

TOWN-WIDE PLANNING COMMITTEE

AGENDA July 5, 2011 7:00 p.m.

1. Welcome and roll call
2. Approval of minutes – 5-3-11
3. Discussion on any updates on the Master Plan

<u>Chapter</u>	<u>Title</u>	<u>"Good Shepherd"</u>
1	Executive Summary	
2	Factor Influencing the Growth of West Boylston	Leon Gaumont
3	Land Use & Zoning	Karen Pare
4	Population & Housing	Sue Meola
5	Economic Development	Michael Fishbein
6	Transportation Network	Lawrence Salate
7	Open Space & Recreation	Diana Englebart
8	Cultural & Historic Resources	Joanne Dunne
9	Municipal Facilities & Services	Leon Gaumont
10	Financial Strategies	Leon Gaumont

4. Review of implementation plan (section Open Space)
5. Review Comprehensive land use bill information
6. Receive documentation from 40b conference and update on Housing Committee
7. Other business
8. Set next meeting and adjournment

Meeting Minutes
May 3, 2011
West Boylston
TOWN WIDE PLANNING COMMITTEE

TWPC members present: Mr. Gaumond, Mr. Fishbein, Ms. Pare, Mr. Simmarano, Ms. Meola, Ms. Engelbart, Mr. Owanisian

TWPC members absent: Mr. Phillips, Ms Dunne and Dr. Tashjian

The TWPC meeting was called to order by the Chairman, Leon Gaumond, at 7:01 pm.

Motion by Ms. Pare to approve the minutes of 4-5-2011 and to amend the minutes to reflect the fact that Ms. Engelbart was present. Seconded by Mr. Owanisian. All in favor.

Due to time constraints, Mr. Gaumond asked to have the Master Plan Update: Chapter 7: Open Space and the review of the Open Space Implementation Section carried over to the next meeting. There was general agreement.

Ms. Pare asked to table discussion of the land use and housing sections until later this year or early next year when the census data is completely certified. All in favor.

Mr. Gaumond reviewed the warrant for the May Town Meeting (2011). The TWPC determined that most articles were not addressed by the Master Plan or no recommendations by TWPC were needed on Town Meeting Floor with the exception of Article 37 (Incentive Zoning). Ms. Pare spoke to the need for incentive zoning with changes particularly in the way the Town calculates the density bonus. This article will limit the land to that which is usable land (Section 3.10.D). They also change the ability of multi-family dwellings per lot (Section 3.10.D#3). They are also adding a fee in lieu of units to contribute money to the affordable housing trust fund. There was significant discussion on the calculation of exemptions from the provisions of 40B. Ms. Pare and Mr. Gaumond informed the group that a determination would likely be done this summer. Motion to recommend this article to Town Meeting by Ms. Pare. Seconded by Mr. Simmarano. Voting yes: Ms. Pare, Mr. Simmarano, Ms. Meola, Ms. Engelbart, Mr. Owanisian. Mr. Fishbein abstains.

Ms. Engelbart asked if there is any requirement or guidance from the state or federal government as to how much open space a community should have. After a discussion, the consensus was no.

Next meeting will be held on June, 7, 2011 at 7:00 p.m.

Motion by Ms. Meola to adjourn, seconded by Mr. Simmarano. Meeting concluded at 7:55 p.m.

Leon A. Gaumond Jr., Town Administrator

Open Space and Recreation			
Provide input into decisions on future uses of DCR and county-owned land to ensure they remain open and accessible for recreational use.	Board of Selectmen/Open Space Committee/Parks Commission	On-Going	
Establish a long-range plan to ensure the preservation of lands under Chapters 61, 61A, and 61B, and support the agricultural use of DCR land.	Open Space Committee/Board of Assessors	Medium-Term	Done - vote 9-4-07
Encourage greenway connections throughout the town, such as wildlife corridors and walking trails.	Open Space Committee/West Boylston Land Trust	On-Going	
Extend the Rail Trail along the Quinapoxet River and up to Sterling, possibly along Pleasant Street.	Wachusett Greenways/Open Space Committee	Short-Term	
Amend the Zoning Bylaws to include provisions for Open Space development (Cluster Zoning).	Planning Board	Short-Term	
Improve enforcement of bylaws designed to protect the environment.	Town Administrator	Short-Term	
Acquire open land by purchase or gift, and work with landowners to preserve sensitive resources through conservation restrictions.	West Boylston Land Trust	On-Going	
Acquire easements from landowners to link open space via natural corridors for hiking and wildlife routes.	West Boylston Land Trust	On-Going	
Protect privately owned wetlands by encouraging certification of vernal pools, utilizing students and volunteers such as Scouts.	Conservation Commission/School Department	On-Going	
Coordinate open space preservation with historical preservation efforts.	Town Administrator/Open Space Committee/Historical Commission	On-Going	
Investigate the use of state grants to preserve historic and treasured landscapes.	Open Space Committee/Historical Commission	On-Going	
Consider adoption of the Community Preservation Act to acquire open space, protect historic resources, and create affordable housing.	Board of Selectmen/Conservation Commission/Housing Partnership	Medium-Term	Done - vote 9-4-07

Take action to reduce the amount of unaccounted-for-water loss and increase water conservation.	Water District	On-Going	
Expand active recreational facilities and obtain additional land for recreation.	Parks Commission	Medium-Term	
Increase opportunities for passive recreation for seniors.	Parks Commission	Medium-Term	
Review all town recreation facilities for compliance with the Americans with Disabilities Act.	Parks Commission	Short-Term	
Prepare and implement a public education program to promote the wise use of the Town's open space and recreation facilities.	Open Space Committee/Parks Commission	On-Going	
Publicize the availability of the public composting area and expand hours of operation.	Superintendent of Streets and Parks	On-going	Improvements noted: 6-10-08
Assess interest in formation of community gardens and look for an appropriate site.	Parks Commission	Short-Term	
Construct sanitary facilities at high use public areas, e.g. Goodale Park, Woodland Park and the Rail Trail.	Parks Commission	Medium-Term	
Provide adequate buffers between parks used for active recreation and residential zones.	Parks Commission/Planning Board	Short-Term	
Provide maps showing availability and location of recreational facilities.	Parks Commission/Open Space Committee	Short-Term	
Develop and implement rules/regulations and fees for use of Park facilities.	Parks Commission	Short-Term	Done – vote 6-10-08
Develop Operation and Maintenance Plans for active recreation areas to keep facilities in good condition.	Parks Commission/DPW	Short-Term	
Seek additional recreational access on DCR land.	Parks Commission	On-Going	
Seek long-term leases for town athletic fields that are located on DCR land.	Parks Commission	Medium-Term	
Improve pedestrian facilities, especially to commercial areas,	Board of Selectmen	Long-Term	

including the installation of sidewalks along the southern part of Route 12.				
Improve walking trails for the disabled and senior citizens.	Parks Commission		Medium-Term	
Expand the availability of infant and toddler facilities at Pride Park and Woodland Park.	Parks Commission		Medium-Term	Pride Park Done vote 6-10-08
Develop historic/interpretive side trails along the Rail Trail.	Wachusett Greenways/ Open Space Committee		Medium-Term	
Retain and maintain the scenic pine grove in Goodale Park.	Parks Commission		On-Going	
Provide a safe public swimming area for residents.	Parks Commission		Long-Term	
Provide information to town officials and citizens about tax and other benefits of open space.	West Boylston Land Trust		Short-Term	
Provide training to local officials dealing with open space, recreation, and water, so that laws relating to land use are consistently enforced.	Town Administrator		Short-Term	Done -- vote 9-4-07
Improve coordination among boards whose decisions affect open space and ensure that the Planning Board gets input from other officials during the site plan review and subdivision review process.	Town Administrator		Short-Term	
Preserve the current amount of town-owned open space, especially that around the Mixer Building.	Parks Commission		On-Going	
Assess town-owned property that is unusable (i.e. steep slopes and wetlands), and invite DCR to swap such properties for flat usable areas.	Town Administrator/Parks Commission/Conservation Commission		Medium Term	
Establish a policy of notifying the Conservation Commission when land under Chapter 61, 61A, or 61B is being considered for removal.	Town Administrator/ Board of Assessors		Short-Term	Done -- vote 9-4-07
<i>Specific Recreation Projects:</i> Develop new football field. Rebuild bleachers at All Purpose Field. Acquire landfill property from Selectmen and develop plans for	Parks Commission		On-Going	

