the Escrow Account be replenished during the BOARD’S review of the APPLICATION.

#### **5.2 CONSULTANT SELECTION**

- 5.2.1 Technical Consultants - The BOARD may engage, as outside consultants, engineers, scientists, architects, environmental consultants, planners, urban designers and/or other appropriate professionals to assist the BOARD in analyzing a proposed project and the effect(s) on the project of all applicable laws, bylaws and rules and regulations. Such assistance may include, but not be limited to, reviewing an application, monitoring or inspecting a project or SITE for compliance with the BOARD’S decision or applicable laws, bylaws and rules and regulations, or inspecting a project during construction or implementation. Additionally, the BOARD may engage legal counsel to provide non-general representation including, but not limited to, review of legal documents and opinions submitted by the APPLICANT.
- 5.2.2 Financial Analyst - Where a pro forma is requested by the BOARD in accordance with the provisions of 760 CMR 56.05 (6), as may be amended, it may engage a financial analyst to perform the same consultant review permitted in connection with other technical information submitted to the BOARD.
- 5.2.3 Notification to the APPLICANT - Upon selection of consultants as aforesaid, the BOARD shall provide notice thereof to the APPLICANT, by hand or via first-class mail.

#### **5.3 APPEALS**

An APPLICANT may appeal the selection of any outside consultant by the BOARD to the Board of Selectmen. Such appeal must be made in writing within 20 days from the date the BOARD mailed or hand-delivered notice to the APPLICANT of the selection of the consultant. The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum required qualifications. The minimum qualifications shall consist either of an educational degree in, or related to, the field at issue or 3 or more years of practice in the field at issue or a related field. The required time limits for action upon an APPLICATION by the BOARD shall be extended by the duration of the administrative appeal. In the event that no decision is made by the Board of Selectmen within 1 month from the date of filing of the appeal, the selection made by the BOARD shall stand.

## **SECTION 6**

### **PUBLIC HEARING AND DECISION**

#### **6.1 PUBLIC HEARING NOTICE**

The BOARD shall hold a public hearing on the APPLICATION within 30 days, in accordance with 760 CMR 56.05(3)-(4), as may be amended. The deadlines for BOARD action, as therein established, shall be applicable only to the extent that the APPLICANT has made timely submittal of all materials required by these RULES and/or reasonably requested by the BOARD hereunder.

6.1.1 The BOARD will give notice pursuant to M.G.L. c. 40A, § 11 of the time and place of the public hearing and its subject matter, sufficient for identification, as follows:

- By publication of the notice in a newspaper of general circulation in the Town of Acton once in each of two successive weeks, the first publication to be not less than fourteen days before the day of the public hearing. The newspaper will send the bill for the advertisement directly to the APPLICANT and the APPLICANT shall pay the bill directly to the newspaper.
- By posting the notice in a conspicuous place in the Acton Town Hall or on the official Town of Acton website for a period of not less than fourteen days before the day of the public hearing.
- By mailing the notice with Accountable Mail to all PARTIES IN INTEREST.
  - At least 21 days before the day of the public hearing, the APPLICANT shall submit to the Planning Department the Accountable Mail letters containing the notice, addressed to each PARTY IN INTEREST, sender shown as the Town of Acton Planning Board, 472 Main Street, Acton, MA 01720. The envelopes are to be sealed, ready to be mailed, accompanied by one copy of the notice for the BOARD record, and payment to the Town of Acton for the cost of the Accountable Mailings. In addition, submit a duplicate set of empty, open envelopes, standard postage prepaid, addressed to each PARTY IN INTEREST, sender as above, for the mailing of the decision notice.
- Failure to properly notify PARTIES IN INTEREST and to publish a notice of the hearing could render the public hearing invalid and could cause serious delays in the processing of the APPLICATION.

#### **6.2 CONDUCT AND SCOPE OF PUBLIC HEARING**

An APPLICANT may appear on their own behalf or be represented by an agent or attorney. It is the responsibility of the APPLICANT or their agent to present the APPLICATION to the BOARD and to the public. In the absence of an appearance, the BOARD may decide the matter using the information it has received.

6.2.1 Presentation of the APPLICATION by the APPLICANT should not exceed 10 minutes in duration except for good reason. The APPLICANT may be requested to answer questions raised by the BOARD or the public. The BOARD will retain any evidence which has been introduced at the hearing for reference in its deliberations on the case.

- 6.2.2 The hearing may be continued to one or more subsequent sessions by mutual agreement between the BOARD and the APPLICANT.
- 6.2.3 The BOARD may request access to the SITE for an inspection by the BOARD or its authorized agents at any reasonable time during the public hearing. The BOARD may conduct the SITE visit during the public hearing or any continued session thereof.
- 6.2.4 In no case will the BOARD allow new evidence to be admitted after the close of the public hearing unless this evidence was specifically requested by the BOARD prior to the close of the public hearing.

### **6.3 WITHDRAWAL OF APPLICATION**

Any APPLICATION for a PERMIT submitted hereunder may be withdrawn without prejudice by notice in writing to the BOARD. No refund of the application fee will be provided if an APPLICATION is withdrawn. Remaining fee deposits for consultant reviews will be refunded to the extent that they have not yet been used or obligated for consultant services.

### **6.4 DECISION**

The BOARD shall render a decision, by majority vote, within 40 days after the close of the public hearing in the manner specified by 760 CMR 56.05(8), as may be amended. The BOARD may vote to approve, approve with conditions, or deny a Comprehensive Permit to the APPLICANT.

6.4.1 Approval - The BOARD may approve a Comprehensive Permit on the terms and conditions set forth in the APPLICATION. The following conditions will be required:

- Prior to endorsement of the approved plan, the BOARD shall require that the construction of streets and the installation of MUNICIPAL SERVICES be secured by one, or in part by one and in part by another, of the methods described in Section 6 of the Acton Subdivision Rules and Regulations;
- Upon completion of the project an as-built plan shall be submitted to the Zoning Enforcement Officer.

6.4.2 Approval with Conditions - The BOARD may approve a Comprehensive Permit subject to conditions and limitations, including but not limited to those necessary to protect the health or safety of the occupants of the proposed project or of the residents of the Town, to protect the natural environment, to promote better site and building design in relation to the surroundings and municipal and regional planning and to preserve open spaces (the "Local Concerns"). A Comprehensive Permit issued by the BOARD may be subject to the grant of a subsidy by the APPLICANT's subsidizing agency, the issuance of final approval by said subsidizing agency, the receipt of permit(s) or approval(s) required from any state or federal agency and/or the receipt of any waiver(s) ordered by the BOARD from fees normally imposed by LOCAL BOARD(s). The following conditions will be required:

- Prior to endorsement of the approved plan, the BOARD shall require that the construction of streets and the installation of municipal services be secured by one, or in part by one and in part by another, of the methods described in Section 6 of the Acton Subdivision Rules and Regulations;

- Upon completion of the project an as-built plan shall be submitted to the Zoning Enforcement Officer.

6.4.3 Denial - The BOARD may deny a Comprehensive Permit if it finds that there are no conditions that will adequately address Local Concerns, or for any other reason which may be provided for by the ACT or the Regulations 760 CMR 56, as amended from time to time. Additionally, an APPLICATION may be denied on the grounds that Acton has achieved any of the Statutory Minima set forth in 760 CMR 56.03(1), as may be amended, in which event the BOARD shall provide notice of the same to the APPLICANT and the Department of Housing and Community Development in accordance with 760 CMR 56.03(8), as may be amended.

## **6.5 RECORDING OF DECISION**

In the event of an approval or approval with conditions, the APPLICANT shall record a full copy of the DECISION in the owner's chain of title for the SITE in the Middlesex South District Registry of Deeds or the Land Court. A copy of the recorded DECISION or other evidence of recording shall be submitted to the Zoning Enforcement Officer prior to the issuance of a building permit on the SITE.

## **6.6 ENDORSEMENT AND RECORDING OF APPROVED PLANS**

The approved plan as revised in accordance with the BOARD's decision of approval shall be submitted to the Zoning Enforcement Officer. The majority of the BOARD shall sign the approved plan. The APPLICANT shall record the approved and signed plan in the Middlesex South District Registry of Deeds or the Land Court prior to the issuance of a building permit on the SITE.

## **6.7 APPEAL OF DECISION**

Any person aggrieved by the issuance of a Comprehensive Permit may appeal the BOARD's DECISION. Appeals may be taken pursuant to 760 CMR 56.05(9), as may be amended.

## **6.8 TRANSFER OF PERMIT**

Transfer of a PERMIT to a person or entity other than the Applicant, shall require written notice to the BOARD with a copy of the Subsidizing Agency's confirmation that the transferee meets the requirements of 760 CMR 56.04(1)(a) and (b), as may be amended.

## **6.9 LAPSE OF PERMIT**

The time limit on the PERMIT and any extensions thereof shall be governed by 760 CMR 56.05(12)(c), as may be amended.

## **SECTION 7**

### **PROJECT MODIFICATIONS**

#### **7.1 CHANGES TO AN APPLICATION**

- 7.1.1 Project Eligibility - Should an APPLICANT propose any change(s) to its APPLICATION or any other aspect of its proposal that may affect the project eligibility requirements of 760 CMR 56.04(1), as may be amended, it shall immediately notify the BOARD and the subsidizing agency of said change(s). In the event the BOARD finds that the change(s) may be substantial, the BOARD may request that the subsidizing agency review said change(s) and reaffirm, amend or deny its determination of project eligibility.
- 7.1.2 Additional Information - In the event that an APPLICANT proposes change(s) to a project while review of its APPLICATION is pending before the BOARD, the BOARD may require submittal of revised version(s) of the APPLICATION materials, to the extent said materials are pertinent to the proposed change(s). For the purpose of determining deadlines for BOARD action, a substantial change to a project shall constitute a new APPLICATION to the BOARD.

#### **7.2 CHANGES AFTER THE ISSUANCE OF A PERMIT**

If an APPLICANT desires to change the details of a project approved by the BOARD, it shall promptly notify the BOARD, in writing, of the details of said change(s). Within twenty (20) days, the BOARD shall determine and notify the APPLICANT as to whether the change(s) are insubstantial or substantial.

- 7.2.1 Insubstantial Changes - If, in the opinion of the BOARD, the change(s) are insubstantial, or if the BOARD fails to respond within twenty (20) days following notification by the APPLICANT of said change(s), the Comprehensive Permit granted by the BOARD shall be deemed modified to incorporate said change(s). Matters generally characterized as insubstantial changes are set forth in 760 CMR 56.07(4)(d), as may be amended.
- 7.2.2 Substantial Changes - If, in the opinion of the BOARD, the change(s) are substantial, the BOARD shall hold a public hearing on said change(s) and review the same all in accordance with 760 CMR 56.05(11)(c), as may be amended. For the purpose of said review, the BOARD may require submittal of any of the materials specified in the Section 3, above, to the extent said materials are pertinent to the proposed change(s), and payment of the fee(s) specified in said Section 3. Matters generally characterized as substantial changes are set forth in 760 CMR 56.07(4) (c), as may be amended.



## **APPENDIX B**

### **DEVELOPMENT IMPACT REPORT (DIR)**

The Development Impact Report (DIR) is intended to serve as a guide to the applicant in formulating the development proposal, as well as a guide to the Zoning Board of Appeals in its evaluation of the proposed development in the context of existing conditions and planning efforts by the Town. The DIR should be prepared as early in the development process as possible, even if certain aspects are unknown at that time. It is recommended that the various aspects of the DIR, together with a conceptual development plan, are discussed with the Planning Department staff as soon as possible, prior to the filing of an application for approval of a preliminary plan.

The DIR seeks to raise the broad range of issues generally associated with development plans in a form and in a language that is understandable to a layperson. It assesses development impacts which could possibly be avoided or mitigated if recognized early in the development process. Other portions of the DIR request information which will help the Town plan ahead and ensure adequate services in the future. It is the hope of the Zoning Board of Appeals that the use of the DIR, along with early consultations with the Planning Department staff and the applicant's continuing cooperation throughout the development process, will foster a development of excellent quality and design sensitive to Acton's natural and historic heritage and other community concerns.

The DIR shall be filed with an application for approval of a preliminary and a definitive subdivision plan. The DIR shall clearly and methodically assess the relationship of the proposed development to the natural, physical, and social environment. In preparing the DIR, professionals of the respective fields shall be consulted and a systematic, interdisciplinary approach shall be utilized which will ensure the integrated use of the natural and social sciences and the environmental design arts in planning, designing and engineering of the proposed project.

# DEVELOPMENT IMPACT REPORT

Please type or print information in blanks below.

1. Name of Proposed Subdivision \_\_\_\_\_
2. Location \_\_\_\_\_
3. Name of Applicant(s) \_\_\_\_\_
4. Brief Description of the Proposed Project \_\_\_\_\_  
\_\_\_\_\_
5. Name of Individual Preparing this DIR \_\_\_\_\_  
Address \_\_\_\_\_ Business Phone \_\_\_\_\_  
\_\_\_\_\_
6. Professional Credentials \_\_\_\_\_  
\_\_\_\_\_

**A. Site Description**

7. Present permitted and actual land uses by percentage of the site.

<i><b>Uses</b></i>	<i><b>Percentage</b></i>
Industrial	
Commercial	
Residential	
Forest	
Agricultural	
Other (specify)	

8. Total acreage on the site: \_\_\_\_\_ acres.

<i><b>Approximate Acreage</b></i>	<i><b>At Present</b></i>	<i><b>After Completion</b></i>
Meadow or Brushland (non agriculture)		
Forested		
Agricultural (includes orchards, cropland, pasture)		
Wetland		
Water Surface Area		
Flood Plain		
Unvegetated (rock, earth, or fill)		
Roads, buildings and other impervious surfaces		
Other (indicate type)		

9. List the zoning districts in which the site is located and indicate the percentage of the site in each district. *Note: be sure to include overlay zoning districts.*

<b>District</b>	<b>Percentage</b>

10. Predominant soil type(s) on the site: \_\_\_\_\_

Soil drainage (Use the US Natural Resources Conservation Service's definition)

<b>Soil Type</b>	<b>% of the Site</b>
Well drained	
Moderately well drained	
Poorly drained	

11. Are there bedrock outcroppings on the site? \_\_\_yes \_\_\_no

12. Approximate percentage of proposed site with slopes between:

<b>Slope</b>	<b>% of the Site</b>
0 - 10%	
10 - 15%	
greater than 15%	

13. In which of the Groundwater Protection Districts in the site located? How close is the site to a public well? Zone(s) \_\_\_\_\_ Proximity to a public well: \_\_\_\_\_ feet

14. Does the project site contain any species of plant or animal life that is identified as rare or endangered? (Consult with the Massachusetts National Heritage Program and the Acton Natural Resources Director). \_\_\_yes \_\_\_no

If yes, specify: \_\_\_\_\_  
 \_\_\_\_\_

15. Are there any unusual or unique features on the site such as trees larger than 30 inches D.B.H., bogs, kettle ponds, eskers, drumlins, quarries, distinctive rock formation or granite bridges?

\_\_\_yes \_\_\_no

If yes, specify: \_\_\_\_\_  
 \_\_\_\_\_

16. Are there any established foot paths running through the site or railroad right of ways?

\_\_\_yes \_\_\_no

If yes, specify: \_\_\_\_\_

---

17. Is the site presently used by the community or neighborhood as an open space or recreation area?  
\_\_\_yes \_\_\_no

Is the site adjacent to conservation land or a recreation area? \_\_\_yes \_\_\_no

If yes, specify: \_\_\_\_\_  
\_\_\_\_\_

18. Does the site include scenic views or will the proposed development cause any scenic vistas to be obstructed from view? \_\_\_yes \_\_\_no

If yes, specify: \_\_\_\_\_  
\_\_\_\_\_

19. Are there wetlands, lakes, ponds, streams, or rivers within or contiguous to the site?  
\_\_\_yes \_\_\_no

If yes, specify: \_\_\_\_\_  
\_\_\_\_\_

20. Is there any farmland or forest land on the site protected under Chapter 61A or 61B of the Massachusetts General Laws? \_\_\_yes \_\_\_no

If yes, specify: \_\_\_\_\_  
\_\_\_\_\_

21. Has the site ever been used for the disposal of hazardous waste? Has a 21E Study been conducted for the site? \_\_\_yes \_\_\_no

If yes, specify results: \_\_\_\_\_  
\_\_\_\_\_

22. Will the proposed activity require use and/or storage of hazardous materials, or generation of hazardous waste? \_\_\_yes \_\_\_no

If yes, specify \_\_\_\_\_  
\_\_\_\_\_

23. Does the project contain any buildings or sites of historic or archaeological significance? (Consult with the Acton Historic Commission or the Action Historical Society.)

\_\_\_yes \_\_\_no

If yes, please describe \_\_\_\_\_

24. Is the project contiguous to or does it contain a building in a local historic district or national register district? \_\_\_yes \_\_\_no

25. Is the project contiguous to any section of the Isaac Davis Trail?    \_\_\_yes        \_\_\_no

If yes, please describe \_\_\_\_\_

**B. Circulation System**

26. What is the average weekday traffic and peak hour traffic volumes generated by the proposed subdivision?

Average weekday traffic	
Average peak hour volumes      morning	
Average peak hour volumes      evening	

27. Existing street(s) providing access to proposed subdivision:

Name \_\_\_\_\_ Town Classification \_\_\_\_\_

28. Existing intersection(s): list intersections located within 1000 feet of any access to the proposed development:

Name of ways \_\_\_\_\_

29. Location of existing sidewalks within 1000 feet of the proposed site? \_\_\_\_\_

\_\_\_\_\_

30. Location of proposed sidewalks and their connection to existing sidewalks:

\_\_\_\_\_

\_\_\_\_\_

31. Are there parcels of undeveloped land adjacent to the proposed site?    \_\_\_yes    \_\_\_no

Will access to these undeveloped parcels be provided within the proposed site?

