Town of Auburn

M.G.L. CHAPTER 40B COMPREHENSIVE PERMITTING GUIDE

A Handbook for Town Boards, Staff, & Developers

www.auburnma.gov

September 2025

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Credits

This guidebook is the product of a collaborative process between Town of Auburn staff, volunteers from Town boards, and the Central Massachusetts Regional Planning Commission (CMRPC). Thank you to the following volunteers who dedicated their time to attend regular working group meetings and contribute constructive feedback:

- Dan Carpenter, Select Board
- Glenn Feldman, Planning Board
- Robert Tatro, ZBA

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INTRODUCTION

Overview of M.G.L. Chapter 40B

M.G.L. c. 40B, §§ 20-23 - known as Chapter 40B or the Comprehensive Permit Law - is a state law that was enacted in 1969 to facilitate construction of low- or moderate-income housing. It establishes a consolidated local review and approval process (known as a "comprehensive permit") that empowers the Zoning Board of Appeals (ZBA) in each town and city to hold hearings and make binding decisions that encompass all local ordinances or bylaws and regulations. In certain circumstances, the ZBA's comprehensive permit decision may be appealed to the Massachusetts Housing Appeals Committee (HAC), which has the power to affirm, modify, or overturn local decisions.

The HAC has the discretion to overturn local decisions in cases involving a city or town that has not met its regional fair-share obligations under the 40B statute. If a city or town meets one of the following statutory minima, the HAC is required to uphold the decision as "consistent with local needs".

- **Housing Unit Minimum**: If the number of low- or moderate-income housing units in the community exceeds 10 percent of the total number of housing units reported in the most recent federal (decennial) census; or
- **General Land Area Minimum**: If low- or moderate-income housing has been developed on sites comprising 1.5 percent or more of the total land area in the community zoned for residential, commercial or industrial use; or
- **Annual Land Area Minimum**: If the comprehensive permit application before the ZBA would lead to construction of low- or moderate-income housing on sites comprising more than 0.3 of 1 percent of the total land area in the community zoned for residential, commercial or industrial use or ten acres, whichever is larger, in one calendar year.

In addition, the Chapter 40B regulations create some safe harbor options that allow a ZBA to deny a comprehensive permit without risk of its decision being overturned by the HAC.

- The community has met EOHLC's "recent progress" threshold (760 CMR 56.03(1)(c) and 56.03(5)). This means that within the last 12 months, the community has created new SHI units equal to or greater than 2 percent of the total year-round housing units reported in the most recent federal census.
- The project before the ZBA is a project that exceeds EOHLC's definition of a "large" project under 760 CMR 56.03(1)(d), where the definition of "large" project varies by the size of the municipality

Purpose of the Handbook

This document outlines the Town of Auburn's internal workflow and procedures for reviewing and responding to M.G.L. Chapter 40B comprehensive permit applications, including those submitted through the Local Initiative Program (LIP). The purpose is to ensure a clear, consistent, and transparent process for all stakeholders – including municipal staff, board members, developers, abutters, and the general public – throughout the lifecycle of a 40B project.

The workflow addresses two procedural tracks – a Standard 40B process and a Friendly 40B process:

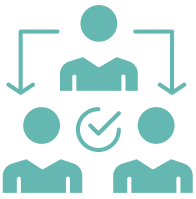
- **Standard 40B** occurs when the Town is notified by the Commonwealth that a Chapter 40B application has been filed with a funding agency, and the municipality is responding to a formal notice and site visit. This track bypasses early collaboration and begins at the response and comment stage (see Phase III), proceeding directly to state review and ZBA permitting.
- **Friendly 40B** is initiated by a developer through the Town's Planning Division or Town Manager's Office for a "friendly 40B" process via the Local Initiative Program (LIP). This collaborative approach includes early engagement, Select Board review, a negotiated LIP agreement, and coordinated submission to the Executive Office of Housing and Livable Communities (EOHLC).

Both tracks converge at the Comprehensive Permit stage, which includes ZBA application, public hearings, and post-approval project monitoring.

This workflow is designed to:

- Promote early engagement and collaboration between developers and the Town.
- Ensure compliance with Massachusetts General Laws and the Executive Office of Housing and Livable Communities (EOHLC) guidelines.
- Integrate Auburn's Housing Production Plan (HPP) goals and local planning objectives.
- Facilitate timely and informed decision-making by municipal boards and committees.
- Provide opportunities for meaningful public input and community outreach.
- Support the long-term success and monitoring of affordable housing developments in Auburn.

