

Understanding the Local Initiative Program (LIP) Chapter 40B Comprehensive Permit

PREPARED FOR MILLBURY
BOARD OF SELECTMEN

MAY 10, 2022



Agenda

- Chapter 40B: Quick Overview
- Local Initiative Program
 - What is it?
 - Why do we have it?
 - Advantages and limitations
- Process
- Q&A

What is Chapter 40B?

- **The Commonwealth's regional planning law**
- In 1969, the legislature added the affordable housing part – Sections 20-23 – to address *regional* housing disparities
- Law assumes communities have met their regional “fair share” if at least 10% of their housing stock is included in the **Subsidized Housing Inventory (SHI)**, affordable to low-income people, and subsidized by a federal or state program



Statutory Minima (G.L. c. 40B, § 20)

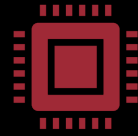
Presumption of unmet need if “SHI-eligible” affordable housing comprises ...

Less than 10% of year-round housing units, OR

Less than 1.5% of community’s total land area zoned for residential, commercial, or industrial use, OR

A project involving 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

What does it mean if a town is below 10%?



Developers can apply for a “comprehensive permit” under Chapter 40B



Request waivers from zoning & other local regulations



Streamline permitting process for projects with affordable units

The “Safe Harbors” — Chapter 40B Regulations

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



What is Affordable Housing under Chapter 40B?

- Counts towards the state's 10% affordable housing goal for every community
- Affordable to households with income at or below 80% of the area median income (AMI)
- How are those income limits determined?
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Income limits set by HUD

FY2022 HUD Income Limits for Worcester County Metro Area

Area Median Income (AMI) \$116,700

Household Size	Extremely Low Income (30% AMI)	Very Low Income (50% AMI)	Low Income (80% AMI)
1	\$23,250	\$38,700	\$61,900
2	\$26,550	\$44,200	\$70,750
3	\$29,850	\$49,750	\$79,600
4	\$33,150	\$55,250	\$88,400

Comprehensive permit: scope

- Board of Appeals has jurisdiction over all approvals under local regulations, such as:
 - Zoning
 - Subdivision Control
 - Local wetlands, septic system regulations
 - Historic district
 - Scenic roads
- Waivers necessary to allow construction of proposed development
- None of this changes with LIP



Comprehensive permit: scope

- Not within ZBA's purview:
 - Impact on municipal & school facilities available to all residents of the community
 - Fiscal impact studies
 - Tenant/homebuyer selection
 - Profit monitoring
 - Market study



Critical 40B Application Submission Requirements

Chapter 40B and Local Initiative Program

- Applicant Status: Public Agency, Non-Profit, or Limited Dividend Organization
- Evidence of Site Control
- **Project Eligibility Letter from Subsidizing Agency**
- **LIP v. “Conventional” 40B**

Other 40B Application Submission Requirements

- Preliminary Plans
- Existing site conditions and locus map
- Preliminary, scaled, architectural drawings
- Tabulation of proposed buildings by type, size and ground coverage
- Preliminary subdivision plan (if applicable)
- Preliminary utilities plan
- List of requested waivers