\_\_\_yes        \_\_\_no

If yes, please describe \_\_\_\_\_

If no, please explain why \_\_\_\_\_

**C. Utilities and Municipal Services**

32. If dwelling units are to be constructed, what is the total number of bedrooms proposed?

\_\_\_\_\_

33. If the proposed use of the site is nonresidential, what will the site be specifically used for and how many feet of Gross floor area will be constructed? \_\_\_\_\_

34. How will sewage be handled? \_\_\_\_\_

\_\_\_\_\_

35. Storm Drainage

a. Describe nature, location and surface water body receiving current surface water of the site:

\_\_\_\_\_  
\_\_\_\_\_

b. Describe the proposed storm drainage system and how it will be altered by the proposed development: \_\_\_\_\_

\_\_\_\_\_

c. Will a NPDES Permit be required?      \_\_\_yes      \_\_\_no

36. In the event of fire, estimate the response time of the fire department (consult with Fire Dept.)

\_\_\_\_\_

37. Schools (if residential)

a. Projected number of new school age children: \_\_\_\_\_

b. Distance to nearest school: \_\_\_\_\_

**D. Measures to Mitigate Impacts**

Attach brief descriptions of the measures that will be taken to:

38. Prevent surface water contamination.

39. Prevent groundwater contamination.

40. Maximize groundwater recharge.

41. Prevent erosion and sedimentation.

42. Maintain slope stability.

43. Design the project to conserve energy.

44. Preserve wildlife habitat.

45. Preserve wetlands.

46. Ensure compatibility with the surrounding land uses.

47. Control peak runoff from the site so that the post-development rate of runoff will be no greater than the predevelopment rate of runoff for the 10-year storm event.

48. Preserve historically significant structures and features on the site.

49. To mitigate the impact of the traffic generated by the development.

Please use layman's terms where possible while still being accurate and comprehensive. Where appropriate, graphics shall be used. List sources of data, reference materials, and methodology used to determine all conclusions. Use additional sheets as necessary.

APPENDIX C

**TABULATION OF BUILDINGS - UNIT COMPOSITION**

<b>Type of Unit</b>		<b>Number of Units</b>	<b>Number of baths/unit</b>	<b>Gross Sq.Ft./unit</b>	<b>Unit sale price/monthly rent</b>	<b>Homeowner Association/ Condo fee (if applicable)</b>	<b>% Condo Ownership (if applicable)</b>
<b>1 Bedroom</b>	<b>Affordable</b>						
	<b>Market Rate</b>						
<b>2 Bedroom</b>	<b>Affordable</b>						
	<b>Market Rate</b>						
<b>3 Bedroom</b>	<b>Affordable</b>						
	<b>Market Rate</b>						
<b>4 Bedroom</b>	<b>Affordable</b>						
	<b>Market Rate</b>						
<b>5+ Bedroom</b>	<b>Affordable</b>						
	<b>Market Rate</b>						

**APPENDIX D**

**Comprehensive Permits – Filing Fee Schedule**

Base fee:	\$ 200.00
Plus, for each Dwelling Unit:	\$ 100.00
Plus, for each structure or portion of a structure proposed for commercial or other non-residential or accessory uses	\$3,000.00

## **APPENDIX E**

**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)

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### **Guidelines for Affordable Housing Development in Acton - The Review Process December 2015**

#### **Introduction**

The Town of Acton has a Comprehensive Permit Policy that was adopted jointly by the Board of Selectmen and Planning Board in 2006 to communicate the Town's preferences for housing developed under Chapter 40B. This policy can be accessed at the Planning Department section of the Town Web Site: <http://www.acton-ma.gov/index.aspx?NID=167>

The main purpose of this policy is to provide guidance to developers, Town staff, Town boards, and the Board of Appeals in locating, designing, evaluating and permitting Chapter 40B developments in order to achieve five local objectives:

- Provide permanently affordable housing for low-, moderate- and middle-income people;
- Respect our natural resources;
- Contribute to the vitality of our villages and business districts;
- Minimize adverse fiscal and infrastructure impacts; and
- Reflect a collaborative approach by the developer and Town.

Toward these ends, the Town encourages applications for small-scale comprehensive permit developments that serve low- and moderate-income households and, whenever possible, middle-income households. The policy encourages developments that make use of existing structures or conform to the established architectural traditions in our community; and developments located in or adjacent to the Town's existing villages, Kelley's Corner or other business centers. Small, attractive affordable housing developments in these areas will help expand the town's inventory of low- and moderate-income housing in a manner that acknowledges the Town's land use policies, development traditions and fiscal capacity.

To accomplish the Town's affordable housing objectives in the most efficient and collaborative manner, the Acton Community Housing Corporation (ACHC) recommends developers use the MA Department of Housing and Community Development (DHCD)'s Local Initiative Program for the required subsidizing agency. The Local Initiative Program (LIP) is a state program that encourages the creation of affordable housing by providing technical assistance to communities and developers who are working together to create affordable rental opportunities for low- and moderate-income households. This program requires the approval and signature of both the Board of Selectmen and the ACHC prior to the filing of the application to DHCD. Other subsidizing agency options are: MassHousing, MassDevelopment, or the U.S. Department of Housing and Urban

Development. It is ACHC's hope that developers using these alternative subsidizing agencies will still follow the collaborative process laid out for LIP projects to expedite the review of the proposal.

### **Process**

The Town of Acton looks forward to working with developers very early in the planning process. This process is required for all DHCD LIP proposals and is optional but strongly recommended for alternative subsidizing agencies such as MassHousing. The Acton Community Housing Corporation (ACHC) has been designated by the Board of Selectmen to act as the "first stop" for interested developers of affordable housing. The ACHC will conduct an initial review of the proposed development concept and work closely with Town boards and committees to identify health, safety, infrastructure, and other issues.

The purpose of these guidelines is to spell out the review criteria and process for affordable housing development so that these issues may be worked out prior to the start of the Board of Appeals hearings. Both the ACHC and the Board of Selectmen will then be able to make an informed recommendation relating to the application to the state subsidizing agency.

***The ACHC will primarily concentrate its review upon issues of affordability, rather than assume responsibility for analyzing such issues as infrastructure, site planning, historic preservation, and environmental considerations, which are best addressed by existing boards and committees charged with those responsibilities.***

Support of an application does not constitute Town approval of the plan. The Board of Appeals is the decision-making body for Comprehensive Permits (Chapter 774 of the Acts of 1969 codified in Massachusetts General Laws as Chapter 40B). The steps may vary somewhat on a project-by-project basis, depending on the specific issues of the proposed plans.

The ACHC and the Town of Acton are particularly sensitive to appropriate designs for 40B developments to make them as consistent as possible with the surrounding areas. The state agencies have collaborated to create a 40B Handbook for Design Review for consistency with the requirements of the 40B regulations in terms of use, site planning and building design. It can be found here: <http://www.mass.gov/hed/community/40b-plan/handbook-approach-to-ch-40b-design-reviews.html>

This handbook is a reflection of these agencies and their commitment to ensuring that 40B affordable housing developments adhere to high standards of site and building design that enhance the quality of life for residents and the communities in which they reside.

### **Step 1. Initial Contact**

Developer receives a copy of the Guidelines for Affordable Housing from the ACHC or the Planning Department at Town Hall. The Developer contacts the ACHC to schedule an introductory meeting.

### **Step 2. First Meeting with the ACHC**

The purpose of this meeting is to introduce the project. The developer should be prepared to present an overview of the project concept. The ACHC will decide whether or not to support the conceptual design at this meeting if it has enough information. Two weeks prior to the scheduled meeting, the developer should submit one electronic copy of all materials to [achc@acton-ma.gov](mailto:achc@acton-ma.gov).

Submittal requirements that are most helpful for ACHC review:

- a. Location of project, name of applicant, and owner of record.
- b. Existing conditions plan showing topography and environmental features.
- c. Conceptual site plan showing building footprints, parking roads, drives, buffers and major environmental features.
- d. Density and scale of development.
- e. Floor Area Ratio as described in Comprehensive Permit Policy.
- f. Housing types.
- g. Proposed subsidy program.
- h. Number and percentage of affordable units.
- i. Zoning and Subdivision Rules and Regulations conformity analysis.
- j. Site control, purchase agreement

**Step 3. Introductory Meeting with Department Heads and Water District**

a) If the ACHC approves the conceptual plan, the Chair will contact the Planning Department to schedule a brief introduction of the project by the developer at a department head meeting to be held within one month of submittal of the conceptual plan. The developer will distribute the initial submission materials to the Planning Department to be distributed to the various departments. The purpose is to "flag" technical issues and concerns generated by the proposed project. Participating departments include planning, conservation, selectmen, health, building, engineering, water district, fire, police and tree warden. Written comments should be sent to the Planning Department and ACHC.

**Step 4. Development of Preliminary Plans**

Following comments by the ACHC and departments, the developer should prepare preliminary plans that incorporate these comments. These plans must be sufficiently detailed to permit meaningful review by the applicable board/department. A copy of the DHCD LIP or MassHousing application should be included with the preliminary plans. This is required for LIP proposals.

Preliminary plans and the LIP application must include:

- a. General information, including name, locus map at a scale of 1" = 1200', number of units, owner, proposed lender, commitment or letter of interest from the lender, attorney, contact person, resumes of development team, and name of development.
- b. Project description, including unit mix with respect to ownership/rental, bedrooms, subsidized/market sales, subsidized/market rental, proposed density, total site area, total buildable site area, total building coverage of site, site coverage for walks, parking and roads, open space on site at completion and amenities.
- c. Architectural elevations and unit floor plans.
- d. Site plan delineating boundaries, lot lines, wetlands, watercourses, floodplains, groundwater protection zones, and proposed/existing topography, building footprints, parking, roads and drives.
- e. Sewer/septic location and preliminary design.
- f. Proposed drainage location and design.
- g. Identification of housing subsidy program to be utilized.

**Step 5. Public Participation**

ACHC supports soliciting community input relevant to the proposed project. We strongly recommend that developers reach out to abutters early in the process at the time of the first meeting with the ACHC. A public information meeting will be held by the ACHC after the preliminary plans are available, which could be up to two months after the initial meeting with ACHC. This is required for LIP proposals and strongly recommended for MassHousing projects. Abutters within 300 feet of the project location should be invited using an official abutter

list from the Assessor's Office. The ACHC will assist the developer in coordinating the public meeting as necessary. Town board members will also be invited to this meeting via general email.

**Step 6. ACHC Meeting with Developer**

The ACHC will meet with the developer at least one more time to discuss concerns that have arisen to discuss project trade-offs. Options will be clarified. The Intent at this point in the process is to have substantial agreement on the design and plans. This agreement will form the basis of the application to the state subsidizing agency and the subsequent Comprehensive Permit submission to the Board of Appeals.

The ACHC will assist the developer through the review process to make it as expeditious as possible. Assuming that the developer can complete preliminary plans within two months, the Town pre-ZBA process should be completed within six months, depending on the complexity of the project. This process will greatly facilitate the formal Comprehensive Permit review.

Once the ACHC is comfortable with the preliminary design and LIP application, they will vote to sign the application.

**Step 7. Presentation to the Board of Selectmen**

The preliminary plans and the project description should be presented to the Board of Selectmen. At this point, if the Board is comfortable with the design they could vote to sign the LIP application, assuming the use of the LIP program, and issue a formal letter of support for the project. Comments can be submitted within 30 days for MassHousing projects once the Town is notified by MassHousing of the application.

**Step 8. Formal application to state subsidizing agency**

To qualify for Chapter 40B, a development proposal must first receive a letter of project eligibility under a state or federal housing program, such as the Department of Housing and Community Development (LIP), MassHousing, MassDevelopment, or the U.S. Department of Housing and Urban Development. At least 25% of the units must be affordable to lower income households who earn no more than 80% of the area median income.

If the state project eligibility agency is DHCD LIP, then the Selectmen and the ACHC will sign the application before it is submitted to the agency. If the application is other than a DHCD LIP, the developer will apply directly to the agency without Town approval. The agency will then notify the Town of the application, seeking comments.

**Step 9. Formal Application to the Board of Appeals for a Comprehensive Permit**

Once the state project eligibility agency has submitted a letter of site eligibility to the developer, the formal application will be made to the Board of Appeals with a hearing scheduled within 30 days.

Acton Community Housing Corporation  
December 2015

## APPENDIX F

### Chapter 40B - Sections 20-23

#### **Section 20: Definitions**

The following words, wherever used in this section and in sections twenty-one to twenty-three, inclusive, shall, unless a different meaning clearly appears from the context, have the following meanings:?

"Low or moderate income housing", any housing subsidized by the federal or state government under any program to assist the construction of low or moderate income housing as defined in the applicable federal or state statute, whether built or operated by any public agency or any nonprofit or limited dividend organization.

"Uneconomic", any condition brought about by any single factor or combination of factors to the extent that it makes it impossible for a public agency or nonprofit organization to proceed in building or operating low or moderate income housing without financial loss, or for a limited dividend organization to proceed and still realize a reasonable return in building or operating such housing within the limitations set by the subsidizing agency of government on the size or character of the development or on the amount or nature of the subsidy or on the tenants, rentals and income permissible, and without substantially changing the rent levels and units sizes proposed by the public, nonprofit or limited dividend organizations.

"Consistent with local needs", requirements and regulations shall be considered consistent with local needs if they are reasonable in view of the regional need for low and moderate income housing considered with the number of low income persons in the city or town affected and the need to protect the health or safety of the occupants of the proposed housing or of the residents of the city or town, to promote better site and building design in relation to the surroundings, or to preserve open spaces, and if such requirements and regulations are applied as equally as possible to both subsidized and unsubsidized housing. Requirements or regulations shall be consistent with local needs when imposed by a board of zoning appeals after comprehensive hearing in a city or town where (1) low or moderate income housing exists which is in excess of ten per cent of the housing units reported in the latest federal decennial census of the city or town or on sites comprising one and one half per cent or more of the total land area zoned for residential, commercial or industrial use or (2) the application before the board would result in the commencement of construction of such housing on sites comprising more than three tenths of one per cent of such land area or ten acres, whichever is larger, in any one calendar year; provided, however, that land area owned by the United States, the commonwealth or any political subdivision thereof, or any public authority shall be excluded from the total land area referred to above when making such determination of consistency with local needs.

"Local Board", any town or city board of survey, board of health, board of subdivision control appeals, planning board, building inspector or the officer or board having supervision of the construction of buildings or the power of enforcing municipal building laws, or city council or board of selectmen.

## **Section 21: Low or moderate income housing; applications for approval of proposed construction; hearing; appeal**

Any public agency or limited dividend or nonprofit organization proposing to build low or moderate income housing may submit to the board of appeals, established under section twelve of chapter forty A, a single application to build such housing in lieu of separate applications to the applicable local boards. The board of appeals shall forthwith notify each such local board, as applicable, of the filing of such application by sending a copy thereof to such local boards for their recommendations and shall, within thirty days of the receipt of such application, hold a public hearing on the same. The board of appeals shall request the appearance at said hearing of such representatives of said local boards as are deemed necessary or helpful in making its decision upon such application and shall have the same power to issue permits or approvals as any local board or official who would otherwise act with respect to such application, including but not limited to the power to attach to said permit or approval conditions and requirements with respect to height, site plan, size or shape, or building materials as are consistent with the terms of this section. The board of appeals, in making its decision on said application, shall take into consideration the recommendations of the local boards and shall have the authority to use the testimony of consultants. The board of appeals shall adopt rules, not inconsistent with the purposes of this chapter, for the conduct of its business pursuant to this chapter and shall file a copy of said rules with the city or town clerk. The provisions of section eleven of chapter forty A shall apply to all such hearings. The board of appeals shall render a decision, based upon a majority vote of said board, within forty days after the termination of the public hearing and, if favorable to the applicant, shall forthwith issue a comprehensive permit or approval. If said hearing is not convened or a decision is not rendered within the time allowed, unless the time has been extended by mutual agreement between the board and the applicant, the application shall be deemed to have been allowed and the comprehensive permit or approval shall forthwith issue. Any person aggrieved by the issuance of a comprehensive permit or approval may appeal to the court as provided in section seventeen of chapter forty A.

**Section 22: Appeal to housing appeals committee; procedure; judicial review**

Whenever an application filed under the provisions of section twenty-one is denied, or is granted with such conditions and requirements as to make the building or operation of such housing uneconomic, the applicant shall have the right to appeal to the housing appeals committee in the department of housing and community development for a review of the same. Such appeal shall be taken within twenty days after the date of the notice of the decision by the board of appeals by filing with said committee a statement of the prior proceedings and the reasons upon which the appeal is based. The committee shall forthwith notify the board of appeals of the filing of such petition for review and the latter shall, within ten days of the receipt of such notice, transmit a copy of its decision and the reasons therefor to the committee. Such appeal shall be heard by the committee within twenty days after receipt of the applicant's statement. A stenographic record of the proceedings shall be kept and the committee shall render a written decision, based upon a majority vote, stating its findings of fact, its conclusions and the reasons therefor within thirty days after the termination of the hearing, unless such time shall have been extended by mutual agreement between the committee and the applicant. Such decision may be reviewed in the superior court in accordance with the provisions of chapter thirty A.

### **Section 23: Hearing by housing appeals committee; issues; powers of disposition; orders; enforcement**

The hearing by the housing appeals committee in the department of housing and community development shall be limited to the issue of whether, in the case of the denial of an application, the decision of the board of appeals was reasonable and consistent with local needs and, in the case of an approval of an application with conditions and requirements imposed, whether such conditions and requirements make the construction or operation of such housing uneconomic and whether they are consistent with local needs. If the committee finds, in the case of a denial, that the decision of the board of appeals was unreasonable and not consistent with local needs, it shall vacate such decision and shall direct the board to issue a comprehensive permit or approval to the applicant. If the committee finds, in the case of an approval with conditions and requirements imposed, that the decision of the board makes the building or operation of such housing uneconomic and is not consistent with local needs, it shall order such board to modify or remove any such condition or requirement so as to make the proposal no longer uneconomic and to issue any necessary permit or approval; provided, however, that the committee shall not issue any order that would permit the building or operation of such housing in accordance with standards less safe than the applicable building and site plan requirements of the federal Housing Administration or the Massachusetts Housing Finance Agency, whichever agency is financially assisting such housing. Decisions or conditions and requirements imposed by a board of appeals that are consistent with local needs shall not be vacated, modified or removed by the committee notwithstanding that such decisions or conditions and requirements have the effect of making the applicant's proposal uneconomic.

The housing appeals committee or the petitioner shall have the power to enforce the orders of the committee at law or in equity in the superior court. The board of appeals shall carry out the order of the hearing appeals committee within thirty days of its entry and, upon failure to do so, the order of said committee shall, for all purposes, be deemed to be the action of said board, unless the petitioner consents to a different decision or order by such board.

