

Exhibit E

760 CMR 31.00: HOUSING APPEALS COMMITTEE: CRITERIA FOR DECISIONS UNDER
M.G.L. c. 40B, §§ 20-23

Section

- 31.01: Jurisdictional Requirements
- 31.02: Local Action Prerequisite
- 31.03: Changes in Applicant's Proposal
- 31.04: Computation of Statutory Minima
- 31.05: Scope of the Hearing
- 31.06: Burdens of Proof
- 31.07: Evidence
- 31.08: Decision and Appeal
- 31.09: Enforcement
- 31.10: Effective Date of Amendments

31.01: Jurisdictional Requirements

(1) To be eligible to submit an application for a comprehensive permit or to file or maintain an appeal before the Committee, the applicant and the project shall fulfill the following jurisdictional 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 and moderate income housing subsidy program.
- (c) The applicant shall control the site.

(2) Fundability shall be established by submission of a written determination of Project Eligibility (Site Approval) by a subsidizing agency as follows:

- (a) A determination of Project Eligibility (Site Approval) shall include:
 - 1. the name and address of the applicant
 - 2. the address of the site and site description;
 - 3. the number and type (ownership or rental) of housing units proposed;
 - 4. the name of the housing program under which Project Eligibility (Site Approval) is sought; and
 - 5. 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 developer).
- (b) A determination of Project Eligibility (Site Approval) shall make the following findings:
 - 1. that the proposed project appears generally eligible under the requirements of the housing program, subject to final review of eligibility and to final approval;
 - 2. that the subsidizing agency has performed an on-site inspection of the site and has reviewed pertinent information submitted by the applicant;
 - 3. that the proposed housing design is generally appropriate for the site on which it is located;
 - 4. that the proposed project appears financially feasible within the housing market in which it will be situated (based on comparable rentals or sales figures);
 - 5. that an initial *pro forma* has been reviewed and the project appears financially feasible on the basis of estimated development costs;
 - 6. that the developer meets the general eligibility standards of the housing program.

(c) Within ten days of filing of its application with a subsidizing agency for preliminary approval of a project, the applicant shall serve written notice upon the Director of the Department of Housing and Community Development, One Congress Street, 10th Floor, Boston, MA 02114.

(d) Upon receipt of the application, the subsidizing agency shall provide written notice to the chief elected official of the involved community and a 30-day review period for comments, and it shall consider any such comments prior to issuing a determination of Project Eligibility (Site Approval).

(e) Within ten days of receipt of a written determination of Project Eligibility (Site Approval) from the subsidizing agency, the applicant shall serve a copy of that determination upon the Director of the Department of Housing and Community Development, One Congress Street, 10th Floor, Boston, MA 02114.

(f) After issuance of a determination of Project Eligibility (Site Approval), the project shall be considered fundable unless there is sufficient evidence to determine that the project is no longer eligible for a subsidy.

(3) Either a preliminary determination in writing by the subsidizing agency that the applicant has sufficient interest in the site, or a showing that the applicant, or any entity 50% or more of which is owned by the applicant, owns a 50% or greater interest, legal or equitable, in the proposed site, or holds any option or contract to purchase the proposed site, shall be considered by the Board or the Committee to be conclusive evidence of the applicant's interest in the site.

(4) No determination of Project Eligibility or Site Approval shall be issued for a project sooner than 30 days after the filing of its application with the subsidizing agency for preliminary approval of the project. A determination of Project Eligibility or Site Approval shall be for a particular financing program. A change in the program under which the applicant plans to receive financing shall require a new determination, and may be deemed a substantial change pursuant to 760 CMR 31.03. An applicant may proceed under alternative financing programs if the application to the Board or appeal to the Committee so indicates and if full information concerning the project under the alternative financing arrangements is provided.

(5) Failure of the applicant to fulfill any of the requirements in 760 CMR 31.01(1) may be raised by the Committee, the Board, or a party at any time, and shall be cause for dismissal of the application or appeal. No application or appeal shall be dismissed, however, unless the applicant has had at least 60 days to remedy the failure.