<p>recreational use.</p> <p>Renovate Town Pool.</p> <p>Obtain additional practice fields e.g. a parcel of DCR land north of Edwards School, and athletic fields adjacent to John Augustus Hall on Beaman Street.</p> <p>New dugouts, safety fence on Goodale Street, and add lights at Softball Field.</p> <p>Construct dugouts at A and B fields.</p> <p>Construct additional parking areas at Goodale Park.</p> <p>Re-grade and extend irrigation, construct dugouts, and add lights at baseball field.</p> <p>Repair or re-construct tennis and basketball courts at Goodale Park.</p> <p>Install bathroom facilities at Goodale Park and Woodland Park.</p> <p>Continue to investigate additional land to acquire for parks and recreation.</p>			<p>A field complete: vote 6-10-08</p>
<p>Update the 5-Year Open Space and Recreation Plan upon its expiration to keep the Town eligible for state and federal funds.</p>	<p>Open Space Committee</p>	<p>Medium-Range</p>	

CHAPTER 7 OPEN SPACE AND RECREATION

"Conservation means development as much as it does protection. I recognize the right and duty of this generation to develop and use the natural resources of our land; but I do not recognize the right to waste them, or to rob, by wasteful use, the generations that come after us."

— Theodore Roosevelt, 'The New Nationalism', speech at Osawatomie, Kansas, 31 Aug 1910.

Mission of the Open Space Implementation Committee is to maintain a balanced approach to provide safe open space and recreational opportunities for active and passive activities, to provide a safe and adequate water supply, to enhance the Town character, and to support opportunities for agriculture and wildlife to flourish in a fiscally-responsible manner.

Description of Open Space Committee

The West Boylston Open Space and Recreation Committee was formed under the Town-wide Planning Committee by the Board of Selectmen in September of 1994. It produced the original Open Space and Recreation Plan (OSRP) in 1996 to meet State funding eligibility requirements specifically for upgrading the Town Pool facility, but no application for pool renovation was ever made. The 5-year update of the 1996 OSRP was completed in 2002. The Selectmen in 2004 changed the Open Space and Recreation Committee to be an independent committee to produce the next required 5-year update and to interact with the Parks Commission and coordinate open space issues in Town. In 2009 the committee's name was changed to the Open Space Implementation Committee (OSIC) reflecting the desire to encourage completion of the action items noted in the OSRP. To fill vacancies that occur, the Town Administrator posts a notice on the local cable Television Channel and on the town website, and asks for volunteers for the committee. The committee is made up of a representative of the Conservation Commission, Planning Board, Parks Commission, and four members of the public. The committee has invited members from many other town committees to provide input when the OSRP updates are being produced. The committee generally meets monthly, but more frequently in preparation of an update. In 1999 the Town-wide Planning Committee completed an extensive citizen survey where 39% of those surveyed responded. These data were used to compile the goals for the 2002 OSRP. A web-based survey was conducted in 2009, with less than 1% of the population responding and it generally agreed with the 1999 survey data, but due to the low response rate, the 1999 results are considered to be more representative of the wishes of the townspeople.

Open Space and Recreation Current Status

The town of West Boylston has a wealth of open space surrounding the Wachusett Reservoir, but some recreational uses are restricted by the Massachusetts Department of Conservation and Recreation (DCR). Most of the town's unrestricted recreational areas (the athletic fields) are in constant demand, currently overused, and with the projected population growth, the burden on these areas will increase. The town requires a plan that addresses the needs for increased active recreational space, as well as passive recreational areas and activities that are accessible to the elderly, disabled and young people. Cost-efficient recreational opportunities should be made available to town residents of all ages and capabilities. The large tract of open space and the smaller green areas within the more developed areas of town preserve the aesthetics of the Town's environment and West Boylston's small town character. The purity of the Town's water supply as well as the DCR waters must be preserved and potential new water supplies must be protected. Access to DCR lands must be preserved and a cooperative atmosphere created to expand uses that are reasonable. The Town's Master Plan should encourage actions that protect the open spaces and current character of the town.

Comments from townspeople in attendance at public meetings and information from the Parks Commission received during the OSRP update in 2009 reflect little change from previous plan goals. Walking or hiking remain the most frequent activities of residents, and expanding safe and accessible walkways is a high priority, as are expansion of field-based activities and the desire to have swimming facilities available for town residents. The sidewalk system in town should be the focus of improvements to provide benefits for the greatest number of residents.

A regional needs assessment was compiled by the Massachusetts Department of Conservation Services (MassDCS) in the Massachusetts Outdoors 2006 report. This report states that the highest interest is for new facilities for walking (16.4%), swimming (17.0%), hiking (14.4%), road biking (12.1%), and playground activity (10.2%). The regional preferences for new funding initiatives showed strongest support for maintaining existing facilities (93.9%), followed by the acquisition of new recreation areas (81.1%), and support for additional park staff (78.8%).

These data from the all communities in the Central Region indicate that the targeted areas of critical need are significantly different from those represented by West Boylston residents. The miles of trails in West Boylston near the Wachusett Reservoir and along the Central Mass Rail Trail provide exceptional walking and hiking opportunities for local residents. The roadways in the area provide bicycling opportunities and the two playgrounds in town have received high praise from the public.

The regional data from Central MA communities are consistent with local residents' responses to the local surveys relative to activities and interests. Both data sets indicated that there is a strong desire to have accessible walking paths, well-maintained recreation areas, and acquisition of expanded recreation areas. There was no suggestion in either local survey for additional park staff. Perhaps this is due to the significant presence of the DCR Wachusett Watershed Rangers in town.

There are multiple studies since 1997 referenced that show that for community planning, on average, residential development required \$1.13 in municipal services for every \$1 of revenue received in property taxes. Farm, forest and open space land required only \$0.29 in services per dollar of revenue.

Fiscal Costs Associated With Different Land Uses

Land Use Type	For This Much Tax Paid (Revenue Coming In)	Use This Much In Town Services (Costs to Town)
Residential	\$ 1.00	\$ 1.13
Commercial	\$ 1.00	\$ 0.43
Open Space	\$ 1.00	\$ 0.29

Although data specific to West Boylston was not used, all these studies found that **residential development typically incurs a net fiscal cost to a town**, while businesses and open spaces provide a positive cash flow. The major difference in Town service costs are associated with the education expenses that open space and commercial uses do not generate. As noted above, the DCR-owned open space requires little cost for the town.

Although the DCR owns more than one-third of the land in West Boylston and many people resent the loss of property taxes for the town, most West Boylston's residents appreciate having this open space and have noted this as a reason they moved to town. The OSIC tries to educate the public about the true costs of development. Though the DCR does not pay taxes, they make a Payment In Lieu Of Taxes, which in FY2010 at \$602,756.00 was more than twice the highest tax payer in town; and more than six (6) times higher than the second highest tax payer in town.

Open Space and Recreation Goals

The major goals for the 2009 OSRP update are:

- Protect the town's water supply.
- Preserve, maintain and enhance town-owned recreational and open spaces.
- Maintain and enhance linkages to access open spaces and recreation facilities through creation of greenway corridors (naturally vegetated pathways) and improve existing non-vehicular access (sidewalks) and parking facilities.
- Protect and expand opportunities for privately-held open spaces i.e. Land Trust properties, Chapter 61 (Forestry), 61A (Agricultural), and 61B (Recreational) lands.
- Maintain and enhance existing recreation facilities for all age groups.

To work toward these goals, the 2009 OSRP drafted a list of Action Items included Section 9. Some of these have been completed and others still need to be accomplished.