## APPENDIX G

### 760 CMR: DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

#### 760 CMR 56.00: COMPREHENSIVE PERMIT; LOW OR MODERATE INCOME HOUSING

##### Section

- 56.01: Background and Purpose
- 56.02: Definitions
- 56.03: Methods to Measure Progress Toward Local Affordable Housing Goals
- 56.04: Project Eligibility; Other Responsibilities of Subsidizing Agency
- 56.05: Local Hearings
- 56.06: Procedural Regulations for Appeals to the Housing Appeals Committee
- 56.07: Criteria for Housing Appeals Committee Decisions
- 56.08: Amendments; Waivers; Transition Rules

##### 56.01: Background and Purpose

The Comprehensive Permit Statute, St. 1969, c. 774, now codified at M.G.L. c. 40B, §§ 20 through 23, was adopted by the legislature to address the shortage of low and moderate income housing in Massachusetts and to reduce regulatory barriers that impede the development of such housing. Under M.G.L. c. 40B, §§ 20 through 23, the developer of a project that includes a sufficient level of subsidized low and moderate income housing units may apply for a Comprehensive Permit from the local zoning board of appeals (the “Board”). Appeals by developers from decisions of the Board are decided by the Housing Appeals Committee (the “HAC”).

The purpose of 760 CMR 56.00, is to implement the statutory scheme. 760 CMR 56.00 sets forth comprehensive standards and procedures to govern the course of project review, from an initial determination of eligibility by the federal or state agency that is providing a subsidy (the “Subsidizing Agency”), through local permitting review by the Board, to issuance or denial of a Comprehensive Permit, potential appeals to the HAC, and post-permitting procedures. 760 CMR 56.00 also addresses the Subsidized Housing Inventory which is maintained by the Department of Housing and Community Development (the “Department”). To achieve these ends, the Department has consolidated materials previously found in several different sets of regulations, and it has codified issues that have been decided by judicial or administrative decisions or are general practice as reflected in policy documents of the Department. 760 CMR 56.00 has further advanced the statutory purposes of M.G.L. c. 40B, §§ 20 through 23 by clarifying the procedures of the expedited review process, and by otherwise addressing recurring questions of interpretation.

##### 56.02: Definitions

Adjudicatory Proceeding – means as defined in M.G.L. c. 30A, § 1.

Affirmative Fair Marketing Plan – means a plan for the marketing of SHI Eligible Housing, including provisions for a lottery or other resident selection process, consistent with guidelines adopted by the Department, and providing effective outreach to protected groups underrepresented in the municipality. The plan shall not permit any discrimination on the basis of race, creed, color, sex, age, disability, familial status, sexual orientation, national origin or any other legally protected category in the leasing or sale of SHI Eligible Housing.

Applicant – means a public agency, a non-profit organization, or a Limited Dividend Organization that proposes a Project for which it has submitted or intends to submit an application for a Comprehensive Permit to a Board.

Board – means a local Board of Appeals established by M.G.L. c. 40A, § 12, and acting in its capacity to issue a Comprehensive Permit under the powers granted by M.G.L. c. 40B, §§ 20 through 23.

Chief Executive Officer – means the mayor in a city and the board of selectmen in a town, unless some other municipal office is designated to be the chief executive officer under the provisions of a local charter.

56.02: continued

Committee – means the Housing Appeals Committee, also referred to as "HAC."

Comprehensive Permit – means a permit for the development of Low or Moderate Income Housing issued by a Board pursuant to M.G.L. c. 40B, §§ 20 through 23 and 760 CMR 56.00.

Consistent with Local Needs – means either that:

- (a) one or more of the grounds set forth in 760 CMR 56.03(1) have been met; or
- (b) Local Requirements and Regulations imposed on a Project are reasonable in view of the regional need for Low and Moderate Income Housing, considered with the number of Low Income Persons in the affected municipality and with Local Concerns, and if such Local Requirements and Regulations are applied as equally as possible to both subsidized and unsubsidized housing.

Days – means, for the purposes of 760 CMR 56.00, a period that shall begin with the first day following that on which the act that initiates such period of time occurs. The last day of the period so computed is to be included unless it is a day on which the office of the Department is closed, in which event the period shall run until the end of the next following business day. When such period of time, with the intervening Saturdays, Sundays and legal holidays counted, is five days or less, the said Saturdays, Sundays and legal holidays shall be excluded from the computation; otherwise, such days shall be included in the computation.

Department – means the Massachusetts Department of Housing and Community Development and its successors, as established and currently existing pursuant to M.G.L. chs. 23B and 6A.

Developer – means the Applicant or any successor that owns or controls a Project.

Housing Need – means the regional need for Low and Moderate Income Housing considered with the number of Low Income Persons in a municipality affected.

Housing Production Plan (HPP) – means an affordable housing plan adopted by a municipality and approved by the Department, defining certain annual increases in its number of SHI Eligible Housing. *See* 760 CMR 56.03(4).

HUD – means the U.S. Department of Housing and Urban Development.

Income Eligible Household – means a household of one or more persons whose maximum income does not exceed 80% of the area median income, adjusted for household size, or as otherwise established by the Department in guidelines. For homeownership programs, the Subsidizing Agency may establish asset limitations for Income Eligible Households by statute, regulations, or guideline. In the absence of such provisions, Income Eligible Households shall be subject to asset and/or other financial limitations as defined by the Department in guidelines.

Limited Dividend Organization – means any entity which proposes to sponsor a Project under M.G.L. c. 40B, §§ 20 through 23; and is not a public agency or a nonprofit; and is eligible to receive a Subsidy from a Subsidizing Agency after a Comprehensive Permit has been issued and which, unless otherwise governed by a federal act or regulation, agrees to comply with the requirements of the Subsidizing Agency relative to a reasonable return for building and operating the Project.

Local Board – means any local board or official, including, but not limited to any board of survey; board of health; planning board; conservation commission; historical commission; water, sewer, or other commission or district; fire, police, traffic, or other department; building inspector or similar official or board; city council or board of selectmen. All boards, regardless of their geographical jurisdiction or their source of authority (that is, including boards created by special acts of the legislature or by other legislative action) shall be deemed Local Boards if they perform functions usually performed by locally created boards.

56.02: continued

Local Concern – means the need to protect the health or safety of the occupants of a proposed Project or of the residents of the municipality, to protect the natural environment, to promote better site and building design in relation to the surroundings and municipal and regional planning, or to preserve Open Spaces. *See* 760 CMR 56.07(3)(c) through (g).

Local Initiative Project – means a Project for which the project eligibility application is submitted by the Chief Executive Officer of the municipality under 760 CMR 56.04(2), in accordance with the Department’s Local Initiative Program (“LIP”).

Local Requirements and Regulations – mean all local legislative, regulatory, or other actions which are more restrictive than state requirements, if any, including local zoning and wetlands ordinances or by-laws, subdivision and board of health rules, and other local ordinances, by-laws, codes, and regulations, in each case which are in effect on the date of the Project’s application to the Board.

Low Income Persons – means all persons who, according to the latest available United States Census, reside in households whose net income does not exceed the maximum income limits for admission to public housing, as established by the Department. The Department's calculation shall be presumed conclusive on the Committee unless a party introduces authoritative data to the contrary. Data shall be authoritative only if it is based upon a statistically valid, random sample or survey of household income conducted in the relevant area since the latest available U.S. Census.

Low or Moderate Income Housing – means any units of housing for which a Subsidizing Agency provides a Subsidy under any program to assist the construction or substantial rehabilitation of low or moderate income housing, as defined in the applicable federal or state statute or regulation, whether built or operated by any public agency or non-profit or Limited Dividend Organization. If the applicable statute or regulation of the Subsidizing Agency does not define low or moderate income housing, then it shall be defined as units of housing whose occupancy is restricted to an Income Eligible Household.

Open Spaces – means land areas, including parks, parkland, and other areas which contain no major structures and are reserved for outdoor recreational, conservation, scenic, or other similar use by the general public through public acquisition, easements, long-term lease, trusteeship, or other title restrictions which run with the land.

Party – means party as defined in M.G.L. c. 30A, § 1.

Project – means a development involving the construction or substantial rehabilitation of units of Low or Moderate Income Housing that is eligible to submit an application to a Board for a Comprehensive Permit or to file or maintain an appeal before the Committee. *See* 760 CMR 56.04 for eligibility requirements. A Project may contain ancillary commercial, institutional, or other non-residential uses, so long as the non-residential elements of the Project are planned and designed to:

- (a) complement the primary residential uses; and
- (b) help foster vibrant, workable, livable, and attractive neighborhoods consistent with applicable local land use plans.

Project Eligibility – means a determination by a Subsidizing Agency that a Project satisfies the jurisdictional requirements of 760 CMR 56.04(1).

Public Housing – means housing owned, operated, or managed by a local housing authority, or leased under the auspices of a local housing authority pursuant to M.G.L. c.121B.

Reasonable Return - means, as calculated according to guidelines issued by the department, and with respect to

- (a) building an ownership project or continuing care retirement community, that profit to the Developer is not more than 20% and not less than 15% of the total development costs;
- (b) building a rental project:

56.02: continued

1. that payment of development fees from the initial construction of the Project is not more than a reasonable fee as determined by the Subsidizing Agency's program limitations and not less than 10% of the total development costs; and
  2. that commencing upon the Project's initial occupancy, distributions of profit funded by operating revenues shall not exceed a reasonable rate relative to the Developer's equity in the Project as determined by the Subsidizing Agency's program requirements;
- (c) building an ownership project, continuing care retirement community or rental project, for the purpose of determining whether the Project is Uneconomic, that profit to the Developer or payment of development fees from the initial construction of the Project, if an amount lower than the minimum set forth 760 CMR 56.02: Reasonable Return(a) or (b), as applicable, has been determined to be feasible as set forth in the Project Eligibility Letter, then such lower amount shall be the minimum; or
- (d) building an ownership project, continuing care retirement community or rental project, for the purpose of determining whether the Project is Uneconomic, when one or more conditions imposed by the Board decrease the total number of units in a Project, if those conditions do not address a valid health, safety, environmental, design, open space or other Local Concern, then the amount as calculated prior to the imposition of such conditions shall be the minimum, provided that such amount does not exceed the maximum return set forth in 760 CMR 56.02: Reasonable Return(a), or fall below the minimum set forth in 760 CMR 56.02: Reasonable Return(a), (b) or (c), as applicable.

SHI Eligible Housing – means, solely for the purposes of 760 CMR 56.03:

- (a) any unit of Low or Moderate Income Housing;
- (b) such other housing units in a Project as may be so defined under the Department's guidelines; and
- (c) any other housing unit as may be allowed under the Department's guidelines, provided that such housing unit is subject to a Use Restriction and Affirmative Fair Marketing Plan, and regardless of whether or not such unit received a Subsidy.

Statutory Minima – means the standards set forth in M.G.L. c. 40B, §§ 20 through 23 and 760 CMR 56.03(3).

Subsidized Housing Inventory (SHI) – means the list compiled by the Department containing the count of Low or Moderate Income Housing units by city or town. *See* 760 CMR 56.02(2).

Subsidizing Agency – means any agency of state or federal government that provides a Subsidy for the construction or substantial rehabilitation of Low or Moderate Income Housing. If the Subsidizing Agency is not an agency of state government, the Department may appoint a state agency to administer some or all of the responsibilities of the Subsidizing Agency with respect to 760 CMR 56.00; in that case, all applicable references in 760 CMR 56.00 to the Subsidizing Agency shall be deemed to refer to the appointed project administrator. It shall be the responsibility of the Subsidizing Agency to enforce compliance with provisions of 760 CMR 56.00 and applicable Department guidelines relating to matters including Affirmative Fair Marketing Plans, Cost Examination and Limitations on Profits and Distributions, Project Eligibility, Subsidies, and Use Restrictions (for the term of the initial Use Restriction; *see* 760 CMR 56.05(13)). A Subsidizing Agency may delegate its compliance and enforcement obligations to a third party, if the third party meets standards established by the Department in guidelines. The Department reserves the right to ensure that the compliance and enforcement activities of a Subsidizing Agency are satisfactory.

Subsidy – means assistance provided by a Subsidizing Agency to assist the construction or substantial rehabilitation of Low or Moderate Income Housing, including direct financial assistance; indirect financial assistance through insurance, guarantees, tax relief, or other means; and non-financial assistance, including in-kind assistance, technical assistance, and other supportive services. A leased housing, tenant-based rental assistance, or housing allowance program shall not be considered a Subsidy for the purposes of 760 CMR 56.00.

Uneconomic – means any condition imposed by a Board in its approval of a Comprehensive Permit, brought about by a single factor or a combination of factors, to the extent that it:

- (a) makes it impossible for a public agency or a nonprofit organization to proceed in building or operating a Project without financial loss; or

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(b) makes it impossible for a Limited Dividend Organization to proceed and still realize a reasonable return in building or operating such Project within the limitations set by the Subsidizing Agency on the size or character of the Project, or on the amount or nature of the Subsidy or on the tenants, rentals, and income permissible, and without substantially changing the rent levels and unit sizes proposed by the Applicant. *See* 760 CMR 56.05(8)(d).

Use Restriction – means a deed restriction or other legally binding instrument in a form consistent with Department guidelines and, in the case of a Project subject to a Comprehensive Permit, in a form also approved by the Subsidizing Agency, which runs with the land and is recorded with the relevant registry of deeds or land court registry district, and which effectively restricts the occupancy of a Low or Moderate Income Housing unit to Income Eligible Households during the term of affordability. A Use Restriction shall contain terms and conditions for the resale of a homeownership unit, including definition of the maximum permissible resale price, and for the subsequent rental of a rental unit, including definition of the maximum permissible rent. A Use Restriction shall require that tenants of rental units and owners of homeownership units shall occupy the units as their domiciles and principal residences. A Use Restriction may require that an Income Eligible Household must have a lower percentage of area median income than 80%. For enforcement of Use Restrictions, *see* 760 CMR 56.05(13).

Waiver – means an exception from a use, dimensional, or other restriction of local requirements and regulations, granted to a Project through a Comprehensive Permit. *See* 760 CMR 56.05(7).

### 56.03: Methods to Measure Progress Toward Local Affordable Housing Goals

(1) A decision by a Board to deny a Comprehensive Permit, or (if the Statutory *Minima* defined at 760 CMR 56.03(3)(b) or (c) have been satisfied) grant a Comprehensive Permit with conditions, shall be upheld if one or more of the following grounds has been met as of the date of the Project's application:

- (a) the municipality has achieved one or more of the Statutory *Minima*, in accordance with 760 CMR 56.03(3);
- (b) the Department has certified the municipality's compliance with the goals of its approved Housing Production Plan, in accordance with 760 CMR 56.03(4);
- (c) the municipality has made recent progress toward the Statutory *Minima*, in accordance with 760 CMR 56.03(5);
- (d) the project is a large project, as set forth in 760 CMR 56.03(6); or
- (e) a related application has previously been received, as set forth in 760 CMR 56.03(7).

For the purposes of 760 CMR 56.03, units of SHI Eligible Housing shall be counted only if they satisfy the requirements for listing on the SHI in accordance with 760 CMR 56.03(2). A Board decision based on one or more of the grounds set forth in 760 CMR 56.03(1) shall be made solely in accordance with the procedure set forth in 760 CMR 56.03(8). Such a denial shall be without prejudice, and it shall not preclude re-filing of the Comprehensive Permit application at a later date.

Notwithstanding the foregoing, a Board may at its sole discretion elect to proceed with the full local hearing, and ultimately to approve a Comprehensive Permit, even though one or more of the above grounds have been met. If a Board so elects, such election shall not be grounds for an appeal taken pursuant to 760 CMR 56.03(8)(a).

#### (2) Subsidized Housing Inventory.

(a) The Department shall maintain the SHI to measure a municipality's stock of SHI Eligible Housing. The SHI is not limited to housing units developed through issuance of a Comprehensive Permit; it may also include SHI Eligible Housing units developed under M.G.L. chs. 40A, c. 40R, and other statutes, regulations, and programs, so long as such units are subject to a Use Restriction and an Affirmative Fair Marketing Plan, and they satisfy the requirements of guidelines issued by the Department.

