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**BOARD OF ZONING APPEALS (BZA)
RECORD OF MINUTES AND PROCEEDINGS**

January 8, 2020, 7:00pm
McCulloch Building, Mary McElroy Room
182 Green Street, Weymouth, MA 02191

Members Present: Richard McLeod, Chairman
Ed Foley
Jonathan Moriarty
Brandon Diem
Kemal Denizkurt

Not Present: N/A

Also Present: Eric Schneider, Principal Planner

Chairman McLeod called the Board of Zoning Appeals meeting to order at 7:00 p.m. at the McCulloch Building, 182 Green Street and explained the procedures that would be followed to the people present.

Mr. McLeod confirmed with Mr. Schneider that **Case #3404** had been formally withdrawn by the applicant.

New Business:

1. **Case #3403** - The petitioner Rin Chitnanda, for property located at **122 Clinton Road**, also shown on Weymouth Town Atlas sheet 15, block 195, lot 27, located in the R-1 Zoning District. The petitioner is seeking the following relief from the requirements of the Weymouth Zoning Ordinance:

Special Permit: 120-40 (D) Extension or change to an existing nonconformity

The subject property is 5,550 SF with an existing single-family home. Petitioner seeks to add a foyer to the front of the home and to add a second story.

Mr. Foley made a motion to open the public hearing on Case #3403 and was seconded by Mr. Moriarty. **UNANIMOUSLY VOTED.**

The applicant explained the proposed project to the Board members. It is Ms. Chitinanda's attention to expand the living area of her existing home by adding a second floor and by adding an enclosed foyer to the front of the house.

Mr. Schneider informed the Board that, given the existing nonconformities of the site, only a Special Permit would be required to extend them as requested.

Mr. Diem referred to photos of the neighborhood and stated that the proposal was very much in keeping with the character of the neighborhood and, in fact, nearly mimicked similar additions done by her neighbors.

Mr. Schneider concurred with Mr. Diem's observations.

Mr. McLeod asked for any further comments from Town staff.

Mr. Schneider stated that he had discussed the project with Mary Ellen Schloss, the Conservation Administrator, who confirmed that a formal review of the project was not required. Ms. Schloss did however request that additional care be given during the construction to ensure the protection of the Back River and its tributaries which border the rear of the property. Specifically, it was requested that staging areas and dumpsters for the project be limited to the front of the lot as much as possible.

Mr. McLeod asked for any additional comments from the public.

Mr. David Lang of 118 Clinton Road, a direct abutter, spoke in support of the project.

Mr. McLeod made a motion to close the public hearing and was seconded by Mr. Foley. UNANIMOUSLY VOTED.

Mr. Foley made a motion to APPROVE the request for a SPECIAL PERMIT for Case #3403.

SPECIAL PERMIT

1. The specific site is an appropriate location for such a use.
2. The proposed use of structure will not be detrimental or adversely affect the character or future character of the neighborhood or town.
3. There is not a potential for nuisance or serious hazard to vehicles or pedestrians.
4. There are adequate and appropriate facilities, utilities and other public services provided for the proper operation of the proposed use.
5. That the public convenience and welfare will be substantially served with the proposal.

The special permit is issued with the condition that special care be taken to limit the spread of trash and construction materials to the Back River. Specifically, the applicant is required to install temporary construction fencing along the back property line. Fencing should be installed in such a way that trash will not blow underneath it. The applicant is further required to keep dumpsters and stored construction materials on the front of the property and to ensure that the site is cleaned of debris at the end of each work day.

Mr. Diem seconded the motion. UNANIMOUSLY VOTED.

Mr. McLeod made a motion to approve the meeting minutes from 8/14/2019, 10/16/2019, and 12/11/2019.

Mr. Moriarty seconded the motion. UNANIMOUSLY VOTED.

Mr. Schneider, through Chairman McLeod, turned the meeting over Jane Kudcey, Weymouth Housing Coordinator. Ms. Kudcey explained that, as a 40B project had been recently proposed in Weymouth, the Town was eligible to have a state funded consultant provide technical assistance to the Board members. The purpose of this training is to provide general information to the Board as to its responsibilities in reviewing Comprehensive Permits for 40B proposals. Ms. Kudcey then turned the meeting over to Lynn Sweet of LDS Consulting.

After each of the Board members introduced themselves and provided a brief summary of their experience with Comprehensive Permits, Ms. Sweet presented the attached PowerPoint presentation to those in attendance.

Upcoming Meetings: January 29, 2020

ADJOURNMENT

Mr. Foley made a motion to adjourn at 8:45pm and was seconded by Mr. Moriarty. VOTED UNANIMOUSLY.

Approved by: Kenel Deniz Kurt 1-29-2020
Mr. Denizkurt, Clerk Date

Guidance Document for ZBA Chair or Chair *Pro Tem* Order of the Public Hearing (Chapter 40B)

- ☐ Announce the opening of the public hearing for X case (identify the case).¹
- ☐ Read (or as the clerk to read) the public hearing notice.
- ☐ Briefly explain how the board will proceed and the 180-day rule, and identify the date by which the Board must close the hearing.
- ☐ Name the Board members who will hear and vote on the case. If associate members are also seated, explain that they are present as backup (Mullin Rule).
- ☐ Refer attendees to the “Hearing Process” poster or handout. If the Chair decides to limit time for presentation and comments, state the time limits at the outset (e.g., 1/2 hour for the applicant, 15-30 minutes for Board questions; 1/2 hour for public comment – may vary based on complexity of the case).
- ☐ Read the correspondence received prior to the opening of the hearing. Very long correspondence can be summarized.
- ☐ Ask the applicant to present the proposal, beginning with how the project meets the minimum eligibility requirements for a comprehensive permit.
- ☐ Allow Board members to ask questions and allow the applicant to respond. ***If the Board plans to exercise a “safe harbor” denial, inform the applicant and give the applicant written notice of the same at the hearing.**²
- ☐ After Board members have asked their questions, allow attendees to ask questions through the chair. (If Town staff attend, consider allowing them to ask their questions first.) Allow the applicant to respond.
- ☐ Identify the Board’s need for consultants to review aspects of the project (e.g., traffic, site civil, design review, environmental). Set timeline for hiring consultants and when applicant has to provide funds for the escrow account (if Town has adopted G.L. c. 44, § 53G).
- ☐ If the hearing needs to continue, determine the continuance date. State what the Board needs to receive from the applicant before the next hearing, and set a reasonable deadline for receipt of the additional documents or plans.
- ☐ Tell attendees they can submit written comments before the close of the public hearing.
- ☐ Have applicant sign agreement to continue and **file with the Town Clerk!**
- ☐ Close the hearing.