This guide serves as a reference for municipal departments and officials involved in the permitting and oversight of 40B projects and is intended to enhance coordination, improve efficiency, and maintain public confidence in the process.



Phase I Leaders:
Town Manager
& Select Board

PHASE I: PRE-APPLICATION & EARLY ENGAGEMENT

Standard 40B & "Friendly 40B"

1. Initial Inquiry & Proposal Submission

Consultation with Town: When an affordable housing proposal has been filed, Auburn is notified by the State of Massachusetts and a site visit is planned. As part of this policy, the Select Board requests that Town administration begin work on the response to the State at the point of notification. As early as possible, relevant boards should be notified and invited to provide comments to Auburn's response to the State. The Town administration may file for an extension of the comment period, if necessary.

The Auburn Planning Department or Town Manager's Office will contact the developer to discuss the intent for a 40B housing project. The initial discussion will determine if the intended project will follow 1.) a "Friendly 40B" process using the Local Initiative Program (LIP) or 2.) a standard 40B comprehensive permit application to the Auburn Zoning Board of Appeals (ZBA).

2. Review by Town Staff

Proposal Review: Following the initial discussion, Auburn municipal staff will review the proposal. Reviewers should include the Town Planner, Town Manager, 40B Coordinator, or other appropriate staff.

Staff will determine consistency with the Town's Housing Production Plan (HPP) and Master Plan. In preparation for Auburn's response letter to the Commonwealth, the 40B Coordinator will collect relevant information from town departments.

3. Preliminary Meeting(s) with Developer*

****Only for LIP applications***

Host Discussion Meeting(s): Town staff will set up one or more initial meetings with the developer to discuss key elements of the proposed project, specifically location, density, design, affordability mix, and public benefit.

At the meeting(s), Town staff will emphasize Auburn's local goals, including design standards, infrastructure capacity, and community character. At a preliminary meeting, the Town should request the developer pay for a 40B consultant for the upcoming listening session.

4. Outreach

Host Community Listening Session: Town administration should host a minimum of one event open to the public in which the Town Manager and additional Town staff will share details of the housing development process and proposal, providing ample opportunity for abutters to voice any concerns and ask questions. An optional sign-in sheet should be available for community members to request occasional email updates.

An invitation to the listening session should be mailed to abutters within a 1,000 ft. minimum radius and Town Meeting members in the precinct. The invitation should provide staff contact information and links to 40B materials on the Town of Auburn website. Relevant municipal boards and departments should be invited to participate in the listening session. Town leaders are encouraged to attend public meetings, share any concerns, and be active participants in the process.

Post Regular Online Updates & FAQ: A page on the Town of Auburn website should be dedicated to information, Frequently Asked Questions, and regular project updates on 40B applications. This page, along with any Town-operated social media platforms, should remain active and consistently updated to notify the community of any project changes and relevant content.

Hire a 40B Consultant at the Developer's Expense: Professional consultants are available to help ZBAs evaluate technical issues associated with comprehensive permit applications. At an early stage in the application process, a consultant should be selected to coordinate their reviews with municipal staff. Mass Housing Partnership provides consulting services under a 40B Technical Assistance Grant Program.

Share Technical Assistance Materials from Consultants: Third-party technical assistance from pre-qualified consultants is available to towns reviewing 40B comprehensive permit applications. Consultants may provide trainings and educational materials to the ZBA as requested. Any recordings of ZBA trainings, slideshows, or other informational materials should be promoted and shared across relevant departments and with town residents.

Town of Auburn Contacts

Town Manager	Planning Department	Ch. 40B Coordinator
508-832-7720	508-832-7704	[email]

Phase II Leader:
Select Board

PHASE II: LOCAL INITIATIVE PROGRAM (LIP)

If pursuing "Friendly 40B"

The Local Initiative Program (LIP) 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. LIP allows the Executive Office of Housing and Livable Communities (EOHLC) to provide technical assistance that qualifies as a "subsidy." The LIP may also issue a site eligibility letter for a project, a prerequisite for a developer to apply for a Comprehensive Permit.