The recent Open Space and Recreation accomplishments in town include:

1. October 2010 Town Meeting vote to acquire a 5.4 acre property adjacent to the Lee Street well field supported by the Greater Worcester Land Trust and leveraged with 50% funding from the MassDCS.
2. Creation of the Agricultural Commission by Town Meeting vote in May 2009.
3. Establishment of a local Right To Farm bylaw at the October 2010 Town Meeting.
4. Funded preservation and reconstruction of the basketball and tennis court facilities at Goodale Park by Town Meeting vote in May 2010, with construction completed in spring of 2011.
5. The Selectmen, with no effort from the OSIC, enacted a Town Policy for Beautification of Town Squares and Islands in fall of 2010.
6. Following the devastation of the December 2008 Ice Storm and subsequent 'cleanup' efforts, the OSIC voted that the Pine Grove no longer warrants protection as a wooded area. During reconstruction work of the Goodale basketball/tennis courts, this area was used for material storage and is graded as a future athletic practice field space. The use of this area may protect other existing wooded, passive recreation areas in town from threat of development into additional athletic fields.
7. Following submittal of a draft protocol from the OSIC, the Selectmen adopted a Chapter 61 First Right of Refusal policy in the spring of 2010. This policy describes the process the town must follow in response to a property owner request to remove land that is in a 'protected open space' status. The town has the first option to purchase the property before it can be sold to another entity.

The following list is the current prioritized listing of Action items as suggested by the OSIC for incorporation into the town's Master Plan.

1. Transportation Committee will push to improve and expand sidewalks in town. The highest priority for sidewalk repairs and construction should be for most, if not all, streets within 1 mile of the schools and then expanded along the business routes.
2. The OSIC shall compile an updated list of privately-owned lands of interest for future acquisition or other protection mechanisms. The properties will be ranked based on the goals of the OSRP.
3. The OSIC shall assist the Agriculture Commission and the Land Trust, with the cooperation of the Board of Assessors, to contact landowners who could potentially benefit from the Chapter 61 Program, and assist them in filing for the benefits of Chapter 61, 61A, and 61B; and establish a long range plan to ensure the preservation of lands under Chapters 61, 61A, and 61B.
4. Request to Town Administrator that OSIC be included as a voting member on the Municipal Building Advisory Committee to represent open space and recreation concerns as part of the development strategy for municipal properties.
5. OSIC will work with the Department of Conservation and Recreation through their Public Access Plan to add downloadable maps of West Boylston's overall trail system (walking/bicycling/hiking trails), including trails on public, private and DCR lands, to the town's website.

6. The OSIC, with assistance from the Town Administrator and the Board of Assessors shall investigate the benefits/limitations of a policy to minimize tax valuation similar to those within the Chapter Lands program for lots that are below these thresholds, when the owner commits and records documentation that the land will not be developed and will remain as open space in perpetuity. This could allow for activities similar to those under the Chapter 61 programs.
7. The OSIC, along with the Economic Development Task Force, the Wachusett Greenways, the DPW and the Parks Commission will develop a plan to evaluate and potentially repurpose River Road into a recreation area. This area would allow for a looped pathway connecting to the existing Rail Trail, creating a pathway similar to the Rail Trail in construction and maintenance needs, and may provide for Town income by licensing a small food vendor on the River Road property. The area should include some parking and would encourage fishing, nature observation, and passive recreation such as hiking, cross-country skiing, snow-shoeing, and biking along this route.
8. The OSIC, working with the Agricultural Commission will investigate and encourage the establishment of a Farmer's Market in West Boylston.
9. Working with the DPW, OSIC will identify potential bicycle trails within the town. Identify needs for improvement/enhancement and develop a plan to implement the bicycle trail system and maps.
10. Through the Transportation Committee, when the resurfacing of Route 140 is considered next, the DPW Director should include widening the pavement to provide a bicycle and walking path for the full length of this major north/south arterial that would provide significant pedestrian interconnectivity.
11. The Transportation Committee and the Economic Development Task Force, working with the DPW, will improve visitor access between the area surrounding the Old Stone Church, the business area at the intersection of Routes 12 and 110, and the DCR trails throughout this area.
 - a. The Transportation Committee shall investigate the possibility of widening or restriping Route 12 to provide a sidewalk on the west side from the Triangle at 12/140 north to the signals at Route 110 where a crosswalk should be provided to safely access the DCR property.
 - b. The DPW Director shall investigate the possibility of widening Route 140 at the Old Stone Church to provide on-street parking and safe pedestrian and bicycle access. Possibly construct a short wall and fill to provide parallel parking adjacent to DCR Gate WB10 Southwest leg of the Triangle.
 - c. The DPW Director will investigate the possibility of creating pedestrian crossing walkways, signs, improved parking, and reduced speed limits.
12. The Economic Development Task Force and the OSIC shall evaluate the opportunities of a WB Visitors' Center and work with Wachusett Greenways and the DCR to determine possible locations and together develop a feasibility plan to construct a Visitor Center at a specified location.
13. The OSIC, working with the Greater Worcester Land Trust, shall identify areas to link open space parcels via natural corridors for hiking, greenways and wildlife routes. OSIC will prepare a plan depicting these for the next OSRP update which can be used as a guide to assess acquisition options.
14. The OSIC, working with the Transportation Committee, shall evaluate the feasibility of creating park-like spaces in the open areas along the numbered routes in town. Such a study would include an assessment of the existing sidewalk system and the development of a model for the protocol for maintenance and plans for expansions of such walkways and park areas. Consider using the "pocket parks" model in England, New York City and other communities.
15. The OSIC and the Agricultural Commission shall work with the Middle/High School to support and encourage the school garden program and expand the project into a community garden
16. The OSIC will work with the Parks Commission and the Schools to restore, encourage usage, and maintain the Nature Trail at the Major Edwards School.
17. The OSIC shall work with Wachusett Greenways and the DCR to extend the Rail Trail along Route 140 across the Stillwater basin bridge and up Pleasant Street to Sterling. To enable this extension, the town shall investigate options to fund the addition of a walkway on the Route 140 bridge over the Stillwater River in Oakdale.

Action Item	Primary Coordinator	Timeframe
1. Improve and expand sidewalks in town. The highest priority for sidewalk repairs and construction, should, if not all, streets within 1 mile of the schools and then expand along business routes.	Transportation Committee	Short Term
2. Compile an updated list of privately-owned lands of interest for acquisition or other protection. The properties ranked on the goals based on the goals of the OSRP	OSIC	Short Term
3. Identify lands and contact landowners who could potentially benefit from the Chapter 61 Program, and assist them in filing for the benefits of Chapter 61, 61A, and 61B; and establish a long range plan to ensure the preservation of lands under Chapters 61, 61A, and 61B.	OSIC Agricultural Commission Board of Assessors	Short Term
4. Request to Town Administrator that OSIC be included as a voting member on the Municipal Building Advisory Committee to represent open space and recreation concerns as part of the development strategy for municipal properties.	Town Administrator OSIC	Short Term
5. Review DCR Public Access Plan to add downloadable maps of West Boylston's overall trail system (walking/bicycling/hiking trails), including trails on public, private and DCR lands, to the town's website	OSIC DCR	Short Term
6. Investigate the benefits/limitations of a policy to minimize tax valuation similar to those within the Chapter Lands program for lots that are below that threshold, when the owner commits and records documentation that the land will not be developed and will remain in perpetuity. This could allow for activities similar to those under the Chapter 61 program	OSIC Town Administrator Board of Assessors	Short Term
7. Develop a plan to evaluate and potentially repurpose River Road into a recreation area. This area would allow for a looped pathway connecting to the existing Rail Trail, creating a pathway similar to the Rail Trail in construction and maintenance needs, and may provide for Town income by licensing a small food vendor on the River Road property. The area should include some parking and would encourage fishing, nature observation, and passive recreation such as hiking, cross-country skiing, snow-shoeing, and biking along this route.	OSIC Economic Development Task Force Wachusett Greenways DPW Parks Commission	Short Term
8. Investigate and encourage the establishment of a Farmer's Market in West Boylston.	OSIC Agricultural Commission	Short Term
9. Identify potential bicycle trails within the town. Identify needs for improvement or enhancement and develop a plan to implement the bicycle trail system and maps.	OSIC DPW	Short Term
Provide adequate buffers between parks used for active recreation and residential zones. Encourage DCR ALB Replanting Program to reduce costs and improve implementation.	Parks Commission Planning Board	Short Term