¹ Some boards take 15 minutes at the outset of the hearing to provide a “primer” on Chapter 40B for the benefit of interested parties attending the hearing – that is, an abbreviated version of training the Board may have received beforehand. The MHP consultant can assist with this.

² Some boards do this at the outset of the hearing. However, it seems best to let the applicant present the permit request first so the Board and public have the benefit of getting information about the project. The Board **MUST** notify the applicant of a “safe harbor” determination within 15 days of opening the hearing.

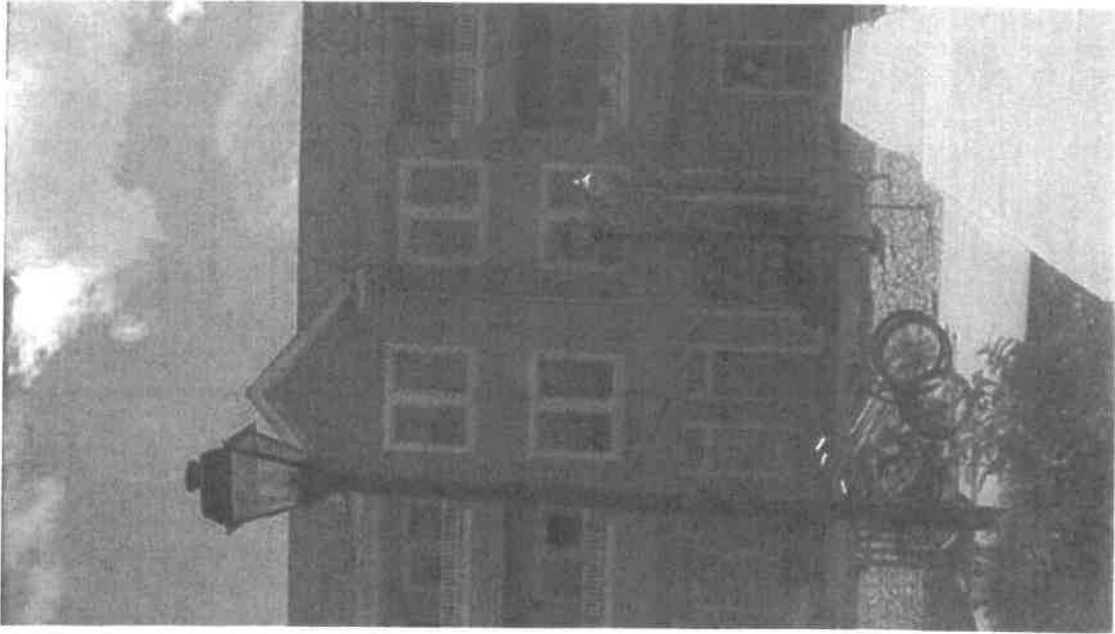
MANAGING CHAPTER 40B

Technical Assistance for Zoning Boards of Appeal

Massachusetts Housing Partnership
Citizen Planner Training Collaborative
Citizens Housing and Planning Association

Updated by Judi Barrett 2017

Content includes CPTC Training (2016) from Katy Lacy, AICP



40B Information Available on the Web

- www.chapa.org
- www.mass.gov/dhcd
- www.masshousing.com
- www.mhp.net

Reviewing the initial application

MHP GRANTS
ELIGIBILITY AND SUBMISSION
REQUIREMENTS

Mass. Housing Partnership (MHP)

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- MHP provides technical assistance to local Zoning Boards of Appeal (ZBA)
- Grants up to \$15,000
- Pre-qualified third-party consultants
- To request technical assistance, contact Laura Shufelt at lshufelt@mhp.net or 857-317-8582

Statutory Minima (G.L. c. 40B, § 20)

- Less than 10% of year round housing units, OR
- Municipalities have less than 1.50% of total land area zoned for residential, commercial, or industrial use, OR
- Project involves no more than 0.3% of the total land area zoned in community for residential, commercial, or industrial use or ten acres, whichever is larger



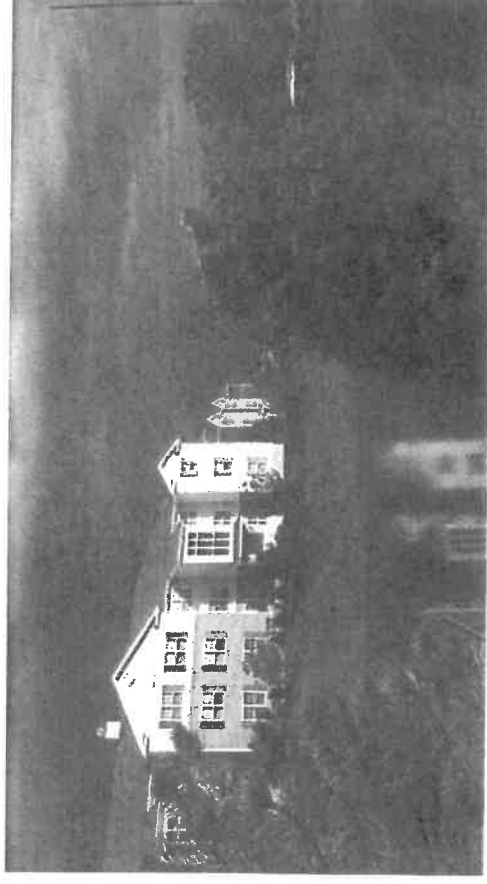


The “Safe Harbors” — Chapter 40B Regulations

- Housing Production Plan —
certified
- Recent Progress Toward
Housing Unit Minimum
- Review of Large Projects
- Related Applications

Critical 40B Application Submission Requirements

- Applicant Status: Public Agency, Non-Profit, or Limited Dividend Organization, AND
- Evidence of Site Control, AND
- Project Eligibility Letter from Subsidizing Agency