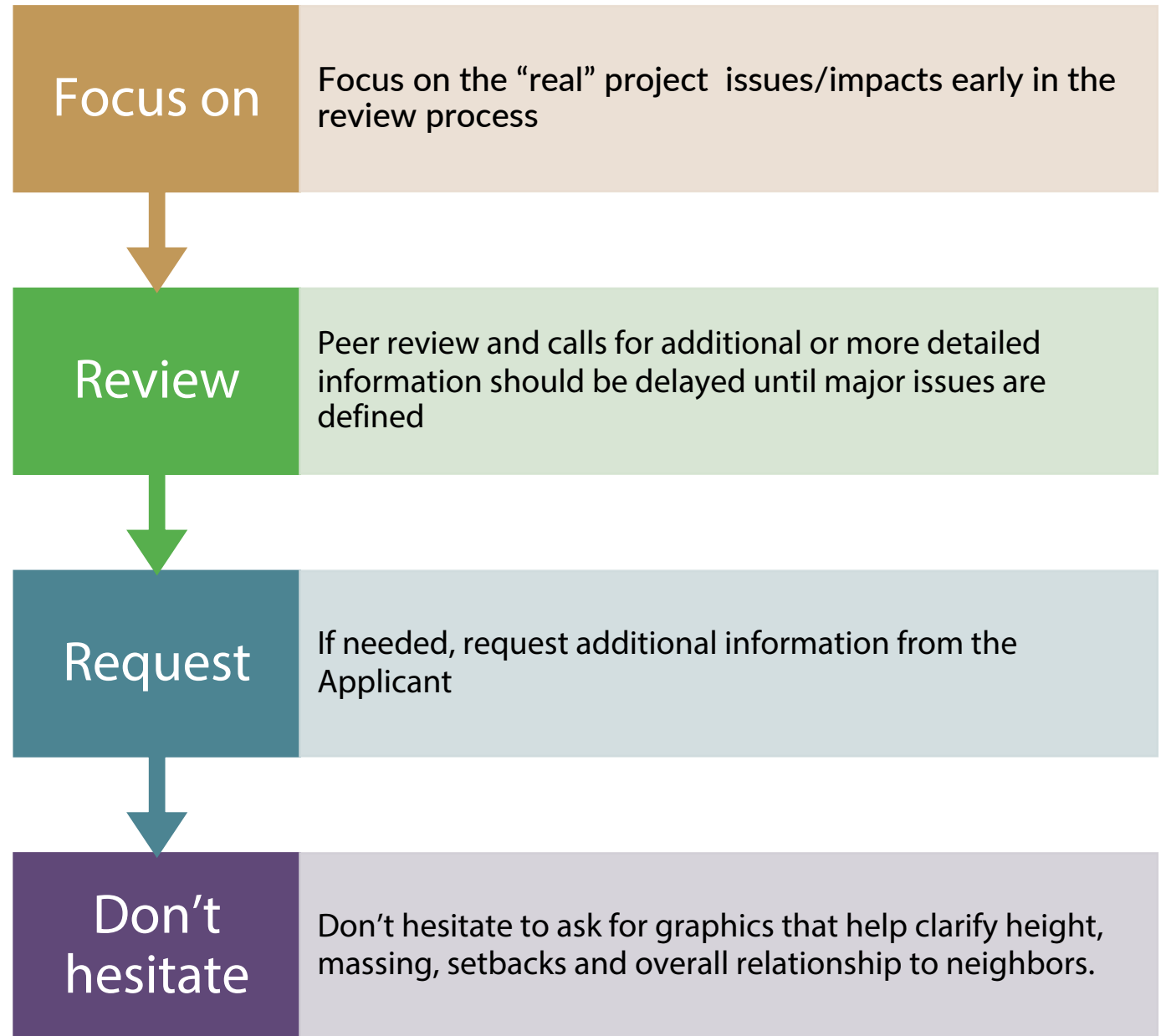


40B Permit Timeline

Critical Deadlines for Chapter 40B Comprehensive Permits

Days	Deadline	Action Required	Authority
7	No later than 7 days from the date on which the comprehensive permit application is received by the ZBA	Distribute the application to other boards and municipal departments and request their comments	G.L. c. 40B, § 21, and 760 CMR 56.05(3)
14	14 days before the public hearing date	Publish notice of the public hearing (publish twice; the second during the week following the first notice)	G.L. c. 40A, § 11
30	No later than 30 days from the date on which the comprehensive permit application is received by the ZBA	Open the public hearing	G.L. c. 40B, § 21; 760 CMR 56.05(3)
15	No later than 15 days from the opening of the public hearing	If applicable, give written notice to the developer and DHCD that the ZBA believes it can deny the permit on one or more "Safe Harbor" grounds (see Safe Harbors), along with the factual basis and documentation for its position	760 CMR 56.05(3); 760 CMR 56.03(8)
15	No later than 15 days from the date of the ZBA's written notice	If applicable, the applicant must challenge the ZBA's "safe harbor" by providing written notice to DHCD and the ZBA, along with any supporting documentation	760 CMR 56.03(8)
30	No later than 30 days from receipt of the applicant's appeal	DHCD must make a determination after reviewing the materials provided by the applicant and the ZBA.	760 CMR 56.03(8)
20	No later than 20 days from the date of DHCD's decision on a "safe harbor" appeal	The applicant or ZBA may appeal DHCD's decision by filing an interlocutory appeal with the HAC and the ZBA's public hearing must be stayed until the conclusion of the appeal.	760 CMR 56.03(8); 760 CMR 56.05(9)(c)
180	Within 180 days from the opening of the public hearing	The ZBA must close the public hearing unless the applicant has agreed in writing to an extension	760 CMR 56.05(3)
40	No later than 40 days from the close of the public hearing	The ZBA must render a decision based on a majority vote of the board and file its written decision with the city or town clerk	G.L. c. 40B, § 21; 760 CMR 56.05(8)(a)
20	No later than 20 days from the date the decision is filed with the city or town clerk	If the ZBA denies a comprehensive permit or approves it with conditions unacceptable to the applicant, the applicant must file an appeal with the HAC; other aggrieved persons must appeal to either the Land Court or Superior Court.	G.L. c. 40B, § 22; and G.L. c. 40A, § 17; 760 CMR 56.05(9)

Making an Informed Decision



Retaining Peer Review Consultants

- Employment of outside consultants
- Review of studies prepared on behalf of the Applicant, not of independent studies
- All written results and reports are made part of the record



Balance regional housing needs with local concerns



What are “local concerns”
under 40B?

- Health
- Safety
- Environmental
- Design