31.02: - Local Action Prerequisite

(1) In order to appeal to the Committee, an applicant shall have applied to the Board for a comprehensive permit in accordance with M.G.L. c. 40B, § 21 and shall have been denied such permit or shall have been granted such permit with conditions which it alleges make the building or operation of such housing uneconomic.

(2) In order to appeal to the Committee, the applicant shall have submitted to the Board an application and a complete description of the proposed project. The items listed below will normally constitute a complete description. Failure to submit a particular item shall not necessarily invalidate an application. Upon motion by either party during an appeal, the Committee may determine whether such item, or any further item not listed, should have been submitted to the Board or should be submitted to the Committee.

- (a) preliminary site development plans showing the locations and outlines of proposed buildings; the proposed locations, general dimensions and materials for streets, drives, parking areas, walks and paved areas; and proposed landscaping improvements and open areas within the site. An applicant proposing to construct or rehabilitate four or fewer units may submit a sketch of the matters in 760 CMR 31.02(2)(a) and 31.02(2)(c) which need not have an architect's signature. All structures of five or more units must have site development plans signed by a registered architect;
- (b) a report on existing site conditions and a summary of conditions in the surrounding areas, showing the location and nature of existing buildings, existing street elevations, traffic patterns and character of open areas, if any, in the neighborhood. This submission may be combined with that required in 760 CMR 31.02(2)(a);
- (c) preliminary, scaled, architectural drawings. For each building the drawings shall be signed by a registered architect, and shall include typical floor plans, typical elevations, and sections, and shall identify construction type and exterior finish;
- (d) a tabulation of proposed buildings by type, size (number of bedrooms, floor area) and ground coverage, and a summary showing the percentage of the tract to be occupied by buildings, by parking and other paved vehicular areas, and by open areas;
- (e) where a subdivision of land is involved, a preliminary subdivision plan;
- (f) a preliminary utilities plan showing the proposed location and types of sewage, drainage, and water facilities, including hydrants;
- (g) documents showing that the applicant fulfills the jurisdictional requirements of 760 CMR 31.01;
- (h) a list of requested exceptions to local requirements and regulations, including local codes, ordinances, by-laws or regulations.

The applicant may submit with its initial pleading to the Committee copies of such of these items as may be relevant to its appeal.

- (3) Pursuant to M.G.L. c. 40B, § 21, as amended by St. 1989, c. 593, the Board shall adopt rules, not inconsistent with M.G.L. c. 40B, for the conduct of its business and shall file a copy of said rules with the city or town clerk. The Committee may in the course of an appeal properly before it pursuant to 760 CMR 31.02(1) determine that a particular local rule is consistent or not consistent with M.G.L. c. 40B, but no appeal shall be heard solely for the purpose of determining the validity of a rule, unless the rule is the sole basis for the denial or conditioning of a comprehensive permit. (For related requirements applying to Boards, see M.G.L. c. 44, § 53G.)

The Committee shall from time to time prepare model local rules for the benefit of Boards, and serve them upon the Boards by first class mail pursuant to 760 CMR 30.08(1). Rules adopted by a Board shall be presumed consistent with M.G.L. c. 40B to the extent that they conform to such model rules. If a Board does not adopt and file rules, it shall conduct business pursuant to the model rules.

31.03: Changes in Applicant's Proposal

- (1) Substantial Changes. If an applicant involved in an appeal to the Committee desires to change aspects of its proposal from its content at the time it made application to the Board, it shall notify the Committee in writing of such changes and the Committee shall determine whether such changes are substantial. If the Committee finds that the changes are substantial, it shall remand the proposal to the Board for a public hearing to be held within 30 days and a decision to be issued within 40 days of termination of the hearing as provided in M.G.L. c. 40B, § 21. Only the changes in the proposal or aspects of the proposal affected thereby shall be at issue in such

hearing. If the Committee finds that the changes are not substantial and that the applicant has good cause for not originally presenting such details to the Board, the changes shall be permitted if the proposal as so changed meets the requirements of M.G.L. c. 40B and 760 CMR 31.00.

