

Comprehensive Permits

A Presentation by:

Carolyn M. Murray

KP Law, P.C.

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Introduction

- Chapter 40B, §20-23
- Subsumes and overrides other local permits, bylaws, regulations, approvals
- State laws and regulations still apply (WPA, Title 5, etc.)

Before the Application

- Update local ZBA regulations
- Only local regulations in effect on date application is filed may be applied
- Include provision for consultant fees
- Filing fee – must be comparable to fees for similar land use applications

Before the Application

- Engage in comprehensive planning
- Approved affordable housing production plan
- Master plan, open space plan, etc.

Before the Application

- Comprehensive plans:
- Is the plan bona fide?
- Does it promote affordable housing?
- Has it been implemented in the area of the site?

Safe Harbors

- Ten percent of housing stock on SHI
- 1.5% of land area
- Affordable housing in calendar year exceeds .3 of 1% of land area
- Affordable units during prior 12 months exceed 2% of housing stock

Safe Harbors

- Large scale projects
- Related application
- Planned production – need an approved Affordable Housing Production Plan
- Procedure for asserting safe harbor

Safe Harbors

- Procedure to assert safe harbor:
- Written notice to applicant and DHCD within 15 days of opening public hearing
- Tolls the 180 day public hearing deadline
- DHCD decision is appealable to HAC

Project Eligibility Letter

- Three jurisdictional requirements:
- Public agency, nonprofit, or limited dividend organization
- Project fundable by subsidizing agency under low or moderate income housing program
- Site control

Project Eligibility Letter

- Contents of application to subsidizing agency
- Notice to Chief Executive
- Comment period and site visit
- Not appealable
- Conclusive as to jurisdictional requirements

Application

- Required contents
- Filing fee
- Filing fee must be paid in full with application – Hanover case

Public Hearing

- Notices same as chapter 40A, §11
- Send notices to local boards within 7 days
- Open public hearing within 30 days
- Close public hearing within 180 days of opening
- Avoid constructive approval!

Public Hearing

- Decision within 40 days of close of hearing
- File with clerk within 14 days
- Forward copy to DHCD
- Can mutually extend time limits

Public Hearing

- Outside consultants
- Pro forma review
- Majority vote
- Waivers of local regulations and bylaws
- Cannot consider matters outside jurisdiction
 - Amesbury case

Decision

- Standard: reasonable and consistent with local needs
- Balancing test: Does need for affordable housing outweigh valid planning objections to the details of the proposal, such as health, open space, safety, open space
- Strong presumption in favor of housing

Decision

- Regional need for affordable housing and number of low income persons in the town
- Health and safety of occupants of proposed housing and residents of town
- Promotion of site and building design
- Preservation of open space

Decision

- Must apply requirements and regulations equally to subsidized and unsubsidized housing
- Cannot deny solely because it does not conform to local requirements
- Local regulations must relate specifically to the proposal

Decision

- The obligation for 10% affordable housing will not go away, so make the best of it
- Use comments from local officials, peer review, and residents to address local concerns
- Request appropriate mitigation

Conditions

- Conditions may not invade jurisdiction of subsidizing agency
- Uneconomic conditions
- Infrastructure concerns
- Decrease in units must be for valid planning, health, etc. reason

Denials

- Outright denials are rarely upheld
- O.I.B. Corp. v. Braintree ZBA – length of access road
- Proximity to railroad yard used to store propane gas
- Inadequate water pressure for fire fighting
- Proposed development at end of runway

Denials

- Dennis – Lack of open space
- Hingham – comprehensive planning
- Stowe – Potential contamination of abutter's well

Appeals

- Applicant can appeal denial or conditions to Housing Appeals Committee (HAC)
- Other aggrieved persons can appeal pursuant to G.L c. 40A, §17

Modification

- Written notice to Board
- 20 days to determine if substantial
- If substantial, written notice to applicant
- Public hearing within 30 days with full notice under c. 40A, §11