

40B Site Approval

Citizen Planner Training Collaborative
March 19, 2016

Stages of a 40B Project

Site Approval (Project Eligibility)

Comprehensive Permit

Final Approval

Construction and Occupancy

Post Occupancy Responsibilities

*Goal of this session is to clarify who does what
(subsidizing agency, developer, municipality) during
each stage....*

Are there any rules?

- M.G.L Chapter 40B (The “Statute”)
- 760 CMR 56.00 (The “Regs”)
- DHCD’s Comprehensive Permit Guidelines (The “Guidelines”)
- Local Rules (established by municipality to govern the process of the local hearing)
- Building and Environmental Regulations
- HUD Fair Housing

Site Approval

In order to submit an application to a local board for a Comprehensive Permit, the project must receive a determination of Project Eligibility from the Subsidizing Agency



Who is the Subsidizing Agency?

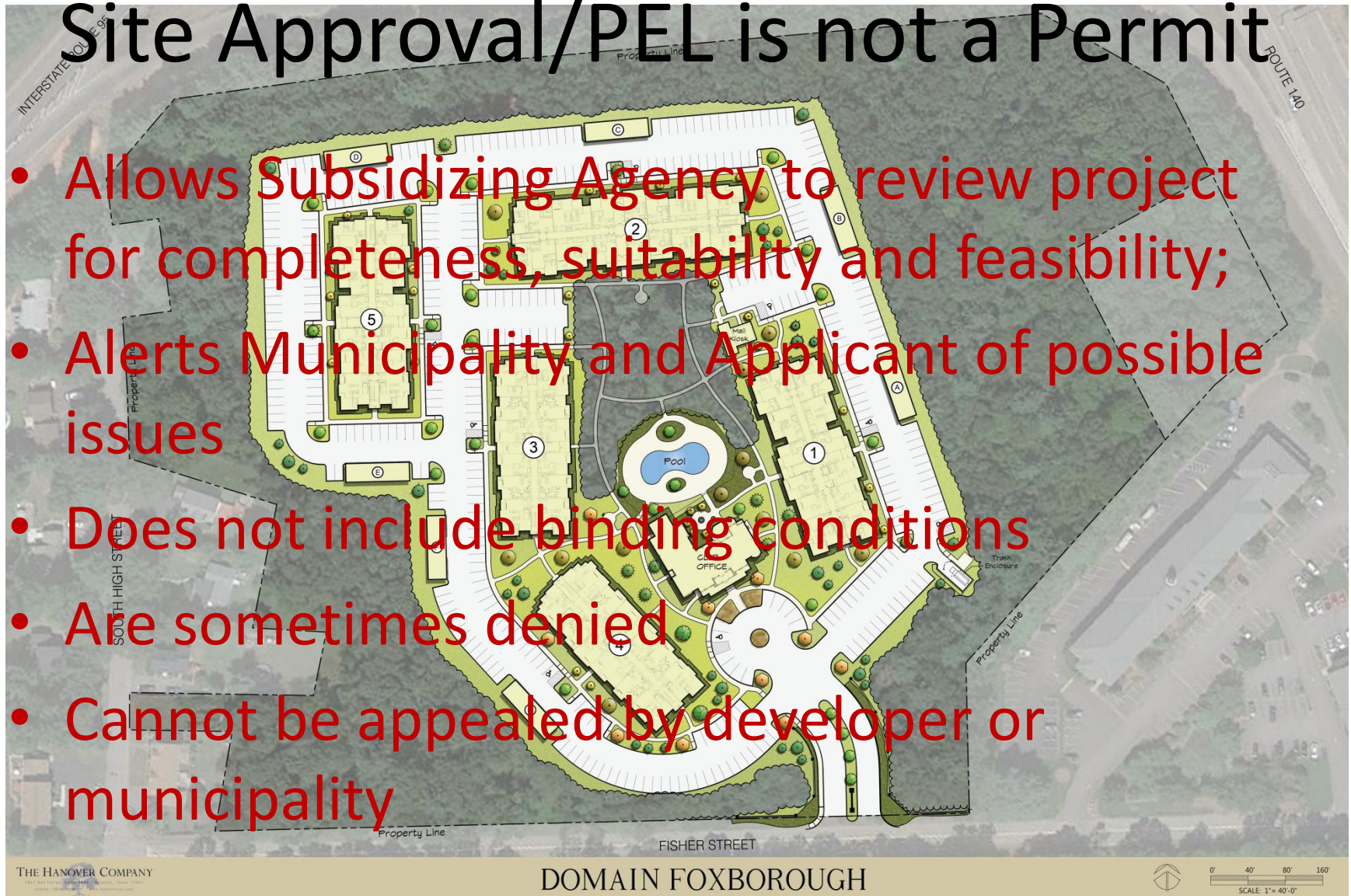
- Department of Housing and Community Development (Local Initiative Program, or LIP)
- MassHousing (New England Fund, or NEF)
- MassHousing Partnership
- Mass Development
- FHLBB (Bank is the Subsidizing Agency)-OLD

