



(1) Project Eligibility. To be eligible to submit an application to a Board for a Comprehensive Permit or to file or maintain an appeal before the Committee, the Applicant and the Project shall fulfill, at a minimum, the following project eligibility requirements:

- (a) The Applicant shall be a public agency, a non-profit organization, or a Limited Dividend Organization;
- (b) The Project shall be fundable by a Subsidizing Agency under a Low or Moderate Income Housing subsidy program; and
- (c) The Applicant shall control the site.

Compliance with these project eligibility requirements shall be established by issuance of a written determination of Project Eligibility by the Subsidizing Agency that contains all the findings required under 760 CMR 56.04(4), based upon its initial review of the Project and the Applicant's qualifications in accordance with 760 CMR 56.04.

(2) Elements of Application. The Applicant shall submit an application for Project Eligibility to the Subsidizing Agency, with a copy to the Chief Executive Officer of the municipality and written notice to the Department, which shall include:

- (a) the name and address of the Applicant;
- (b) the address of the site and site description;
- (c) a locus map identifying the site within a plan of the neighborhood, accompanied by photographs of the surrounding buildings and features that provide an understanding of the physical context of the site;
- (d) a tabulation of proposed buildings with the approximate number, size (number of bedrooms, floor area), and type (ownership or rental) of housing units proposed;
- (e) the name of the housing program under which Project Eligibility is sought;
- (f) relevant details of the particular Project if not mandated by the housing program (including percentage of units for low or moderate income households, income eligibility standards, the duration of restrictions requiring Low or Moderate Income Housing, and the limited dividend status of the Applicant);
- (g) conceptual design drawings of the site plan and exterior elevations of the proposed buildings, along with a summary showing the approximate percentage of the tract to be occupied by buildings, by parking and other paved vehicular areas, and by open areas, the approximate number of parking spaces, and the ratio of parking spaces to housing units;
- (h) a narrative description of the approach to building massing, the relationships to adjacent properties, and the proposed exterior building materials;
- (i) a tabular analysis comparing existing zoning requirements to the Waivers requested for the Project; and

a. evidence of control of the site.

In the case of a Local Initiative Project, the application shall be submitted by the Chief Executive Officer of the Municipality.

(3) Review and Comment Process. Upon receipt of the application, the Subsidizing Agency shall provide written notice to the Chief Executive Officer of the municipality where the Project is located, initiating a 30-day review period of the Project. During the course of the review period the Subsidizing Agency shall conduct a site visit, which Local Boards may attend, and it shall accept written comments from Local Boards and other interested parties.

The Subsidizing Agency shall consider any such comments prior to issuing a determination of Project Eligibility. No determination of Project Eligibility shall be issued for a Project before the end of the 30-day review period.

(4) Findings in Determination. A determination of Project Eligibility, to be issued by the Subsidizing Agency after the close of the 30-day review period, shall make the following findings, based upon its review of the application, and taking into account information received during the site visit and from written comments:

(a) that the proposed Project appears generally eligible under the requirements of the housing subsidy program, subject to final approval under 760 CMR 56.04(7);

(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, such as inclusionary zoning, multifamily districts adopted under M.G.L. c.40A, and overlay districts adopted under M.G.L. c.40R, (such finding, with supporting reasoning, to be set forth in reasonable detail);



see guidelines attached

(c) that the conceptual project design is generally appropriate for the site on which it is located, taking into consideration factors that may include proposed use, conceptual site plan and building massing, topography, environmental resources, and integration into existing development patterns (such finding, with supporting reasoning, to be set forth in reasonable detail);



see approach to design reviews

(d) that the proposed Project appears financially feasible within the housing market in which it will be situated (based on comparable rentals or sales figures);

(e) that an initial *pro forma* has been reviewed, including a land valuation determination consistent with the Department's guidelines, and the Project appears financially feasible and consistent with the Department's guidelines for Cost Examination and Limitations on Profits and Distributions (if applicable) on the basis of estimated development costs;

(f) that the Applicant is a public agency, a non-profit organization, or a Limited Dividend Organization, and it meets the general eligibility standards of the housing program; and

(g) that the Applicant controls the site, based on evidence that the Applicant or a related entity owns the site, or holds an option or contract to acquire such interest in the site, or has such other interest in the site as is deemed by the Subsidizing Agency to be sufficient to control the site.