Action Item	Primary Coordinator	Timeframe
Develop Operations and Maintenance Plans for active recreation areas to keep facilities in good condition.	Parks Commission/DPW	Short Term
Create and distribute public information regarding benefits of open space.	Greater Worc. Land Trust	Short Term
Improve coordination among boards whose decisions affect open space and ensure that the Planning Board gets input from other officials during the site plan review and subdivision review process.	Town Administrator	Short Term
10. When the resurfacing of Route 140 is considered next, the DPW Director should include widening the pavement to provide a bicycle and walking path for the full length of this major north/south arterial that would provide significant pedestrian interconnectivity	OSIC Transportation Committee DPW	Medium Term
11. Improve visitor access between the area surrounding the Old Stone Church, the business area at the intersection of Routes 12 and 110, and the DCR trails throughout this area.	OSIC Transportation Committee Economic Development Task Force DPW	Medium Term
<ol style="list-style-type: none"> The Transportation Committee shall investigate the possibility of widening or restriping Route 12 to provide a sidewalk on the west side from the Triangle at 12/140 north to the signals at Route 110 where a crosswalk should be provided to safely access the DCR property. The DPW Director shall investigate the possibility of widening Route 140 at the Old Stone Church to provide on-street parking and safe pedestrian and bicycle access; and constructing two short walls and fill to provide parallel parking along the Southwest leg of the Triangle. The DPW Director will investigate the possibility of creating pedestrian crossing walkways, signs, improved parking, and reduced speed limits. 	OSIC Economic Development Task Force Wachusett Greenways DCR	Medium Term
12. Evaluate the opportunities of a WB Visitors' Center and determine possible locations and together develop a feasibility plan to construct a Visitor Center at a specified location.	OSIC Greater Worcester Land Trust	Medium Term
13. Identify areas to link open space parcels via natural corridors for hiking, greenways and wildlife routes. OSIC will prepare a plan depicting these for the next OSRP update which can be used as a guide to assess acquisition options.	OSIC Transportation Committee	Medium Term
14. Evaluate the feasibility of creating park-like spaces in the open areas along the numbered routes in town. Such a study would include an assessment of the existing sidewalk system and the development of a model for the protocol for maintenance and plans for expansions of such walkways and park areas. Consider using the "pocket parks" model in England, New York City and other communities.	OSIC Transportation Committee	Medium Term

Action Item	Primary Coordinator	Timeframe
15. Work with the Middle/High School to support and encourage the school garden program and expand the project into a community garden	OSIC Agricultural Commission	Medium Term
16. Restore, encourage usage, and maintain the Nature Trail at the Major Edwards School.	OSIC Parks Commission Schools	Medium Term
Expand active recreational facilities and obtain land for recreation	Parks Commission	Medium Term
Increase opportunities for passive recreation for seniors	Parks Commission	Medium Term
Construct Sanitary facilities at high use public areas e.g. Goodale Park, Woodland Park and the Rail Trail	Parks Commission	Medium Term
Seek long term leases for town athletic fields that are located on DCR land	Parks Commission	Medium Term
Improve walking trails for the disabled and senior citizens	Parks Commission	Medium Term
Develop historic/interpretive side trails along the Rail Trail	OSIC Wachusett Greenways	Medium Term
Assess town owned property that is unusable (i.e. steep slopes and wetlands, and invite DCR to swap such properties for flat usable areas	Parks Commission DCR	Medium Term
Update the 5 year Open Space and Recreation Plan upon its expiration to keep the Town eligible for state and federal funds.	OSIC	Medium Term
Improve pedestrian facilities, especially to commercial areas, including the installation of sidewalks along the southern part of Route 12.	Board of Selectmen Planning Board	Long Term
Develop new surface on existing All-Purpose field.	Parks Commission	Long Term
Rebuild bleachers at All Purpose Field.	Parks Commission	Long Term
Acquire landfill property from Board of Selectmen and develop plans for recreation use.	Parks Commission	Long Term
Obtain additional practice fields e.g. a parcel of DCR land north of Edwards School, and athletic fields adjacent to John Augustus Hall on Beaman Street.	Parks Commission	Long Term
Improve enforcement of bylaws designed to protect the environment.	Town Administrator	On-Going
Acquire open land by purchase or gift and work with landowners to preserve sensitive resources through conservation restrictions.	Greater Worcester Land Trust	On-Going
Acquire easements from landowners to link open space via natural corridors for hiking and wildlife routes.	Greater Worc. Land Trust	On-Going

Action Item	Primary Coordinator	Timeframe
Protect privately owned wetlands by encouraging certification of vernal pools utilizing students and volunteers such as Scouts.	Conservation Commission School Department	On-Going
Investigate the use of state grants to preserve historic and treasured landscapes.	OSIC Historical Commission	On-Going
Take action to reduce the amount of unaccounted-for-water loss and increase water conservation.	Water District	On-Going
Prepare and implement a public education program to promote the wise use of the Town's open space and recreation facilities.	OSIC Parks Commission	On-Going
Publicize the availability of the public composting area and expand hours of operation.	DPW	On-Going
Seek additional recreation access on DCR land.	Parks Commission	On-Going
Preserve the current amount of town-owned open space, especially at the Mixter Building.	Parks Commission	On-Going
1. October 2010 Town Meeting vote to acquire a 5.4 acre property adjacent to the Lee Street well field supported by the Greater Worcester Land Trust and leveraged with 50% funding from the MassDCS.		Completed
2. Creation of the Agricultural Commission by Town Meeting vote in May 2009.		Completed
3. Establishment of a local Right To Farm bylaw at the October 2010 Town Meeting.		Completed
4. Funded preservation and reconstruction of the basketball and tennis court facilities at Goodale Park by Town Meeting vote in May 2010, with construction completed in spring of 2011.		Completed
5. The Selectmen, with no effort from the OSIC, enacted a Town Policy for Beautification of Town Squares and Islands in fall of 2010.		Completed
6. Following the devastation of the December 2008 Ice Storm and subsequent 'cleanup' efforts, the OSIC voted that the Pine Grove no longer warrants protection as a wooded area. During reconstruction work of the Goodale basketball/tennis courts, this area was used for material storage and is graded as a future athletic practice field space. The use of this area may protect other existing wooded, passive recreation areas in town from threat of development into additional athletic fields.		Completed
Establish long range policy 9/4/2007 to ensure preservation of lands under Chapter 61, 61A, and 61B and support agricultural use of DCR land		Completed

Action Item	Primary Coordinator	Timeframe
Amend the Zoning Bylaws to include provision for Residential Open Space Zoning (cluster zoning) in October 2010.		Completed
Adopt the Community Preservation Act to acquire open space, protect historic resources, and create affordable housing at Town Meeting on 9/4/2007.		Completed

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LEON A. GAUMOND, JR.
TOWN ADMINISTRATOR

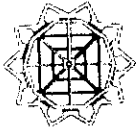
TOWN OF WEST BOYLSTON
MUNICIPAL OFFICE BUILDING
127 HARTWELL STREET
WEST BOYLSTON, MASSACHUSETTS 01583-1108

✓ To: The Honorable Members of the West Boylston Planning Board
✓ CC: Town Wide Planning Committee ✓
From: Leon A. Gaumond Jr., Town Administrator
Date: June 16, 2011
Re: MMA's Zoning Reform Working Group

I recently attended a meeting of the MMA board of Directors and heard a brief presentation about S. 1019 – the Comprehensive land use bill. Attached is a copy of the handout from that discussion.

As you can see from the attached letter, even though there are many positive areas of the reform bill, there are some provisions that cause concerns among cities and towns, most notably, the new requirement that all town zoning bylaws and ordinances must be consistent with any local plans (Master Plan, Open Space, etc.). Planning Boards and other town officials from across the state have been working to advance a meaningful reform however there seems to be somewhat universal concern about this matter.

I hope this information is helpful to you and please feel free to share with your members. As always, please feel free to contact me if I can be of further assistance.



MASSACHUSETTS MUNICIPAL ASSOCIATION

ONE WINTHROP SQUARE, BOSTON, MA 02110
617-426-7272 • 800-882-1498 • fax 617-695-1314 • www.mma.org

May 18, 2011

The Honorable Michael Kane, Chairman
The Honorable James Welch, Chairman
Committee on Municipalities and Regional Government
State House
Boston, MA 02133

Dear Chairman Kane, Chairman Welch and Members of the Committee,

On behalf of the cities and towns of the Commonwealth, the Massachusetts Municipal Association would like to offer comment on the land use legislation before the Committee for public hearing today.