Goal is a consistent process, no matter which agency is involved.....

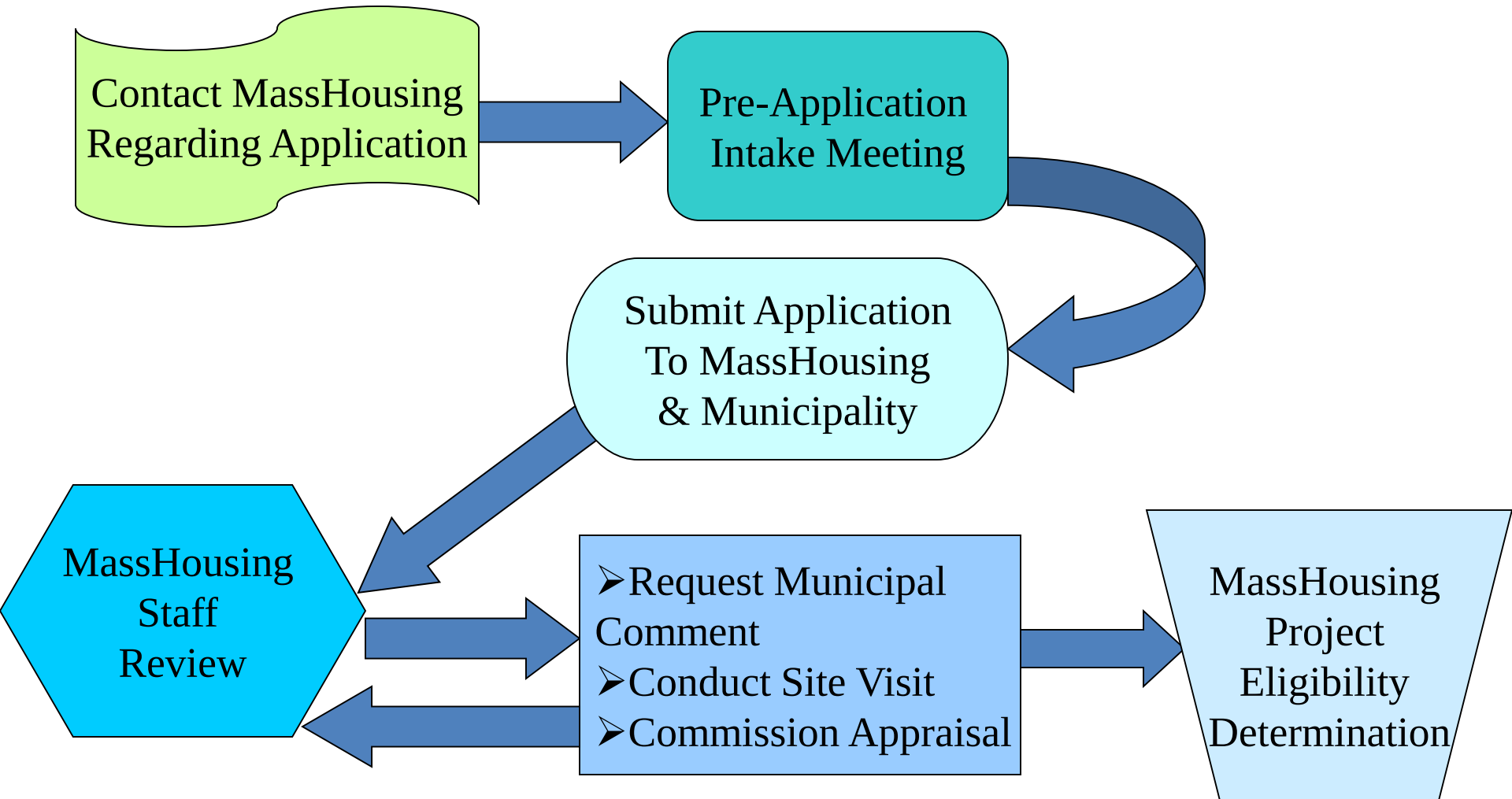


Site Approval/PEL is not a Permit

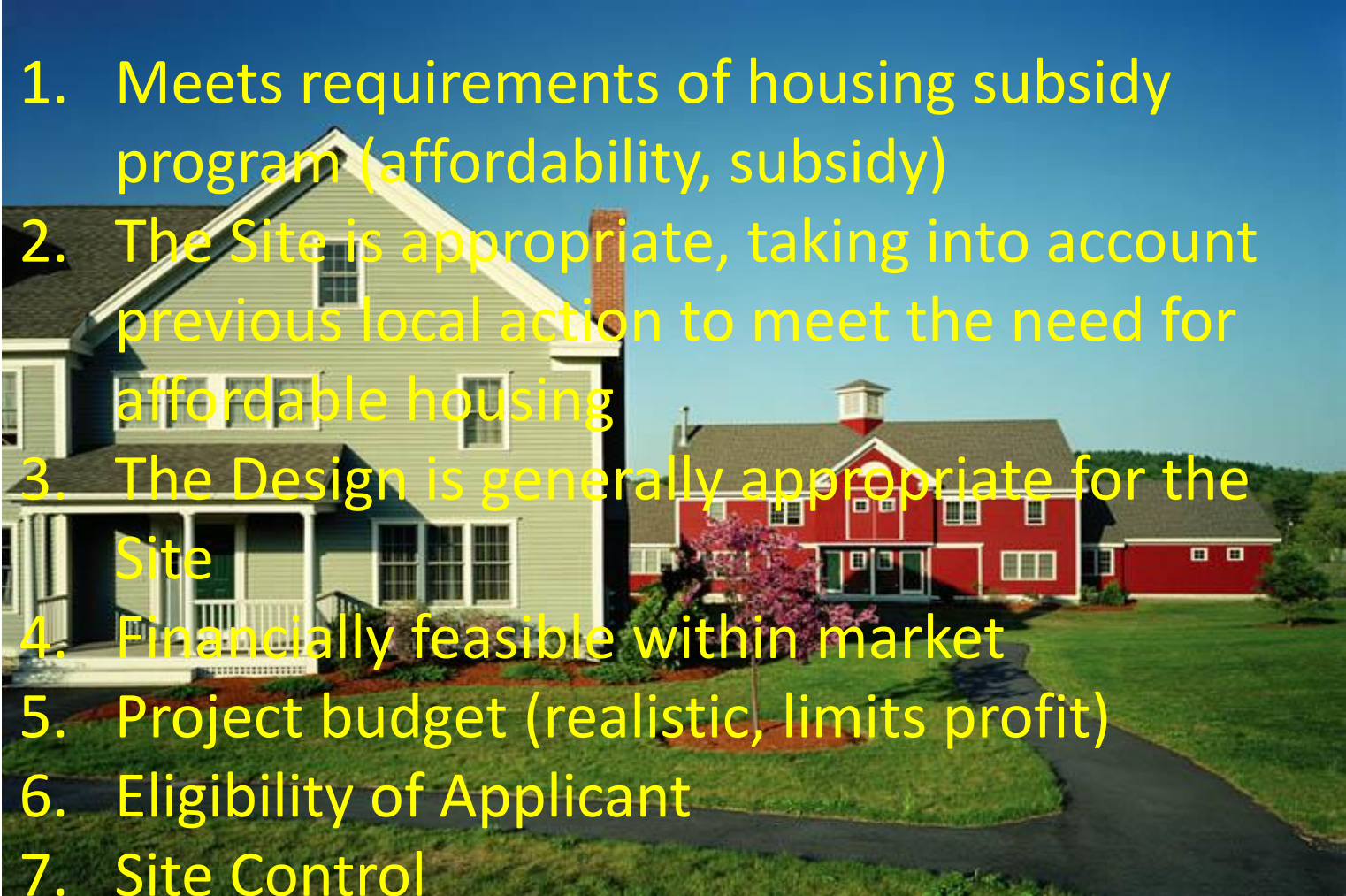
- Allows Subsidizing Agency to review project for completeness, suitability and feasibility;
- Alerts Municipality and Applicant of possible issues
- Does not include binding conditions
- Are sometimes denied
- Cannot be appealed by developer or municipality