(b) Units shall be eligible to be counted on the SHI at the earliest of the following:

- 1. For units that require a Comprehensive Permit under M.G.L. c. 40B, § 20 through 23, or a zoning approval under M.G.L. c. 40A or completion of plan review under M.G.L. c. 40R, the date when:

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- a. the permit or approval is filed with the municipal clerk, notwithstanding any appeal by a party other than the Board, but subject to the time limit for counting such units set forth at 760 CMR 56.03(2)(c); or
  - b. on the date when the last appeal by the Board is fully resolved;
  2. When the building permit for the unit is issued;
  3. When the occupancy permit for the unit is issued; or
  4. When the unit is occupied by an Income Eligible Household and all the conditions of 760 CMR 56.03(2)(b) have been met (if no Comprehensive Permit, zoning approval, building permit, or occupancy permit is required.)
- (c) Time Lapses. If more than one year elapses between the date of issuance of the Comprehensive Permit or zoning approval under M.G.L. c. 40A or completion of plan review under M.G.L. c. 40R, as that date is defined in 760 CMR 56.03(2)(b)1., and issuance of the building permit, the units will become ineligible for the SHI until the date that the building permit is issued. If more than 18 months elapse between issuance of the building permits and issuance of the certificate of occupancy, the units will become ineligible for the SHI until the date that the certificate of occupancy is issued. If a Comprehensive Permit or zoning approval lapses permanently, the units become permanently ineligible for the SHI. Notwithstanding the foregoing, if a Comprehensive Permit or zoning approval permits a project to be constructed in phases, and provided that:
1. each phase contains at least 150 units;
  2. each phase contains the same proportion of SHI Eligible Housing units as the overall project; and
  3. the projected average time period between the start of successive phases does not exceed 15 months, then the entire project shall remain eligible for the SHI so long as the phasing schedule set forth in the permit approval continues to be met. If more than one year elapses between the date of issuance of the Comprehensive Permit or zoning approval under M.G.L. c. 40A or completion of plan review under M.G.L. c. 40R, as that date is defined in 760 CMR 56.03(2)(b)1., and final resolution of any pending appeal by a party other than the Board, the units will become ineligible for the SHI until the date that the last appeal is fully resolved.
- (d) Enforcement and Termination of Use Restrictions. Use Restrictions shall be enforced in accordance with 760 CMR 56.05(13), except that an agency of municipal government may enforce the Use Restriction for a unit not subject to a Comprehensive Permit. Units shall no longer be eligible for inclusion on the SHI upon expiration or termination of the initial Use Restriction, unless a subsequent Use Restriction has been imposed in accordance with the requirements of 760 CMR 56.05(13).
- (e) Municipal Certification. Each municipality shall provide to the Department, once every two years, a statement certified by the Chief Executive Officer, in such form and upon such schedule as may be required by the Department, as to the number of SHI Eligible Housing units eligible to be listed on the SHI, other than those within a Project subject to a Comprehensive Permit.
- (f) Biennial Updates. The SHI shall be updated by the Department once every two years, or more frequently if information is provided by the municipality or otherwise received and verified by the Department. The Department shall administer the SHI in accordance with its own procedures, as set forth in 760 CMR 56.00 and guidelines of the Department.
- (3) Computation of Statutory *Minima*
- (a) Housing Unit Minimum. For purposes of calculating whether the city or town's SHI Eligible Housing units exceed 10% of its total housing units, pursuant to M.G.L. c. 40B, § 20 and 760 CMR 56.00, there shall be a presumption that the latest SHI contains an accurate count of SHI Eligible Housing and total housing units. In the course of a review procedure pursuant to 760 CMR 56.03(8), a party may introduce evidence to rebut this presumption, which the Department shall review on a case-by-case basis, applying the standards of eligibility for the SHI set forth in 760 CMR 56.03(2). The total number of housing units shall be that total number of year-round units enumerated for the city or town in the latest available United States Census.
  - (b) General Land Area Minimum. For the purposes of calculating whether SHI Eligible Housing exists in the city or town on sites comprising more than 1½% of the total land area zoned for residential, commercial, or industrial use, pursuant to M.G.L. c. 40B, § 20:

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1. Total land area shall include all districts in which any residential, commercial, or industrial use is permitted, regardless of how such district is designated by name in the city or town's zoning bylaw;
2. Total land area shall include all unzoned land in which any residential, commercial, or industrial use is permitted;
3. Total land area shall exclude land owned by the United States, the Commonwealth or any political subdivision thereof, the Department of Conservation and Recreation or any state public authority, but it shall include any land owned by a housing authority and containing SHI Eligible Housing;
4. Total land area shall exclude any land area where all residential, commercial, and industrial development has been prohibited by restrictive order of the Department of Environmental Protection pursuant to M.G.L. c. 131, § 40A. No other swamps, marshes, or other wetlands shall be excluded;
5. Total land area shall exclude any water bodies;
6. Total land area shall exclude any flood plain, conservation or open space zone if said zone completely prohibits residential, commercial and industrial use, or any similar zone where residential, commercial or industrial use are completely prohibited.
7. No excluded land area shall be counted more than once under the above criteria.

Only sites of SHI Eligible Housing units inventoried by the Department or established according to 760 CMR 56.03(3)(a) as occupied, available for occupancy, or under permit as of the date of the Applicant's initial submission to the Board, shall be included toward the 1½% minimum. For such sites, that proportion of the site area shall count that is occupied by SHI Eligible Housing units (including impervious and landscaped areas directly associated with such units).

(c) Annual Land Area Minimum. For purposes of calculating whether the application before the Board would result in the commencement in any one calendar year of construction of Low or Moderate Income Housing on sites comprising more than 0.3 of 1% of the city or town's land area or ten acres, whichever is larger, pursuant to M.G.L. c. 40B, § 20:

1. Total land area of the municipality and the land area occupied by Low or Moderate Income Housing shall be calculated in the manner provided in 760 CMR 56.03(3)(b);
2. If 0.3 of 1% of total land area is less than ten acres, the minimum for sites occupied by Low or Moderate Income Housing shall be ten acres;
3. The relevant calendar year shall be the calendar year period of January 1<sup>st</sup> through December 31<sup>st</sup> that includes the Applicant's projected date for initiation of construction;
4. Any Low or Moderate Income Housing for which construction is expected to commence within the calendar year, other than that proposed by the Applicant, must have received a final approval by the Subsidizing Agency prior to the date of the Applicant's initial submission to the Board, in order to be included towards the 0.3 % or ten acres;
5. Development and construction work in connection with Low or Moderate Income Housing shall be proceeding in good faith to completion insofar as is reasonably practicable, in order for such housing to be included towards the 0.3% or ten acres minimum.

Only sites of SHI Eligible Housing units inventoried by the Department or established according to 760 CMR 56.03(3)(a) as under permit as of the date of the Applicant's initial submission to the Board, and expected to commence construction within the relevant calendar year, shall be included toward the 0.3 % or ten acres minimum. For such sites, that proportion of the site area shall count that is occupied by SHI Eligible Housing units (including impervious and landscaped areas directly associated with such units).

(d) Evidence regarding Statutory *Minima* submitted under 760 CMR 56.03(3) shall comply with any guidelines issued by the Department.

(4) Housing Production Plans.

(a) A Housing Production Plan (HPP) may shall be developed and reviewed in accordance with 760 CMR 56.03(4) and guidelines adopted by the Department. The HPP shall contain at a minimum the following elements, covering a time period of five years:

1. Comprehensive housing needs assessment;
2. Affordable housing goals; and
3. Implementation strategies.

(b) Comprehensive Housing Needs Assessment. The HPP must establish a strategic plan for municipal action with regards to housing, based upon a comprehensive housing needs assessment that examines:

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1. the most recent available census data of the municipality's demographics and housing stock, together with a projection of future population and housing needs, taking into account regional growth factors, that covers the entire time period of the plan;
  2. development constraints and limitations on its current and future needs, and the municipality's plans to mitigate those constraints; and
  3. the capacity of the municipality's infrastructure to accommodate the current population and anticipated future growth, including plans for enlargement or expansion of existing infrastructure systems to ensure that both current and future needs are met.
- (c) Affordable Housing Goals. The HPP shall address the matters set out in the Department's guidelines, including:
1. a mix of types of housing, consistent with local and regional needs and feasible within the housing market in which they will be situated, including rental, homeownership, and other occupancy arrangements, if any, for families, individuals, persons with special needs, and the elderly;
  2. a numerical goal for annual housing production, pursuant to which there is an increase in the municipality's number of SHI Eligible Housing units by at least 0.50% of its total units (as determined in accordance with 760 CMR 56.03(3)(a)) during every calendar year included in the HPP, until the overall percentage exceeds the Statutory Minimum set forth in 760 CMR 56.03(3)(a).
- (d) Implementation Strategies. The HPP shall address the matters set out in the Department's guidelines, including an explanation of the specific strategies by which the municipality will achieve its housing production goal, and a schedule for implementation of the goals and strategies for production of units, including all of the following strategies, to the extent applicable:
1. the identification of zoning districts or geographic areas in which the municipality proposes to modify current regulations for the purposes of creating SHI Eligible Housing developments to meet its housing production goal;
  2. the identification of specific sites for which the municipality will encourage the filing of Comprehensive Permit applications;
  3. characteristics of proposed residential or mixed-use developments that would be preferred by the municipality (examples might include cluster developments, adaptive re-use, transit-oriented housing, mixed-use development, inclusionary housing, *etc.*); and/or
  4. municipally owned parcels for which the municipality commits to issue requests for proposals to develop SHI Eligible Housing; and/or
  5. participation in regional collaborations addressing housing development.
- (e) Review and Approval of Housing Production Plans. A HPP shall be adopted by the municipality's planning board, its conservation commission, and its select board or city council, following which the Chief Executive Officer may submit the HPP to the Department for its approval. The Department shall conduct an initial 30-day completeness review, and it will notify the municipality of any deficiency and offer an opportunity to remedy the deficiency. Within 90 days after the Department's finding that the HPP is complete, the Department shall approve the HPP if it meets the requirements specified herein; otherwise, it shall disapprove the HPP. The Department shall notify the municipality of its decision to either approve or disapprove a HPP in writing. If the Department disapproves a HPP, the notification shall include a statement of reasons for the disapproval. If the Department fails to mail notice of approval or disapproval of a HPP within 90 days after its receipt, it shall be deemed to be approved. A municipality that originally submitted a HPP that had been disapproved may submit a new or revised HPP to the Department at any time.
- A municipality may amend its HPP from time to time if the Department approves the amendment upon the finding that the amended HPP meets the requirements of 760 CMR 56.03(4). The Department shall have the discretion to require the full 90-day review process for a major amendment to a HPP. A HPP shall be updated and renewed within five years of the date of its approval by the Department, through the full 90-day review process set forth above, or as the Department may otherwise require. The Department may, at its sole discretion, elect to treat a major amendment as a renewed HPP.

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(f) Certification of Municipal Compliance. A municipality may request that the Department certify its compliance with an approved HPP if it has increased its number of SHI Eligible Housing units in an amount equal to or greater than its 0.50% production goal for that calendar year. SHI Eligible Housing units shall be counted for the purpose of certification in accordance with the provisions for counting units under the SHI set forth in 760 CMR 56.03(2). Requests for certification may be submitted at any time, and the Department shall determine whether a municipality is in compliance within 30 days of receipt of the municipality's request. If the Department determines the municipality is in compliance with its HPP, the certification shall be deemed effective on the date upon which the municipality achieved its numerical target for the calendar year in question, in accordance with the rules for counting units on the SHI set forth in 760 CMR 56.03(2).

A certification shall be in effect for a period of one year from its effective date. If the Department finds that the municipality has increased its number of SHI Eligible Housing units in a calendar year by at least 1.0% of its total housing units, the certification shall be in effect for two years from its effective date.

(5) Recent Progress Toward Housing Unit Minimum. Recent progress toward a municipality's *Statutory Minima* shall mean that the number of SHI Eligible Housing units that have been created within the municipality during the 12 months prior to the date of the Comprehensive Permit application, evidenced by being inventoried by the Department or established according to 760 CMR 56.03(3)(a) as occupied, available for occupancy, or under permit as of the date of the Applicant's initial submission to the Board, is equal to or greater than 2% of the municipality's total housing units, as determined in accordance with 760 CMR 56.03(3)(a).

(6) Review of Large Projects. A large project shall be defined as follows:

- (a) in a municipality which has a total number of 7,500 or more housing units (as determined in accordance with 760 CMR 56.03(3)(a)), the application for a Comprehensive Permit involves construction of more than 300 housing units or a number of housing units equal to 2% of all housing units in the municipality, whichever number is greater; or
- (b) in a municipality which has between 5,000 and 7,500 housing units exclusive, as so enumerated, the application for a Comprehensive Permit involves construction of more than 250 housing units; or
- (c) in a municipality which has between 2,500 and 5,000 housing units inclusive, as so enumerated, the application for a Comprehensive Permit involves construction of more than 200 housing units; or
- (d) in a municipality which has less than 2,500 housing units, as so enumerated, the application for a Comprehensive Permit involves construction of a number of housing units equal to 6% of all housing units in the municipality.

(7) Related Applications. For the purposes of 760 CMR 56.03(7), a related application shall mean that less than 12 months has elapsed between the date of an application for a Comprehensive Permit and any of the following:

- (a) the date of filing of a prior application for a variance, special permit, subdivision, or other approval related to construction on the same land, if that application was for a prior project that was principally non-residential in use, or if the prior project was principally residential in use, if it did not include at least 10% SHI Eligible Housing units;
- (b) any date during which such an application was pending before a local permit granting authority;
- (c) the date of final disposition of such an application (including all appeals); or
- (d) the date of withdrawal of such an application.

An application shall not be considered a prior application if it concerns insubstantial construction or modification of the preexisting use of the land.

(8) Procedure for Board Decision.

- (a) If a Board considers that, in connection with an Application, a denial of the permit or the imposition of conditions or requirements would be consistent with local needs on the grounds that the *Statutory Minima* defined at 760 CMR 56.03(3)(b) or (c) have been satisfied or that one or more of the grounds set forth in 760 CMR 56.03(1) have been met, it must do so according to the following procedures. Within 15 days of the opening of the local hearing

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for the Comprehensive Permit, the Board shall provide written notice to the Applicant, with a copy to the Department, that it considers that a denial of the permit or the imposition of conditions or requirements would be consistent with local needs, the grounds that it believes have been met, and the factual basis for that position, including any necessary supportive documentation. If the Applicant wishes to challenge the Board's assertion, it must do so by providing written notice to the Department, with a copy to the Board, within 15 days of its receipt of the Board's notice, including any documentation to support its position. The Department shall thereupon review the materials provided by both parties and issue a decision within 30 days of its receipt of all materials. The Board shall have the burden of proving satisfaction of the grounds for asserting that a denial or approval with conditions would be consistent with local needs, provided, however, that any failure of the Department to issue a timely decision shall be deemed a determination in favor of the municipality. This procedure shall toll the requirement to terminate the hearing within 180 days.

(b) For purposes of 760 CMR 56.03(8), the total number of SHI Eligible Housing units in a municipality as of the date of a Project's application shall be deemed to include those in any prior Project for which a Comprehensive Permit had been issued by the Board or by the Committee, and which was at the time of the application for the second Project subject to legal appeal by a party other than the Board, subject however to the time limit for counting such units set forth at 760 CMR 56.03(2)(c).

(c) If either the Board or the Applicant wishes to appeal a decision issued by the Department pursuant to 760 CMR 56.03(8)(a), including one resulting from failure of the Department to issue a timely decision, that party shall file an interlocutory appeal with the Committee on an expedited basis, pursuant to 760 CMR 56.05(9)(c) and 56.06(7)(e)11., within 20 days of its receipt of the decision, with a copy to the other party and to the Department. The Board's hearing of the Project shall thereupon be stayed until the conclusion of the appeal, at which time the Board's hearing shall proceed in accordance with 760 CMR 56.05. Any appeal to the courts of the Committee's ruling shall not be taken until after the Board has completed its hearing and the Committee has rendered a decision on any subsequent appeal.

56.04: Project Eligibility; Other Responsibilities of Subsidizing Agency

(1) Project Eligibility. To be eligible to submit an application to a Board for a Comprehensive Permit or to file or maintain an appeal before the Committee, the Applicant and the Project shall fulfill, at a minimum, the following project eligibility requirements:

- (a) The Applicant shall be a public agency, a non-profit organization, or a Limited Dividend Organization;
- (b) The Project shall be fundable by a Subsidizing Agency under a Low or Moderate Income Housing subsidy program; and
- (c) The Applicant shall control the site.

Compliance with these project eligibility requirements shall be established by issuance of a written determination of Project Eligibility by the Subsidizing Agency that contains all the findings required under 760 CMR 56.04(4), based upon its initial review of the Project and the Applicant's qualifications in accordance with 760 CMR 56.04.

(2) Elements of Application. The Applicant shall submit an application for Project Eligibility to the Subsidizing Agency, with a copy to the Chief Executive Officer of the municipality and written notice to the Department, which shall include:

- (a) the name and address of the Applicant;
- (b) the address of the site and site description;
- (c) a locus map identifying the site within a plan of the neighborhood, accompanied by photographs of the surrounding buildings and features that provide an understanding of the physical context of the site;
- (d) a tabulation of proposed buildings with the approximate number, size (number of bedrooms, floor area), and type (ownership or rental) of housing units proposed;
- (e) the name of the housing program under which Project Eligibility is sought;
- (f) relevant details of the particular Project if not mandated by the housing program (including percentage of units for low or moderate income households, income eligibility standards, the duration of restrictions requiring Low or Moderate Income Housing, and the limited dividend status of the Applicant);

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- (g) conceptual design drawings of the site plan and exterior elevations of the proposed buildings, along with a summary showing the approximate percentage of the tract to be occupied by buildings, by parking and other paved vehicular areas, and by open areas, the approximate number of parking spaces, and the ratio of parking spaces to housing units;
- (h) a narrative description of the approach to building massing, the relationships to adjacent properties, and the proposed exterior building materials;
- (i) a tabular analysis comparing existing zoning requirements to the Waivers requested for the Project; and
- (j) evidence of control of the site.

In the case of a Local Initiative Project (LIP), the application shall be submitted by the Chief Executive Officer of the Municipality.

(3) Review and Comment Process. Upon receipt of the application, the Subsidizing Agency shall provide written notice to the Chief Executive Officer of the municipality where the Project is located, initiating a 30-day review period of the Project. During the course of the review period the Subsidizing Agency shall conduct a site visit, which Local Boards may attend, and it shall accept written comments from Local Boards and other interested parties. The Subsidizing Agency shall consider any such comments prior to issuing a determination of Project Eligibility. No determination of Project Eligibility shall be issued for a Project before the end of the 30-day review period.

(4) Findings in Determination. A determination of Project Eligibility, to be issued by the Subsidizing Agency after the close of the 30-day review period, shall make the following findings, based upon its review of the application, and taking into account information received during the site visit and from written comments:

- (a) that the proposed Project appears generally eligible under the requirements of the housing subsidy program, subject to final approval under 760 CMR 56.04(7);
- (b) that the site of the proposed Project is generally appropriate for residential development, taking into consideration information provided by the municipality or other parties regarding municipal actions previously taken to meet affordable housing needs, such as inclusionary zoning, multifamily districts adopted under M.G.L. c. 40A, and overlay districts adopted under M.G.L. c. 40R (such finding, with supporting reasoning, to be set forth in reasonable detail);
- (c) that the conceptual project design is generally appropriate for the site on which it is located, taking into consideration factors that may include proposed use, conceptual site plan and building massing, topography, environmental resources, and integration into existing development patterns (such finding, with supporting reasoning, to be set forth in reasonable detail);
- (d) that the proposed Project appears financially feasible within the housing market in which it will be situated (based on comparable rentals or sales figures);
- (e) that an initial *pro forma* has been reviewed, including a land valuation determination consistent with the Department's guidelines, and the Project appears financially feasible and consistent with the Department's guidelines for Cost Examination and Limitations on Profits and Distributions (if applicable) on the basis of estimated development costs;
- (f) that the Applicant is a public agency, a non-profit organization, or a Limited Dividend Organization, and it meets the general eligibility standards of the housing program; and
- (g) that the Applicant controls the site, based on evidence that the Applicant or a related entity owns the site, or holds an option or contract to acquire such interest in the site, or has such other interest in the site as is deemed by the Subsidizing Agency to be sufficient to control the site. The Subsidizing Agency shall provide copies of its written determination of Project Eligibility to the Department, the Chief Executive Officer of the municipality, and the Board.