Unlike conventional housing subsidy programs, in which a state or federal agency must approve every aspect of financing, design and construction, LIP allows most of these decisions to be made by the Town. LIP regulations and guidelines address those program components that must be reviewed and approved by EOHLC.

Technical support is provided by EOHLC to both the town and the developer. If a development cannot be built under existing zoning, the developer may seek a comprehensive permit allowing the development to be built at a higher density than allowed under existing zoning.

Any project that expects to seek financing from EOHLC or another Subsidizing Agency, must apply to the funding program for a Determination of Project Eligibility and not to LIP.

Note: The Local Initiative Program (LIP) is designed to encourage negotiation and compromise between the developer and the community. The developer will work cooperatively with town boards to adjust density, improve setbacks, or blend architectural aesthetics with the neighborhood. This process should result in a development with mutually agreed-upon changes. However, the Town is still limited by state regulations under Chapter 40B on what can be requested for the developer. The ZBA, or other municipal board, holds no authority to outright deny an LIP project application or impose conditions that render a proposed development uneconomic without facing an appeal by the developer at the state Housing Appeals Committee, which has the power to affirm, modify, or overturn local decisions.

1. Select Board Initiatives

The Auburn Select Board, a 5-member elected board, is responsible for setting policies and guiding the strategic direction of the town. The executive powers of the town are vested in the Select Board. With regard to new housing development under the Chapter 40B comprehensive permit process and LIP, the Select Board should ensure that the diverse voices of the Auburn community are heard and their concerns are thoughtfully considered.

Public Notification and Meeting(s): The Select Board should hold a public meeting in which abutters within a minimum 1,000 ft. radius and Town Meeting members of the precinct are invited to provide feedback and ask questions on the proposed housing development. The meeting will help the Town gather public input for the LIP agreement.

With support from Town administration, the community should be notified on the proposed development project through a variety of outreach methods, including:

- A notification letter mailed by the Town to any residences and businesses within a minimum 1,000 ft. radius of the project and Town Meeting members of the precinct.
- Emails sent to any email addresses on file.
- Updates to the 40B page of the Town website.
- Posts on Town social media accounts.
- Information available on ACTV.
- Code Red system (if deemed appropriate).

Establish Sub-Committee of Select Board: The Select Board should create a sub-committee designated to participate in LIP negotiations with the developer and Town administration.

Auburn Select Board

Meets 2nd and 4th Monday of every month

Town Hall
104 Central Street
Auburn, MA 01501

508-832-7720
DVecchio@auburnma.gov

LIP applications are available on the EOHLC website, or by calling the LIP staff at 617-573-1301

2. Local Initiative Program (LIP) Application Development

The Town and the developer should collectively prepare an application for approval of a LIP Agreement to be submitted to EOHLC.

Develop Project Eligibility Form (PEF) for EOHLC: Entry to the comprehensive permit process begins with a Project Eligibility application to one of the Subsidizing Agencies. The application forms differ by agency, but the basic components include:

- Site location and description;
- A locus map and photographs of the surrounding area;
- The proposed buildings and approximate number units by size (number of bedrooms, floor area) and type (ownership or rental);
- The name of the housing program under which a PE determination is sought;
- Preliminary development pro forma;
- Relevant project details, such as the percentage of low- or moderate-income units, income eligibility standards, the duration of the proposed affordable housing restrictions, and whether the applicant is a non-profit, public agency, or limited dividend organization;
- Conceptual site plan, elevation drawings, and basic site development calculations, e.g., approximate impervious coverage, approximate open areas, number of parking spaces, and average parking spaces per unit;
- Description of the approach to architectural massing and exterior building materials, and how the proposed buildings relate to adjacent properties;
- A list of proposed waivers of zoning requirements and all other relevant local bylaws, ordinances, and regulations; and
- Evidence of control of the site (usually a purchase and sale agreement or deed).

LIP Proposal Summary: A summary of the project application should be developed to share with the public and town boards, committees, and staff.

Local Support Documentation: Comments from relevant municipal boards such as Select Board and Planning Board, should be documented as part of the application.

Affordability & Marketing Plan: The developer and town administration should collaborate on a plan for selecting tenants and homebuyers as well as marketing SHI eligible units in process consistent with EOHLC's guidelines.

