

# CHAPTER 40B COMPREHENSIVE PERMIT OVERVIEW

PRESENTATION TO:  
THE TOWN OF READING, ZONING BOARD OF APPEALS  
READING VILLAGE CONTINUED PUBLIC HEARING



**BEALS + THOMAS**

Civil Engineers | Landscape Architects | Land Surveyors | Planners | Environmental Specialists

John P. Gelcich, AICP

May 12, 2016

# Comprehensive Permit Background

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- Enacted in 1969
- MGL Chapter 40B Sections 20-23 (the Law)
- 760 CMR 56.00 (the Regulations)
- Affordable housing
  - Less than 80% Area Median Income (AMI)
  - For Reading (Boston-Cambridge-Quincy HMFA<sup>1</sup>) 80% AMI for:
    - 1-person household: \$48,800
    - 2-person household: \$55,800
    - 4-person household: \$69,700

# Comprehensive Permit Background

(continued)

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- Allows ZBAs to approve housing development under streamlined process if at least 20-25% of units are long-term affordable (30+ years)
- 10% of each municipality's year-round housing stock must be affordable (State mandate)
  - This information is kept on the Town's Subsidized Housing Inventory (SHI)
  - As of February 2016, Reading was at 7.78%
- Exemptions by meeting short term goals (Safe Harbor) – to be discussed later

# Comprehensive Permit Background

(continued)

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- Empowers the ZBA to grant all local approvals necessary for the project after consultation with relevant Boards and Committees as part of one permit
- The Comprehensive Permit does **not** waive other local, state, and federal permitting requirements such as:
  - Building Permit
  - State highway access permits
  - Wastewater disposal permits (Title 5)
  - State building code requirements
  - State Wetlands Protection Act (Local Con Com reviews)

# Abilities of the ZBA

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- May use more flexible standards than provided for in Zoning Bylaw and **can** waive other local requirements
- May work with the Applicant before or during the process to negotiate the design of the project – but be aware of open meeting laws
- May 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 majority vote, may require the Applicant to pay a reasonable review fee for outside consultants chosen by the Board alone
- Shall not address matters in the hearing that are beyond its jurisdiction under 40B Law and Regulations and that lie solely within the authority of the Subsidizing Agency
  - ▣ Examples: project eligibility or funding eligibility

# 40B Process and Reading Village

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- Applicant applies for determination of project eligibility with subsidizing agency - **COMPLETE**
- Applicant submits application to ZBA - **COMPLETE**
- ZBA notifies local departments, boards, committees, commissions - **COMPLETE**
- ZBA holds public hearings - **ACTIVE**
- ZBA issues decision
- Applicant applies for building permit or appeals to Housing Appeals Committee (HAC)

# Timeline: Status and Next Steps

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- Hearing Opened – February 4, 2016
- Halfway Point (90 Days) – May 3, 2016
- Hearing to be Closed (180 Days) – August 1, 2016
  - Unless Applicant has provided written consent to extend
- ZBA Decision to be Rendered – September 12, 2016
  - 40 Days after close of Public Hearing
- Decision Filed with Reading Town Clerk – September 26, 2016
- Applicant Filing Deadline for Appeal to HAC – October 17, 2016
  - Applicant may file appeal with HAC if they feel the ZBA wrongly denied or imposed requirements that make the Project “uneconomic”
    - As long as municipality has not met Statutory Minima or Safe Harbor requirement (Reading has not)

# Decision of the ZBA

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- The ZBA may:
  - Approve the application as submitted
  - Approve the application with conditions with respect to site plan, height, size, shape or building materials that address matters of Local Concern
    - As long as these requirements do not make the project “uneconomic”
    - May be appealed by applicant to HAC if municipality does not meet Statutory Minima or Safe Harbor requirements (Reading has not)
  - Deny the application
    - Must show that the denial is Consistent with Local Needs
    - May be appealed by applicant to HAC if municipality does not meet Statutory Minima or Safe Harbor requirements (Reading does not)

# Local Needs/Local Concern

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- **Consistent with Local Needs** means:
  - The conditions imposed on the Project can be considered reasonable when weighed against the State-established regional need for affordable housing, the number of low-income persons within the Town, and the Local Concerns
- **Local Concern** means the need to:
  - Protect the health or safety of the occupants of a proposed project or the residents of the municipality
  - Protect the natural environment
  - Promote better site and building design in relation to the surroundings and municipal and regional planning
  - Preserve open spaces

# Statutory Minima – The Town’s Leverage

760 CMR 56.03(3)

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- Comprehensive Permit applications may be denied by ZBA, without applicant’s right to appeal to HAC, if project is determined to not be “Consistent with Local Needs” **and** municipality meets any of the below:
  - 10% of total housing units are affordable – **Not met**
  - SHI-eligible housing exists on 1.5% of the total land area zoned for residential, commercial, or industrial use – **Not met**
  - The application before the ZBA would result in the construction of SHI-eligible housing on sites comprising more than 0.3% of the Town’s land area or ten acres, whichever larger, within one calendar year – **Not met**

# Safe Harbor – The Town’s Leverage

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- Comprehensive Permit applications may be denied by ZBA, without applicant’s right to appeal to HAC, when project is not Consistent with Local Needs and one of the following benchmarks are reached :
  - The municipality has achieved one or more of the Statutory Minima (760 CMR 56.03) – **Not met**
  - DHCD has certified the municipality’s compliance with the goals of its approved Housing Production Plan (760 CMR 56.03(4)) – **Not met**
  - The municipality has made recent progress towards the Statutory Minima (760 CMR 56.03(5)) – **Not met**
  - The project is a large project (760 CMR 56.03(6)) – **Not applicable**
  - A related application has previously been received (760 CMR 56.03(7)) – **Not applicable**