MassHousing Project Eligibility Process for the Applicant



Site Approval Findings

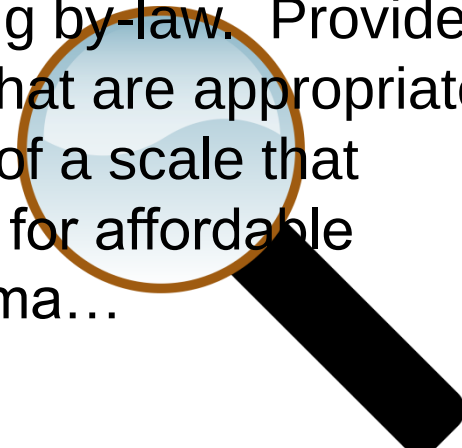
- 
- A photograph of a residential site. In the foreground, there is a green two-story house with white trim and a porch. To the right, there is a red two-story building with white trim, resembling a barn or a large garage, with a small cupola on the roof. A paved driveway leads from the bottom right towards the red building. The background shows a clear blue sky and some trees.
1. Meets requirements of housing subsidy program (affordability, subsidy)
 2. The Site is appropriate, taking into account previous local action to meet the need for affordable housing
 3. The Design is generally appropriate for the Site
 4. Financially feasible within market
 5. Project budget (realistic, limits profit)
 6. Eligibility of Applicant
 7. Site Control

Elaborate on Criteria B

- (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;*

- Previous Municipal Actions (760 CMR 56.04(4)(b))

Such actions could include the creation of multi-family districts under G.L. c.40A; overlay districts adopted under G.L. c.40R; and/or the adoption of an inclusionary zoning by-law. Provided that such measures relate to sites/districts that are appropriate for residential use and create opportunities of a scale that reasonably relate to the municipality's need for affordable housing as measured by the Statutory Minima...



Elaborate on Criteria C: Design

That the conceptual project design is generally appropriate for the site on which it is located, taking into account factors that may include

- proposed use,

- conceptual site plan,

- building massing,

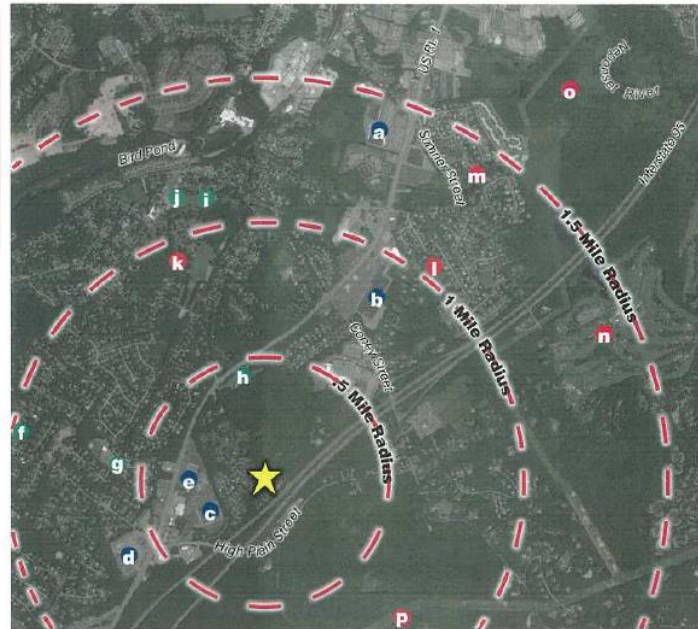
- topography,

- environmental resources, and

- integration into existing development patterns.

Proposed Use/Context

Proximity Map



Retail / Entertainment

- Super Stop and Shop
- Walpole Mall
- Walmart Super Center
- Big Y Foods
- Grossman's

Civic Institutions

- Bird Middle School
- Old Post Road School
- League School of Greater Boston
- Union Congregational Church
- St. Mary's Catholic Church

Parks / Recreation

- Francis William Bird Park
- Doherty Field
- Summer Saint Conservation
- Spring Valley Country Club
- Neponset Valley Lands
- Mass Audubon's Moose Hill Wildlife Sanctuary

Proposed Site Entrance Location

Conceptual Site Plan



Building Massing



LEFT SIDE ELEVATION

SCALE 3/16" = 1'-0"