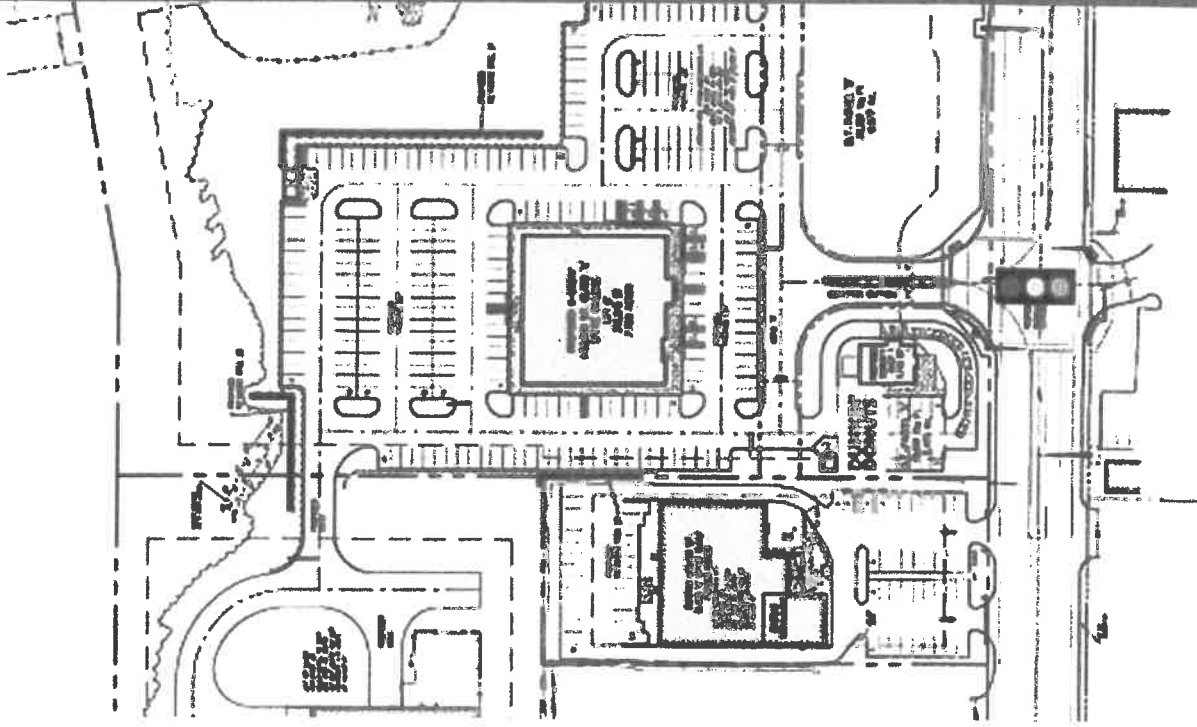
Other 40B Application Submission Requirements

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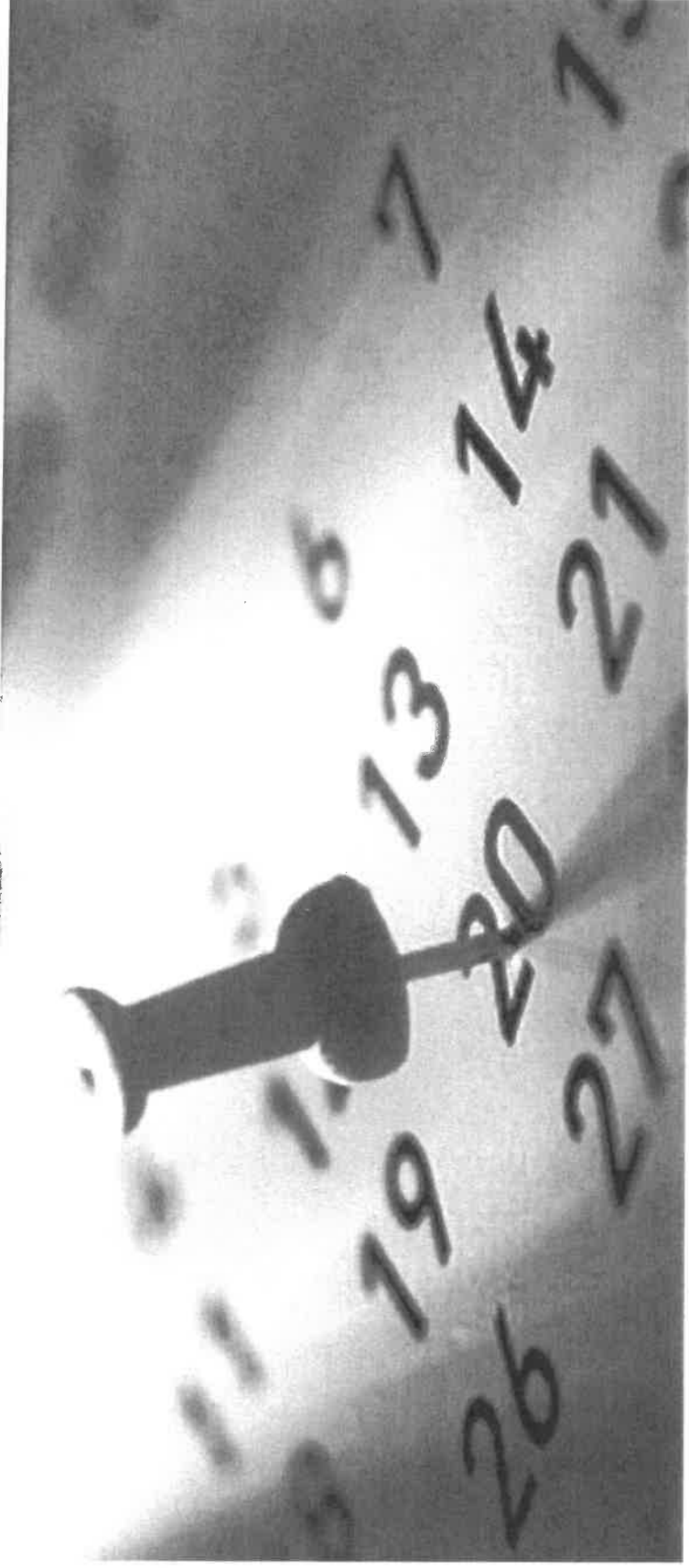
- Preliminary plans
- Existing site conditions and locus map
- Preliminary, scaled, architectural drawings
- A tabulation of proposed buildings by type, size and ground coverage
- A preliminary subdivision plan (if applicable)
- A preliminary utilities plan
- A list of requested waivers

What does “preliminary plan” mean?