Land use planning and the regulation of development are fundamental local level decisions where citizens can plan for the future of their communities and adopt a framework of rules to guide development toward that end. These are the tools that cities and towns use to protect the public health and safety and encourage the economic growth that helps pay for local school and municipal spending through the property tax.

Over the past several years, the MMA has participated in a number of work groups on land use reform, including most recently the Zoning Reform Working Group that has focused on the comprehensive land use bill reported favorably by this Committee last May. This bill is before you today as Senate 1019 filed by Senator James Eldridge. There are other comprehensive bills that have been filed, but our comments will focus on S. 1019 in this letter.

It is generally recognized that land use law in Massachusetts is increasingly obsolete and in need of reform and re-organization. Basic statutes related to planning, zoning and subdivision control are decades old and do not provide adequate tools to guide growth in a densely populated, economically active state with ambitious and complex development goals. New tools are needed to allow cities and towns to effectively plan and create land use frameworks that facilitate and balance sometimes competing goals, such as housing production, including affordable housing, and open space retention and "smart growth." As the 2007-2009 recession fades and a recovery takes hold, it would be enormously beneficial to have in place a modern system of planning and land use regulation.

Principles of Review

The several comprehensive land use bills that have been filed over the past several sessions are complex and would make significant and long-lasting changes across a broad area of law and regulation. To help evaluate the different proposals, the MMA developed a set of review principles to ensure that core local government interests are considered.

1. Legislation should enhance and strengthen the ability of cities and towns to guide development toward the objectives of local land use plans.

2. Legislation should support the presumption of validity of locally adopted bylaws and ordinances and avoid state preemption of local decisions.
3. Legislation should provide a permanent and reliable revenue stream for local land use planning and zoning purposes and not impose any unfunded mandates on cities and towns.

Comments on S. 1019

S. 1019 would amend the Zoning Act [Chapter 40A] and the Master Plan and Subdivision Control statutes in Chapter 41 of the General Laws to update and modernize current land use law. There are many provisions in S. 1019 that we strongly support, but there are also provisions that are contrary to the local government principles listed above and require us to oppose the bill as it is drafted. We hope to continue discussions with the Zoning Reform Working Group, members of this Committee and other interested parties to find common ground on reforms and draft a bill that we can all support.

Below are some of the positive ideas included in S. 1019. The general descriptions are adapted from a summary prepared by the Zoning Reform Work Group:

- The Zoning Act would be reorganized and consolidated in a more user-friendly outline format with topic headings for most paragraphs.
- While it is implicit in current law, the bill would explicitly establish that municipalities have the capacity to control the use of land within their borders to the extent not preempted by state law, as provided by the Home Rule Amendment to the Constitution of the Commonwealth.
- While some cities and towns have been able to adopt new practices, the bill would explicitly confirm the statutory authority of cities and towns relative to the use of impact fees, inclusionary zoning, unified development ordinances, form-based zoning, transfers of development rights, and cluster development.
- The bill would modify excessive “grandfathering” provisions so that amendments to zoning ordinances and by-laws may proceed without circumvention by landowners.
- The bill would increase local control by allowing communities the option to reduce the vote majority for adoption of zoning bylaws and ordinances from two-thirds down to a simple majority.
- The bill would increase local control by allowing cities and towns to reduce the vote majority to approve special permit to simple majority, and it would provide a clear lapse/extension process.
- The bill would increase local control by providing explicit statutory authority for inclusionary zoning to require the creation of affordable housing in development projects.
- The bill would provide explicit statutory authority to require payment of impact fees associated with development projects.

- The bill would provide a means to avoid costly land use dispute litigation using an “off-line” avenue for an applicant and town to resolve difficulties in prospective development projects so the approval process is successful.
- The bill would increase fines that cities and towns may assess from \$300 to \$1000 per offense and would prevent old zoning violations from becoming lawfully nonconforming structures or uses unless a community so desires.
- The bill would create a presumption that a local board’s Site Plan decision was correct in the event of any appeal, whether from an abutter or appeal of a denial by an applicant and would provide an “off-line” mediation process for all appeals.
- The bill would provide enhanced guidance to communities in the development of their master plans, including allowing a city or town without a master plan to instead opt to adopt an existing regional plan (thus saving on the costs of plan-making).
- The bill would increase local control by providing an option to adopt regulations for “minor subdivisions” in place of current Approval Not Required (ANR) provisions. Many suburban and rural towns must bear the costs of unlimited ANR development along substandard public ways.
- The bill would increase local control by requiring that changes to the number, shape, and size of lots shown on approved subdivision plans go through the formal Chapter 41, section 81W process unless such changes are locally defined as minor subdivisions.
- The bill would establish that the date of the next planning board meeting is the date of submittal of subdivision plans so that a planning board has the full statutory period to review.
- The bill would establish that subdivision rules and regulations may require the set-aside of up to 5 percent of a subdivision as a park or playground for the new neighborhood.
- The bill would introduce a presumption that the local board’s decision on a subdivision plan was correct in the event of any appeal and judicial review, whether from an abutter or appeal of a denial by an applicant.

Notwithstanding our support for many of these updates and enhancements to current law included in S. 1019, there are a number of policy issues where we still differ greatly from the position in the bill that, at present, lead us to oppose it. Some of the disagreements are major, others are relatively minor, and in some cases are related to land use issues not addressed in the bill. Given all the time and effort over many years given to this reform effort, we would like to give our best effort to resolve these differences.

We are preparing a comprehensive analysis of S. 1019 that we will share with the Committee when it is complete. Below is a discussion of one of the major policy disagreements that we are working to resolve.

S. 1019 would require that cities and towns prepare local plans and that zoning be consistent with the plan. The new Chapter 40A would provide that after January 1, 2017, no zoning ordinance or bylaw may be inconsistent with a local master plan. This would significantly weaken the presumption of validity of local land use regulations. It would provide

a statutory pathway and encouragement for developers to argue that a bylaw or ordinance impedes a plan's goals and proposed uses. While this section would provide that local zoning bylaws and ordinances enjoy a "rebuttable presumption" of validity, it would enable a court or administrative agency to declare a zoning bylaw or ordinance "invalid."

Our objection to this provision is two-fold. First, the master plan requirement with judicial jeopardy attached to it would impose an unfunded mandate. Good planning is expensive whether done by municipal staff or by consultants. While S. 1019 includes a state bond authorization of \$11 million, this is one-time funding and there is no assurance that it would actually be included in the Governor's already tight capital plan and made available to cities and towns. Funding of master plans needs to be an ongoing commitment on the part of the state.

Second, and most critically, S. 1019 includes an explicit statutory threat to local zoning rules that would invite developers and others to challenge bylaws and ordinances. This structure makes developers, through the courts, the enforcers of plan-to-bylaw consistency. We cannot support this structure.

One example of a smaller issue is the first item in the Purposes of Zoning Ordinances and Bylaws in section 1 of S. 1019 that uses the term "implementation." This suggests that cities and towns are developers and builders and can be held responsible for the timing, financing and completion of actual development projects. A possible alternative term, "establishment," would reflect the reality that cities and towns create a regulatory framework through which developers and builders make decisions and take action based on economic conditions. The bill also would make significant changes to how zoning variances are granted with possible adverse effects on cities and towns and on homeowners and landowners.

In addition to the provisions included in the bill there are a number of issues that should be considered as part of a fully comprehensive reform bill, including a review of the extent of the exemption for religious and educational purposes, the "Dover Amendment," and reforms to Chapter 40B consistent with the recommendations of the Inspector General and the ability of cities and towns to plan for local affordable housing development.

Thank you for your interest in this significant local government matter. If you have any questions, please do not hesitate to contact MMA Deputy Legislative Director John Robertson at (617) 426-7272. We look forward to working with you on this important issue.