3. Select Board Action

Host Public Meeting(s): A minimum of one (1) meeting open to the public should be hosted by the Select Board to confirm endorsement of the LIP application. The public should be notified through a variety of outreach methods, including:

- A notification letter mailed by the Town to any residences and businesses within a minimum 1,000 ft. radius of the project as well as Town Meeting members in the precinct.
- Emails sent to any email addresses on file.
- Updates to the 40B page of the Town website.
- Posts on Town social media accounts.
- Information available on ACTV.
- Code Red system (if deemed appropriate).

Following the public meeting, or at a subsequent meeting, the Select Board will take a vote to sign the LIP Agreement with the developer.

4. Project Eligibility Submission to EOHLC

Submit Application to EOHLC: After the Town signs the LIP agreement, the application is submitted by the developer to EOHLC for review. An application fee must be submitted with the application by the developer according to a schedule of fees.

Site Visit: EOHLC will schedule a site visit after receipt of the application. EOHLC will use this site visit to determine whether the project seems consistent with the basic requirements of the LIP and to identify potential unusual problems with the site or proposed development. The public should be notified when the site visit is scheduled using the outreach methods listed above.

Local Comment Period and Extension: After receiving a Project Eligibility application, the Subsidizing Agency notifies the Town Manager with a notification letter, beginning a 30-day comment period for the town. If needed, the Select Board should authorize a request for an extension of the 30-day public comment period and the Town Manager should subsequently request the extension.

The Town has 30 days to seek public comments after receiving a notification letter from EOHLC. An extension may be requested.

4. Project Eligibility Submission to EOHLC (cont.)

Notify the Community: The Town Manager should post the notice and Project Eligibility application on the 40B page of the Town website and seek comments from municipal boards and departments. Additional outreach methods should include those listed under 3.*) Select Board Action*. The Town Manager should try to act as a clearinghouse for comments on the PE application.

Comment Letter from Town Manager: The Town Manager is responsible for seeking constructive input on the proposed project from municipal boards and departments, as well as from local residents and businesses. A letter summarizing comments from the community should be written by the Town Manager then submitted to the Select Board for review.

Project Eligibility Letter: EOHLC will issue a Determination of Project Eligibility if the proposed project meets LIP requirements, effective for two (2) years from date of issuance unless otherwise stated. This is a prerequisite to an application to the Zoning Board of Appeals for a comprehensive permit. After review of the LIP Comprehensive Permit Application, EOHLC may issue a Determination of Project Eligibility if the following findings are determined:

- The application meets the requirements specified in 760 CMR 56.04(4).
- The proposed project appears generally eligible under the requirements of the LIP, subject to final program review and approval.
- The proposed site plan is appropriate in the context of the surrounding area and taking into account previous municipal action to meet affordable housing needs, and the housing design is appropriate for the site.
- The proposed project appears financially feasible in the context of the local housing market.
- The initial pro forma for the project appears financially feasible on the basis of estimated development costs and revenues.
- The Applicant is a public agency, a non-profit organization, or a Limited Dividend Organization.
- The Applicant controls the site.
- For age-restricted housing, that the market study demonstrates need and marketability within the municipality.

Phase III Leader:
Zoning Board of Appeals (ZBA)

PHASE III: COMPREHENSIVE PERMIT APPLICATION PROCESS

Standard 40B & "Friendly 40B"

This section offers guidance on the conventional approach a developer may take under the Comprehensive Permit Law M.G.L. Chapter 40B. This consolidated permitting process gives the ZBA authority to grant all of the approvals that would otherwise trigger separate applications under local bylaws or ordinances. The ZBA also has authority to grant waivers of local requirements if requested by the developer and necessary to construct the proposed project. However, the ZBA does not have the authority to waive state requirements.

Chapter 40B projects must adhere to a statutory timeline outlined in this document.

Auburn Zoning Board of Appeals (ZBA)

Meets the 3rd Thursday of every month

Town Hall
104 Central Street
Auburn, MA 01501

508-832-7704

1. Filing with the Zoning Board of Appeals (ZBA)

Application Submission: The developer submits a Comprehensive Permit application under M.G.L. Chapter 40B.