(5) Substantial Changes. If an Applicant desires to change aspects of its proposal that would affect the project eligibility requirements set forth at 760 CMR 56.04(1), after it has received a determination of Project Eligibility, it shall notify the Subsidizing Agency in writing of such changes, with a copy to the Department, the Chief Executive Officer of the municipality, and the Board. The Subsidizing Agency shall determine within 15 days whether such changes are substantial with reference to the project eligibility requirements. Failure to respond shall be deemed a finding that the change is not substantial. If the Subsidizing Agency finds that the

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changes are substantial, it shall ordinarily defer any review (except if the Applicant, the Chief Executive Office of the municipality, or the Board request otherwise) until either the Board has issued a Comprehensive Permit or the application has been denied and the Applicant has lodged an appeal with the Committee, at which time the Subsidizing Agency shall reaffirm, amend, or deny its determination of the project eligibility requirements. Only the changes affecting the project eligibility requirements set forth at 760 CMR 56.04(1) shall be at issue in such review. In the case of a Comprehensive Permit that is not subject to appeal, such decision may be incorporated into the Subsidizing Agency's final approval issued pursuant to 760 CMR 56.04(7). If the Subsidizing Agency finds that the changes are not substantial and that the Applicant has good cause for not originally presenting such details in its application, the changes shall be permitted if the proposal as so changed meets the requirements of M.G.L. c. 40B, §§ 20 through 23 and 760 CMR 56.04.

(6) Conclusive Nature of Determination. Issuance of a determination of Project Eligibility shall be considered by the Board or the Committee to be conclusive evidence that the Project and the Applicant have satisfied the project eligibility requirements of 760 CMR 56.04(1). Alleged failure of the Applicant to continue to fulfill any of these project eligibility requirements may be subsequently raised by the Board at any time, with the burden of proof on the Board, or by the Committee during an appeal, in either case solely upon the grounds that there has been a substantial change affecting the project eligibility requirements set forth at 760 CMR 56.04(1). Such challenge shall be decided by the Subsidizing Agency in accordance with the procedure set forth in 760 CMR 56.04(5), and the Board hearing or Committee appeal may be stayed until such challenge is decided.

(7) Final Approval. Following the issuance of a Comprehensive Permit, the Subsidizing Agency shall issue its final written approval of the Project to the Applicant, with a copy to the Board and the Department. Such approval shall, at a minimum:

- (a) reaffirm each of the project eligibility requirements enumerated in 760 CMR 56.04(1);
- (b) confirm that the proposed Use Restriction is in a form consistent with Department guidelines; and
- (c) verify that cost examination requirements have been acknowledged, that a commitment has been made by the Applicant to comply with the cost examination requirements defined in 760 CMR 56.04(8) under the pains and penalties of perjury, and that adequate financial surety, as defined in guidelines issued by the Department, has been secured by the Subsidizing Agency sufficient to ensure completion of the cost examination to the satisfaction of the Subsidizing Agency and the distribution of excess funds as required at 760 CMR 56.04(8)(e).

(8) Cost Examination and Limitations on Profits and Distributions.

- (a) Following the issuance of a Comprehensive Permit, a Project for which the Developer is a Limited Dividend Organization shall be subject to the following limitations on reasonable return as determined by the Subsidizing Agency, in accordance with guidelines issued by the Department. The Subsidizing Agency shall be solely responsible for the monitoring and enforcement of such limitations, subject to the Subsidizing Agency's right to delegate such functions as set forth in 760 CMR 56.02: Subsidizing Agency.
- (b) Certification of Total Development Costs. For purposes of compliance with 760 CMR 56.04(8)(b)1. and (c), total development costs, and the determination of qualifying inclusions and exclusions, shall be established by the Applicant or subsequent Developer in a detailed financial statement of all material costs of the project prepared by a certified public accountant and submitted to the Subsidizing Agency in a form and upon a schedule determined by the Department's guidelines. The Department's guidelines shall provide for verification of financial statements; submission of a copy of cost certifications to the affected municipality for its review and consideration by the Subsidizing Agency of any inaccuracies identified by the municipality during its review; and enforcement actions, including suspension or disqualification from state agency programs, in the event of noncompliance with 760 CMR 56.04(8).
- (c) Distribution of Excess Funds. Any funds in excess of the applicable limitations on profits and distributions shall be paid over to the Subsidizing Agency or the municipality or the Subsidizing Agency, as determined solely by the Subsidizing Agency's program requirements and the terms of a regulatory agreement, or similar agreement, to be entered into between the Subsidizing Agency and the Developer.

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(d) Cost Certification Inventory. The Department shall maintain an inventory of all projects granted a Comprehensive Permit and the respective status of each Project with respect to the submission of the certification of total development costs as required by 760 CMR 56.04(8)(d). For the purposes of such inventory, Subsidizing Agencies shall provide information to the Department in the manner and form required by the Department.

56.05: Local Hearings

(1) Local Rules. The Board shall adopt rules, not inconsistent with M.G.L. c. 40B, §§ 20 through 23, for the conduct of its business and shall file a copy of said rules with the city or town clerk. Such rules shall be consistent with the purpose of M.G.L. c. 40B, §§ 20 through 23 to provide a streamlined permitting process that overcomes regulatory barriers to the development of Low or Moderate Income Housing. The Committee may in the course of an appeal properly before it pursuant to 760 CMR 56.06(1) determine that a particular local rule is consistent or not consistent with M.G.L. c. 40B, §§ 20 through 23, but no appeal shall be heard solely for the purpose of determining the validity of a rule, unless the rule is the sole basis for the denial or conditioning of a Comprehensive Permit. (For related requirements applying to Boards, *see* M.G.L. c. 44, § 53G.)

Rules adopted by a Board shall be presumed consistent with M.G.L. c. 40B, §§ 20 through 23 to the extent that they conform with 760 CMR 56.05. A Board may seek non-binding advice from the Department as to whether a proposed set of local rules is consistent with M.G.L. c. 40B, §§ 20 through 23 and 760 CMR 56.05. If a Board does not adopt and file rules, it shall conduct business pursuant to 760 CMR 56.05.

(2) Elements of Submission, Filing Fees. The Applicant shall submit to the Board an application and a complete description of the proposed Project. Normally the items listed below will constitute a complete description. Failure to submit a particular item shall not necessarily invalidate an application. The Board shall not require submissions for a Comprehensive Permit that exceed those required by the rules and procedures of Local Boards for review under their respective jurisdictions.

(a) preliminary site development plans showing the locations and outlines of proposed buildings; the proposed locations, general dimensions and materials for streets, drives, parking areas, walks and paved areas; and proposed landscaping improvements and open areas within the site. An Applicant proposing to construct or rehabilitate four or fewer units may submit a sketch of the matters in 760 CMR 56.05(2)(a) and (c) which need not have an architect's signature. All Projects of five or more units must have site development plans prepared by a registered architect or engineer;

(b) a report on existing site conditions and a summary of conditions in the surrounding areas, showing the location and nature of existing buildings, existing street elevations, traffic patterns and character of open areas, if any, in the neighborhood. This submission may be combined with that required in 760 CMR 56.05(2)(a);

(c) preliminary, scaled, architectural drawings. For each building the drawings shall be prepared by a registered architect, and shall include typical floor plans, typical elevations, and sections, and shall identify construction type and exterior finishes;

(d) a tabulation of proposed buildings by type, size (number of bedrooms, floor area) and ground coverage, and a summary showing the percentage of the tract to be occupied by buildings, by parking and other paved vehicular areas, and by open areas;

(e) where a subdivision of land is involved, a preliminary subdivision plan;

(f) a preliminary utilities plan showing the proposed location and types of sewage, drainage, and water facilities, including hydrants;

(g) the Project Eligibility letter, showing that the Applicant fulfills the requirements of 760 CMR 56.04(1);

(h) a list of requested Waivers.

The Board may require the payment of a reasonable filing fee with the application, if consistent with subdivision, cluster zoning, and other fees reasonably assessed by the municipality for costs designed to defray the direct costs of processing applications, and taking into consideration the statutory goal of M.G.L. c. 40B, §§ 20 through 23 to encourage affordable housing development.

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(3) Conduct of Board Hearing. Within seven days of receiving a complete application, the Board shall notify each Local Board of the application by sending such Local Board a notice of the application and a copy of the list of Waivers required by 760 CMR 56.05(2)(h). Based upon that list, it shall also, within the same seven days, invite the participation of each Local Board as is deemed necessary or helpful in making its decision upon such application by providing such Local Board with a copy of the entire application (such copies to be provided by the Applicant upon request).

The Board shall open a hearing within 30 days of its receipt of a complete application, and it shall thereafter pursue the hearing diligently. The Board shall open hearings for Projects in the order in which a complete application is filed. In order to further the purpose of M.G.L. c. 40B, §§ 20 through 23 to provide a streamlined permitting process that overcomes regulatory barriers to the development of Low or Moderate Income Housing, a hearing shall not extend beyond 180 days from the date of opening the hearing, presuming that the Applicant has made timely submissions of materials in response to reasonable requests of the Board that are consistent with its powers under 760 CMR 56.05, except with the written consent of the Applicant.

If the Board wishes to deny an application on one or more of the grounds set forth in 760 CMR 56.03(1), it must do so in accordance with the procedure set forth in 760 CMR 56.03(8), or it shall be deemed to have waived its rights. A Board may stay the commencement of a hearing if three or more Comprehensive Permit applications are concurrently undergoing hearings before the Board, and the total number of housing units in those pending Projects exceeds the numerical threshold for a large project within that municipality, as set forth in 760 CMR 56.03(6).

(4) Scope of Board Hearing.

(a) General Principle. Consistency with Local Needs is the central issue in all Comprehensive Permit applications before the Board. Not only must all Local Requirements and Regulations applied to the Applicant be Consistent with Local Needs, but decisions of the Board must also be Consistent with Local Needs. The Board shall not address matters in the hearing that are beyond its jurisdiction under M.G.L. c. 40B, §§ 20 through 23 and 760 CMR 56.00 and that lie solely within the authority of the Subsidizing Agency.

(b) Commentary. In its conduct of a hearing, the Board should make itself aware of the detailed provisions for burden of proof and evidence, set forth in 760 CMR 56.07(2) and (3), that the Committee would apply to the appeal of a Board decision.

(c) Denial. In the case of the denial of a Comprehensive Permit, the issue shall be whether the decision of the Board is Consistent with Local Needs.

(d) Approval with Conditions. In the case of approval of a Comprehensive Permit with conditions or requirements imposed, the issues shall be:

1. first, whether the conditions and/or requirements considered in aggregate make the building or operation of such Project Uneconomic; and
2. second, if so, whether such conditions and/or requirements are Consistent with Local Needs.

A condition which makes a Project Uneconomic will not be removed or modified if as a result of such action the Project would not be Consistent with Local Needs.

(5) Consultant Review.

(a) If, after receiving an application, the Board determines that in order to review that application it requires technical advice in such areas as civil engineering, transportation, environmental resources, design review of buildings and site, and (in accordance with 760 CMR 56.05(6) review of financial statements that is unavailable from municipal employees, it may employ outside consultants. Whenever possible it shall work cooperatively with the Applicant to identify appropriate consultants and scopes of work and to negotiate payment of part or all of consultant fees by the Applicant. Alternatively, the Board may, by majority vote, require that the Applicant pay a reasonable review fee in accordance with 760 CMR 56.05(b) for the employment of outside consultants chosen by the Board alone. The Board should not impose unreasonable or unnecessary time or cost burdens on an Applicant. Legal fees for general representation of the Board or other Local Boards shall not be imposed on the Applicant.

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- (b) A review fee may be imposed only if:
  1. the work of the consultant consists of review of studies prepared on behalf of the Applicant, and not of independent studies on behalf of the Board;
  2. the work is in connection with the Applicant's specific Project; and
  3. all written results and reports are made part of the record before the Board.
  4. a review fee may only be imposed in compliance with applicable law and the Board's rules.
- (c) All fees assessed pursuant to 760 CMR 56.05(5)(b) shall be reasonable in light of:
  1. the complexity of the proposed Project as a whole;
  2. the complexity of particular technical issues;
  3. the number of housing units proposed;
  4. the size and character of the site;
  5. the projected construction costs; and
  6. fees charged by similar consultants and scopes of work in the area. As a general rule, the Board may not assess any fee greater than the amount which might be appropriated from town or city funds to review a project of similar type and scale in the town or city.
- (c) The Board's rules shall set out procedures for inviting proposals by qualified outside consultants, and for the deposit of review fees in a special municipal account. The Board's rules may provide that if the Applicant fails to pay the review fee within the stated time period, the Board may deny the Comprehensive Permit. Any unspent excess in the account, including accrued interest, shall be reimbursed to the Applicant upon the issuance of the Board's decision or withdrawal of the application.
- (d) An administrative appeal from the selection of the outside consultant may be lodged within 20 days of the consultant's selection, with the city council or town board of selectmen. The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum, required qualifications. The minimum qualifications shall consist either of an educational degree in or related to the field at issue or three or more years of practice in the field at issue or a related field. The required time limits for action upon an Application by the Board shall be extended by the duration of the administrative appeal. In the event that no decision on the appeal is made by the city council or the town board of selectmen within one month following the filing of the appeal, the selection made by the Board shall stand.

(6) Review of Financial Statements.

- (a) A Board may request to review the *pro forma* or other financial statements for a Project only after the following preconditions have been met:
  1. other consultant review has been completed;
  2. the Applicant has had an opportunity to modify its original proposal to address issues raised;
  3. the Board has had an opportunity to propose conditions to mitigate the Project's impacts and to consider requested Waivers; and
  4. the Applicant has indicated that it does not agree to the proposed condition(s) or Waiver denial(s) because they would render the Project uneconomic. A Board may not conduct review of a *pro forma* in order to see whether a Project would still be economic if the number of dwelling units were reduced, unless such reduction is justified by a valid health, safety, environmental, design, open space, planning, or other local concern that directly results from the size of a project on a particular site, consistent with 760 CMR 56.07(3).
- (b) If the Applicant does not agree to some or all of the proposed permit conditions or Waiver denials because they would render the Project Uneconomic, the Board may ask the Applicant to submit its *pro forma*, in form satisfactory to the Subsidizing Agency, and revised as necessary to reflect the additional cost of meeting these conditions and/or denials. The revised *pro forma* may be subjected to the same consultant review as any other technical information submitted to the Board, in accordance with 760 CMR 56.05(5) and the Board's rules. The Board may then use this information to decide whether to adopt or modify its originally proposed conditions and/or denials. *Pro forma* review should conform to recognized real estate and affordable housing industry standards, consistent with the policies of the Subsidizing Agency and guidelines adopted by the Department.

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(c) Related financial issues, including related-party transactions, the estimated sales price or rental rates of market-rate units, and land acquisition costs, shall be addressed in accordance with the Department's guidelines. Disagreements between the Applicant and the Board's consultant should be resolved in accordance with the Department's guidelines. The Subsidizing Agency has the sole responsibility to establish and enforce reasonable profit and distribution limitations on the Applicant, as set forth in 760 CMR 56.04(8).

(7) Waivers from Local Requirements and Regulations. The Applicant may request Waivers, as listed in its application or as may subsequently arise during the hearing, and the Board shall grant such Waivers as are Consistent with Local Needs and are required to permit the construction and operation of the Project. Zoning waivers are required solely from the "as-of-right" requirements of the zoning district where the project site is located; there shall be no requirement to obtain waivers from the special permit requirements of the district. If a Project does not request a subdivision approval, waivers from subdivision requirements are not required (although a Board may look to subdivision standards, such as requirements for road construction, as a basis for required project conditions, in which case the Applicant can seek Waivers from such requirements).

(8) Board Decisions.

(a) The Board shall render a decision, based on a majority vote of the Board, within forty days after termination of the public hearing, unless such time period is extended by written agreement of the Board and the Applicant. The hearing is deemed terminated when all public testimony has been received and all information requested by the Board that it is entitled to receive has been submitted. In making its decision, the Board shall take into consideration the recommendations of Local Boards, but shall not be required to adopt same. The Board shall file its decision within 14 days in the office of the city or town clerk, and it shall forward a copy of any Comprehensive Permit to the Applicant or its designated representative and to the Department when it is filed.

(b) The Board may dispose of the application in the following manner:

1. approve a Comprehensive Permit on the terms and conditions set forth in the application;
2. approve a Comprehensive Permit with conditions with respect to height, site plan, size, shape or building materials that address matters of Local Concern; or
3. deny a Comprehensive Permit as not Consistent with Local Needs if the Board finds that there are no conditions that will adequately address Local Concerns.

(c) Conditions. The Board shall not issue any order or impose any condition that would allow the building or operation of the Project in accordance with standards less safe than the applicable building and site plan requirements of the Subsidizing Agency, or that would deviate from the project eligibility requirements of the Subsidizing Agency, or that would require the Project to provide more Low or Moderate Income Housing units than the minimum threshold required by the Department's guidelines. The Board, in its decision, may make a Comprehensive Permit subject to any of the following conditions or requirements:

1. the grant of the Subsidy by the Subsidizing Agency;
2. issuance of final approval by the Subsidizing Agency pursuant to 760 CMR 56.04(7);
3. the securing of the approval of any state or federal agency with respect to the Project which the Applicant must obtain before building, provided, however, that the Board shall not delay or deny an application on the grounds that any state or federal approval has not been obtained;
4. complete or partial waiver ordered by the Board of fees otherwise assessed or collected by Local Boards;
5. any other condition consistent with M.G.L. c. 40B, §§ 20 through 23 and with 760 CMR 56.00.

(d) Uneconomic Conditions. The Board shall not issue any order or impose any condition that would cause the building or operation of the Project to be Uneconomic, including a requirement imposed by the Board on the Applicant:

1. to incur costs of public infrastructure or improvements off the project site that:
  - a. are not generally imposed by a Local Board on unsubsidized housing;
  - b. address a pre-existing condition affecting the municipality generally; or
  - c. are disproportionate to the impacts reasonably attributable to the Project; or

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2. to reduce the number of units for reasons other than evidence of Local Concerns within the purview of the Board (*see* 760 CMR 56.05(4)(e); *see* also 760 CMR 56.07(3)(c) through (h)) regarding evidence that would be heard by the Committee on an appeal), such as design, engineering, or environmental deficiencies that directly result from the impact of a Project on a particular site.