- Open Space
- Planning
- Other Local Concerns
(related to physical
development of the site)



Big difference between denial and approval with conditions that could make the project uneconomic!

Appeal of Decision

- Appeals by the Applicant are made with the Housing Appeals Committee (HAC)
- Appeals for other parties are made with Superior Court or the Land Court.





Local Initiative Program

How is it different?

Why LIP?

Established in 1990 in response to a report from a special legislative commission.

Issue: how to make Chapter 40B less “draconian” and more inviting to cities and towns?

Emergence of inclusionary zoning: Cambridge, Newton, Brookline. Should these units count, and if so, how?

Chapter 40B defines low and moderate-income housing as “any housing subsidized by the federal or state government under any program to assist the construction of low or moderate-income housing.”

LIP is a subsidy in the form of DHCD technical assistance.

Two Faces of LIP

“Local Action Units”

- Inclusionary zoning
- Community Preservation Act
- Any local action that results in SHI-eligible affordable units without a comprehensive permit

LIP Comprehensive Permit

How is the LIP Comprehensive Permit different?

- DHCD is the approval authority for a Project Eligibility Letter (PEL)
- A LIP PEL will not be issued unless the Select Board has signed the PE Application
 - Applicant prepares
 - Board reviews
 - Board signs – or no PE Application
 - Often negotiated process

Examples of LIP Negotiations

- Would the developer ...
 - provide more than the minimum required number of affordable units?
 - provide a playground for children in the development and surrounding neighborhood?
 - Install sprinklers in duplex units if the site is in a remote part of town?



Non-Negotiable Items

- DHCD policies:
 - Minimum 10% 3-bedroom units
 - Local preference capped at 70% affordable units
 - Affirmative fair marketing requirements
 - Long-term regulatory agreement
 - Pricing of affordable units
- Payments to the Town as a condition of support for LIP application (but negotiated public improvements needed for the development are not uncommon)

Advantages of LIP Comprehensive Permit

- Many project-related issues can be resolved by the Select Board before developer applies to DHCD
- PE Application to DHCD is somewhat easier
- PEL will most likely happen faster
- Some developers say DHCD's PEL process is less "bureaucratic"
- Possibility of an "easier" or less contentious permitting process with the Board of Appeals (but not guaranteed!)

Beware ...

- Once comprehensive permit application reaches the ZBA, the permitting process is the same as for any other comprehensive permit
- Public hearing may be less contentious, but no guarantees
- ZBAs usually consider the Select Board's involvement as a plus – but neighborhood may not!

Questions?

LIP COMPREHENSIVE PERMITS

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