Sincerely,



Geoffrey C. Beckwith
Executive Director

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508 835-3490
FAX: 508 835-4102
EMAIL: lgaumond@westboylston-ma.gov



TWPC
LEON A. GAUMOND, JR.
TOWN ADMINISTRATOR

TOWN OF WEST BOYLSTON
MUNICIPAL OFFICE BUILDING
127 HARTWELL STREET
WEST BOYLSTON, MASSACHUSETTS 01583-1108

To: Board of Selectmen
Planning Board
ZBA
Open Space Implementation Committee
Town Wide Planning Committee
Affordable Housing Trust/Housing Partnership
CC: Building Inspector
From: Leon A. Gaumond Jr., Town Administrator
Date: June 16, 2011
Re: 40B conference

I recently attended a conference with other Town Officials on navigating the 40B process.

The program was outstanding from my perspective. One of the best presentations was from Edward Marchant. He presented an Overview of Chapter 40B Fundamentals. Attached is a copy of his notes. I am sure you will find this information helpful to you in your role with the Town.

I hope this information is helpful to you and please feel free to share with your members. As always, please feel free to contact me if I can be of further assistance.

Edward H. Marchant
EHM/Real Estate Advisor
Brookline, MA 02445
617-739-2543
emarchant@msn.com

OVERVIEW OF CHAPTER 40B FUNDAMENTALS

The Next Chapter of 40B:
A Training on the Latest Developments in the Affordable Housing Law
June 15, 2011

CHAPTER 40B INFORMATION RESOURCES

1. 40B Information Available on the Web

Without a doubt, the best and most current information on Chapter 40B is readily available on the Web. The best sources of Chapter 40B information are:

- Citizens' Housing and Planning Association
www.chapa.org
Go to "Housing Policy" on home page and then to "Chapter 40B"
- Massachusetts Department of Housing and Community Development (DHCD)
www.mass.gov/dhcd
Go to "Community Development" in central column on home page and then to "Chapter 40B Planning"

The current Subsidized Housing Inventory (SHI) (12/22/2010) as of 6/6/11 is available at: <http://www.mass.gov/Ehed/docs/dhcd/hd/shi/shiinventory.pdf>

Remember: The SHI will be adjusted based upon the 2010 Census.

- Housing Appeals Committee (HAC)
Access the HAC site via the DHCD home page--look for "Housing Appeals Committee" in the left margin.
- MassHousing
www.masshousing.com
Go to "Developers" section on home page and then click on "Comprehensive Permit/40B" (includes detailed Cost Certification information/requirements)

Representative listings of Chapter 40B-related documents available at the CHAPA and DHCD websites are provided at the end of this outline.

BE SURE THAT YOU ARE FAMILIAR WITH THE CHAPTER 40B REGULATIONS ("760 CMR 56.00: COMPREHENSIVE PERMIT: LOW OR MODERATE INCOME HOUSING") AND "COMPREHENSIVE PERMIT GUIDELINES" DATED 2/22/08. THESE REGULATIONS AND GUIDELINES ARE AVAILABLE AT THE HOUSING APPEALS COMMITTEE (HAC) WEB SITE.

2. Information Re: Funding Available for 40B Technical Assistance

- Massachusetts Housing Partnership Fund
Contact: Dina Vargo (dvargo@mhp.net)
http://www.mhp.net/uploads/resources/ch._40b_ta_guidelines.pdf
- In many instances, Applicants have also been willing to provide funding to ZBAs to retain technical assistance advisors, particularly if they feel that such technical assistance will expedite the review process.

3. Local 40B Resources: Town Counsel/City Law Department/Staff

4. Other Zoning Boards of Appeal/Staff from Other Towns or Cities/Developers with 40B Experience/Lawyers with 40B Experience

5. Peer Review Consultants [See 760 CMR 56.05(5)]

6. 40B Project Visits. For a valuable learning experience, there's nothing like visiting several representative 40B developments similar to the type of development that is being proposed in your community. Call CHAPA, DHCD, MassHousing or MHP for project locations or call ZBAs in nearby towns/cities.

7. Local Comprehensive Permit Decisions. These are public documents and should be available at the ZBA office or Clerk's office. All 40B documents that are part of a public hearing are public documents. One good way to understand the 40B process is to visit a ZBA office and review the complete project file for a 40B project. You can get a better understanding of the types of conditions that can be required by reviewing some representative Comprehensive Permit decisions.

8. Housing Appeals Committee (HAC) Decisions

- Recent HAC decisions are now available on the Web at HAC's web site.
- All HAC decisions are available at Social Law Library in Boston (617 523 0018)

9. Conferences

- Check out MHP's, DHCD's, and CHAPA's web sites for information on any proposed Chapter 40B conferences or other training sessions.

10. Chapter 40B Consultants

GENERAL EXPERIENCES WITH OTHER 40B APPLICATIONS

- **CONDUCT A SITE/NEIGHBORHOOD VISIT EARLY IN THE REVIEW PROCESS AND MAKE SURE THAT YOU UNDERSTAND BOTH SITE AND NEIGHBORHOOD EXISTING CONDITIONS, THE PROPOSED SITE PLAN AND BUILDING DESIGN, AND THE LOCATION OF ABUTTERS WHO WILL BE MOST AFFECTED BY THE PROPOSED DEVELOPMENT**
- **ZBA, TOWN STAFF, PEER REVIEWERS, AND POTENTIAL OPPONENTS SHOULD IDENTIFY AND FOCUS ON THE "REAL" PROJECT ISSUES/IMPACTS AS EARLY IN THE REVIEW PROCESS AS POSSIBLE AND TRY TO RESOLVE EACH ISSUE IN A LOGICAL, EFFICIENT MANNER THAT RECOGNIZES THE CRITICAL PATH NATURE OF THE RESPECTIVE STEPS IN THE HOUSING DEVELOPMENT PROCESS**
- **NEGOTIATING WITH DEVELOPERS IS POSSIBLE AND IS FREQUENTLY DONE. UNDERSTANDABLY, DEVELOPERS NORMALLY WANT TO HAVE "EVERYTHING ON THE TABLE" BEFORE SERIOUS NEGOTIATIONS BEGIN**
- **WORK SESSIONS WITH THE DEVELOPER CAN OFTEN BE PRODUCTIVE AFTER THE INITIAL MORE FORMAL PUBLIC HEARINGS BUT BE SURE THAT YOU GET LEGAL ADVICE RE: OPEN MEETING LAW REQUIREMENTS**
- **IF NECESSARY, ZBAS SHOULD GET OBJECTIVE AND EXPERIENCED TECHNICAL ASSISTANCE ADVISORS/ PEER REVIEWERS TO SUPPLEMENT ZBA MEMBERS' SKILLS AND EXPERIENCE**

**PRIMARY CONCERNS OF ZBA MEMBERS,
OTHER MUNICIPAL BOARDS/DEPARTMENTS OR COMMITTEES,
ABUTTERS/NEIGHBORS, AND
APPLICANT/DEVELOPMENT TEAM MEMBERS**

GENERAL CHAPTER 40B ISSUES

**1. CHAPTER 40B STATUTORY MINIMA/REGULATORY REQUIREMENTS RE:
ELIGIBILITY**

- Less than 10% of year round housing units in community are qualified "affordable" units [methodology for calculating number of qualified affordable units is provided in 760 CMR 56.03 (3)(a)]
- Qualified "affordable" units are located on less than 1.50% of total land area zoned for residential, commercial, or industrial use [methodology for calculating land areas is provided in 760 CMR 56.03 (3)(b)]
- Application before ZBA will not result in commencement of construction of qualified "affordable" housing comprising more than 0.3% (three tenths of one percent) of the total land area zoned in community for residential, commercial, or industrial use or ten acres, whichever is larger, in any one calendar year [methodology for calculating annual land area minimum is provided in 760 CMR 56.03 (3)(c)]
- Housing Production Plan (HPP)—under certain circumstances a municipality can deny any Comprehensive Permit application if the municipality has a DHCD-approved Housing Production Plan and is meeting its affordable housing goals [760 CMR 56.03 (4)] or if it has made Recent Progress Toward Housing Unit Minimum [760 CMR 56.03 (5)]. A municipality can grant Comprehensive Permits even it has satisfied these requirements. However, a developer has no right to appeal any ZBA decision if a municipality has satisfied either the ½ of 1% or 1% HPP standards and has been certified by DHCD. These HPP regulations are complicated. If you need help in understanding them, call DHCD.
- Recent Progress Toward Housing Unit Minimum—even without an approved HPP, if a community has created Subsidized Housing Inventory eligible units equal to or greater than 2% of the municipality's year round housing units, the ZBA can deny an application. See 760 CMR 56.03 (5).
- Review of Large Projects (There are limits on the maximum size of 40B projects. The limits vary based upon the number of year round housing units in each community based upon the latest decennial census data. See 760 CMR 56.03 (6).