(2) Commentary and Examples. The statute requires that an applicant present its application first to a local Board of Appeals before appealing to the Housing Appeals Committee. If on appeal to the Committee the applicant wishes to make changes in its proposal from its content as originally presented to the Board, the Board should have an opportunity to review changes which are substantial.

Following are some examples of what circumstances ordinarily will and will not constitute a substantial change of the kind described in 760 CMR 31.03(1):

- (a) The following matters ordinarily will be substantial changes:
1. An increase of more than 10% in the height of the building(s);
 2. An increase of more than 10% in the number of housing units proposed;
 3. A reduction in the size of the site of more than 10% in excess of any decrease in the number of housing units proposed;
 4. A change in building type (e.g., garden apartments, townhouses, high-rises);
 5. A change from rental property to homeownership or vice versa;
- (b) The following matters ordinarily will not be substantial changes:
1. A reduction in the number of housing units proposed;
 2. A decrease of less than 10% in the floor area of individual units;
 3. A change in the number of bedrooms within individual units, if such changes do not alter the overall bedroom count of the proposed housing by more than 10%;
 4. A change in the color or style of materials used;
 5. A change in the financing program under which the applicant plans to receive financing, if the change affects no other aspect of the proposal.

(3) Changes after Issuance of a Permit.

(a) If after a comprehensive permit is granted by the Board or the Committee, an applicant desires to change the details of its proposal as approved by the Board or the Committee, it shall promptly notify the Board in writing, describing such change. Within 20 days the Board shall determine and notify the applicant whether it deems the change substantial or insubstantial.

(b) If the change is determined to be insubstantial or if the Board fails to notify the applicant, the comprehensive permit shall be deemed modified to incorporate the change.

(c) If the change is determined to be substantial, the Board shall hold a public hearing within 30 days of its determination and issue a decision within 40 days of termination of the hearing, all as provided in M.G.L. c. 40B, § 21. Only the changes in the proposal or aspects of the proposal affected thereby shall be at issue in such hearing. A decision of the Board denying the change or granting it with conditions which make the housing uneconomic may be appealed to the Committee pursuant to M.G.L. c. 40B, § 22; a decision granting the change may be appealed to the superior court pursuant to M.G.L. c. 40B, § 21 and M.G.L. c. 40A, § 17.

(d) The applicant may appeal a determination that a change is substantial by filing a petition with the Committee within 20 days of being so notified. Such an appeal will stay the proceedings before the Board.

1. If the Committee rules that the change is insubstantial, it shall modify the comprehensive permit.
2. If the Committee rules that the change is substantial, it shall remand the proposal for a hearing pursuant to 760 CMR 31.03(3)(c).

31.04: Computation of Statutory Minima

(1) Housing Unit Minimum. For purposes of calculating whether the city or town's low and moderate income housing units exceed 10% of its total housing units, pursuant to M.G.L. c. 40B, § 20:

(a) There shall be a presumption that the latest Department of Housing and Community Development Subsidized Housing Inventory contains an accurate count of low and moderate income housing. If a party introduces evidence to rebut this presumption, the Board or Committee shall on a case by case basis determine what housing or units of housing are low or moderate income housing. In examining particular housing developments or units, it shall first be guided by the intent expressed in the regulations governing the program under which the housing is financed (*e.g.*, 760 CMR 45.06 for the Local Initiative Program and 760 CMR 37.10 for the HOP program). It shall also be guided by the latest Department of Housing and Community Development Listing of M.G.L. c. 40B Low or Moderate Income Housing Programs. Housing units shall be counted if they are subject to building permits, available for occupancy, or occupied. In addition, housing units authorized by a comprehensive permit shall be counted when the comprehensive permit becomes final (760 CMR 31.08(4)), provided that any housing units, for which building permits have not been issued within one year of the date when the comprehensive permit becomes final, shall no longer be counted until building permits have been issued. No housing unit shall be counted more than once for any reason.

(b) The total number of housing units shall be that total number of units enumerated for the city or town in the latest available United States Census; provided that evidence that net additional units have been occupied, have become available for occupancy, or are under building permit or that total units have decreased between the latest Census and the date of initial application shall be considered.