- Good example of preliminary plan contents: MassHousing Project Eligibility Application Existing Conditions & Project Submission Requirements (Appendix C in MHP Chapter 40b Handbook)



Site Plan (Alternate #4)



Noticing and conducting the required public hearing

7/14/30/15/15/30/180/40/20 DAYS



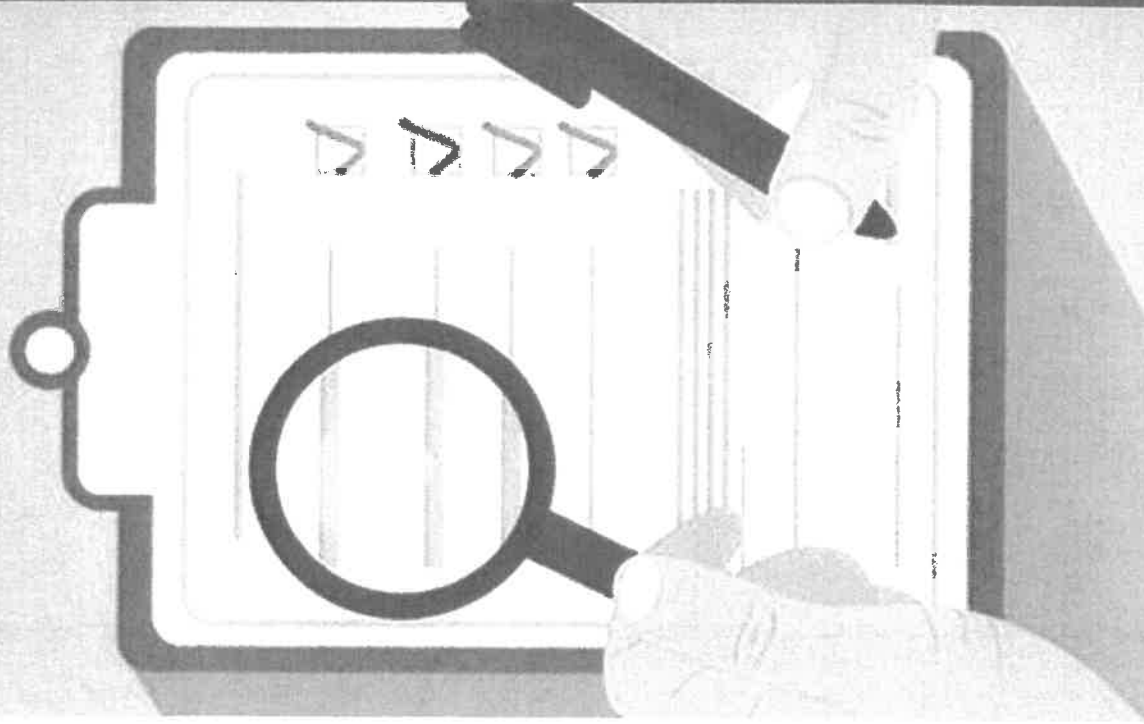
Chapter 40B Performance Requirement Deadlines

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- Distribute Application - 7 Days
- **Notice of Public Hearing – 14 Days**
- **Open Public Hearing - Within 30 days**
 - Safe Harbor Notification - 15 days
 - Applicant's safe harbor appeal period - 15 days
 - DHCD safe harbor response deadline - 30 days
- Close Hearing - 180 days
- **Decision - 40 days**
- **Appeal - 20 days**

Scheduling a Site Visit

- Conduct a site/neighborhood visit early in the review process
- Understand...
 - Site and neighborhood existing conditions
 - The proposed site plan and building design
 - The location of abutters most affected by the proposed development



Retaining Peer Review Consultants

- Employment of outside consultants
- Civil Engineering, Traffic, Architecture
- Financial – **if necessary**
- Review of studies prepared on behalf of the Applicant, **not** preparation of independent studies
- All written results and reports are made part of the record

Securing sufficient project information to make an informed decision

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- Focus on the “real” project issues/impacts early in the review process
- Peer review and calls for additional or more detailed information should be delayed, if possible, until major issues are defined
- If needed, request additional information from the Applicant
- Don’t hesitate to ask for graphics that help clarify height, massing, setbacks, and overall relationship to neighbors

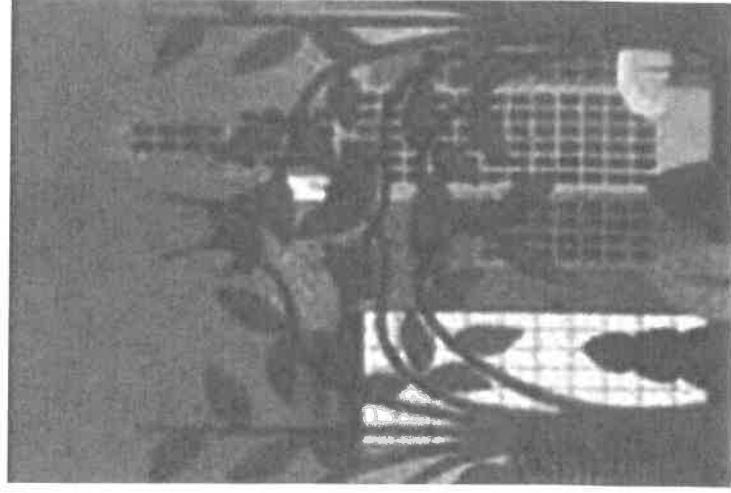
Negotiation and Work Sessions

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- Negotiating with developers is possible
- Work sessions with developers can often be productive after initial more formal public hearings
- Neighbors can be invited to these sessions
- All discussions during the session are advisory in nature
- No decisions can be made
- Comply with Open Meeting Law
- **Check with your Town Counsel**



Balance Regional Housing Needs with Local Concerns



- Health
- Safety
- Environmental
- Design
- Open Space
- Planning
- Other Local Concerns

Planning Standards

Hanover Woods (2014)

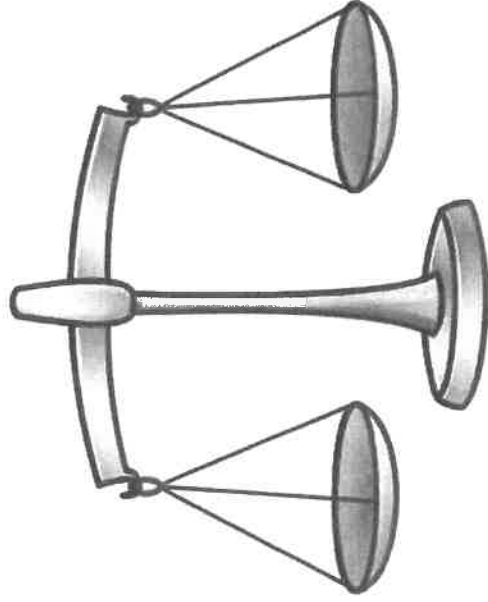
- Thresholds:

1. The plans must be "bona fide," meaning they were legitimately adopted and continue to function as viable planning tools in the town
2. The plans must promote the creation of affordable housing, and
3. The plans must have been implemented in the area of the site.

If yes, yes, and yes, pass "go" and consider ...

Weighing the Local Planning Concern

Hanover Woods (2014)



Does the local planning concern outweigh the regional need for affordable housing?

