MANAGING CHAPTER 40B
Housing Production Plans: Approval, Certification, Implementation

Brookline Board of Selectmen
May 16, 2017

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LEGAL FRAMEWORK

• Statute: G.L. c. 40B, ss. 20-23 (Chapter 40B), the “comprehensive permit” law
• State regulations: 760 CMR 56.00 et seq.
• DHCD Chapter 40B Guidelines: policy
• Appeals
  • Housing Appeals Committee (HAC)
  • Superior Court
  • Mass. Appeals Court
  • SJC
• Under Chapter 40B, community presumed to have unmet needs for affordable housing if less than 10% of year-round housing on Subsidized Housing Inventory (SHI).

• 10% is statutory minimum.

• Other statutory minima involve land area calculations, but rarely met.

• Several towns in litigation re “1.5% rule”

Brookline today: 9.34%
REGULATORY SAFE HARBORS

• Housing Production Plan
• “Recent Progress” or “2% Rule”
• Large-Scale Projects
• Related Applications

Safe harbor means…
ZBA’s decision deemed “consistent with local need.” Even if town is below statutory minimum, Housing Appeals Committee will uphold the ZBA.
ROLES & RESPONSIBILITIES

STATE & SUBSIDIZING AGENCIES

• Regulate

• Administer/Implement
  • Subsidized Housing Inventory
  • Project Eligibility
  • Final Approval
  • Cost Certification
  • Affordable Housing Restriction

• Housing Appeals Committee

BOARD OF APPEALS

• Adopt local regulations

• Receive comprehensive permit applications

• Conduct fair, impartial hearing process

• Reach decision, file with Town Clerk

• Receive/hear modification, extension requests
CRUCIAL DEADLINES FOR ZBA

- 7/14/30/15/15/30/180/40/20
- Distribute Application: 7 Days
- Notice of Public Hearing: 14 Days
- Open Public Hearing: 30 Days
- Safe Harbor Notification: 15 Days
- Applicant Appeal Safe Harbor: 15 Days
- DHCD Answer: 30 Days
- Close Hearing: 180 Days
- Decision: 40 Days
- Appeal: 20 Days
ZBA OPTIONS

• ZBA may take one of the following actions on a comprehensive permit:
  • Deny
  • Approve as submitted
  • Approve with conditions

• Appeal to HAC if town does not meet:
  • Statutory minima
  • Regulatory “safe harbors”
• Old concept, new name:
  • Special Commission, April 1989
  • “Planned Production,” 2002-2008
  • “Housing Production Plan,” 2008-Present
HPP “101”

• Housing Production Plan
  • Components
  • DHCD approval process
• Implementation: creation of new affordable units
• One- and two-year goals (0.5% and 1%)
• Certification (maximum of 2 years)
WHAT’S THE POINT?

• Purpose of a DHCD-approved Housing Plan:
  • Reach the 10% statutory minimum
  • Gain more control over comprehensive permits while working toward 10%
  • Manage the pace of housing growth
  • Encourages towns to produce housing
  • Helps (or should help) the Board of Appeals
THE POINT IS NOT ...

• To “stop” 40B applications
• To cause needless delays in affordable housing production
• To “do nothing” for 12 or 24 months
BROOKLINE's HPP

- Housing Production Plan: October 2016
- Plan certified: March 23, 2017 - March 22, 2018
- Minimum certification goals:
  - 131 units = one-year certification
  - 262 = two-year certification
BROOKLINE BY THE NUMBERS

• Brookline Census 2010: 26,201 year-round units
• Chapter 40B minimum: 2,620
• Existing SHI: 2,438
• 10% Gap: 182
• Certification “gap”
  • 90 before 12/31/2017 OR
  • 131 in 2018
• Potential for 178 in current 40B applications
HOW/WHEN UNITS “COUNT”

• Comprehensive permit units count on the SHI – and for HPP certification – when ZBA decision is filed with the Town Clerk

• If no building permit in 12 months, units removed from SHI. May affect HPP certification depending on number of units lost.

• Once removed from SHI, units restored with building permit, but they do not count toward future HPP annual goals. (No “double counting”)

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Housing Plan Certification: What it Means, What it Doesn’t Mean
POSSIBILITIES

• Just say “no” under “safe harbor” rules
• Proceed with fair/impartial review
• Work with applicant, other interested parties to arrive at reasonable compromise
• Reach decision
ISSUES

• Is it realistic to permit 90 more units this year?
• Is it realistic to permit 131 next year?
• Balance desire to maintain certification with desire for getting the best possible projects for the Town and neighborhoods
• What is the best possible outcome?
• The worst?