

In January 2014, all four subsidizing agencies entered into an “Interagency Agreement Regarding Housing Opportunities for Families with Children,” which generally requires at least 10 percent of the units in comprehensive permit developments to have three or more bedrooms. The purpose of the Interagency Agreement is to protect families with children from housing discrimination in the production of affordable and mixed-income housing under Chapter 40B. Thus, developers have to report the proposed percentage of three-bedroom units in their PE applications and later, they have to document compliance with the policy when they seek Final Approval from one of the subsidizing agencies (after the comprehensive permit has been issued).

### Local Comment Period

After receiving a PE application, the Subsidizing Agency notifies the Chief Elected Official and schedules a site visit. The notification letter starts the clock for a 30-day comment period for the city or town. At this point, the Chief Elected Official should post the notice and PE application on the community’s website and seek comments from municipal boards and departments. Making the documents available on the city or town website will ensure that interested residents can have access to the information so they can comment if they wish.

Although it may not be possible to coordinate the comments process, the Chief Elected Official should try to act as a clearinghouse for comments on the PE application. The comment period provides an opportunity for elected officials to lead a constructive conversation about Chapter 40B and organize a coherent response for the community. It is important to remember that Subsidizing Agencies want to encourage low- and moderate-income housing development, so it is unrealistic to expect them to issue a denial simply because the community objects to a proposed development. There are occasional exceptions, e.g., a Subsidizing Agency’s deference to a community that has taken significant steps to increase the supply of affordable housing. For most cities and towns, the most constructive approach is to focus on matters that clearly fall within the scope of a PE determination. The Subsidizing Agency’s decision criteria are listed in 760 CMR 56.04, and they include:

- that the proposed project appears generally eligible under the requirements of the housing subsidy program;
- 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);
- 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

### The federal Fair Housing Act prohibits discrimination because of:

- *Race*
- *Color*
- *Religion*
- *National origin*
- *Sex*
- *Disability (physical and mental impairments)*
- *Familial status (presence of children)*

*In addition to these groups, the Commonwealth of Massachusetts prohibits discrimination on the basis of:*

- *Gender identity*
- *Sexual orientation*
- *Genetic information*
- *Ancestry*
- *Age*

massing, topography, environmental resources, and integration into existing development patterns (such finding, with supporting reasoning, to be set forth in reasonable detail);

- that the proposed project appears financially feasible within the housing market in which it will be situated (based on comparable rentals or sales figures);
- that an initial pro forma has been reviewed, including a land valuation determination consistent with DHCD's guidelines, and the project appears financially feasible and consistent with DHCD's guidelines for Cost Examination and Limitations on Profits and Distributions (if applicable) on the basis of estimated development costs;
- 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
- 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 Chief Elected Official should reach out to the local housing partnership or housing trust about the housing needs that the proposed project could meet and the degree to which the project advances the goals of the community's housing plan (if one exists). In addition, the Planning Board should be asked to weigh in on the project's relationship to the city or town master plan if the plan is current and actively being implemented.

### **Subsidizing Agency Decision**

The Subsidizing Agency will issue a decision after the close of the local comment period. The time needed to make a decision varies by agency and the project's consistency with the determination and findings required in the Chapter 40B regulations. The developer, the Chief Elected Official, and the ZBA receive a copy of the PE determination.