

# TOWN OF SUTTON

## Comprehensive Permits

A Presentation by:

Amy E. Kwesell

KP Law, P.C.

# Introduction

Chapter 40B (G.L. c. 40B, §20-23) enables developers to obtain a single - “comprehensive” - permit from the Zoning Board of Appeals for a residential development.

ZBA acts on zoning issues raised, but also acts in place of all other local boards that would otherwise review the project.

Development is usually at greater density than permitted under zoning, and usually requires relief from other local bylaws as well.

Projects typically a mixture of market-rate and below market rate housing.

State laws and regulations still apply (WPA, Title 5, etc.)

# Before the Application

- Engage in comprehensive planning
- Approved affordable housing production plan (Sutton HPP - valid until 12/15/2024)
- Master plan, open space plan, etc.

# Consistent with Local Needs

- Important phrase in 40B – used for several purposes
- A municipality is “consistent with local needs” if it meets certain thresholds relating to housing units and housing production. Most common:
  - 10% of city or town housing units are “affordable”\*
  - Low or moderate income housing occupies 1.5% of municipality’s land area
  - municipality is certified as being in compliance with a Housing Production Plan
- These are referred to as “safe harbor”

# Safe Harbors

- Ten percent of housing stock on SHI (Sutton at 1.7% as of December 21, 2020)
- 1.5% of land area (“GLAM”)
- Large scale projects (more than 200 units for Sutton)
- Related application
- Planned production – need an approved Affordable Housing Production Plan (Sutton’s HPP is valid until 12/15/2024) Need 17 units for safe harbor

# Town is in “Safe Harbor”

- If municipality is “consistent with local needs,” the ZBA may deny a comprehensive permit, or grant it with conditions, and that decision is final as to the applicant.
- If municipality not “consistent with local needs,” applicant has right of appeal to Housing Appeals Committee (discussed later).
- ZBA in a city or town that is “consistent with local needs” may still hear application and grant comprehensive permit.
-

# Safe Harbors

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

# Project Eligibility Letter

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



# Project Eligibility Letter

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

# Application

- Required contents – ZBA should have separate Comprehensive Permit Regulations
- Filing fee
- Filing fee must be paid in full with application – Hanover case

# Application

- Project will typically need relief from provisions of zoning and other local bylaws. Applicant submits “waiver list.”
- ZBA will obtain advice from other boards on the waiver requests – e.g., advice from Conservation Commission on whether to waive provision of wetlands bylaw.
- ZBA not required to grant waiver of any bylaw or other local regulations, but may do so if it would be “consistent with local needs.”
- ZBA not required to grant waiver of any bylaw or other local regulations unless denial of the waiver renders the project “uneconomic”.

# Public Hearing

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

# Public Hearing

- 180 days from the opening hearing to close the public hearing
- Decision within 40 days of close of hearing
- File with clerk within 14 days
- Forward copy to DHCD
- Can mutually extend time limits – in writing and filed with the Town Clerk

# Public Hearing

- Outside consultants – very important!!!
- The ZBA is empowered to require the payment for third party consultant reviews for any aspect of the project that the Board believes relevant, other than legal services.
- G.L. c.44, s.53G authorizes such review and prepayment.
- An applicant's right to object to such requirement is limited to the consultant not being qualified or having a conflict of interest.
- Majority vote
- Waivers of local regulations and bylaws

# Decision

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

# Decision

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



# Decision

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

# Decision

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

# Conditions

- Conditions may not invade jurisdiction of subsidizing agency
- Uneconomic conditions “[a]ny condition brought about by a single factor or combination of factors that makes it impossible for a public agency or nonprofit organization to proceed in building or operating low or moderate income housing without financial loss or for a limited dividend organization to proceed and still realize a reasonable return...”
- Infrastructure concerns
- Decrease in units must be for valid planning, health, etc. reason

# Appeals

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

# Modification

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

# Questions?