FRONT ELEVATION

SCALE 3/16" = 1'-0"

Crowninshield Road
Brookline, MA 02/12/15



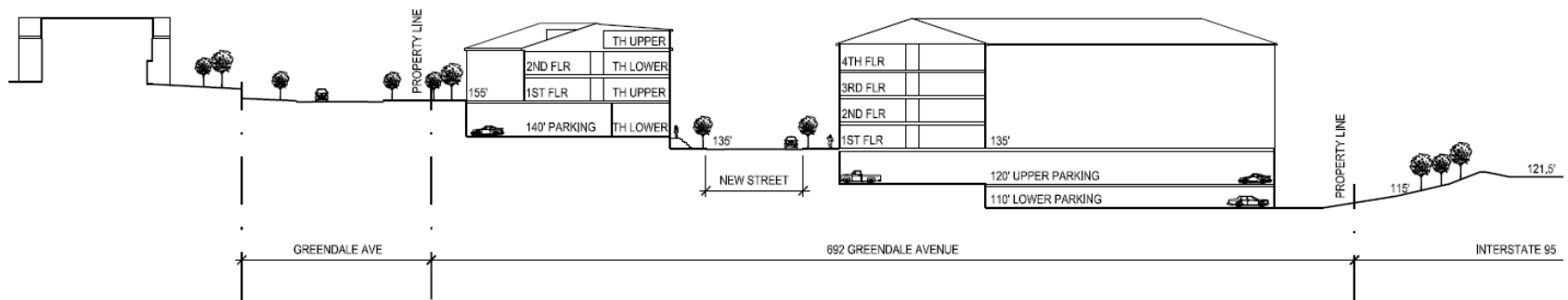
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Topography



692 Greendale Avenue

Needham, MA

Site Section

Scale: 1" = 40'

July 17, 2012

DEVELOPER : Mill Creek Residential Trust, LLC

ARCHITECT : The Architectural Team

tat | the architectural team

Environmental Resources

Proposed Site Plan: A-2

Development Calculations

Parcel Information

Total AC: 13.46 AC
 Parcel A: 7.86 AC
 Parcel B: .69 AC
 Lot D1: 4.91 AC
 Developable Area: 8.97 AC
 Preserved Area: 4.49 AC

Residential Units

4 Story Multi-Family
 2 BDR: 84
 1 BDR: 60
 2 Story Flats
 2 BDR: 24
 1 BDR: 6
 Total Units: 174
 Total Units / AC: 19.4 Units/AC

Parking

Total Parking: 315 Spaces
 Parking Ratio: 1.82 / Unit
 Surface: 232
 Handicap: 9
 Under Multi-Family: 36
 Under Flats: 38

Potential Bio-Infiltration Area

15,000 - 20,000 SF



Building Calculations

Building Footprint SF: 78,355 SF
 Multi-Family: 47,483 SF (15,827 SF / BLDG)
 Flats: 27,041 SF (5,734 / 2BDR BLDG
 4,105 / 1BDR BLDG)
 Clubhouse: 3,831 SF
 Building GSF: 241,481 GSF
 Multi-Family: 183,450 GSF (81,150 / BLDG)
 Flats: 54,200 GSF (49,000 / 2BDR BLDG
 8,200 / 1BDR BLDG)
 Clubhouse: 3,831 GSF

Lot Coverage

Building Footprint: 20% (1.8 AC / 8.97 AC)
 Impervious Paving: 43.6% (3.91 AC / 8.97 AC)
 Open Space: 36.4% (3.26 AC / 8.97 AC)
 *Preserved area not included

Zoning Classification

Parcel and Surrounding: Residence - A
 Lot Area: 30,000 SF
 Min. Setback: 30' front / 20' side / 30' rear
 Max. Lot Coverage: 25% structure / 40% impervious / 50% open space

Fitting Into Existing Development Patterns



Municipal Input Does Matter!

Possibilities for Handling

- Addressed in the Site Approval process
- Addressed before submittal of Comprehensive Permit
- Addressed in the Comprehensive Permit Hearing Process

Justifications for Denial

- Incomplete Application
- Health and Safety
- Site Control
- Quality of Design, taking into account housing purpose
- *Weighed differently depending on previous Municipal Action*



Comprehensive Permit Hearing Process

- Must start within two years after issuance of PEL
- Application to Designated “Local Board”

HELP!