- Importance of the planning interest
- Extent to which the project conflicts with or undermines the planning interest
- Amount of affordable housing that has resulted from implementing the town's planning efforts
- Integrity of the planning process

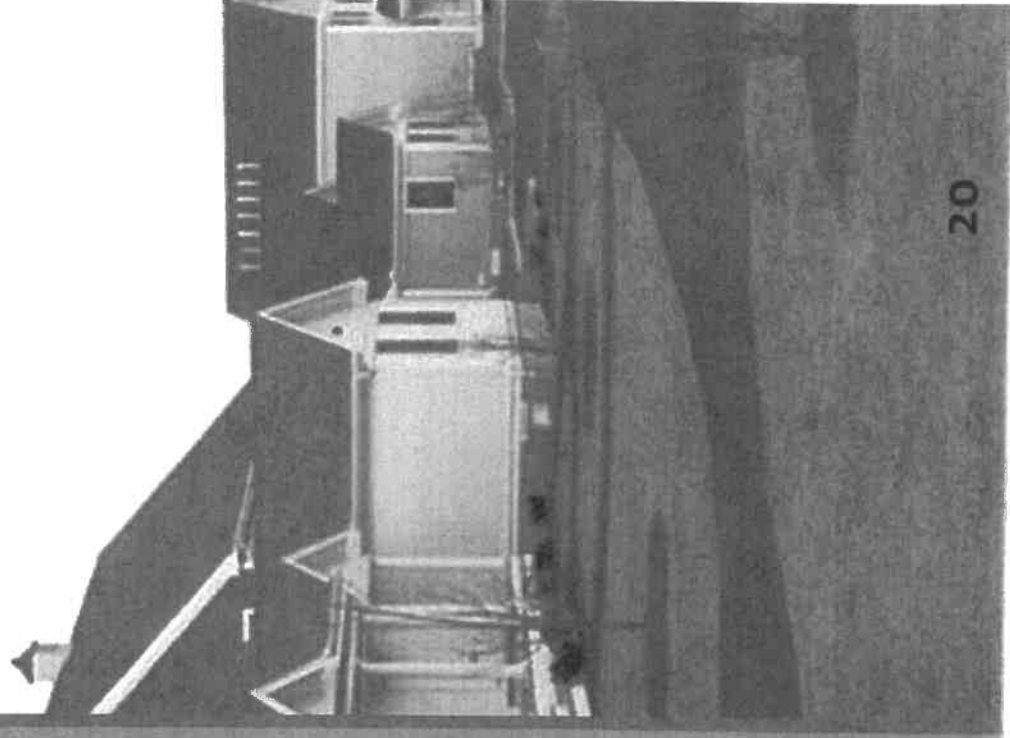


Holding Deliberation Sessions

- Deliberate in a logical and orderly fashion
- Discuss potential conditions
- Review the requested waivers
- Ideally, discuss before closing the public hearing so applicant and public know what to expect

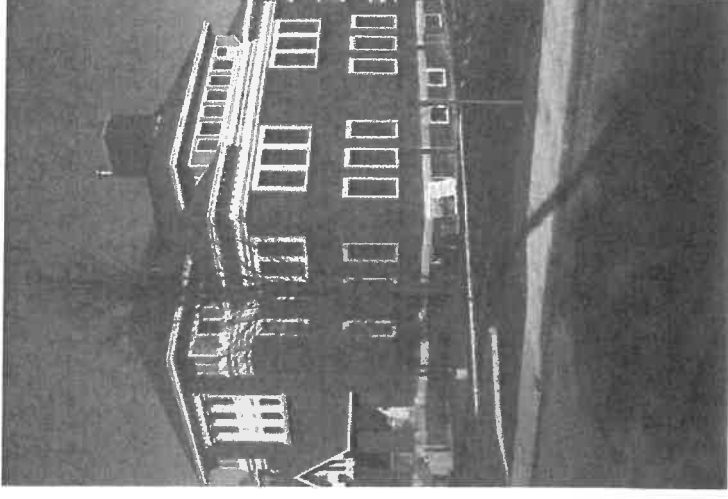
Drafting and issuing the Comprehensive Permit decision

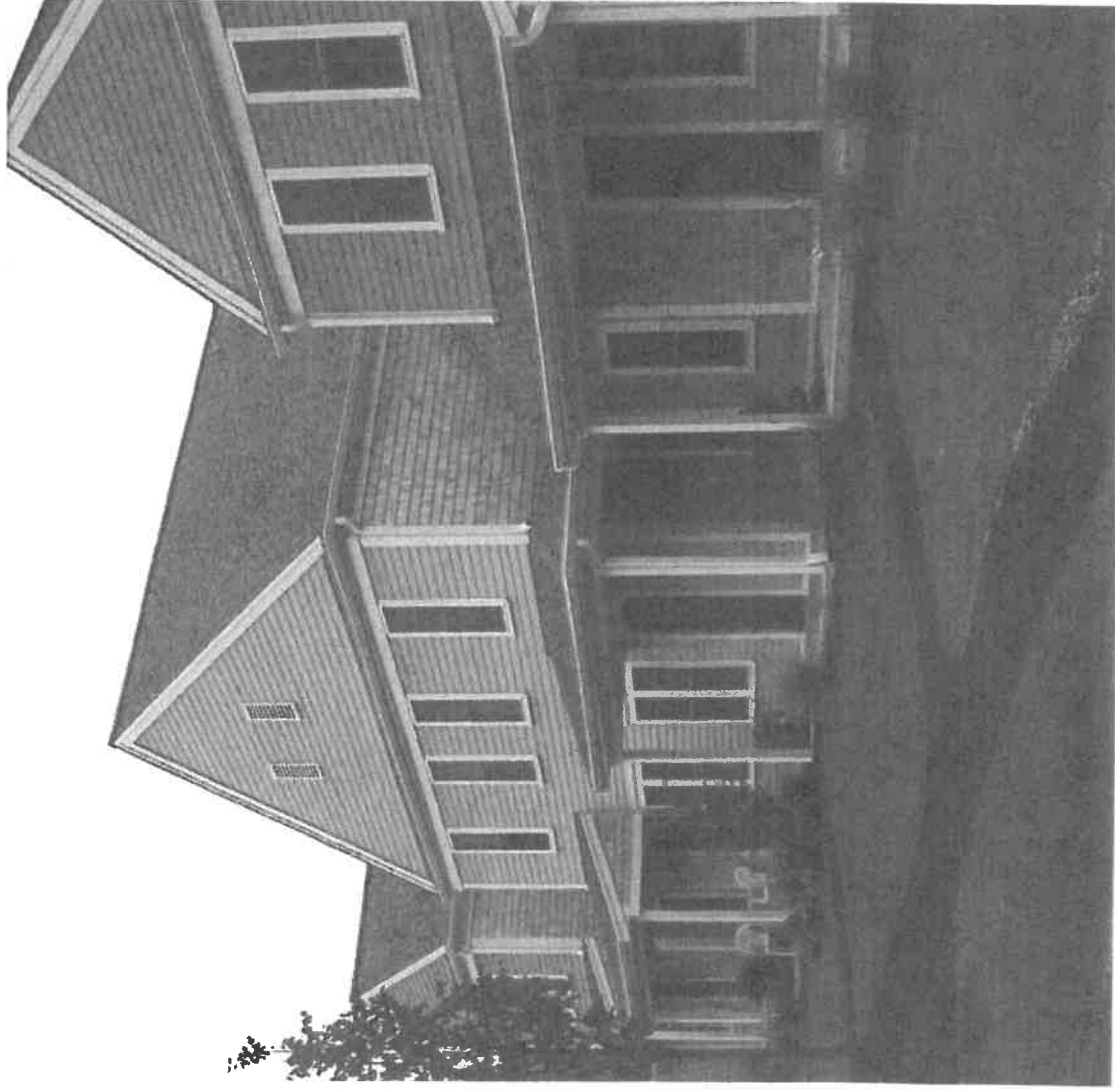
- The ZBA has three decision options
 - Denial
 - Approval as submitted
 - Approval with conditions