A comprehensive permit application should include all required documents:

- Preliminary site development plans with the locations and outlines of proposed buildings; the proposed locations, general dimensions, and materials for streets, drives, parking areas, walks and other paved areas; and proposed landscaping improvements. Any project of five or more units must have a site plan stamped by a registered professional architect or engineer.
- An existing conditions report on the proposed site and the surrounding areas.
- Preliminary, scaled architectural drawings prepared by a registered architect, with typical floor plans, elevations, and sections, including construction type and finishes.
- Tabulation of proposed buildings by type, size, and footprint, impervious coverage, and open space, including percentage of tract to be occupied by buildings, parking and paved vehicular areas.
- A preliminary subdivision plan, if the project involves a subdivision.
- A preliminary utilities plan (water, wastewater, drainage, and storm water management facilities).
- The Project Eligibility Letter (PEL) issued by the Subsidizing Agency.
- A list of requested waivers from local ordinances or bylaws and regulations.

Pro Forma Request (optional): If deemed necessary, the ZBA may request that a development pro forma is submitted as part of the application.

Note: The Chapter 40B regulations specifically prohibit reviewing "a pro forma in order to see whether a Project would still be economic if the number of dwelling units were reduced, unless such reduction is justified by a valid health, safety, environmental, design, open space, planning or other local concern that directly results from the size of a project on a particular site." (760 CMR 56.05(6)(a)(4))

Consultant Request: Any ZBA that has received a comprehensive permit application is eligible to request help from Mass Housing Partnership's (MHP) Chapter 40B Technical Assistance Program. MHP has a pre-qualified list of consultants who work with ZBAs around the state at the request of cities and towns.

The consultant can help the ZBA with a range of tasks, depending on needs, such as: Procuring peer review consultants; Advising the ZBA on Chapter 40B requirements and policies; Researching technical questions at the ZBA's request; Coordinating the project review schedule; Gathering comments from city or town staff; Attending work sessions; Drafting the ZBA's decision, and so forth.

2. Opening the Public Hearing

ZBA Opens Public Hearing: Once the ZBA receives a comprehensive permit request, the application and plans should be sent to boards and departments that usually participate in the development review process. Obtaining comments from these municipal boards and departments is critical for the ZBA to reach an informed decision and determine appropriate conditions of approval. *The ZBA Chair should announce attendance requirements of the board.*

The Auburn ZBA must open a public hearing within 30 days of a comprehensive permit application being filed.

Coordinate Input from Boards and Departments: The Town should coordinate all feedback – including written comments and participation at the public hearing – from relevant municipal departments and boards, including:

- Planning Board
- Conservation Commission
- Board of Health
- Department of Public Works / Engineering Division
- Fire Department
- Police Department
- Development & Inspection Services

Basic Protocol for a Public Hearing: The ZBA should conduct a public hearing using the following method:

- Open the hearing and read the public hearing notice.
- Introduce members of the ZBA sitting on the case.
- Explain public hearing "basics" so the applicant and public can anticipate how the ZBA will conduct the hearing and know what to expect along the way. If the ZBA typically concludes meetings at a certain time, the public should be told at the outset so they are not surprised later.
- Read correspondence into the record.
- Invite the developer to present the project.
- After the presentation, allot time for ZBA members to ask questions.
- Open the hearing to questions and comments from the public.
- Schedule a site visit. Note that site visits should be open to the public, but they are not a "meeting" under the Open Meeting Law as long as the ZBA does not deliberate during the visit.
- Decide on a date to continue the public hearing (assuming it does not open and close on the same night), in consultation with the developer.

No later than 15 days from the opening of the public hearing, the Auburn ZBA must provide written notice to the developer and EOHLC if it believes it can deny the permit on "Safe Harbor" grounds.

3. Peer Review Process

The ZBA must identify any notable issues associated with each project, determine whether peer review consultants will be needed, and develop a schedule that will allow the board to close the hearing within 180 days.

The Auburn ZBA must close the public hearing within 180 days unless the applicant has agreed in writing to an extension.

Once the issues have been determined, the procurement process for peer review consultants should proceed. The developer is responsible for the reasonable cost of peer reviews necessary to evaluate matters that are properly before the ZBA. Typical peer review services for comprehensive permit projects include:

- **Traffic** - The peer review consultant typically reviews the developer's traffic impact and access study, the proposed plan for vehicular and pedestrian circulation, and connectivity to adjacent roads, sidewalks, public pathways, and bicycle facilities.
- **Stormwater / Engineering** - Assistance from a registered professional engineer to review the developer's site plan and proposed cuts and fills, earth removal, stormwater management, water and wastewater infrastructure, and proposed waivers from local bylaws/ordinances and regulations, to the extent necessary to support the ZBA's decision.
- **Environmental Impact** - For projects involving waivers of a local wetlands bylaw, a wetlands scientist should be hired to review the application and the proposed project's impact on wetlands, vernal pools, groundwater and surface water quality.
- **Design / Architecture** - This peer review typically includes a review by a registered professional architect of the proposed buildings, the impact of the buildings on surrounding areas, and design elements.