If a proposed nonresidential element of a Project is not allowed by-right under applicable provisions of the current municipal zoning code, a condition shall not be considered Uneconomic if it would modify or remove such nonresidential element.

(9) Appeals from Board Decisions.

(a) If the Board approves the Comprehensive Permit, any person aggrieved may appeal within the time period and to the court provided in M.G.L. c. 40A, § 17.

(b) If the Board denies the Comprehensive Permit or approves the permit with unacceptable conditions or requirements, the Applicant may appeal to the Housing Appeals Committee as provided in M.G.L. c. 40B, § 22 and 760 CMR 56.06.

(c) If the Board takes action adverse to the Applicant under 760 CMR 56.03(8), 760 CMR 56.05(11), or a similar provision of 760 CMR 56.00, or otherwise violates or fails to implement M.G.L. c. 40B, §§ 20 through 23, the Applicant may appeal to the Housing Appeals Committee as provided in M.G.L. c. 40B, § 22 and 760 CMR 56.06.

(10) Enforcement.

(a) The Board shall have the same power to issue permits or approvals as any Local Board which would otherwise act with respect to an application, including but not limited to waivers, consents, and affirmative actions such as plan endorsements and requests for waivers from regional entities.

(b) A Comprehensive Permit issued by a Board, including by order of the Committee pursuant to 760 CMR 56.07(5), shall be a master permit which shall subsume all local permits and approvals normally issued by Local Boards. Upon presentation of the Comprehensive Permit, subsequent more detailed plans (to the extent reasonably required relative to the local permit in question), and final approval from the Subsidizing Agency pursuant to 760 CMR 56.04(7), all Local Boards shall take all actions necessary, including but not limited to issuing all necessary permits, approvals, waivers, consents, and affirmative actions such as plan endorsements and requests for waivers from regional entities, after reviewing such plans only to insure that they are consistent with the Comprehensive Permit (including any Waivers), the final approval of the Subsidizing Agency, and applicable state and federal codes.

(c) After the issuance of a Comprehensive Permit, the Board may issue directions or orders to Local Boards designed to effectuate the issuance of a Comprehensive Permit (including any Waivers) and the construction of the Project, in accordance with 760 CMR 56.05(10)(b).

(11) Changes after Issuance of a Permit.

(a) If after a Comprehensive Permit is granted by the Board, including by order of the Committee pursuant to 760 CMR 56.07(5), an Applicant desires to change the details of its Project as approved by the Board or the Committee, it shall promptly notify the Board in writing, describing such change. Within 20 days the Board shall determine and notify the Applicant whether it deems the change substantial or insubstantial, with reference to the factors set forth at 760 CMR 56.07(4).

(b) If the change is determined to be insubstantial or if the Board fails to notify the Applicant by the end of such 20-day period, the Comprehensive Permit shall be deemed modified to incorporate the Change.

(c) If the change is determined to be substantial, the Board shall hold a public hearing within 30 days of its determination and issue a decision within 40 days of termination of the hearing, all as provided in M.G.L. c. 40B, § 21. Only the changes in the Project or aspects of the Project affected thereby shall be at issue in such hearing. An Applicant shall have the right at any time to withdraw its request for a change and to rely on the previously issued Comprehensive Permit. A decision of the Board denying the change or granting it with conditions which make the housing Uneconomic may be appealed to the Committee pursuant to M.G.L. c. 40B, § 22; a decision granting the change may be appealed to the superior court pursuant to M.G.L. c. 40B, § 21 and M.G.L. c. 40A, § 17.

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(d) The Applicant shall raise to the Board any objection to the determination by the Board that the change is substantial within 20 days of such determination, subject to the provisions of the next sentence. The Applicant may elect to continue the proceedings before the Board and preserve its right to raise the objection in context of its appeal to the Committee, if any, of the Board's denial of the Comprehensive Permit or approval with unacceptable conditions or requirements, or the Applicant may appeal a determination that a change is substantial by filing an appeal with the Committee on an expedited basis, pursuant to 760 CMR 56.05(9)(c) and 56.06(7)(e)11., within 20 days of being so notified. Such an appeal will stay the proceedings before the Board.

1. If the presiding officer rules that the change is insubstantial, the Comprehensive Permit shall be deemed modified by the Committee.
2. If the presiding officer rules that the change is substantial, he or she shall remand the proposal for a hearing pursuant to 760 CMR 56.05(11)(c).

(12) Finality, Transfers, and Lapses of Comprehensive Permits.

(a) Finality of Permits. A Comprehensive Permit shall become final on the date that the written decision of the Board is filed in the office of the municipal clerk, if no appeal is filed. Otherwise, it shall become final on the date the last appeal is decided or otherwise disposed of, provided however that if a Comprehensive Permit is issued by the Board or the Committee and is subsequently subject to legal appeal, an Applicant may elect to proceed at risk with construction of the Project. A Comprehensive Permit that is issued by constructive grant pursuant to 760 CMR 56.07(5)(d) shall be deemed final upon the expiration of the applicable deadline.

(b) Transfer of Permits. Prior to substantial completion of a Project or a phase thereof, a Comprehensive Permit may be transferred to a person or entity other than the Applicant, upon written confirmation from the Subsidizing Agency that the transferee meets the requirements of 760 CMR 56.04(1)(a) and (b), and upon written notice to the Board and the Committee (in the case of a Project granted a Comprehensive Permit under 760 CMR 56.07). Transfer of a permit shall not, by itself, constitute a substantial change pursuant to 760 CMR 56.07(4). After substantial completion, a Comprehensive Permit shall be deemed to run with the land.

(c) Lapse of Permits. If construction authorized by a Comprehensive Permit has not begun within three years of the date on which the permit becomes final except for good cause, the permit shall lapse. This time period shall be tolled for the time required to pursue or await the determination on any appeal on any other state or federal permit or approval required for the Project. The Board or the Committee may set a later date for lapse of the permit, and it may extend any such date. An extension may not be unreasonably denied or denied due to other Projects built or approved in the interim. Extension of a permit shall not, by itself, constitute a substantial change pursuant to 760 CMR 56.07(4).

(13) Enforcement of Use Restrictions.

(a) For Projects receiving a Comprehensive Permit, the Subsidizing Agency shall be the initial holder of the Use Restriction, with the sole right and obligation to enforce it during its initial term. The Subsidizing Agency shall give written notice to the Chief Executive Officer of the municipality at least six months prior to the expiration of the term of the Subsidy. After such expiration, during the balance of the term of affordability the holder may be a local public or quasi-public entity, or other entity approved by the Department.

(b) The holder(s) of the Use Restriction shall provide for its monitoring and enforcement; they may do so themselves or enter into a contract for monitoring services with an entity experienced in affordable housing operation, although the holders shall retain responsibility for ensuring compliance with the Use Restriction. A contract for monitoring services may charge reasonable fees, as allowed in guidelines issued by the Department. The holder of a Use Restriction shall respond to the reasonable request from the Chief Executive Officer of the Municipality to provide information on the status of its monitoring and enforcement activities.

56.06: Procedural Regulations for Appeals to the Housing Appeals Committee

(1) General Provisions.

- (a) Docket. The Committee shall keep a record known as a docket, and shall enter therein all papers relating to every appeal filed pursuant to M.G.L. c. 40B, § 22.
- (b) Office. The principal office of the Committee is c/o the Department.
- (c) Addressing Correspondence. All communications, including pleadings, correspondence, and other documents of any sort shall be addressed to the Housing Appeals Committee, c/o the Department.
- (d) Date of Receipt. All communications, including correspondence, motions and pleadings shall be deemed to be filed or received on the day on which they are actually received in the Department.
- (e) Extension of Time. Except as otherwise specified in M.G.L. c. 40B, §§ 20 through 23, it shall be within the discretion of the presiding officer to extend any time limit for good cause.
- (f) Signatures. Every application, statement, notice, pleading, petition, complaint, motion, brief, memorandum and other document shall be signed by the filing party or by one or more attorneys, in their individual names on behalf of and representing the filing party. This signature constitutes a certificate by the signer that he or she has read the document, that to the best of his or her knowledge every statement contained in the instrument is true, and that it is not interposed for delay.

(2) Parties and Intervention.

- (a) Substitution or Succession of Parties. The presiding officer may, on motion, at any time in the course of any proceeding, permit such substitution of parties as justice or convenience may require.
- (b) Intervention. The presiding officer may allow any person showing that he or she may be substantially and specifically affected by the proceedings to intervene as a party in the whole or in any portion of the proceedings. In determining whether to permit a person to intervene, the presiding officer shall consider only those interests and concerns of that person which are germane to the issues of whether the Local Requirement and Regulations make the Project Uneconomic or whether the Project is Consistent with Local Needs. The presiding officer shall not allow a person to intervene if his or her interests are substantially similar to those of any party and no showing is made that one or more of the parties will not diligently represent those interests. Motions to intervene shall be made promptly after the filing of the initial pleading unless good cause for delay is shown. The participation of an intervener may be limited to the extent and under terms determined in the discretion of the Presiding Officer. Notwithstanding the foregoing, any person shall be allowed to intervene to the extent that he or she would have standing as a person aggrieved to appeal the grant of a special permit in accordance with M.G.L. c. 40A, § 17. The presiding officer may require the consolidation of multiple interveners with substantially similar interests.
- (c) Interested Persons. The presiding officer may allow interested persons to participate in the hearing. Such persons shall be entitled to receive all notices pursuant to 760 CMR 56.06(7)(b) and all other documents pursuant to 760 CMR 56.06(6), but shall be permitted to participate further in the hearing only to the extent and under the terms determined in the discretion of the presiding officer.

- (3) Ex Parte Communications. In an appeal proceeding, no person not employed by the Committee shall communicate *ex parte* with any member of the Committee with respect to the merits of that or any other proceeding. In an appeal proceeding, if any *ex parte* communication is directed to any person in violation of the first sentence, the members of the Committee and all other parties shall be immediately informed of the substance of the communication and the circumstances of its receipt; provided that a request for information with respect to the status of an adjudicatory proceeding or with respect to Committee procedures shall not be prohibited by 760 CMR 56.06(3). Nothing in 760 CMR 56.06(3) shall prohibit the Committee from obtaining documents or other information of public record from subsidizing agencies or other public agencies. If any such information forms the basis for Committee action, it shall be officially noticed pursuant to 760 CMR 56.06(8)(b.3) or otherwise made part of the record.

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(4) Initial Pleadings.

(a) Contents. An initial pleading, as used in 760 CMR 56.06, shall refer to the statement required in M.G.L. c. 40B, § 22 and shall contain in substance the following:

1. A clear and concise statement of the prior proceedings before the Board, including the date of notice of the decision appealed from.
2. A clear and concise statement of the appellant's objections to the decision appealed from, and the reasons upon which the appeal is based.
3. A prayer setting forth the relief sought.
4. The complete name and address of the appellant for the purpose of service of papers in connection with the appeal.
5. If the appellant is represented by counsel, the name and address of the attorneys.
6. A copy of the application and the complete description of the Project submitted to the Board; provided, however, that failure to submit a particular item shall not necessarily invalidate an application, and that upon motion by either party during an appeal, the presiding officer may determine whether such item, or any further item not listed, should have been submitted to the Board or should be submitted to the Committee;
7. A copy of the written decision of the Board, if available.
8. The Committee may print or otherwise duplicate forms to be filled out and used as initial pleadings. When such forms are available the Committee may require their use.

(b) Notification. The Committee shall forthwith transmit the initial pleading to the Board. The Board may, within ten days of receipt of the initial pleading, file a copy of its decision and reasons therefor with the Committee, but shall not be required to do so if a copy received pursuant to 760 CMR 56.06(4)(a)6. accurately represents that decision.

(c) Answer. Any party may file, but shall not be required to file, with the Committee an answer to the initial pleading within ten days after the service of the document to which the answer is directed.

(d) Amendments to Pleadings. Leave to file amendments to any pleadings may be allowed in the discretion of the presiding officer.

(e) Withdrawal of Pleadings.

1. Prior to Commencement of Hearing. A party may withdraw an initial pleading filed with the Committee at any time prior to the commencement of a hearing on such pleading. A notice of withdrawal of the initial pleading shall be filed in accordance with 760 CMR 56.06(6).
2. After Commencement of Hearing. A party desiring to withdraw an initial pleading after the commencement of hearing on such pleading shall file a motion for withdrawal in accordance with 760 CMR 56.06(5). If any party has an objection thereto, he shall within ten days after receipt of said motion file a statement with the Committee setting forth the reasons for his objection. Such an objecting party shall have a hearing on the motion to withdraw, if at the time of filing it so requests. In the absence of objections or a request for hearing, the motion to withdraw shall be deemed allowed, unless otherwise ordered.

(f) Fees. A fee shall be paid by the appellant upon the filing of the initial pleading, in an amount to be defined by standing order of the Committee. The fee shall be used to support the operations of the Committee as provided by St. 1989, c. 653, § 4. Fees shall be payable, in full, by check payable to the Massachusetts Department of Housing and Community Development, upon the filing of appeals with the Committee pursuant to M.G.L. c. 40B, § 22. Fees may be reduced when, in the judgment of the presiding officer, such action is warranted by special circumstances and is in the public interest. Fees charged to non-profit organizations may be reduced to the extent that the cost of such fees is not allowed as a mortgageable cost by the Subsidizing Agency. When a reduction is granted, a statement of the reasons therefore will be filed in the record. Any motion for reduction of fees shall be filed with the initial pleading. No initial pleading will be accepted for filing without the minimum fee.

(g) Time for Appeal. An appeal shall be taken within 20 days after the written decision of the Board has been filed in the office of the city or town clerk. An appeal may also be taken if no written decision is filed within forty days after the termination of the public hearing.

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(h) Massachusetts Environmental Policy Act (MEPA).

1. No later than ten days after filing of the initial pleading, the appellant shall file an Environmental Notification Form (ENF) with the Secretary of Environmental Affairs if so required by M.G.L. c. 30, § 62A and 301 CMR 11.03. (Also *see* 301 CMR 11.05(2).) A copy of the ENF shall simultaneously be served upon the Committee pursuant to 760 CMR 56.06(6). If no ENF need be filed, the appellant may so demonstrate by serving upon the Committee with the initial pleading an advisory opinion obtained from the Secretary of Environmental Affairs pursuant to 301 CMR 11.01(6). (Also *see* 301 CMR 11.05(3), 301 CMR 11.12(2).)
2. A copy of any notice required pursuant to M.G.L. c. 30, § 62H and 301 CMR 11.14(1) of intention to commence a court action shall simultaneously be served upon the Committee pursuant to 760 CMR 56.06(6).

(5) Motions.(a) General Requirements.

1. Presentation and Opposition to Motions. A party may request of the presiding officer an order or action that may aid in the disposition of the appeal by filing a motion. Motions may be made in writing or orally in the presence of all parties upon leave of the presiding officer. If a hearing on the motion is desired, it shall be requested at the time the motion is filed, and a hearing may be held at the discretion of the presiding officer. Written opposition to a motion shall be filed within 20 days after the motion is filed unless a different time period is provided below. A written reply to the opposition may be filed within ten days after the opposition is filed. Failure to file a timely opposition may result in a grant of the relief requested by the moving party. In the interest of expediting the hearing on the merits, the presiding officer may deny without prejudice or defer the ruling on any motion until the completion of the hearing. Time periods for the filing of motions and oppositions may be enlarged by the presiding officer for good cause shown.
2. Summary Ruling. The presiding officer may act upon a motion summarily, without awaiting an opposition to the motion, with or without prejudice, in appropriate circumstances, which may include:
  - a. non-adversarial or routine motions;
  - b. motions having the assent of all non-moving parties;
  - c. motions the presiding officer determines would unnecessarily consume time without resolving material issues; or
  - d. motions the presiding officer determines to be insubstantial in view of the established law or facts of the appeal.

(b) Preliminary Motions. Unless the presiding officer issues an order providing otherwise, the following preliminary motions shall be filed within 30 days after the conference of counsel (*See* 760 CMR 56.06(7)(d)1.):

1. motions to require review by the Subsidizing Agency of a substantial change to a Project Eligibility determination, as described in 760 CMR 56.04(6);
2. motions to dismiss raising issues under the presumption described in 760 CMR 56.07(3)(a)3.;
3. motions concerning sufficiency of the application under 760 CMR 56.05(2);
4. motions concerning constructive grant of a Comprehensive Permit pursuant to M.G.L. c. 40B, § 21 and 760 CMR 56.07(5)(d);
5. motions to clarify whether the Board's decision is a denial or a grant with conditions.

(c) Procedural Motions. The following motions may be filed at any time:

1. motions to dismiss for failure to prosecute the appeal or comply with an order of the presiding officer or of the Committee;
2. other procedural motions.

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(d) Motions for Summary Decision. Any party may move, with or without supporting affidavits and a memorandum of law, for a summary decision in the moving party's favor upon all or any of the issues that are the subject of the appeal. The decision sought shall be made if the record before the Committee, together with the affidavits (if any), shows that there is no genuine issue as to any material fact and that the moving party is entitled to a decision in its favor as a matter of law. A summary decision may be made on any issue, even if other issues remain for hearing. Summary decision may be made against the moving party, if appropriate.

An opposition and opposing affidavits may be filed by the opposing party within 30 days of the filing of the motion. A written reply to the opposition may be filed within ten days after the opposition is filed.

(e) Motions for Directed Decision. Upon a party's submission of prefiled testimony, any opposing party may move for a directed decision in its favor on the ground that upon the facts or the law the original party has failed to prove a material element of its case or defense.

An opposition may be filed by the opposing party within 30 days of the filing of the motion. A written reply to the opposition may be filed within ten days after the opposition is filed.

(6) Filing and Service.

(a) Filing. For the purpose of proceedings under 760 CMR 56.06 only, filings with the Committee shall be made by first class mail, overnight delivery, or hand delivery. (*See* 760 CMR 56.06(1)(c)).

(b) Service upon Parties and Other Persons. All pleadings, correspondence, or documents of any sort filed with the Committee by a party, intervener, interested person, or other person shall be served simultaneously by first-class mail, overnight delivery, or hand delivery upon all the parties, interveners, and interested persons.