- www.chapa.org
- www.mass.gov/dhcd
- www.masshousing.com
- www.mhp.net



Mass. Housing Partnership (MHP)

- MHP provides technical assistance to local Zoning Boards of Appeal (ZBA)
- Grants up to \$15,000
- Qualified third-party consultants
- To request an application for technical assistance contact Laura Shufelt at lshufelt@mhp.net or 617-330-9944 ext. 292

Statutory Minima/Regulatory Requirements

- Less than 10% of year round housing units
- Municipalities have less than 1.50% of total land area zoned for residential, commercial, or industrial use
- Project involves no more than 0.3% of the total land area zoned in community for residential, commercial, or industrial use or ten acres, whichever is larger



Safe Harbor Provisions

- **Housing Production Plan**
- **Recent Progress Toward Housing Unit Minimum**
- **Review of Large Projects**
- **Related Applications**



Critical 40B Application Submission Requirements

- **Applicant Status: Public Agency, Non-Profit, or Limited Dividend Organization**
- **Evidence of Site Control**
- **Project Eligibility Letter from Subsidizing Agency**



Other 40B Application Submission Requirements

- Preliminary Plans versus Final Plans
- Existing site conditions and locus map
- Preliminary, scaled, architectural drawings
- A tabulation of proposed buildings by type, size and ground coverage
- A preliminary subdivision plan (if applicable)
- A preliminary utilities plan
- A list of requested waivers

Chapter 40B Performance Requirement Deadlines

- **Distribute Application - 7 Days**
- **Notice of Public Hearing – 14 Days**
- **Open Public Hearing - Within 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**

Scheduling a Site Visit

- Conduct a site/neighborhood visit early in the review process
- Understand...
 - Site and neighborhood existing conditions
 - The proposed site plan and building design
 - The location of abutters who will be most affected by the proposed development

Retaining Peer Review Consultants

- Employment of outside consultants
- Civil Engineering, Traffic, Architecture
- Financial – if necessary
- Review of studies prepared on behalf of the Applicant, **not** preparation of independent studies
- All written results and reports are made part of the record



Securing sufficient project information to make an informed decision

- Focus on the “real” project issues/impacts early in the review process
- Peer review and calls for additional or more detailed information should be delayed, if possible, until major issues are defined
- If needed, request additional information from the Applicant
- Don't hesitate to ask for graphics that help clarify height, massing, setbacks and overall relationship to neighbors

Negotiation and Work Sessions

- Negotiating with developers is possible
- Work sessions with developers can often be productive after initial more formal public hearings.
- Neighbors can be invited to these sessions.
- All discussions during the session are advisory in nature.
- No decisions can be made
- Comply with Open Meeting Law
- Check with your Town Counsel



Balance Regional Housing Needs with Local Concerns

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

Holding Deliberation Sessions



- Deliberate in a logical and orderly fashion
- Discuss potential conditions
- Review the requested waivers
- Ideally, discuss before closing the public hearing so applicant and public know what to expect

Drafting and issuing the Comprehensive Permit decision

- The ZBA has three decision alternatives
 - Denial
 - Approval as submitted
 - Approval with conditions



Approval with Conditions

- The conditions should not make the Project Uneconomic
- Conditions and/or requirements must be consistent with Local Needs
- The Board shall not reduce the number of units for reasons other than evidence of Local Concerns within the Board's purview



Appeal of Decision

- Appeals by the Applicant are made with the Housing Appeals Committee (HAC)
- Appeals for other aggrieved parties are made with Superior Court or the Land Court



ZONING BOARD OF APPEALS OF AMESBURY V. HOUSING APPEALS COMMITTEE –MA. SJC



- Addressed the question of “what is the scope of a local zoning board's authority under 40B”
- Defined ZBA’s purview vs Subsidizing Agency.

Managing the Comprehensive Permit

- Applicants must submit to the subsidizing agency for Final Approval.
- Final engineering and architectural plans accompany application for a building permit.
- Changes requested to the Comprehensive Permit must be deemed substantial or insubstantial within 20 days of receiving applicant's request

Who does what after the Comprehensive Permit is Granted?