Phase IV Leaders:
ZBA & DDIS

PHASE IV: DECISION & POST-APPROVAL

Standard 40B & "Friendly 40B"

1. Decision

ZBA Issues a Decision: Once the hearing is closed, the ZBA has 40 days to deliberate, vote, and file the decision with the Town Clerk. If the ZBA closes the hearing and votes at the same time, then the decision must be filed with the Town Clerk's office within 14 days. A decision must be approved by a simple majority of the ZBA members sitting on the case. *Reminder - once the ZBA closes the hearing, the board cannot accept any further testimony from the applicant nor the public.*

The Auburn ZBA must issue a decision on a comprehensive permit within 40 days of the public hearing.

Chapter 40B authorizes a ZBA to 1.) approve as proposed, 2.) approve with conditions, or 3.) deny a comprehensive permit application.

- **Approval as Proposed:** The ZBA approves the comprehensive permit without conditions.
- **Approval with Conditions:** The ZBA may impose conditions to eliminate or mitigate the adverse impact of a proposed project. The conditions section of the permit should be written clearly and succinctly, as it will be used by the building official as a checklist. The developer should send a draft of the conditions to the subsidizing agency for review before they are finalized.
- **Denial**: ZBAs should view denial of a comprehensive permit as a "last resort" measure to be taken only when there is no practical way to approve the project with conditions. The HAC has generally not supported denials if the ZBA could have granted a comprehensive permit with reasonable conditions to protect health, safety, open space, and site and building design concerns.

To facilitate open communications with the developer and ensure that the public understands what the ZBA intends to do, the ZBA should draft preliminary conditions of approval and provide them to the developer while the public hearing is still open.

2. Comprehensive Permit Modifications

ZBA May Request Modifications: Two types of modifications may be requested by the ZBA after the comprehensive permit has been granted – an *insubstantial change* and a *substantial change*. If a modification is insubstantial, the change is deemed approved. If a modification is substantial, the ZBA must notify the developer and follow a basic timeline as the original permit.

The Auburn ZBA has 20 days to determine and notify the developer whether a requested change is substantial.

If a requested change is substantial, the same basic timelines as the original permit must be followed: a public hearing must be held within 30 days of the ZBA's determination, and the ZBA must file its decision with the Town Clerk within 40 days of the hearing.

3. Appeals (if applicable)

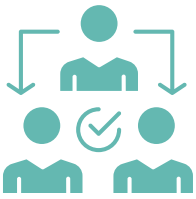
Applicant May File an Appeal: If the ZBA denies a comprehensive permit or approves it with conditions unacceptable to the applicant, the applicant may file an appeal with the Massachusetts Housing Appeals Committee (HAC). Other aggrieved persons must appeal to either the Land Court or Superior Court. After the 20-day appeal period lapses, the decision is to be recorded at the Worcester Registry of Deeds.

Once a decision is filed with the Town Clerk, a 20-day appeal period ensues in which the developer can file an appeal with the HAC.

4. Final Approval

Subsidizing Agency Issues Final Approval: After the ZBA has issued a comprehensive permit, it is the Subsidizing Agency's responsibility to issue a final approval. Under this process, the Subsidizing Agency will enter into a Regulatory Agreement with the developer, which will lay out the financial, limited dividend, affordability, monitoring, and other requirements for the developer to meet.

Before the Regulatory Agreement is executed, the Auburn ZBA will be asked to sign an acknowledgement that compliance with the Regulatory Agreement will be sufficient for compliance with the affordability conditions and other applicable requirements of the comprehensive permit.