(2) General Land Area Minimum. For the purposes of calculating whether low and moderate income housing exists in the city or town on sites comprising more than 1½% of the total land area zoned for residential, commercial, or industrial use, pursuant to M.G.L. c. 40B, § 20:

(a) Total land area shall include all districts in which any residential, commercial, or industrial use is permitted, regardless of how such district is designated by name in the city or town's zoning by-law;

(b) Total land area shall include all unzoned land in which any residential, commercial, or industrial use is permitted;

(c) Total land area shall exclude land owned by the United States, the Commonwealth or any political subdivision thereof, the Metropolitan District Commission or any state public authority;

(d) Total land area shall exclude any land area where all residential, commercial, and industrial development has been prohibited by restrictive order of the Department of Environmental Protection pursuant to M.G.L. c. 131, § 40A. No other swamps, marshes, or other wetlands shall be excluded;

(e) Total land area shall exclude any water bodies;

(f) Total land area shall exclude any flood plain, conservation or open space zone if said zone completely prohibits residential, commercial and industrial use, or any similar zone where residential, commercial or industrial use are completely prohibited.

Only sites of low and moderate income housing units inventoried by the Department or established according to 760 CMR 31.04(1)(a) as occupied, available for occupancy, or under permit as of the date of the applicant's initial submission to the Board, shall be included toward the 1½% minimum.

(3) Annual Land Area Minimum. For purposes of calculating whether the application before the Board would result in the commencement in any one calendar year of construction of low and moderate income housing on sites comprising more than 0.3 of 1% of the city or town's land area or ten acres pursuant to M.G.L.

c. 40B, § 20:

(a) Total land area of the municipality and the land area occupied by low or moderate income housing shall be calculated in the manner provided in 760 CMR 31.04(2);

(b) If 0.3 of 1% of total land area is less than ten acres, the minimum for sites occupied by low and moderate income housing shall be ten acres;

(c) The relevant calendar year shall be the calendar year period of January 1 through December 31 which includes the applicant's projected date for initiation of construction;

(d) Ordinarily any low or moderate income housing for which construction is expected to commence within the calendar year, other than that proposed by the applicant, must have received a firm funding commitment by the subsidizing agency prior to the date of the applicant's initial submission to the Board, in order to be included towards the 0.3 % or ten acres;

(e) Development and construction work in connection with low or moderate income housing shall be proceeding in good faith to completion insofar as is reasonably practicable, in order for such housing to be included towards the 0.3 % or ten acres minimum.

31.05: Scope of the Hearing

(1) General Principle. Consistency with local needs is the central issue in all cases before the Committee. Not only must all local requirements and regulations applied to the applicant be consistent with local needs, but decisions of the Board and the Committee must also be consistent with local needs.

(2) Denial. In the case of the denial of a comprehensive permit, the issue shall be whether the decision of the Board was consistent with local needs.

(3) Approval with conditions. In the case of approval of a comprehensive permit with conditions or requirements imposed, the issues shall be:

(a) first, whether the conditions considered in aggregate make the building or operation of such housing uneconomic, and

(b) second, whether the conditions are consistent with local needs.

Commentary. A condition which makes a project uneconomic will not be removed or modified if as a result of such action the project would not be consistent with local needs.

31.06: Burdens of Proof

Applicant's Case

(1) The applicant shall have the burden of proving that it has met the jurisdictional requirements of 760 CMR 31.01(1).

(2) In the case of a denial, the applicant may establish a *prima facie* case by proving, with respect to only those aspects of the project which are in dispute, that its proposal complies with federal or state statutes or regulations, or with generally recognized standards as to matters of health, safety, the environment, design, open space, or other matters of local concern.

(3) In the case of an approval with conditions, the applicant shall have the burden of proving that the conditions make the building or operation of the housing uneconomic. That is, the applicant has the burden of proving that, within the limits set by the subsidizing agency and without substantially changing the rent levels and unit sizes proposed,

(a) in the case of a public agency or non-profit organization, the conditions make it impossible to proceed in building or operating low or moderate income housing without financial loss,

(b) in the case of a limited dividend organization, the conditions imposed by the Board make it impossible to proceed in building or operating low or moderate income housing and still realize a reasonable return as defined by the applicable subsidizing agency, or

(c) alternatively, in either case, the conditions would result in a subsidizing agency refusal to fund. See 760 CMR 31.07(1)(f).