# Crafting Conditions

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- The ZBA may condition approval to ensure the health, welfare, and safety of residents
- The HAC is the authority on whether the conditions comply with the 40B regulations
- Example Conditions (HAC Decision No. 2009-07, Norwell/Simon Hill):
  - Proposed single-access roadway is longer than allowed by zoning. The ZBA conditions approval to limit the length of this roadway citing emergency access concerns affecting a large number of units. HAC upheld this condition as a valid Local Concern.
  - Native plant species required as landscaping. Upheld by HAC due to Applicant's inability to prove condition would contribute to adverse economic impact.
  - ZBA conditioned the project on the installation of water quality monitoring wells along property line. HAC struck this condition, as ZBA did not provide a valid Local Concern outweighing the need for affordable housing. The Applicant is, however, required to comply with state and federal drinking water requirements.

# Housing Appeals Committee (HAC)

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- If the ZBA denies or imposes conditions to the Comprehensive Permit, the Applicant may appeal the decision to the HAC if municipality **does not** meet Statutory Minima or Safe Harbor requirements
- The Applicant has the burden of proof:
  - ▣ That the project is eligible
  - ▣ The conditions render the project “uneconomic”
  - ▣ The local requirements and regulations have not been applied as equally to subsidized and unsubsidized housing
- The ZBA has the burden of proof:
  - ▣ That the decision was consistent with Local Needs
  - ▣ There is a valid Local Concern which outweighs the Housing Need
  - ▣ If condition is due to adequacy of municipal services/infrastructure, that the installation of municipal services/infrastructure adequate to meet Local Needs is not technically or financially feasible

# Housing Appeals Committee (HAC)

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- The HAC shall render a decision which may:
  - Vacate denial and direct ZBA to issue Comprehensive Permit
  - Direct ZBA to remove conditions so as to make Project economic
  - Direct ZBA to modify conditions to make Project economic
  - Uphold decision by ZBA

# Local Preference

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- Towns may implement a local preference requirement to be administered by the Developer
  - Maximum allowed is 70% of the affordable units
- Requirements for Town:
  - Demonstrate the need for local preference
  - Justify the extent of the local preference
  - Demonstrate that the proposed local preference will not have disparate impacts on protected classes
- Allowable preference categories
  - Current residents
    - Durational requirements such as how long an applicant has lived/worked in the area are not permitted.
  - Municipal employees
  - Employees of local businesses
  - Households with children attending the locality's schools

# Local Preference/Lottery

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- Lottery Process (from DHCD Comprehensive Permit Guidelines)
  - Developer Administered
  - Should include two (2) pools
    - Local preference pool
    - Open pool
  - The percentage of minority local resident households in the local preference pool should not be less than the percentage of minorities in the surrounding HUD-defined area
    - If not, the Developer is to rank minority candidates (in order of drawing) in open pool and then add to the local pool in order of their ranking
  - Residents should be included in both pools

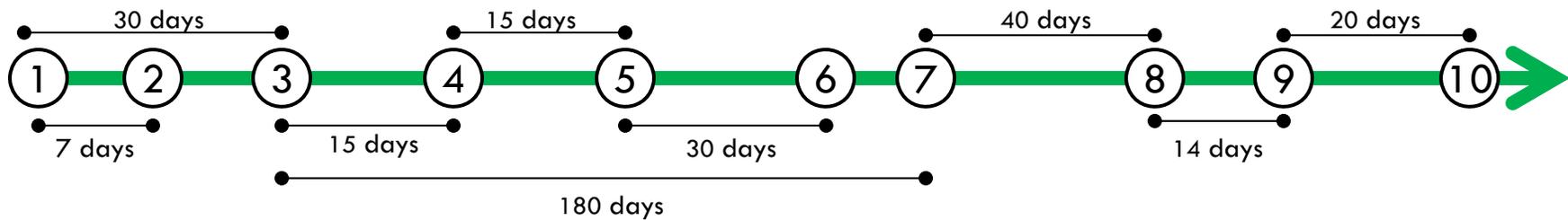
# Definitions

(760 CMR 56.02)

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- **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.
- **Housing Need** means the regional need for Low and Moderate Income Housing considered with the number of Low Income Persons in the municipality affected.
- **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).
- **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
  - makes it impossible for a public agency or a nonprofit organization to proceed in building or operating a Project without financial loss; or
  - 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).
- **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).

# Timeline



①	②	③	④	⑤
Comprehensive Permit Application Date (Day 0)	ZBA Distributes Application to Local Boards/Committees/ Departments	Initial Public Hearing Must Be Held	ZBA to Determine Whether to Deny Based on Statutory Minima/Safe Harbor	Date By When Applicant Must File Response to DHCD

**January 7, 2016**

**January 13, 2016**

**February 4, 2016**

**Not Applicable**

**Not Applicable**

⑥	⑦	⑧	⑨	⑩
DHCD Must Issue Decision	Public Hearing Must Close	ZBA Must Render Decision	Date By When ZBA Must File Decision With Town Clerk	Date By When Applicant May File Appeal with HAC

**Not Applicable**

**August 1, 2016**

**September 12, 2016**

**September 26, 2016**

**October 17, 2016**



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QUESTIONS