Approval with Conditions

- The conditions should not make the Project Uneconomic
- Conditions and/or requirements must be consistent with Local Needs
- The Board may not reduce the number of units for reasons other than evidence of Local Concerns within the Board's purview



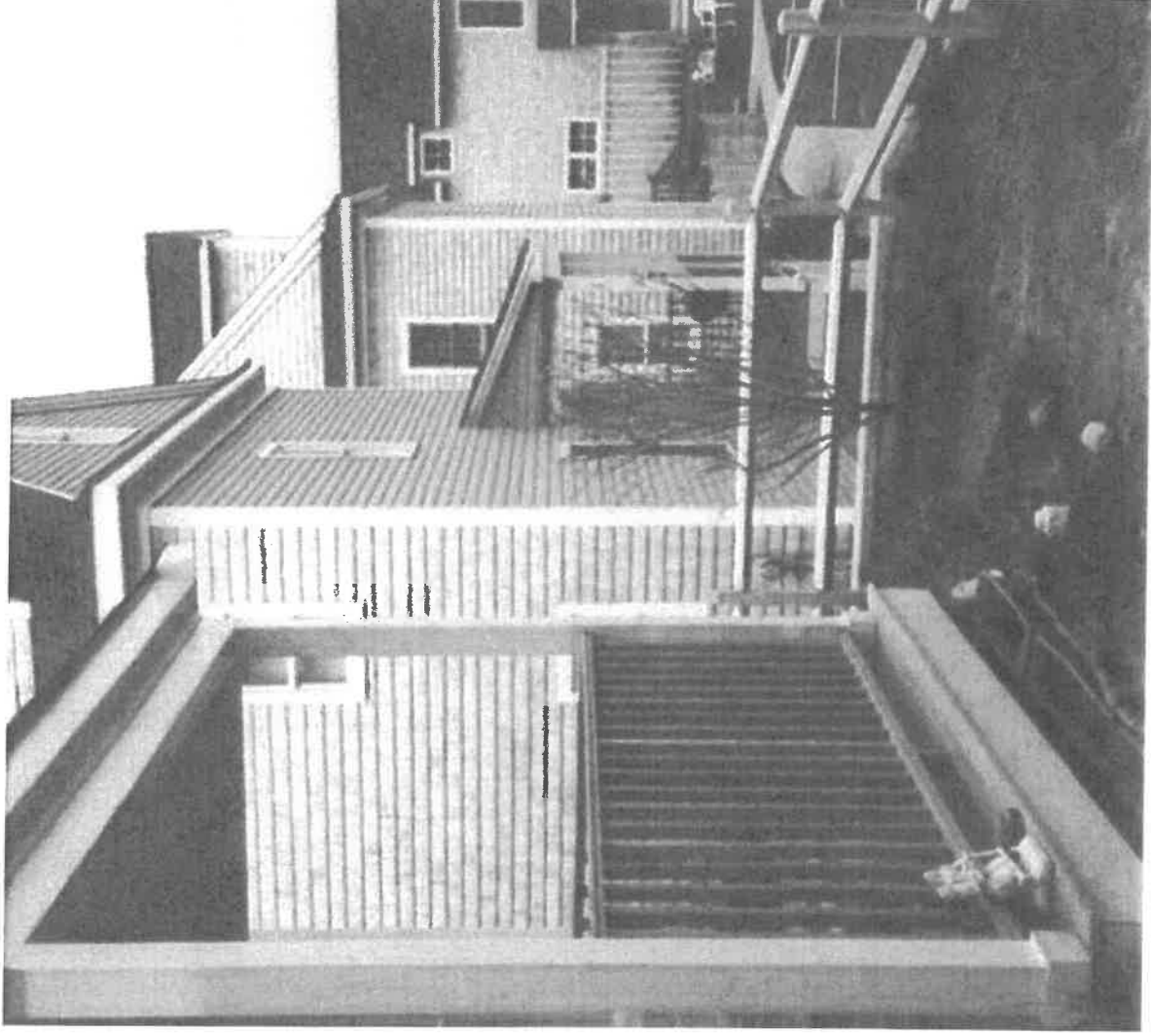


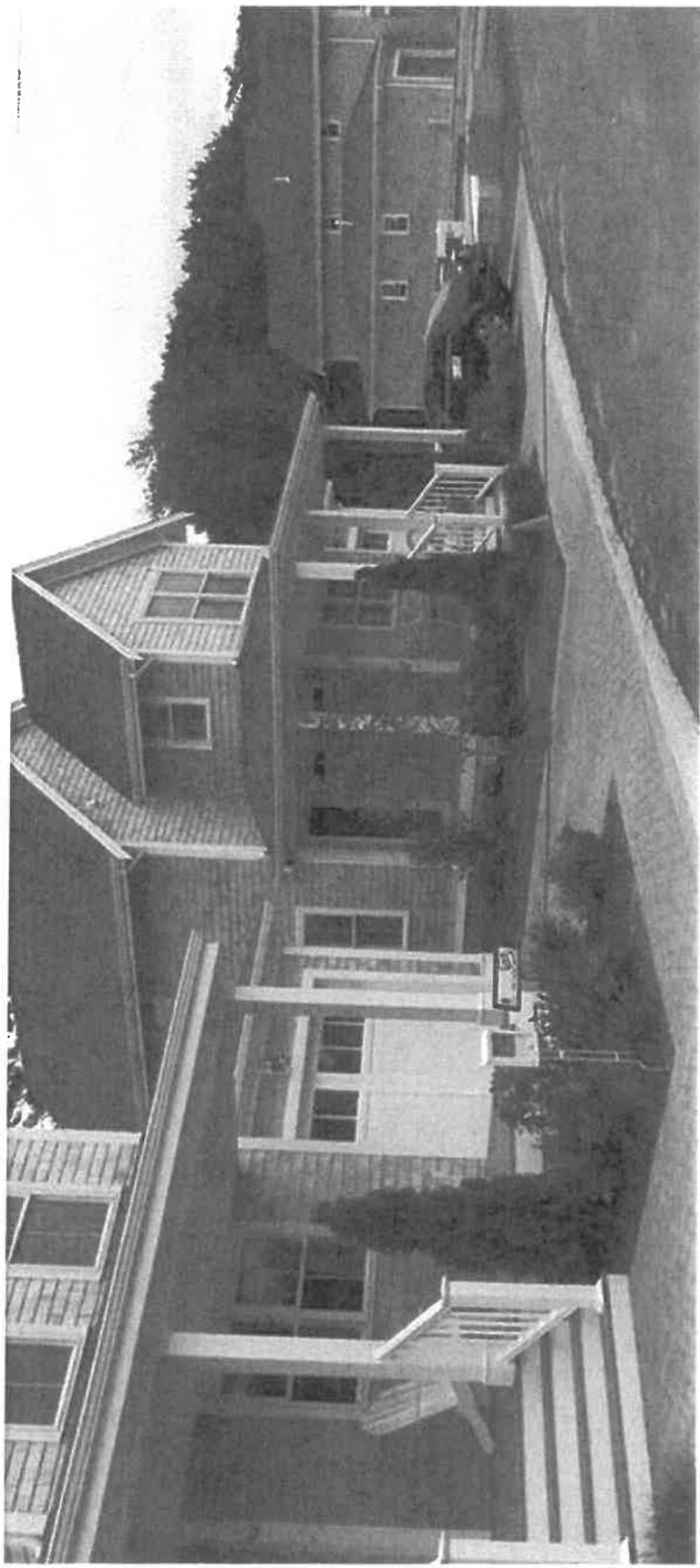
Appeal of Decision

- Appeals by the Applicant: Housing Appeals Committee (HAC)
- Appeals by other parties; Superior Court or Land Court

ZONING BOARD OF APPEALS OF AMESBURY V. HOUSING APPEALS COMMITTEE -MA. SJC

- Addresses the question of “what is the scope of a local zoning board's authority under 40B
- Defines ZBA's purview vs Subsidizing Agency





What happens next?

FROM COMPREHENSIVE PERMIT TO THE COMPLETED PROJECT

Who does what?

- Comprehensive Permit modifications
- Final Approval
- Construction
- Limited Dividend Monitoring
- Affordability Monitoring

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Comprehensive Permit Modifications: Board of Appeals