- Final Approval
- Construction
- Limited Dividend Monitoring
- Affordability Monitoring



Existing



Proposed

Karen Rd Elevation - Proposed

Scale: 1" = 40'-0"



PCMA
PLANNING & COMMUNITY
MANAGEMENT ASSOCIATION

Waban AMA Realty Ventures, LLC
1521 Beacon Street Waban

Proposed Design 06/13/2015

Final Approval

A Responsibility of the Subsidizing Agency

- Check that Comprehensive Permit has not expired
- Reaffirm Project Eligibility
- Confirm Use Restriction (for affordability)
- Make sure that Cost Certification requirements have been acknowledged;
- Collect Surety
- **Enter into a Regulatory Agreement**



The Regulatory Agreement *A Recorded Contract*

- Between the Developer and the Subsidizing Agency (and, in the case of LIP, the Municipality)
- Identifies the Developer and Affordability Monitoring Agent
- Describes Limited Dividend Requirement and Affordability Requirement
- Includes an Affordability Monitoring Services Agreement
- **Has a term.....**



Term of Regulatory Agreement

Homeownership 40B: “Initial Occupancy”

- All Affordable Units are occupied by eligible owners for the first time
- All Affordable Units secured with Long Term Affordability Restriction
- Long-Term Affordability Monitoring Services Agreement has been put into place

Rental 40B

- Defined Term (Typically 30 Years)
- Annual Limited Dividend Certification (Approved by Subsidizing Agency)
- Annual Income Certification (Reviewed by Subsidizing Agency)
- *Allows for appointment of successor to continue enforcement of Affordability Requirement*

Construction-Business as Usual

- Once Final Approval is Granted, Normal Permitting/Inspectional Requirements Apply
- No Final Approval=No Building Permits!
- *Site work prior to Final Approval is permitted in accordance with local by-laws*



Post Occupancy Responsibilities: Subsidizing Agency

Limited Dividend Requirement

Process is different for homeownership and rental projects.

- Process starts 90 days after “substantial completion”
- Involves Cost Examination and Cost Certification Process
- Limits Developer profits on 40B Developments
 - Homeownership: Max 20%
 - Rental: Max Developer’s fee plus limited annual distribution

Post-Occupancy Responsibilities:

Affordability Monitoring Agent

Subsidizing Agency and Developer are identified in the Regulatory Agreement and Monitoring Services Agreement (if there is one).

Rental 40B: Subsidizing Agencies=Monitoring Agent

Homeownership 40B:

- DHCD is the Monitoring Agent for all LIP Projects
- MassHousing uses a network of 3rd-party agents (CHAPA, RHSO. etc.)

Post-Occupancy Responsibilities:

Affordability Monitoring Agent

Homeownership 40B - Initial Sales

Review the Affirmative Fair Housing Marketing Plan (AFHMP)

Monitor Initial Sales

Compliance-Determine substantive compliance with Affordability Requirement

Monitor Resales

Annual Reporting

Supplemental Monitoring Services (refinancing, capital improvements, leasing and resale)

Post-Occupancy Responsibilities:

Affordability Monitoring Agent

Rental 40B

- Annual Limited Dividend Certification
- Annual Eligibility Certification for Affordable Units

Post-Occupancy Responsibilities: Affordable Unit Owner/Tenant



Homeowner: Read the Deed Rider!

Contact the Monitoring Agent for Resale; Capital Improvements;
Refinancing

Tenant: Read the Lease!

Notify management company of change in status (Income, Household
Size, Occupancy)

Respond to requests for annual recertification information

Role of Condominium Association

- Enforce Rules of Condominium Association
- Comply with Massachusetts Condominium Law

Note:

Condominium Fees and schedule of beneficial interest are established and reviewed by Subsidizing Agency to ensure affordability at initial sale. Changes to condo documents/condo fees are not regulated by Monitoring Agent or Subsidizing Agency.



Post Occupancy Responsibilities:

Municipality

Normal and Routine Regulations and Services:

- Building Code
- Health/Safety Regulations
- State Wetlands Protection Act
- Town By-Laws (noise, leash laws, parking)
- Affordable units assessed at “affordable” prices



Post Occupancy Responsibilities:

Municipality

40B Homeownership Projects:

- Municipality is notified of pending **Resales** and is eligible to purchase Affordable Units for resale through “Municipal Option”
- Municipality is notified of pending **Foreclosures** and is eligible to purchase Affordable Units for resale through “Municipal Option”

40B Rental Projects:

- Plan for ongoing affordability at the end of the Term of the Regulatory Agreement (typically 30 years) in accordance with the provisions in the Comprehensive Permit.

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