The Subsidizing Agency shall provide copies of its written determination of Project Eligibility to the Department, the Chief Executive Officer of the municipality, and the Board.

(5) Substantial Changes. If an Applicant desires to change aspects of its proposal that would affect the project eligibility requirements set forth at 760 CMR 56.04(1), after it has received a determination of Project Eligibility, it shall notify the Subsidizing Agency in writing of such changes, with a copy to the Department, the Chief Executive Officer of the municipality, and the Board. The Subsidizing Agency shall determine within 15 days whether such changes are substantial with reference to the project eligibility requirements. Failure to respond shall be deemed a finding that the change is not substantial.

If the Subsidizing Agency finds that the changes are substantial, it shall ordinarily defer any review (except if the Applicant, the Chief Executive Office of the municipality, or the Board request otherwise) until either the Board has issued a Comprehensive Permit or the application has been denied and the Applicant has lodged an appeal with the Committee, at which time the Subsidizing Agency shall reaffirm, amend, or deny its determination of the project eligibility requirements. Only the changes affecting the project eligibility requirements set forth at 760 CMR 56.04(1) shall be at issue in such review. In the case of a Comprehensive Permit that is not subject to appeal, such decision may be incorporated into the Subsidizing Agency's final approval issued pursuant to 760 CMR 56.04(7). If the Subsidizing Agency finds that the changes are not substantial and that the Applicant has good cause for not originally presenting such details in its application, the changes shall be permitted if the proposal as so changed meets the requirements of M.G.L. c.40B, §§ 20 through 23 and 760 CMR 56.04.

(6) Conclusive Nature of Determination. Issuance of a determination of Project Eligibility shall be considered by the Board or the Committee to be conclusive evidence that the Project and the Applicant have satisfied the project eligibility requirements of 760 CMR 56.04(1). Alleged failure of the Applicant to continue to fulfill any of these project eligibility requirements may be subsequently raised by the Board at any time, with the burden of proof on the Board, or by the Committee during an appeal, in either case solely upon the grounds that there has been a substantial change affecting the project eligibility requirements set forth at 760 CMR 56.04(1). Such challenge shall be decided by the Subsidizing Agency in accordance with the procedure set forth in 760 CMR 56.04(5), and the Board hearing or Committee appeal may be stayed until such challenge is decided.

(7) Final Approval. Following the issuance of a Comprehensive Permit, the Subsidizing Agency shall issue its final written approval of the Project to the Applicant, with a copy to the Board and the Department. Such approval shall, at a minimum:

(a) reaffirm each of the project eligibility requirements enumerated in 760 CMR 56.04(1);

(b) confirm that the proposed Use Restriction is in a form consistent with Department guidelines; and

(c) verify that cost examination requirements have been acknowledged, that a commitment has been made by the Applicant to comply with the cost examination requirements defined in 760 CMR 56.04(8) under the pains and penalties of perjury, and that adequate financial surety, as defined in guidelines issued by the Department, has been secured by the Subsidizing Agency sufficient to ensure completion of the cost examination to the satisfaction of the Subsidizing Agency and the distribution of excess funds as required at 760 CMR 56.04(8)(e).

(8) Cost Examination and Limitations on Profits and Distributions.

(a) Following the issuance of a Comprehensive Permit, a Project for which the Developer is a Limited Dividend Organization shall be subject to the limitations on Reasonable Return, in accordance with guidelines issued by the Department. The Subsidizing Agency shall be solely responsible for the monitoring and enforcement of such limitations, subject to the Subsidizing Agency's right to delegate such functions as set forth in 760 CMR 56.02, Subsidizing Agency.