(4) In the case of either a denial or an approval with conditions, the applicant may prove that local requirements or regulations have not been applied as equally as possible to subsidized and unsubsidized housing. The applicant shall have the burden of proving such inequality.

Board's Case

(5) In any case, the Board may show conclusively that its decision was consistent with local needs by proving that one of the statutory minima described in 760 CMR 31.04 has been satisfied. The Board shall have the burden of proving satisfaction of such statutory minima.

(6) In the case of denial, the Board shall have the burden of proving, first, that there is a valid health, safety, environmental, design, open space, or other local concern which supports such denial, and then, that such concern outweighs the regional housing need.

(7) In the case of an approval with conditions in which the applicant has presented evidence that the conditions make the project uneconomic, the Board shall have the burden of proving, first, that there is a valid health, safety, environmental, design, open space, or other local concern which supports such conditions, and then, that such concern outweighs the regional housing need.

(8) In the case of either a denial or an approval with conditions, if the denial or conditions are based upon the inadequacy of existing municipal services or infrastructure, the Board shall have the burden of proving that the installation of services adequate to meet local needs is not technically or financially feasible. Financial feasibility may be considered only where there is evidence of unusual topographical, environmental, or other physical circumstances which make the installation of the needed service prohibitively costly.

Applicant's rebuttal

(9) In the case of a denial or an approval with conditions, the applicant shall have the burden of proving that preventive or corrective measures have been proposed which will mitigate the local concern, or that there is an alternative means of protecting local concerns which makes the project economic.

31.07: Evidence

- (1) Presumptions. 760 CMR 31.07(1)(a), (b), (c), (e), and (f) shall be rebuttable presumptions; 760 CMR 31.07(1)(d), (g), and (h) shall be irrebuttable presumptions.
- (a) Fundability/Project Eligibility or Site Approval - See 760 CMR 31.01(2).
 - (b) Site Control - See 760 CMR 31.01(3).
 - (c) Housing Unit Minimum/Subsidized Housing Inventory - See 760 CMR 31.04(1)(a).
 - (d) Recent progress toward housing unit minimum - A decision by a Board to deny a comprehensive permit or grant a permit with conditions shall be consistent with local needs if the municipality has made recent progress toward its housing unit minimum. Recent progress toward its housing unit minimum shall mean that the number of housing units that have been created during the twelve months prior to the date of the comprehensive permit application and that count toward the housing unit minimum described in 760 CMR 31.04(1) is equal to or greater than 2% of the municipality's total housing units. Such a denial shall not preclude re-filing of the application at a later date.
 - (e) Regional housing need/Statutory minima - Proof that a town has failed to satisfy one of the statutory minima described in 760 CMR 31.04(1) and (2) shall create a presumption that there is a substantial regional housing need which outweighs local concerns. *Board of Appeals of Hanover v. H.A.C.*, 363 Mass. 339, 367, 294 N.E.2d 393, 413 (1973).
 - (f) Uneconomic/Agency refusal to fund - Proof that the subsidizing agency will not fund the project because of a condition imposed by the Board, that the applicant has requested a waiver of the subsidizing agency requirement that leads to this result, and that the subsidizing agency has denied a waiver, shall be conclusive evidence that the condition of the Board makes the project uneconomic.
 - (g) Large scale project - A decision by the Board to deny a comprehensive permit application or grant a permit with conditions shall be consistent with local needs if:
 - 1. in a municipality which has a total number of 7500 or more housing units as enumerated in the latest available United States Census, the application for a comprehensive permit involved construction of more than 300 housing units or a number of housing units equal to 2% of all housing units in the municipality, whichever number is greater; or
 - 2. in a municipality which has between 5,000 and 7,500 housing units exclusive, as so enumerated, the application for a comprehensive permit involved construction of more than 250 housing units; or
 - 3. in a municipality which has between 2,500 and 5,000 housing units inclusive, as so enumerated, the application for a comprehensive permit involved construction of more than 200 housing units; or
 - 4. in a municipality which has less than 2,500 housing units, as so enumerated, the application for a comprehensive permit involved construction of more than 150 housing units.
 - (h) Related applications - A decision by the Board to deny a comprehensive permit or grant a permit with conditions shall be consistent with local needs if 12 months has not elapsed between the date of application and any of the following:
 - 1. the date of filing of a prior application for a variance, special permit, subdivision or other approval related to construction on the same land if that application included no low or moderate income housing,
 - 2. any date during which such an application was pending before a local permit granting authority,
 - 3. the date of disposition of such an application, or
 - 4. the date of withdrawal of such an application.