Phase V Leader:
DDIS

PHASE V: PROJECT MONITORING & COMPLIANCE

Standard 40B & "Friendly 40B"

1. Pre-Construction Coordination

Building Permit Application: Once the Subsidizing Agency has granted Final Approval, the developer can apply for a building permit to begin construction of the project. At this stage, the developer should submit all final plans and compliance documentation. The Town may choose to host a pre-construction conference with the building inspector and representatives of municipal departments that have construction inspection and sign-off requirements such as the police, fire, water, and sewer departments. Once it is confirmed that all conditions are met, the building permits will be issued.

The Town may engage with third party engineer to conduct site inspections as needed at developers expense.

2. Affordability Monitoring Agent

Affordability Monitoring Agent Oversight: EOHLC, or another approved monitoring agent, oversees:

- **Lottery and marketing**: During the construction period, the developer will begin to market the affordable units under an *Affirmative Fair Housing Marketing and Resident Selection Plan* (AFHMP) approved by the Subsidizing Agency.
- **Income verification**: On an annual basis, the monitoring agent reviews household income documentation obtained by the property manager and the affordable unit leases in order to certify to the Subsidizing Agency that the affordable units are occupied by income-eligible tenants.
- **Long-term affordability compliance**: The monitoring agent ensures that affordability restrictions within the project remain in place for the specified period and maintains compliance with EOHLC's affordability requirements.

3. Construction & Occupancy

Regular Inspections Conducted by Town: The Auburn Building Commissioner/ Inspector should conduct regular inspections at the development, along with other municipal departments such as Fire, Water, Sewer, or DPW as needed.

Third Party Engineer Provides Additional Inspections: The Town should work with a third party engineer on any inspections or monitoring that is not conducted by Town staff, to be paid for by the developer.

Developer Submits Final Plans to Town: The developer should submit to the Town an as-built plan reflecting the final, constructed condition of all buildings plus any final documents.

Certificate of Occupancy Issued: Once all conditions are met, a Certificate of Occupancy will be issued.

4. Post-Occupancy & Ongoing Monitoring

Subsidizing Agency Monitors Compliance: When the project is finished and occupied, the Subsidizing Agency will assume responsibility for monitoring compliance with the affordable housing restriction and Regulatory Agreement. The monitoring process differs based on the housing type.

- **Homeownership developments**: A third party monitoring agent is typically under contract with the Subsidizing Agency and holds the responsibility of reviewing the AFHMP, monitoring the initial sales, and determining substantive compliance with the affordable housing restriction. On an ongoing basis, the monitoring agent oversees unit resales, monitors requests for refinancing and capital improvements by the affordable unit owners, and provides annual reports about the project's overall compliance with the affordable housing restriction.
- **Rental developments**: The monitoring agent reviews the AFHMP, monitors the lottery and tenant selection process for the affordable units, reviews the income eligibility documentation obtained by the lottery agent, and reviews initial rents and leases. On an annual basis, the monitoring agent reviews household income documentation obtained by the property manager and the affordable unit leases in order to certify to the Subsidizing Agency that the affordable units are occupied by income-eligible tenants.

RECOMMENDED BEST PRACTICES

Transparency & Community Engagement

It is critical to engage the public as early, and frequently, as possible. The Town should utilize multiple methods of outreach to contact and inform the community about 40B applications. This will allow opportunities to address questions and concerns for a project. Most importantly, it will create open communication throughout the 40B permitting and development process.

Professional Support & Training for the ZBA

While many aspects of the comprehensive permit process are similar to other types of petitions reviewed by the ZBA, there are differences that may be confusing or troublesome for the board, particularly for newer members. There are several resources available to ZBAs to help with the Chapter 40B comprehensive permitting process. A professional consultant should be sought from early stages of an application to provide trainings to boards and staff, participate in public hearings, and advise on requirements and policies. ZBA members are encouraged to attend any conferences or workshops that cover basic training, legal updates, or special sessions on Chapter 40B.

Safe Harbor & Housing Production Plan

The Town can claim “Safe Harbor” from 40B developments under certain conditions. The Town of Auburn should actively monitor its Subsidizing Housing Inventory (SHI) status to determine if it can assert these protections. In addition to the three statutory requirements that can provide Safe Harbor, the Town can gain temporary Safe Harbor status by maintaining its 5-year Housing Production Plan and meeting annual affordable housing production goals.

To invoke Safe Harbor, the ZBA must notify the 40B applicant within 15 days of opening the comprehensive permit hearing, providing documentation to support the claim. Then EOHLC will review the claims and make a determination.