(b) Certification of total development costs. For purposes of compliance with 760 CMR 56.04(8)(b)(1) and (c), total development costs, and the determination of qualifying inclusions and exclusions, shall be established by the Applicant or subsequent Developer in a detailed financial statement of all material costs of the project prepared by a certified public accountant and submitted to the Subsidizing Agency in a form and upon a schedule determined by the Department's guidelines. The Department's guidelines shall provide for verification of financial statements; submission of a copy of cost certifications to the affected municipality for its review and consideration by the Subsidizing Agency of any inaccuracies identified by the municipality during its review; and enforcement actions, including suspension or disqualification from state agency programs, in the event of noncompliance with 760 CMR 56.04(8).

(c) Distribution of Excess Funds. Any funds in excess of the applicable limitations on profits and distributions shall be paid over to the Subsidizing Agency or the municipality or the Subsidizing Agency, as determined solely by the Subsidizing Agency's program requirements and the terms of a regulatory agreement, or similar agreement, to be entered into between the Subsidizing Agency and the Developer.

(d) Cost Certification Inventory. The Department shall maintain an inventory of all projects granted a Comprehensive Permit and the respective status of each Project with respect to the submission of the certification of total development costs as required by 760 CMR 56.04(8)(d). For the purposes of such inventory, Subsidizing Agencies shall provide information to the Department in the manner and form required by the Department.

56.05 Local Hearings:

(1) Local Rules. The Board shall adopt rules, not inconsistent with M.G.L. c.40B, §§ 20 through 23, for the conduct of its business and shall file a copy

*end of 56.04*

# Guidelines currently in effect

## 2. Project Application

At a minimum, the Developer shall submit the materials required by 760 CMR 56.04(2). Subsidizing Agencies may require additional materials.

## 3. Findings

The regulations at 760 CMR 56.04(4) set out the findings that are necessary for a determination of Project Eligibility by a Subsidizing Agency. These guidelines elaborate on some of these findings.

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

The purpose of the Act is to provide relief from local exclusionary zoning and regulatory requirements; it is not intended to remove all local control related to regulating patterns of land use and development. In determining whether a Project site is appropriate, Subsidizing Agencies must take into account information provided by a municipality as to whether it has met the purpose of the Act by creating zoning districts and/or requirements that provide the opportunity for affordable housing, and whether the Project complies with such measures. 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, then the fact that the development of affordable housing has yet to occur may be taken into account in considering whether such local measures genuinely address the purpose of the Act, but should not be deemed to be determinative.

### Design (760 CMR 56.04(4)(c))

Given that the purpose of the Act is to overcome local zoning and regulatory barriers to affordable housing, by its very nature the Act introduces into localities a site plan, and likely building typologies, that differ from the surrounding context. Therefore, the Subsidizing Agency must give particular attention in reviewing the Project to the matters that relate to how the Project site plan and design relates to the existing development pattern(s) of the immediately surrounding area.

These guidelines are not intended to be exhaustive and/or supplant the more detailed design review that a Subsidizing Agency undertakes in determining Project Eligibility. Rather, they are intended to draw attention to factors that are of particular importance when introducing a Project into existing surroundings, to encourage a uniform perspective among Subsidizing Agencies, and to create a more transparent review process.

- Relationship to Adjacent Building Typology-- Generally, a Project is developed in the context of single family dwellings and introduces a different form of housing into the neighborhood. Assuming that this is the case, it is important to mitigate the height and scale of the buildings to adjoining sites. In this context, it is particularly important to consider the predominant building types, setbacks, and roof lines of the existing context.

July 30, 2008

Subsidizing Agency  
Project Eligibility

- The massing of the Project should be modulated and/or stepped in perceived height, bulk and scale to create an appropriate transition to adjoining sites.
- Where possible, the site plan should take advantage of the natural topography and site features, or the addition of landscaping, to help buffer massing.
- Design may use architectural details, color and materials taken from the existing context as a means of addressing the perception of mass and height
- Relationship to Adjacent Streets-- Likewise, the manner in which the buildings relate to adjacent streets is critically important. Massing should take into account the pattern of the existing street frontage as well as maintain a human scale by reasonably relating the height of buildings to the width of the public way.
- Density-- Appropriate density of residential dwellings depends upon a myriad of interconnected factors and must be determined case by case. However, the following guidance indicates a range of density (units per Buildable Acre) that can be achieved for each building typology while maintaining appropriate ratios of dwelling space to parking and open space across a broad range of local development patterns.
  - Low Rise/Town Houses                      8 – 40
  - Garden Style Apartments                    25 – 70
  - Midrise    40 – 160

The calculation of units per Buildable Acre provides a measurement related to assessing site plan and design considerations in the context of design review by the Subsidizing Agency. It does not equate with, nor should it be substituted for, a zoning calculation that would be based upon local by-law definitions such as FAR.