- If developer requests changes to the Comprehensive Permit, the Board must determine whether modifications are substantial or insubstantial within **20** days of receiving developer's request

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Final Approval

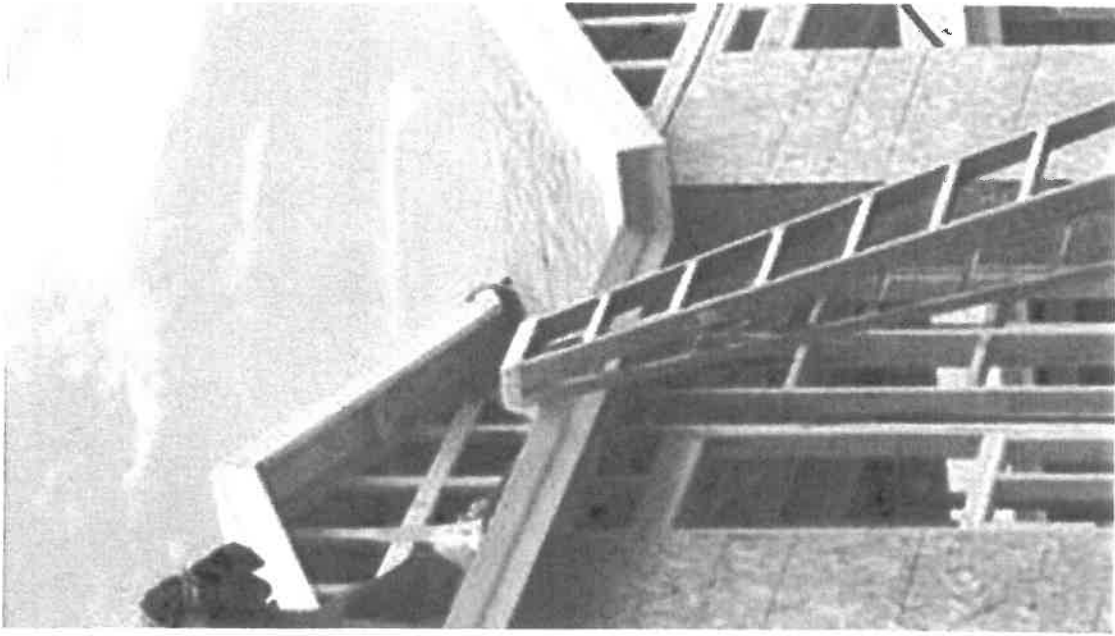
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- Subsidizing Agency's Responsibility
 - Reaffirm Project Eligibility
 - Confirm Use Restriction (for affordability)
 - Make sure Cost Certification requirements have been acknowledged
 - Collect Surety
 - Enter into a Regulatory Agreement

Regulatory Agreement

- Between the developer and the Subsidizing Agency (and, in the case of LIP, the Municipality)
- Identifies the developer and Affordability Monitoring Agent
- Describes limited dividend and affordability requirements
- Has a term (fixed number of years or perpetuity)



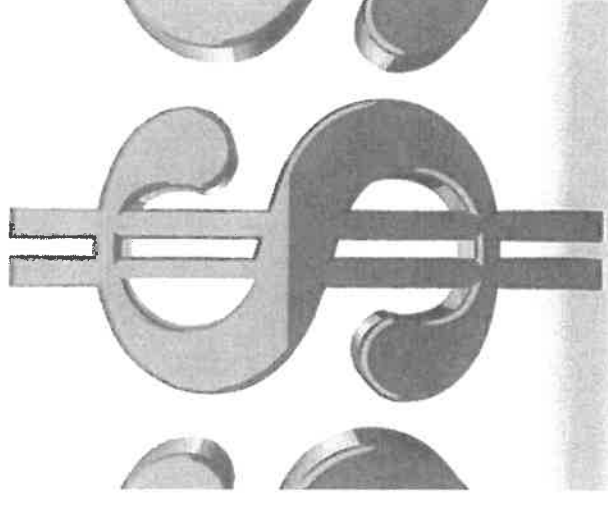


Construction

- **No Final Approval = no building permit!**
- Final engineering and architectural plans come with building permit application
- Site work prior to Final Approval is permitted in accordance with local bylaws