(c) Notice of Appearance. Any counsel appearing on behalf of any party, proposed intervener, or proposed interested person and any person appearing *pro se* shall file with the Committee, prior to the conference of counsel if possible, a notice of appearance, which shall include such counsel's or person's name, mailing address, and telephone number.

(7) Conduct of Hearing.

(a) General Rule. The hearing shall commence within 20 days after receipt of the initial pleading in accordance with M.G.L. c. 40B, § 22.

(b) Notice of Hearing. The Committee shall notify all parties, interveners, and interested persons designated pursuant to 760 CMR 56.06(2) of a scheduled hearing in any pending matter. Such notifications shall include, but not be limited to, the time, date, place and nature of hearing.

(c) Place of Hearing. All hearings shall be held at Boston in the offices of the Department, unless a different place is designated.

(d) Conferences.

1. Conference of Counsel. The hearing shall commence with a conference of counsel, which shall be held within 20 days after the filing of the initial pleading. The presiding officer shall notify the parties of the time and place of the conference of counsel. Parties or their counsel shall appear prepared to discuss all issues in the case and with full authority to make binding agreements, including commitments as to scheduling, or shall come to the conference with the name of the person from whom authority is required and be able to communicate directly with the person at the time of the conference. The purpose of the conference shall be to:

- a. discuss settlement, including the use of mediation or other alternative dispute resolution mechanisms;
- b. define contested issues on which evidence will be offered;
- c. consider the possibility of obtaining stipulations, admissions and agreements which will avoid unnecessary evidence;
- d. discuss arrangements for preparation by the parties of a draft pre-hearing order;
- e. consider any other matters which may aid in the disposition of the appeal.

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2. Pre-hearing Conference. The presiding officer may order the parties to appear for a pre-hearing conference prior to the evidentiary portion of the hearing. Unless preliminary or other motions are pending, the pre-hearing conference shall normally be held within 60 days after the conference of counsel. Parties or their counsel shall appear with full authority to make binding agreements, including commitments as to scheduling, or shall come to the conference with the name of the person from whom authority is required and be able to communicate directly with the person at the time of the conference. The purpose of the conference shall be to:
    - a. finalize and execute a previously drafted pre-hearing order;
    - b. discuss settlement;
    - c. define contested issues on which evidence will be offered;
    - d. consider the possibility of obtaining stipulations, admissions, and agreements that will avoid unnecessary evidence;
    - e. consider any other matters which may aid in the disposition of the appeal.
  3. Pre-hearing Order. Prior to the evidentiary portion of the hearing, the presiding officer may issue a pre-hearing order, which, if possible, shall be drafted jointly by the parties. It may include:
    - a. agreed facts, stipulations, admissions, and other agreements of the parties;
    - b. a list of the contested issues of fact and law together with the burdens of proof established by 760 CMR 56.07(2);
    - c. a list of witnesses to be called, including the designation of those who will be offered as expert witnesses, and a brief summary of the testimony of each witness;
    - d. a list of agreed-upon exhibits;
    - e. a list of contested exhibits, if any;
    - f. if appropriate, a schedule for filing of pre-filed testimony and the amount of time necessary for each party to conduct its case; and
    - g. any additional matters to facilitate the disposition of the appeal.
  4. Teleconferences. The presiding officer may schedule such conferences of the parties by telephone or other electronic means as may aid in the disposition of the appeal.
  5. Mediation. At any time during the pendency of the appeal, the presiding officer may order the parties and interested persons to appear for a mediation screening or a mediation session as part of a dispute resolution program approved by the Committee in accordance with M.G.L. c. 233, § 23. If so directed, the parties and interested persons shall appear at such a mediation screening or mediation session with full authority to negotiate an agreement to resolve all disputed issues in the appeal. All communications during a mediation screening or mediation session shall be confidential to the extent permitted under M.G.L. c. 233, § 23C.
- (e) Conduct of Hearing.
1. Hearing by Committee or Hearing Officer. The hearing shall be conducted before a member of the Committee, before a hearing officer appointed by the Chairman, or before the full Committee.
  2. Presiding Officer. The Chairman of the Committee shall determine whether a member of the Committee or a hearing officer shall preside at a hearing and such person shall be designated the presiding officer. If due to illness or other unforeseen circumstances the presiding officer is not able to continue a hearing, the Chairman of the Committee shall appoint another member of the Committee or a hearing officer to preside as needed. The presiding officer shall conduct the hearings pursuant to M.G.L. c. 30A and 760 CMR 56.06 and 760 CMR 56.07. The presiding officer shall have all those powers conferred upon the Committee for the conduct of a hearing, except that he or she shall not be empowered to make any decisions that would finally determine the proceedings, except:
    - a. on motions to dismiss on grounds relating to project eligibility or progress toward local goals or presumptions, pursuant to 760 CMR 56.03, 760 CMR 56.04, and 760 CMR 56.07(3)(a);
    - b. on motions to dismiss for failure to prosecute the appeal or comply with an order of the presiding officer or of the Committee;
    - c. with regard to the enforcement of decisions of the Committee; or

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d. where such a determination results from agreement or stipulation between the parties.

In cases in which the presiding officer is not a member of the Committee, he or she shall participate in deliberations of the Committee, but shall not vote.

3. Sworn Testimony. All testimony given shall be under oath.
4. Order of Presentation. In general, the appellant shall present its evidence first, followed by the Board, and then by any other parties. Each party shall be permitted to cross examine each witness following his or her direct examination. The presiding officer shall have discretion to vary the order of presentation, to take witnesses out of turn, to permit the introduction of evidence or cross examination after one or both parties have rested, or to otherwise modify the proceedings or accommodate counsel, whenever such action will facilitate the presentation of evidence or avoid delay.
5. Pre-filed Testimony and Other Evidence. In appropriate cases, the presiding officer may order all parties to file the full written text of the testimony of their expert and fact witnesses, including all exhibits to be offered in evidence. All witnesses whose testimony is pre-filed shall appear at the hearing and be available for cross-examination or their testimony shall be stricken, unless the parties agree otherwise. The presiding officer shall not permit additional, new oral testimony on direct or re-direct examination from witnesses whose testimony is pre-filed, except upon a showing that such evidence was unavailable or unanticipated at the time the written testimony was filed. The presiding officer may also require the filing of written rebuttal testimony within a reasonable time after the filing of the direct testimony. Pre-filed testimony shall be given under oath. Pre-filed testimony shall not be required of witnesses compelled to testify by subpoena. Deadlines for pre-filed testimony may be established on a case-by-case basis or by standing order.
6. Conduct. All parties, counsel, witnesses and other persons present at a hearing shall conduct themselves in a manner consistent with the standards of decorum commonly observed in the courts of the Commonwealth. Where such decorum is not observed, the presiding officer may take such action as he or she deems appropriate.
7. Transcript of Record. A stenographic record of the proceedings shall be kept and the Committee shall require a party requesting a copy of the transcript to pay the reasonable costs of preparing said transcripts before the Committee makes the transcript available to the party. Alternatively, the cost may be divided equally among the Committee and each of the parties.
8. Transcript Corrections. Corrections on the official transcript may be made only to make it conform to the evidence presented at the hearing. Objections to the accuracy of the transcript not raised within 30 days after the transcript is made available to the objecting party shall be deemed waived. Transcript corrections agreed to by the parties may be incorporated into the record, if approved by the presiding officer, at any time during the hearing or after the close of evidence. The presiding officer may call for and approve proposed corrections at any time.
9. Review of Record by the Committee. The Committee shall render a written decision based upon a majority vote. If a majority of the Committee have neither heard nor read the evidence, the Committee shall comply with M.G.L. c. 30A, § 11(7). The Committee shall not be required to issue a proposed decision unless a party so requests in writing prior to termination of the hearing. A hearing shall be deemed terminated when all transcripts have been approved by the parties and all briefs and memoranda requested by the presiding officer have been filed.
10. Report of Hearing Officer. Where a hearing officer presides, his or her report of proposed findings of fact and recommended disposition of the appeal shall be submitted to the Committee, but need not be served upon the parties.
11. Expedited Hearing. The chairman or presiding officer may, upon motion by a party or his/her own initiative, order that a hearing, or any portion of a hearing, be conducted on an expedited basis.

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(f) Oral Argument. A party shall have a right before the close of the hearing to argue orally. The presiding officer may in his or her discretion permit additional oral argument at any time after the close of a hearing, provided all parties are given a reasonable opportunity to be heard.

(8) Evidence, Subpoenas.

(a) Evidence. The Committee, as provided in M.G.L. c. 30A, § 11, need not observe the rules of evidence observed by courts, but shall observe the rules of privilege recognized by law, except as otherwise provided by any law. The presiding officer shall upon objection of counsel or upon his or her own initiative exclude evidence that is unduly repetitious or cumulative and evidence that is not relevant to issues properly before the Committee as set forth in 760 CMR 56.07.

(b) Official Notice and Special Evidence.

1. Official notice may be taken of such matters as might be judicially noticed by the courts of the United States or of the Commonwealth, provided that any party shall on timely request be afforded an opportunity to contest the matters of which official notice is to be taken.

2. The presiding officer may take official notice of general, technical or scientific facts within the Committee's specialized knowledge, provided that any party on timely request be afforded an opportunity to contest such notice; and the presiding officer may upon his or her own initiative call any experts who in his or her judgment will contribute to the Committee's knowledge of the facts and issues of a case, provided that such experts shall be subject to cross examination by all parties.

3. Official notice in any proceeding also may be taken of any fact alleged, presented, or found in any other agency proceeding, provided that any party shall on timely request be afforded an opportunity to contest such notice.

(c) Objections and Exceptions. Formal exceptions to rulings on evidence and procedure are unnecessary. It is sufficient that a party at the time that a ruling of the presiding officer is made or sought, makes known to the presiding officer the action which it desires taken or objections to such action and its grounds therefor.

(d) Subpoenas. In accordance with M.G.L. c. 30A, § 12, the presiding officer shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence relating to any matter in question in the proceeding. All parties shall similarly be entitled to the issuance of subpoenas by a notary public or justice of the peace.

(e) Production and View of Objects. A party may file a motion for the production or view of any object which relates to the subject matter of any proceeding that is pending before the Committee. Said motion shall be granted in the discretion of the presiding officer where justice requires.

(9) Depositions and Stipulations.

(a) Depositions. The testimony of a witness or of a party may be taken by deposition only upon order of the presiding officer, either upon his or her own initiative or upon motion of a party, and only upon a showing that the witness or party cannot testify at the hearing without substantial hardship. In taking such a deposition, the procedures in Mass.R.Civ.P. 26-31 shall be followed except as modified by order of the presiding officer.

(b) Stipulations. In the discretion of the presiding officer, the parties may, by stipulation in writing filed with the Committee at any stage of the proceeding, or orally made at the hearing, agree upon any pertinent facts in the proceeding. In making its findings, the Committee need not be bound to any such stipulation.

(10) Consolidation and Continuances.

(a) Consolidation. The presiding officer, upon his or her own initiative or by motion of a party or other person, may order proceedings involving a common question of law or fact to be consolidated for hearing on any or all of the matters in issue in such proceedings.

(b) Continuances. The presiding officer may, for good cause shown, grant a postponement or a continuance of the hearing.

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(11) Briefs and Post-hearing Procedure.

(a) Filing of Briefs. Briefs may be filed by a party or any interested person before or during the course of a hearing or within such time thereafter as the presiding officer shall designate.

(b) Filing of Documents Subsequent to Hearing. The presiding officer may, for good cause shown, allow the parties to file evidentiary documents of any kind or exhibits at a time subsequent to the completion of the hearing, such time to be determined by the presiding officer. If a request for such subsequent filing is granted, the requesting party shall, on or before the date set for filing, send copies of all documents or exhibits that are the subject of the request to all other parties. If such requirement for copies is impracticable, the presiding officer may suspend the provisions; in such case the Committee shall allow reasonable inspection of the original by all parties.

(c) Reopening Hearing. At any time prior to the rendering of a decision, the Committee or the presiding officer may, upon their own initiative or upon motion by a party, reopen the hearing for the purpose of receiving new evidence, oral argument, memoranda, briefs, or motions.

(12) Sanctions. If a party or interested person fails to comply with a rule or order issued by the presiding officer, the presiding officer may impose appropriate sanctions, including the imposition of costs, exclusion of evidence, dismissal of a claim or defense, exclusion from the proceeding, and dismissal of the appeal.

56.07: Criteria for Housing Appeals Committee Decisions(1) Scope of Committee Hearing.

(a) General Principle. Consistency with Local Needs is the central issue in all cases before the Committee. Not only must all Local Requirements and Regulations applied to the Applicant be Consistent with Local Needs, but decisions of the Board and the Committee must also be Consistent with Local Needs.

(b) Denial. In the case of the denial of a Comprehensive Permit, the issue shall be whether the decision of the Board was Consistent with Local Needs.

(c) Approval with Conditions. In the case of the approval of a Comprehensive Permit with conditions or requirements imposed, the issues shall be:

1. first, whether the conditions and/or requirements considered in aggregate make the building or operation of the Project Uneconomic; and
2. second, if so, whether such conditions and/or requirements are Consistent with Local Needs.

Commentary. A condition which causes a Project to be Uneconomic will not be removed or modified if as a result of such action the Project would not be Consistent with Local Needs.

(2) Burdens of Proof.(a) Applicant's Case.

1. The Applicant shall have the burden of proving that it has met the project eligibility requirements of 760 CMR 56.04(1). Such burden shall be conclusively met in accordance with the procedure set forth in 760 CMR 56.04(6), except in the event of a substantial change affecting the project eligibility requirements, which shall be reviewed in accordance with 760 CMR 56.04(5).

2. In the case of a denial, the Applicant may establish a *prima facie* case by proving, with respect to only those aspects of the Project which are in dispute (which shall be limited), in the case of a Pre-hearing Order, to contested issues identified in the pre-hearing order, that its proposal complies with federal or state statutes or regulations, or with generally recognized standards as to matters of health, safety, the environment, design, open space, or other matters of Local Concern.

3. In the case of an approval with conditions, the Applicant shall have the burden of proving that the conditions make the building or operation of the Project Uneconomic.

4. In the case of either a denial or an approval with conditions, the Applicant may prove that Local Requirements and Regulations have not been applied as equally as possible to subsidized and unsubsidized housing. The Applicant shall have the burden of proving such inequality.

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(b) Board's Case.

1. In any case, the Board may show conclusively that its decision was Consistent with Local Needs by proving that one or more of the grounds described in 760 CMR 56.03(1) has been satisfied, in accordance with the procedure set forth in 760 CMR 56.03(8). The Board shall have the burden of proving satisfaction of such grounds.

2. In the case of denial, the Board shall have the burden of proving, first, that there is a valid health, safety, environmental, design, open space, or other Local Concern which supports such denial, and then, that such Local Concern outweighs the Housing Need.

3. In the case of an approval with conditions, relative to which the Applicant has presented evidence that the conditions make the Project Uneconomic, the Board shall have the burden of proving, first, that there is a valid health, safety, environmental, design, open space, or other Local Concern which supports such conditions, and then, that such Local Concern outweighs the Housing Need.

4. In the case of either a denial or an approval with conditions, if the denial or conditions are based upon the inadequacy of existing municipal services or infrastructure, the Board shall have the burden of proving that the installation of services adequate to meet local needs is not technically or financially feasible. Financial feasibility may be considered only where there is evidence of unusual topographical, environmental, or other physical circumstances which make the installation of the needed service prohibitively costly.

(c) Applicant's Rebuttal. In the case of a denial or an approval with conditions, the Applicant shall have the burden of proving that preventive or corrective measures have been proposed which will mitigate the Local Concern, or that there is an alternative means of protecting Local Concerns which makes the project economic.

(3) Evidence.

(a) Presumptions. A determination of Project Eligibility, established in accordance with 760 CMR 56.04 or a determination that a municipality has satisfied one or more of the grounds set forth in 760 CMR 56.03(1), established in accordance with 760 CMR 56.03(8), shall be an irrebuttable presumption. Conversely, proof that a municipality has failed to satisfy any of the grounds described in 760 CMR 56.03(1) shall create a rebuttable presumption that there is a substantial Housing Need which outweighs Local Concerns.

(b) Balancing. If a municipality attempts to rebut the presumption, set forth in 760 CMR 56.07(3)(a) that there is a substantial Housing Need which outweighs Local Concerns:

1. the weight of the Housing Need will be commensurate with the regional need for Low or Moderate Income Housing, considered with the proportion of the municipality's population that consists of Low Income Persons;

2. the weight of the Local Concern will be commensurate with the degree to which the health and safety of occupants or municipal residents is imperiled, the degree to which the natural environment is endangered, the degree to which the design of the site and the proposed housing is seriously deficient, the degree to which additional Open Spaces are critically needed in the municipality, and the degree to which the Local Requirements and Regulations bear a direct and substantial relationship to the protection of such Local Concerns; and

3. a stronger showing shall be required on the Local Concern side of the balance where the Housing Need is relatively great than where the Housing Need is not as great.

(c) Evidence to be Heard. The Committee will hear evidence only as to matters actually in dispute (which shall be limited, in the case of a Pre-hearing Order, to issues identified therein). Below are examples of factual areas of Local Concern in which evidence may be heard if it is relevant to issues in dispute. These examples are not all inclusive.