*(July 30, 2008 change inserted the second clause related to Buildable Acre.)*

#### 4. Project Eligibility Letter

The Subsidizing Agency shall provide a copy of its Project Eligibility determination to the Chief Executive Officer of the municipality.

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proposed  
amendments  
to guidelines - draft

### Fundable

A determination that a Project is "fundable" is not a financing commitment. It is a determination that the Project generally would be considered eligible for the particular housing program under which the Developer seeks Project Eligibility.

### Site Control

In the absence of other requirements established by a Subsidizing Agency for its housing programs, site control shall mean, ~~in addition to holding title,~~ that the Developer or a related entity holds title or holds a ground lease, an option, or a contract for purchase.

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## 3. Findings

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

The purpose of the Act is to provide relief from local exclusionary zoning and regulatory requirements; it is not intended to remove all local control related to regulating patterns of land use and development. In determining whether a Project site is appropriate, Subsidizing Agencies must take into account information provided by a municipality as to whether it has met the purpose of the Act by creating zoning districts and/or requirements that provide the opportunity for affordable housing, including affordable housing that is available to families with children and for which at least 10% of such housing contains units with 3 or more bedrooms, and whether the Project complies with such measures. Such actions could include the creation of multi-family districts or compact centers under G.L. c.40A; overlay districts adopted under G.L. c.40R; and/or the adoption of an inclusionary zoning by-law. If the previous municipal action is of a character and scale to create significant opportunities as-of-right to meet the municipality's need for affordable housing as measured by the Statutory Minima, the municipality's action will be given weight in the eligibility findings. 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, then tThe fact that the development of affordable housing has yet to occur may be taken into account ~~in considering whether such local measures genuinely address the purpose of the Act,~~ but should will not be deemed to be determinative. ]\*

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building typologies, that differ from the surrounding context. Therefore, the Subsidizing Agency must give particular attention in reviewing the Project to the matters that relate to how the Project site plan and design relates to the existing development pattern(s) of the immediately surrounding area.

These guidelines are not intended to be exhaustive and/or supplant the more detailed design review that a Subsidizing Agency undertakes in determining Project Eligibility. Rather, they are intended to draw attention to factors that are of particular importance when introducing a Project into existing surroundings, to encourage a uniform perspective among Subsidizing Agencies, and to create a more transparent review process.

- Relationship to Adjacent Building Typology-- Generally, a Project is developed in the context of single family dwellings and introduces a different form of housing into the neighborhood. Assuming that this is the case, it is important to mitigate the height and scale of the buildings to adjoining sites. In this context, it is particularly important to consider the predominant building types, setbacks, and roof lines of the existing context.
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- Density-- Appropriate density of residential dwellings depends upon a myriad of interconnected factors and must be determined case by case. There is not any "rule of thumb" that can substitute for a review and analysis of the relevant aspects of a given design and site plan.

For additional design resources, see Chapter 40B Design Principals Handbook at <http://www.mass.gov/hed/community/40b-plan/handbook-approach-to-ch-40b-design-reviews.html> or at [http://www.mhp.net/uploads/resources/handbook\\_approach\\_to\\_chapter\\_40b\\_design\\_reviews.final.11mar15.pdf](http://www.mhp.net/uploads/resources/handbook_approach_to_chapter_40b_design_reviews.final.11mar15.pdf), and Design Advisor at <http://www.designadvisor.org>.

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*(July 30, 2008 change inserted the second clause related to Buildable Acre.)*

#### 4. Project Eligibility Letter

The Subsidizing Agency shall provide a copy of its Project Eligibility determination to the Chief Executive Officer of the municipality.

*September 2012 change inserted language addressing treatment of projects sponsored by nonprofits or government entities; also deleted numerical density ranges and added references to design resources.*