- Related Applications (Under certain circumstances, a developer can not submit a Comprehensive Permit application within 12 months of the 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 but did not include at least 10% of its units as Subsidized Housing Inventory Eligible Housing units. Additional information on Related Applications is provided at 760 CMR 56.03 (7).

2. **BALANCING REGIONAL HOUSING NEEDS WITH THE FOLLOWING LOCAL CONCERNS**

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

3. **ROLE AND RESPONSIBILITIES OF ZBA MEMBERS**

4. **CHAPTER 40B PERFORMANCE REQUIREMENT DEADLINES**

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

Although the author believes that the information presented below has been derived from reliable sources, it is subject to errors and omissions and no warranty is made as to its accuracy.

The ZBA must confirm with its own Town Counsel, other advisors, and/or applicable public agencies each of the following Chapter 40B performance requirement deadlines.

**THE FOLLOWING DEADLINES ARE
VERY IMPORTANT!**

CHAPTER 40B PERFORMANCE REQUIREMENT DEADLINES

TIME PERIOD	ACTION
<p>7 DAYS FROM RECEIPT OF CP APPLICATION</p>	<p>Within 7 days of the receipt of the Comprehensive Permit application, the ZBA needs to distribute copies of the Comprehensive Permit application to all Local Boards, departments, and committees (E.g., Planning Board, Conservation Commission, Board of Health, DPW, Affordable Housing Partnership, etc.) If in doubt, it is always better to include any Town entity that might have an interest in the project.</p> <p>The Applicant should be required to provide a sufficient number of copies to simplify this distribution requirement. Each copy must include a copy of the list of Waivers required by 760 CMR 56.05(2) (h).</p> <p>The ZBA should request in writing that each Local Board review the application and submit written comments by a date certain (preferably by the date of the initial public hearing). Unfortunately, this rarely happens and the ZBA often needs to follow-up with each entity to assure that written comments are received.</p>
<p>NO MORE THAN 14 DAYS FROM RECEIPT OF CP APPLICATION</p>	<p>SEE 760 CMR 56.05(3)</p> <p>The initial public hearing must be advertised with proper legal notice and proper notice to abutters such that the initial public hearing can be opened within 30 days of the receipt of a complete Comprehensive Permit (CP) application by the town.</p> <p>Therefore, the ZBA must place all necessary legal ads and notify all abutters of the initial public hearing in accordance with the normal ZBA public hearing advertising requirements. The Applicant is required to include a certified list of abutters within the application.</p> <p>A second legal notice may be required in some jurisdictions.</p> <p>The initial public hearing must be opened within 30 days of the receipt of a complete Comprehensive Permit application unless the Applicant gives written permission to hold the initial public hearing at a later date.</p>
	<p>SEE 760 CMR 56.05(3)</p>

<p>30 DAYS FROM RECEIPT OF CP APPLICATION</p>	<p>The ZBA must open the initial public hearing within 30 days of receipt of a complete Comprehensive Permit application. Even if the ZBA feels that the Comprehensive Permit application is incomplete, some ZBAs take a conservative approach and schedule and open the initial public hearing. At the initial hearing, the ZBA can explain why it feels that the Comprehensive Permit application is incomplete, request any additional required information, and with input from Town Counsel, make a decision as to what the next appropriate step should be.</p>
<p>15 DAYS FROM INITIAL PUBLIC HEARING</p>	<p>Note: A ZBA may stay the commencement of an initial hearing if three or more Comprehensive Permit applications are concurrently undergoing hearings before the ZBA, and the total number of housing units in the pending projects exceeds the numerical threshold for a Large Project within that municipality, as set forth in 760 CMR 56.03(6).</p> <p>SEE 760 CMR 56.05(3)</p> <p>Within 15 days of the initial public hearing, the ZBA must make a determination as to whether or not it wants to deny an application on one or more of the grounds set forth in 760 CMR 56.03(1) in accordance with the procedures set forth in 760 CMR 56.03(8). The ZBA must provide written notice to both the Applicant and DHCD.</p>
<p>15 DAYS FROM ZBA ACTION</p>	<p>SEE 760 CMR 56.05(3) and 760 CMR 56.03(1) and 760 CMR 56.03(8).</p> <p>If the Applicant wishes to challenge the ZBA's assertion that it can deny the application on one or more of the grounds set forth in 760 CMR 56.03(1), the Applicant must file its written response with the Massachusetts Department of Housing and Community Development (DHCD) within 15 days of its receipt of the ZBA's notice. The Applicant must also provide a copy of challenge to the ZBA.</p>
<p>30 DAYS FROM FILING OF APPLICANT'S CHALLENGE</p>	<p>DHCD must issue its decision within 30 days of the receipt of all materials. Any failure of DHCD to issue a timely decision shall be deemed a determination in favor of the municipality.</p> <p>SEE 760 CMR 56.03(8).</p>

**180 DAYS
FROM INITIAL
PUBLIC
HEARING**

Except with the written consent of the Applicant, the public hearing shall not extend beyond 180 days of the initial public hearing. The 180 day limit presumes that the Applicant has made timely submissions of materials in response to reasonable requests of the ZBA.

**40 DAYS
FROM
CLOSING OF
PUBLIC
HEARING**

SEE 760 CMR 56.05(3)

The ZBA must "render a decision" (Denial, Approval, or Approval with Conditions), based on a majority vote of the Board within 40 days of the closing of the public hearing, unless such time period is extended by written agreement of the ZBA and Applicant. The ZBA shall file its decision with 14 days in the office of the city or town clerk and forward a copy to the Applicant or its designated representative, and to DHCD.

Note: Although the regulations state that the ZBA needs only to "render a decision" within 40 days, most ZBAs take a conservative approach and file the written executed decision itself within 40 days of the closing of the public hearing.

**20 DAYS
FROM DATE
ZBA
DECISION IS
FILED WITH
TOWN CLERK**

SEE CMR 760 56.05(8).

If the ZBA denies the permit or approves the permit with unacceptable conditions or requirements, the Applicant may appeal the ZBA decision to the Housing Appeals Committee within 20 days after the written decision has been filed in the office of the city or town clerk.

SEE 760 CMR 56.05(9)(b) and 760 CMR 56.06(4)(g)

If the ZBA 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. The court would normally be either the Land Court or Superior Court.

SEE 760 CMR 56.05(9)(a)

5. ROLE AND RESPONSIBILITIES OF OTHER MUNICIPAL BOARDS/
DEPARTMENTS OR COMMITTEES
6. LOCAL RULES
7. PUBLIC HEARING FORMAT/CONTINUANCE OF PUBLIC HEARING/PUBLIC
NOTICE
8. ZBA VOTING REQUIREMENTS (MULLIN RULE)

9. CRITICAL 40B APPLICATION SUBMISSION REQUIREMENTS

- **Applicant Status: Public Agency, Non-Profit, or Limited Dividend Organization**
- **Evidence of Site Control (Deed, Lease, Option, or P&S Agreement)**
- **Project Eligibility Letter from Subsidizing Agency (primarily MassHousing, DHCD, Massachusetts Housing Partnership (MHP), and MassDevelopment). The Subsidizing Agency must make the following findings in accordance with 760 CMR 56.04 (4):**

