

**Summary of Procedures for issuing Comprehensive Permits  
under G.L. c. 40B, §§20-23 (“Chapter 40B”)**

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**Overview of Chapter 40B**

Chapter 40B was adopted to increase affordable housing and to reduce regulatory barriers to the creation of affordable housing.

Chapter 40B authorizes the ZBA to “step into the shoes” of all local boards and officials and issue a single “umbrella” local permit (the “Comprehensive Permit”) in lieu of the various local permits and approvals that would otherwise be required. The ZBA may waive any local bylaw, rule, or regulation in the Comprehensive Permit. Note, however, that a ZBA cannot grant approval under a Comprehensive Permit for a permit or approval that is required by state law, such as the Wetlands Protection Act, (G.L. c.131, §40), or the State Building Code.

Chapter 40B: G.L. c. 40B, §§20-23

Comprehensive Permit Regulations: 760 CMR 56.00

Of special interest to the ZBA:

760 CMR 56.02: Definitions

760 CMR 56.03: Progress Toward Local Affordable Housing Goals  
 (“safe harbors”)

760 CMR 56.04: Project Eligibility, Role of Subsidizing Agency

760 CMR 56.05: Local Hearings

The developer must agree to sell/rent 25% (most common) of the dwelling units at prices/rents affordable to income-eligible buyers/renters (set at 80% of the area median income). For-profit developers must agree to limit profits at 20% of project costs (most common). The developer must obtain a “subsidy” from the state or federal government. Approval by the Department of Housing and Community Development through the Local Initiative Program is considered a “subsidy” for the purposes of a comprehensive permit. Subsidies also often come from MassHousing, and less often from MassDevelopment.

**Before the ZBA receives the Comprehensive Permit application**

**A. ZBA Adopts Comprehensive Permit Rules**

1. Must be consistent with G.L. c. 40B, §§20-23 and with statute’s purpose of providing a streamlined permitting process.
2. If no rules adopted, ZBA must review an application as required under 760 CMR 56.05.

## B. Determination of Project Eligibility by a Subsidizing Agency

1. Developer applies to “Subsidizing Agency” for “Project Eligibility” determination (copy of Application is sent to Board of Selectmen)
2. Board of Selectmen and all other local boards have 30-day review and comment period.
3. Subsidizing Agency makes findings:
  - project is eligible under the housing subsidy program
  - site is generally appropriate for the project
  - project design is generally appropriate for the site
  - project is financially feasible, based on review of initial pro forma (including land valuation based on zoning as-of-right)
  - if developer is for profit, agrees to limit profits as required by housing subsidy program
  - applicant has sufficient interest in the site to constitute site control

### ZBA Receives Application (includes filing fee)

1. Within **7 days**: notify all local boards—include at least notice of application & list of requested waivers, copy of complete application where appropriate
2. Within **30 days**: open public hearing
  - Publication and notice to parties in interest per c. 40A, §11 public hearing requirements (same as for a special permit hearing)

### Public Hearing

1. **180 day** limit, if applicant has responded timely to requests for additional information.
2. Peer review consultants: engage engineer and legal consultant per ZBA rules for review of application
3. Solicit and review comments from Town boards/committees/officials
4. Site visit
5. Identify issues
6. Explore project modifications to resolve issues with consultants, applicant, Town boards/committees/officials Note: reduction in dwelling units must be justified by a valid health, safety, environmental, design, open space, planning or other local concern that directly arises from size of project on the particular site.
7. Review waivers
8. Review pro forma (may engage consultant) if applicant indicates that compliance with conditions would render project uneconomic.
9. Comply with Open Meeting requirements.
10. Close hearing

## ZBA Decision

1. The ZBA decision is to be “consistent with local needs.” This means that local rules and regulations that are imposed on a project must be applied as equally as possible to both subsidized and unsubsidized housing, and must be reasonable in view of the regional need for low or moderate income housing, considered with the number of low income persons in the municipality and with “local concerns.” “Local concerns” that may be considered by the ZBA include (a) protecting the health and safety of the occupants of the project or the residents of the municipality, (b) protecting the natural environment, (c) promoting better site and building design in relation to the surroundings and municipal and regional planning, and (d) preserving open spaces (i.e., parklands and other areas that are reserved for recreational, conservation, scenic, or other similar uses by the general public).
2. Decision is due **40 days** after hearing closes.
3. Disposition:
  - Approve as proposed
  - Approve with conditions with respect to height, site plan, size, shape or building materials that address matters of local concern
    - conditions may not render the project uneconomic
    - conditions may not deviate from the project eligibility requirements of the subsidizing agency
  - Deny, if ZBA finds that there are no conditions that will adequately address local concerns.
4. Majority vote. All members who vote on the application must attend all sessions, unless town has adopted G.L. c. 39, §23D (allowing member to review audio or video recording or written transcript).
5. File decision with Town Clerk within **14 days**; forward copy to the applicant and the Department of Housing and Community Development.

## Permit Appeals

1. Applicant may appeal to the Housing Appeals Committee **20 days** after date of notice of the decision.
2. Persons aggrieved by a grant of a Comprehensive Permit may appeal pursuant to c. 40A, §17 (**20-day** appeal period, Land Court or Superior Court)

## Term of Permit

1. Comprehensive Permits lapse if construction has not begun within **3 years** from the date the permit becomes final (i.e., all appeals decided).

## **Comprehensive Permit Safe Harbors (allow ZBA to deny the application)**

\* Must provide written notice to applicant of intent to deny and the grounds for the safe harbor asserted, within **15 days** of opening the public hearing.

### Statutory:

1. Housing Unit Minimum (10% of total housing is affordable). G.L. c. 40B, § 20; 760 CMR 56.03(3)(a)
2. General Land Area Minimum (Affordable housing land area exceeds 1 ½% of total land area). G.L. c. 40B, § 20; 760 CMR 56.03(3)(b)
3. Annual Land Area Minimum (New affordable housing construction land area in calendar year exceeds .3 of 1% of total land area). G.L. c. 40B, § 20; 760 CMR 56.03(3)(c)

### Regulatory:

4. Housing Production Plan: (Certified progress on an approved affordable housing planned production plan). 760 CMR 56.03(4)
5. Recent Progress Toward Housing Unit Minimum (Affordable units created during prior 12 months exceeds 2% of Town's total housing stock). 760 CMR 56.03(5)
6. Review of Large Projects (Application is for more than a certain # of units, depending on Town's total housing stock). 760 CMR 56.03(6)
7. Related Application (Application is related to application for zoning or subdivision approval on same land made within prior 12 months). 760 CMR 56.03(7)

## **Local Initiative Program Comprehensive Permits**

1. Concept is that the Town and the developer work together on a comprehensive permit application. Sometimes called a "friendly 40B".
2. The Local Initiative Program is considered to be the state subsidy, and DHCD issues the Project Eligibility letter.
3. First, the Town, through its Board of Selectmen, must submit an application to DHCD for approval of the developer's proposal. Sometimes the developer prepares the application and includes a letter of support from the Selectmen.
4. After DHCD approval, developer then applies to the ZBA for a comprehensive permit.
5. See Local Initiative Program regulations at 760 CMR 45.00 and DHCD Local Initiative Program guidelines at:  
<http://www.mass.gov/Ehed/docs/dhcd/legal/lipguidelines.doc>