Post Occupancy Responsibilities: Subsidizing Agency

- Limited Dividend Requirement
 - Limits developer profits on 40B developments
 - Process starts 90 days after “substantial completion”
 - Involves Cost Examination and Cost Certification Process
 - Process is different for homeownership and rental projects



Post-Occupancy Responsibilities: Affordability Monitoring Agent

• Rental 40B: Subsidizing Agencies serve as Monitoring Agent for the term of the Regulatory Agreement 31

- Homeownership 40B:
 - DHCD is the Monitoring Agent for LIP Projects
 - MassHousing uses a network of 3rd-party agents

Post-Occupancy Responsibilities: Municipality

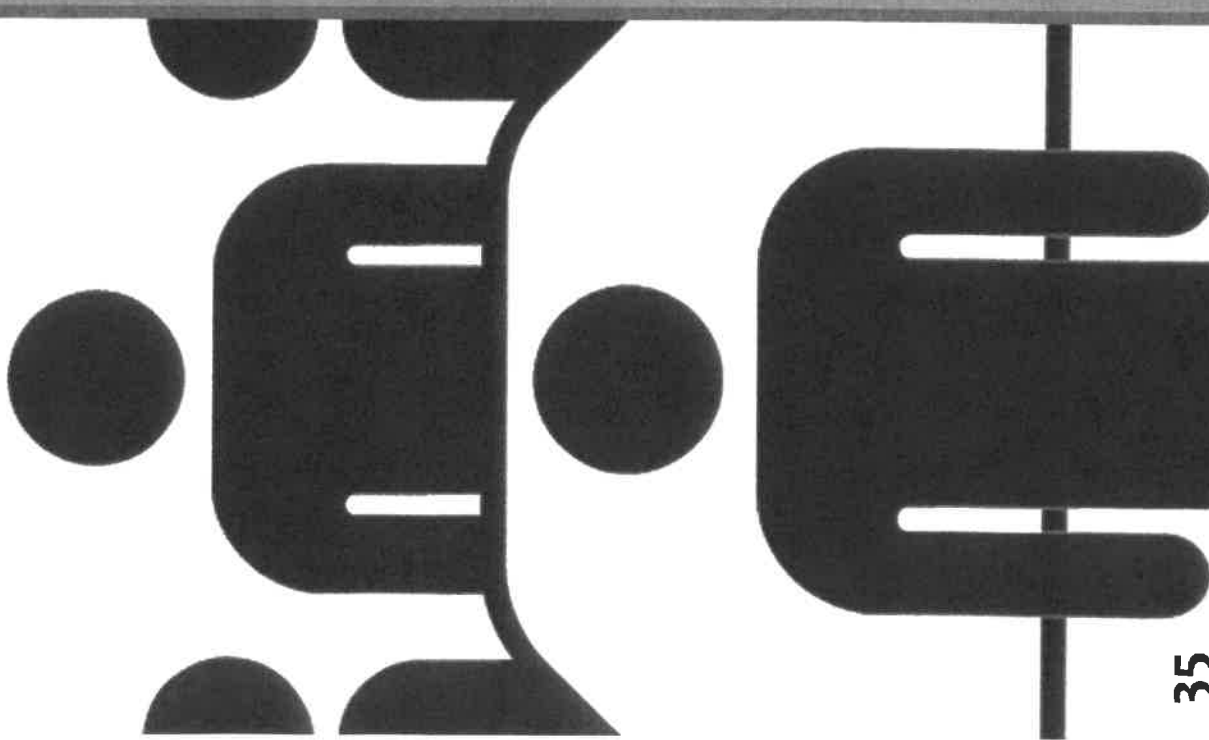
- Normal and routine regulations and services: 32
 - Building Code
 - Health/Safety Regulations
 - State Wetlands Protection Act (G.L. c. 131, § 40)
 - Town Bylaws (noise, leash laws, parking)
 - Affordable units assessed at “affordable” prices – meaning their **restricted** value

Post-Occupancy Responsibilities: Municipality

- For pending resales or foreclosures in 40B Homeownership Projects: Town may purchase affordable units through “Municipal Option” 33
- For 40B Rental Projects, Town initiates plan for ongoing affordability post-Regulatory Agreement (typically 30-year term) per the Comprehensive Permit

Words of wisdom

SUGGESTIONS TO CONSIDER

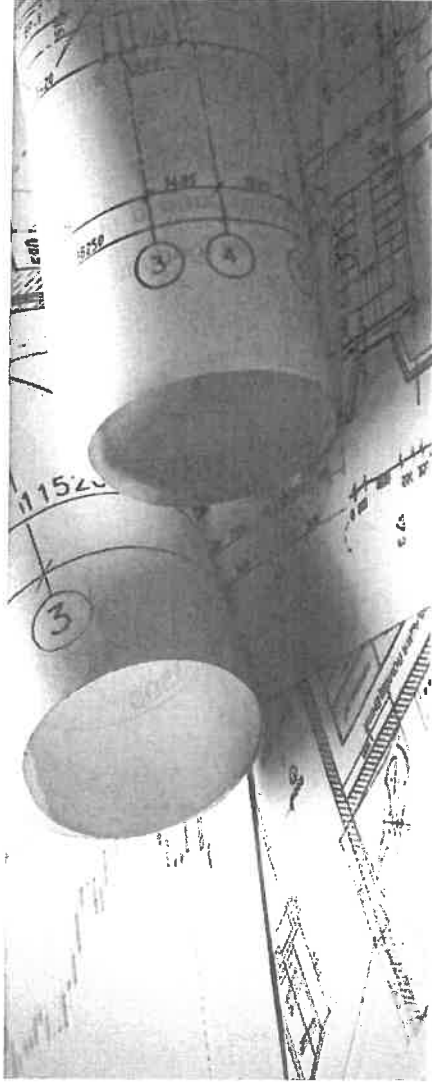


Conducting the public hearing

- A strong chairperson can help the ZBA, the applicant, and the neighborhood
- Hearing chair need not be the official chair (may be chair pro tem)
- Whoever chairs should have experience running a hearing and be recognized by everyone as fair and impartial

Professional help

- Get professional support for the Board of Appeals
- Hire peer review consultants, and coordinate with the Conservation Commission or Board of Health to share peer reviewers as appropriate



The applicant and neighbors

- Encourage the developer to meet with neighbors before the public hearing and outside the public hearing process to address neighborhood concerns, wherever possible



Overview of Chapter 40B Fundamentals

- Conclusions

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- Questions and Answers

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