(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

10. ADDITIONAL INFORMATION THAT CAN BE REQUESTED FROM APPLICANT

11. LAND VALUE APPRAISAL BASED UPON EXISTING "BY-RIGHT" ZONING PREPARED BY AN APPRAISER LISTED ON MASSHOUSING'S APPROVED APPRAISER LIST. THIS APPRAISAL IS A REQUIREMENT FOR PROJECT ELIGIBILITY LETTER (PEL) APPLICATION.
12. PRELIMINARY VS. "FINAL" INFORMATION AND TIMING OF SUBMISSIONS
13. TIMELY REVIEW OF APPLICATION BY ZBA
14. TIMELY IDENTIFICATION OF "REAL" ISSUES
15. TIMELY IDENTIFICATION OF AREAS WHERE PEER REVIEW CONSULTANTS WILL BE REQUIRED.
16. FINANCIAL REVIEW (PRO FORMA REVIEW). SEE 760 CMR 56.05 (6) FOR DETAILED GUIDELINES ON WHY AND WHEN A FINANCIAL REVIEW SHOULD BE DONE.
17. TIMELY PROCUREMENT OF PEER REVIEW CONSULTANTS
18. TIMELY COMPLETION OF PEER REVIEWS
19. COOPERATION AMONG ZBA/DEPARTMENTS/COMMITTEES/APPLICANT
20. OPEN MEETING LAW
21. NEGOTIATION OPPORTUNITIES/PROCESS
22. 40B SUBSIDIZED HOUSING INVENTORY (SHI) "CREDITS" AND PROJECT REQUIREMENTS FOR INCLUSION OF UNITS IN SHI
23. EXCEPTIONS (AKA WAIVERS) TO ZONING BY-LAWS AND OTHER LOCAL RULES BUT NOT TO STATE WETLANDS PROTECTION ACT, TITLE V REQUIREMENTS, AND OTHER STATE REQUIREMENTS. ZBA CAN NOT GRANT EXCEPTIONS TO ANY STATE BUILDING CODE REQUIREMENTS.
24. ZBA DECISION ALTERNATIVES
 - Denial
 - Approval (as submitted)
 - Approval with Conditions
25. CONDITIONS TO DECISION: A RECENT (SEPTEMBER 2, 2010) MASSACHUSETTS SUPREME JUDICIAL COURT (SJC) DECISION IN THE ZONING BOARD OF APPEALS OF AMESBURY V. HOUSING APPEALS COMMITTEE CASE ADDRESSES THE TYPE OF CONDITIONS THAT A BOARD CAN OR CAN NOT PLACE ON A 40B PROJECT. ALL ZBAS SHOULD FAMILIARIZE THEMSELVES WITH THE AMESBURY DECISION.

26. APPEAL PROCESS FOR APPLICANT: HOUSING APPEALS COMMITTEE (HAC)

APPEAL PROCESS FOR OTHER PARTIES WITH STANDING: SUPERIOR COURT OR LAND COURT

APPEAL OF HAC, SUPERIOR COURT OR LAND COURT DECISION: MASSACHUSETTS SUPREME JUDICIAL COURT (SJC)

27. POST COMPREHENSIVE PERMIT DECISION SUBMISSION REQUIREMENTS: FINAL APPROVAL BY SUBSIDIZING AGENCY, FINAL ENGINEERING AND ARCHITECTURAL PLANS FOR BUILDING PERMIT APPLICATION

28. CHANGES IN PROPOSED DEVELOPMENT FOLLOWING DECISION

- Substantial change
- Insubstantial change

29. INSPECTIONS DURING CONSTRUCTION PERIOD

30. LIMITED DIVIDEND RESTRICTIONS AND COST CERTIFICATION

31. LOTTERY, FAIR HOUSING, LOCAL PREFERENCE

32. MONITORING AGREEMENTS AND AGENTS (LIMITED DIVIDEND REQUIREMENTS AND RESIDENT ELIGIBILITY REQUIREMENTS)

33. REGULATORY AGREEMENT

34. DEED RIDER (FOR HOME OWNERSHIP PROJECTS)

35. TRANSFER OF COMPREHENSIVE PERMIT. SEE 760 CMR 56.05 (12) (b)

36. LAPSE OF COMPREHENSIVE PERMIT. SEE 760 CMR 56.05 (12) (c)

REPRESENTATIVE CHAPTER 40B-RELATED DOCUMENTS AVAILABLE AT CHAPA's WEBSITE

[CHAPA Home](#) » [Housing Policy](#) » [Chapter 40B](#)

Looking for 40B and other affordable homeownership lotteries? [Click here.](#)

- **Fact Sheet (prepared by CHAPA)** Updated October 2009
- **Link to Massachusetts Department of Housing and Community Development 40B Web Site**
- **Link to Massachusetts Housing Partnership Web Site**
- **Link to 40B Facts Web Site**
- **DHCD Design Guidelines** - March, 2011
- **Out of Reach 2010** - National Low Income Housing Coalition
- **HUD's 2010 Area Median Income Limits for Massachusetts** - May, 2010
- **H. 4455 - Initiative Petition to Repeal Ch. 40B** January 2010
- **Berquist Appellate Court Decision** July 2009
- **On the Ground: 40B Developments Before and After** Alexandra DeGenova, Brendan Goodwin, Shannon Moriarty, and Jeremy Robitaille Urban and Environmental Policy and Planning, Tufts University May 2009
- **Chapter 40B Housing Production Update prepared by CHAPA (PDF File)** - December 16, 2008
- **Reviewing 40B: What Gets Proposed, Approved, Appealed and Built?** (PDF file) Lynn Fisher, Department of Urban Studies and Planning and the Center for Real Estate MIT November 2008
- **Summary of New 40B Guidelines (PDF File)** April 15, 2008
- **DHCD Powerpoint Presentation on New Regulations (PDF File)** April 15, 2008
- **Housing Appeals Committee Mediation Program (PDF File)** March 31, 2008
- **New 40B Guidelines** March 20, 2008
- **New Chapter 40B Regulations: Regulations (PDF File) CHAPA's Summary (PDF File)** February 22, 2008
- **MIT Center for Real Estate, Housing Conference Materials (Ch. 40B, affordability index, land density)** June 11, 2007
- **New State Deed Rider for Affordable Housing Units with Restrictions Surviving Foreclosure (MassHousing)** (PDF file) June 8, 2006
- **Guidance on Holding Lotteries for NEF (PDF file)** Updated October 2005
- **40B Production and Pipeline Report (PDF file)** March 2005
- **CHAPA's Analysis of the 2005 Subsidized Housing Inventory (40B)** (PDF file) January 18, 2005
- **CHAPA Report: The Record on 40B: The Effectiveness of the Massachusetts Affordable Housing Zoning Law** June 13, 2003
- **Governor's Task Force Report on 40B (PDF file)** Go to **DHCD's website** to read the appendices. June 12, 2003
- **CHAPA Report: The Faces of 40B: Profiles of Families Living in Affordable Housing (PDF file)** June 9, 2003

**REPRESENTATIVE CHAPTER 40B-RELATED DOCUMENTS AVAILABLE AT
DHCD'S WEBSITE**

Chapter 40B Planning

Chapter 40B is a state statute, which enables local Zoning Boards of Appeals to approve affordable housing developments under flexible rules if at least 20-25% of the units have long-term affordability restrictions.

- **Comprehensive Permit Guidelines**

Information regarding M.G.L. Chapter 40B Comprehensive Permit Projects - Subsidized Housing Inventory. Find the CPA Prequalification List, updated monthly.

- **Handbook: Approach to Ch 40B Design Reviews**

The 40B Design Handbook is a result of a collaborative process of the four Massachusetts housing agencies that are authorized to review and approve site eligibility for Chapter 40B affordable housing developments.

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.

Chapter 40B has a long history of succession Massachusetts. Enacted in 1969, it is credited with having produced over 58,000 units of housing for owners and renters, seniors and families, special needs households and veterans.

This handbook strives to create a shared language and vision of well-designed housing in order to create models of success for future developments to follow. Affordable housing is an art as well as an industry and we are committed to marrying the two.

- **Developer's Guide**

A guide to assist a developer through the Chapter 40 B process.

- **Local Initiative Program (LIP)**

The Local Initiative Program is a state housing program that was established to give cities and towns more flexibility in their efforts to provide low and moderate-income housing.

- **Housing Production Plan**

Housing Production Plan is a regulation under Chapter 40B that encourages communities to take a proactive approach to affordable housing development.

- **Subsidized Housing Inventory (SHI)**

The Subsidized Housing Inventory is used to measure a community's stock of low-or moderate-income housing for the purposes of M.G.L. Chapter 40B, the Comprehensive Permit Law. While housing developed under Chapter 40B is eligible for inclusion on the inventory, many other types of housing also qualify to count toward a community's affordable housing stock.

- **Sale Prices and Rents**

Guidance on calculating 40B affordable sale prices and rents.

- **Housing Appeals Committee**

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