(d) Health, Safety, and the Environment. The Committee may receive evidence of the following matters:

1. Structural soundness of the proposed building(s);

2. Adequacy of sewage arrangements;

3. Adequacy of water drainage arrangements;

4. Adequacy of fire protection;

5. Adequacy of the Applicant's proposed arrangements for dealing with the traffic circulation within the site, and feasibility of arrangements which could be made by the municipality for dealing with traffic generated by the Project on adjacent streets;

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6. Proximity of the proposed site to airports, industrial activities, or other activities which may affect the health and safety of the occupants of the proposed housing.
- (e) Site and Building Design. The Committee may receive evidence of the following matters:
1. Height, bulk, and placement of the proposed Project;
  2. Physical characteristics of the proposed Project;
  3. Height, bulk, and placement of surrounding structures and improvements;
  4. Physical characteristics of the surrounding land;
  5. Adequacy of parking arrangements;
  6. Adequacy of open areas, including outdoor recreational areas, proposed within the project site.
- (f) Open Space. The Committee may receive evidence of the following matters;
1. availability of existing Open Spaces, as defined in 760 CMR 56.02, in the municipality;
  2. current and projected utilization of existing Open Spaces and consequent need, if any, for additional Open Spaces, by the municipality's population including occupants of the proposed housing;
  3. relationship of the proposed site to any municipal open space or outdoor recreation plan officially adopted by the planning board, and to any official actions to preserve Open Spaces taken with respect to the proposed site by the town meeting or city council, prior to the date of the Applicant's initial submission. The inclusion of the proposed site in any such open space or outdoor recreation plan shall create a presumption that the site is needed to preserve Open Spaces unless the Applicant produces evidence to the contrary;
  4. relationship of the proposed site to any regional open space plan prepared by the applicable regional planning agency;
  5. current use of the proposed site and of land adjacent to the proposed site;
  6. inventory of sites suitable for use as Open Spaces, and available for acquisition or other legal restriction as Open Spaces, in the municipality, provided that the Committee shall admit no evidence of any open space plan adopted only by the local conservation commission or other local body but not officially adopted by the planning board.
- (g) Municipal and Regional Planning. The Committee may receive evidence of and shall consider the following matters:
1. a municipality's master plan, comprehensive plan, housing plan, Housing Production Plan, or community development plan;
  2. the applicable regional policy plan; and
  3. the results of the municipality's efforts to implement such plans.
- (h) Evidence Not to be Heard. The following matters shall be within the sole province of the Subsidizing Agency, and the Committee will not hear evidence concerning them except for good cause or as set forth in 760 CMR 56.07(3)(h)1. through 4.
1. Matters relating to Project Eligibility, including the marketing of the Project and the Applicant's ability to finance, construct, or manage the Project, except in the case of:
    - a. an alleged substantial change raised by the Board in accordance with 760 CMR 56.04(6); or
    - b. an alleged material inconsistency between the applicable Project Eligibility requirements and an action of the Subsidizing Agency.
  2. The financial feasibility of the Project, what constitutes a reasonable return for a Limited Dividend Organization, or whether the Applicant is likely to earn reasonable return, except that evidence may be heard which is directly relevant to the issue of whether conditions would make the Project Uneconomic in accordance with 760 CMR 56.05(6) and (8)(d).
  3. Resident selection procedures and other matters relating to Use Restrictions and Affirmative Fair Marketing Plans.
  4. The percentage of Low and Moderate Income Housing units within a Project.

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(4) Substantial Changes to Project.

(a) Substantial Changes. If an Applicant involved in an appeal to the Committee desires to change aspects of its proposal from its content at the time it made application to the Board, it shall notify the Committee in writing of such changes, and the presiding officer shall determine whether such changes are substantial. If the presiding officer finds that the changes are substantial, he or she shall remand the proposal to the Board for a public hearing to be held within 30 days and a decision to be issued within 40 days of termination of the hearing as provided in M.G.L. c. 40B, § 21. Only the changes in the proposal or aspects of the proposal affected thereby shall be at issue in such hearing. If the presiding officer finds that the changes are not substantial and that the Applicant has good cause for not originally presenting such details to the Board, the changes shall be permitted if the proposal as so changed meets the requirements of M.G.L. c. 40B, §§ 20 through 23 and 760 CMR 56.00.

(b) Commentary and Examples. The statute requires that an Applicant present its application first to a Board before appealing to the Committee. If on appeal to the Committee the Applicant wishes to make changes in its proposal from its content as originally presented to the Board, the Board should have an opportunity to review changes that are substantial. Following are some examples of what circumstances ordinarily will and will not constitute a substantial change of the kind described in 760 CMR 56.07(4)(a).

(c) The following matters generally will be substantial changes:

1. An increase of more than 10% in the height of the building(s);
2. An increase of more than 10% in the number of housing units proposed;
3. A reduction in the size of the site of more than 10% in excess of any decrease in the number of housing units proposed;
4. A change in building type (*e.g.*, garden apartments, townhouses, high-rises); or
5. A change from one form of housing tenure to another.

(d) The following matters generally will not be substantial changes:

1. A reduction in the number of housing units proposed;
2. A decrease of less than 10% in the floor area of individual units;
3. A change in the number of bedrooms within individual units, if such changes do not alter the overall bedroom count of the proposed housing by more than 10%;
4. A change in the color or style of materials used; or
5. A change in the financing program under which the Applicant plans to receive a Subsidy, if the change affects no other aspect of the proposal.

(5) Committee Decisions.

(a) Decision. In accordance with M.G.L. c. 40B, § 22, the Committee shall render a written decision, based upon a majority vote, stating its findings of fact and conclusions, within 30 days after termination of the hearing unless such time has been extended by consent of the Applicant.

1. If the Committee finds, in the case of a denial, that the decision of the Board was not Consistent with Local Needs, it shall vacate such decision and shall direct the Board to issue a Comprehensive Permit to the Applicant.
2. If the Committee finds, in the case of conditions imposed by the Board, that the conditions render the Project Uneconomic and that the conditions are not Consistent with Local Needs, the Committee shall direct the Board to remove any such condition or to modify it so as to make the Project economic.
3. If the Committee finds, in the case of conditions imposed by the Board, that the conditions render the Project Uneconomic and that the conditions are Consistent with Local Needs, but that the conditions can be modified so as to make the Project economic and to adequately protect health, safety, environmental, design, open space, and other Local Concerns, the Committee shall so direct the Board to modify the conditions.

(b) Conditions. The Committee shall not issue any order which would allow the building or operation of the Project in accordance with standards less safe than the applicable building and site plan requirements of the Subsidizing Agency. The Committee, in its decision, may make a Comprehensive Permit subject to any of the following conditions or requirements:

1. The grant of the subsidy by the Subsidizing Agency;

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2. Issuance of final approval by the Subsidizing Agency pursuant to 760 CMR 56.03(7);
3. The securing of the approval of any state or federal agency with respect to the Project which the Applicant must obtain before building, provided, however, that the Committee shall not delay or deny an appeal on the grounds that any state or federal approval has not been obtained;
4. Complete or partial waiver ordered by the Committee of fees otherwise assessed or collected by Local Boards;
5. Other directions or orders to Local Boards designed to effectuate the issuance of a Comprehensive Permit (including any Waivers) and the construction of the Project; or
6. Any other condition consistent with M.G.L. c. 40B, §§ 20 through 23 and 760 CMR 56.00.

(c) Massachusetts Environmental Policy Act (MEPA). All Projects before the Committee are potentially subject to compliance with the MEPA, M.G.L. c. 30, §§ 61 through 62H.

1. Where no Environmental Impact Report (EIR) is required, no M.G.L. c. 30, § 61 finding shall be required in the Committee's decision. In any such case, however, pursuant to 301 CMR 11.12(2)(b), prior to issuance of a decision, the Applicant may serve upon the Committee pursuant to 760 CMR 56.06(6) the following:

- a. a Certificate of the Secretary of Environmental Affairs pursuant to 301 CMR 11.06(7) that no EIR is required, or
- b. an advisory opinion obtained from the Secretary of Environmental Affairs pursuant to 301 CMR 11.01(6). (Also *see* 301 CMR 11.05(3), 12(2).)

If neither a Certificate nor an advisory opinion is available, the Committee may rely on evidence or testimony admitted at the hearing or thereafter or on other information contained in the record.

2. Where an EIR is required and a Single or Final EIR has received a Certificate of the Secretary of Environmental Affairs of compliance pursuant to 301 CMR 11.08(8)(a), the presiding officer may take official notice of the Certificate without prior notice to the parties pursuant to 760 CMR 56.06(8)(2), and shall include in its decision findings as required by M.G.L. c. 30, § 61. (*See* 301 CMR 11.01(4)(c), 11.12(5)).

3. Where an EIR is required and the Secretary of Environmental Affairs has not issued a Certificate of compliance pursuant to 301 CMR 11.08(8)(a), the Committee may delay its decision or it may render its decision, pursuant to 301 CMR 11.02 (“agency action”(c)), provided that the decision shall be subject to the following conditions:

- a. that the Comprehensive Permit shall not be implemented until the Committee has fully complied with MEPA, and
- b. that the Committee shall retain authority to modify the decision based upon findings or reports prepared in connection with MEPA.

(d) Decisions Involving Constructive Grant of Permit. The Committee may determine, upon motion pursuant to 760 CMR 56.06(5)(b) and after hearing, that a Comprehensive Permit has been granted constructively due to failure of the Board to meet one of the deadlines in M.G.L. c. 40B, § 21 or the 180-day deadline for termination of the hearing set forth in 760 CMR 56.05(3). In any such case, the permit shall be deemed granted for the number of housing units proposed in the application to the Board, and the Committee shall impose reasonable conditions upon the permit sufficient to address health, safety, environmental, design, open space, and all other material local concerns.

(e) Appeal. Any decision of the Committee may be reviewed in the superior court in accordance with the provisions of M.G.L. c. 30A.

(f) Appeal in MEPA Cases. Judicial review of a Committee decision which does not contain Massachusetts Environmental Policy Act findings, but rather contains the conditions required by 760 CMR 56.08(3)(c), shall not be delayed by such conditions.

(6) Enforcement.

(a) The Board shall carry out an order of the Committee within 30 days of its entry, and, upon failure to do so, the order of the Committee shall for all purposes be deemed the action of the Board.

(b) The Committee shall have the same power to issue permits or approvals as any Local Board which would otherwise act with respect to an application.

56.07: continued

(c) A Comprehensive Permit issued by order of the Committee shall be a master permit which shall subsume all local permits and approvals normally issued by Local Boards, in accordance with 760 CMR 56.05(10).

(d) After the issuance of a Comprehensive Permit, the Committee may issue such orders as may aid in the enforcement of its decision. If a party fails to comply with an order issued by the Committee, it may impose appropriate sanctions, including the imposition of costs. Also *see* 760 CMR 56.06(7)(g).

(e) The Committee or the Applicant may enforce an order of the Committee in the Superior Court.

56.08: Amendments; Waivers; Transition Rules

(1) Amendment and Effective Date of Amendments. 760 CMR 56.00 may be amended in accordance with the provisions of M.G.L. c. 30A.

(2) Waivers from 760 CMR 56.00. The Department or, in the event of an appeal before the Committee, the presiding officer may waive any provision of 760 CMR 56.00 except for 760 CMR 56.02, 760 CMR 56.03, 760 CMR 56.07(2)(c), 760 CMR 56.07(3)(b), 760 CMR 56.07(5)(a), and 760 CMR 56.08, when in the judgment of the Department or the presiding officer strict compliance with such provision will result in an undue hardship and will be inconsistent with the purposes of M.G.L. c. 40B, §§ 20 through 23. In the event of such waiver, issued by the presiding officer, he or she shall file with the record of the case a statement of the facts on which such waiver is based. No waiver shall be made if it conflicts with any mandatory provisions of any statute.

(3) Transition Rules.

(a) If no Project Eligibility Determination for a Project had been issued by the Subsidizing Agency prior to the effective date of 760 CMR 56.00, then the entirety of 760 CMR 56.00 shall apply to the Project.

(b) If a Project Eligibility Determination for a Project had been issued by the Subsidizing Agency, but no application was filed with the Board, prior to the effective date of 760 CMR 56.00, then the entirety of 760 CMR 56.00 shall apply to the Project, except that 760 CMR 56.04(4) shall not apply.

(c) If an application for a Project had been filed with the Board prior to the effective date of 760 CMR 56.00, then the entirety of 760 CMR 56.00 shall apply to the Project, except that the changes in the numerical standards of 760 CMR 56.03(4)(c)(2) and 56.03(6)(d), 760 CMR 56.03(8), 760 CMR 56.04(4), and the second and third paragraphs of 760 CMR 56.05(3) shall not apply.

(d) If a Comprehensive Permit for a Project had been finally issued (including the resolution of all appeals) and the Subsidizing Agency had issued its final written approval pursuant to 760 CMR 56.04(7) prior to April 1, 2008, then the entirety of 760 CMR 56.00 shall apply to the Project, except that the financial surety requirements of 760 CMR 56.04(7)(c) shall not apply.

REGULATORY AUTHORITY

760 CMR 56.00: M.G.L. chs. 23B and 40B.



## APPENDIX H

# Regional Housing Services Office

*Serving Acton, Bedford, Burlington, Concord, Lexington, Sudbury and Weston*

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141 Keyes Road  
Concord MA 01742  
(978) 287-1090

[www.RHSOHousing.org](http://www.RHSOHousing.org)  
[info@RHSOHousing.org](mailto:info@RHSOHousing.org)

### Permit Considerations

The following are some considerations for the Town and the permit issuing boards to consider when reviewing 40B and other developments containing affordable units.

#### General Considerations

The details of the affordable units is best defined and documented in the permitting process. Some details are more difficult to work through when reviewing and approving the final Affirmative Fair Housing Marketing Plan which contains the specifics for the lottery process.

State guidance provides overall parameters, and there are some nuances between the MassHousing and DCHD LIP process, as well as some aspects that are up to the local jurisdiction.

Consider the item of upgrades to affordable units. Require the monitoring agent to approve upgrades prior to initial sale. This will prevent the situation where upgrades are negotiated directly with the developer, and perhaps funds to pay for them are not being included in the asset evaluation, or that the upgrades get included in the price, increasing the price above the affordable level.

#### Exterior Considerations

By state guidance, all low and moderate income housing units developed shall be indistinguishable from market-rate units as viewed from the exterior unless the project has an approved alternative development plan. From a plan review, 'Exterior' includes decks/patios and type of parking and any other exterior amenity.

Affordable units must be proportionately distributed throughout a Project, in terms of both location and unit size/type. The affordable units should be listed by address/unit# on the plan and in the decision.

In reviewing (or making) the designation of the affordable units, attention is paid to the following:

- Proportional representation of unit sizes ie, similar percentage of 3 and 4 bedroom units as market rate. List the number of affordable and market units by unit size.
- Square footage if there is a variation in unit sizes. Consider finished basement, or attics
- Proportional amount of housing type eg if half of the development has 1-car garages and half has 2-car garages, half of the affordable units should have 2-car garages. For parking, is it deeded, reserved, or paid for separately? Sometimes the properties give one space, but then charge for a second space.
- Proportional amount of housing style eg if half the development are ranches and half capes, so should the affordables.
- Configurations to review – higher proportion of affordable units adjacent to a busy road or further from common area amenities, affordable units are all middle units in a townhouse style project



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- If there are existing structures being rehabbed as affordable units, there are additional considerations. Require radon and lead testing and review the results, review a home inspection report along with the applicant rehab plans.
- Consider the issue of radon. Best is to require testing in new construction of affordable units prior to occupancy, or require radon mitigation in the design. Middlesex County is prone to radon. This will prevent the situation where radon is discovered upon the first resale of the unit. At the point when it is discovered, the seller has no option but to install mitigation and not be able to get funds back in sales price.

## Interior Considerations

While the low and moderate income units need not be given the same interior finishes and amenities as the market rate units, the interiors shall be of good quality. Interiors shall be completely finished prior to occupancy. The amenities should be documented by the applicant in the file.

Appliances and lighting should be at Energy Star while flooring, bath fixtures, kitchen cabinetry be quality grade not builder grade. Consider requiring tile/resilient/hardwood flooring throughout the affordable units to improve air quality and reduce maintenance cost long-term.

Units shall contain complete living facilities including a stove, kitchen cabinets, plumbing fixtures, a refrigerator, microwaves, and access to laundry facilities. Note that microwaves and fridge is a LIP requirement, not MassHousing. It is useful to have this documented by the applicant and specify this in the permit.

## Condominium Considerations

The board should review condo/homeowners' association budget and supporting estimates to ensure that it is adequate. If inadequate, all buyers could be faced with an increase soon after moving in which is disruptive especially if the buyer had to stretch to afford the unit (this is very common).

ZBA should approve condo docs before recording. Affordable owners should explicitly be given one vote per unit.

The ZBA should specify how the affordable unit condo fee is calculated. The most common is to base it on the value/price. This results in a lower condo fee, and higher sales price, often resulting in a more affordable solution over time (depending on the condo fee). The other option is to base it on square footage (new option under condominium law). This results in equal/similar condo fees for the affordable units and the market rate units, and a lower sales price. The advantage is that it might provide for a more harmonious condominium association as market owners often resent that they pay higher fees. This may be acceptable in developments with low fees (<\$100/month) where the risk posed by increases is lower.

## Timing

If a project is phased, the ZBA should condition that affordable units are built at proportionally the same rate as the market units. Never have the affordable units last.



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## Administrative

The ZBA might include conditions for the municipality receive copies of monitoring reports, though this might be considered outside their jurisdiction.

The decision should specifically detail the total number of units by unit size, the affordable by unit size, and the market by unit size. The decision should specifically note that the affordable units are affordable in perpetuity.

The Regulatory Agreement should be recorded before the first occupancy permit – depending on the size of the project maybe after that. But condition it early.

ZBA/town should review and approve the AFHMP prior to the start of marketing.

The decision could contain a ‘springing’ restriction. Below is some sample language – to ensure that the affordability is assured is the Regulatory Agreement with the Subsidizing Agency terminates. This might be considered a ‘belt and suspenders’ sort of condition, as there is case law that protects the affordable units under 40B, but it might be useful for some unknown future situation.

If and when the Regulatory Agreement with the Subsidizing Agency is terminated, expires or is otherwise no longer in effect and is not replaced with another regulatory agreement with another Subsidizing Agency, the Applicant shall enter into a Permanent Restriction/Regulatory Agreement With the Town, in a form and substance reasonably acceptable to the Board and its counsel (the "Town Regulatory Agreement"), which shall be recorded with the Middlesex South Registry of Deeds against the Property and signed by all necessary parties, including all mortgagees and lien holders of record. The Town Regulatory Agreement: (i) shall require that the Project shall remain 25% affordable so long as the Project does not conform to local zoning; (ii) shall require that at least twenty five percent of the dwellings in the Project shall be affordable to low and moderate income households as that term is defined in MGL Chapter 40B, Sections 20-23; and (iii) shall restrict the number of allowed units to not more than xxx units, with not more than a maximum of xxx bedrooms as described in this Comprehensive Permit. The Town Regulatory Agreement shall constitute a restrictive covenant and shall be recorded against the Property and shall be enforceable by the Town and shall require that the Affordable units shall remain affordable units in perpetuity, meaning, specifically, for so long as the Project does not conform to the Town Zoning Bylaws.