An application shall not be considered a prior application if it concerns insubstantial construction or modification of the preexisting use of the land.

- (2) Balancing. If a town or city attempts to rebut the presumption that there is a substantial regional housing need which outweighs local concerns,
- (a) the weight of the housing need will be commensurate with the proportion of the city or town's population that consists of low income persons; if few or no low income persons reside in the city or town, the strength of housing need will consist of regional need alone,
 - (b) the weight of the local concern will be commensurate with the degree to which the health and safety of occupants or town residents is imperiled, the degree to which the natural environment is endangered, the degree to which the design of the site and the proposed housing is seriously deficient, the degree to which additional open spaces are critically needed in the city or town, and the degree to which the local requirements and regulations bear a direct and substantial relationship to the protection of such local concerns, and
 - (c) a stronger showing shall be required on the local concern side of the balance where the housing need is relatively great than where the housing need is not as great.
- (3) Evidence to be Heard. The Committee will hear evidence only as to matters actually in dispute. Below are examples of factual areas in which evidence may be heard if it is relevant to issues in dispute. These examples are not all inclusive.
- (a) Health, Safety, and the Environment. The Committee may receive evidence of the following matters:
 1. Structural soundness of the proposed building;
 2. Adequacy of sewage arrangements;
 3. Adequacy of water drainage arrangements;
 4. Adequacy of fire protection;
 5. Adequacy of the applicant's proposed arrangements for dealing with the traffic circulation within the site, and feasibility of arrangements which could be made by the city or town for dealing with traffic generated by the project on adjacent streets;
 6. Proximity of the proposed site to airports, industrial activities, or other activities which may affect the health and safety of the occupants of the proposed housing;
 - (b) Site and Building Design. The Committee may receive evidence of the following matters:
 1. Height, bulk, and placement of the proposed housing;
 2. Physical characteristics of the proposed housing;
 3. Height, bulk, and placement of surrounding structures and improvements;
 4. Physical characteristics of the surrounding land;
 5. Adequacy of parking arrangements;
 6. Adequacy of open areas, including outdoor recreational areas, proposed within the building site;
 - (c) Open Space. The Committee may receive evidence of the following matters:
 1. availability of existing open spaces, as defined in 760 CMR 30.02, in the city or town;
 2. current and projected utilization of existing open spaces and consequent need, if any, for additional open spaces, by the city or town's population including occupants of the proposed housing;
 3. relationship of the proposed site to any city or town open space or outdoor recreation plan officially adopted by the planning board, and to any

official actions to preserve open spaces taken with respect to the proposed site by the town meeting or city council, prior to the date of the applicant's initial submission. The inclusion of the proposed site in said open space or outdoor recreation plan shall create a presumption that the site is needed to preserve open spaces unless the applicant produces evidence to the contrary;

4. relationship of the proposed site to any regional open space plan prepared by the applicable regional planning agency;
5. current use of the proposed site and of land adjacent to the proposed site;
6. inventory of sites suitable for use as open spaces, and available for acquisition or other legal restriction as open spaces, in the city or town, *provided* that the Committee shall admit no evidence of any open space plan adopted only by the local conservation commission or other local body but not officially adopted by the planning board.

(4) Evidence Not to be Heard. The following matters shall normally be within the province of the subsidizing agency and the Committee will not hear evidence concerning them except for good cause:

- (a) Fundability of the project by a subsidizing agency. In order to rebut the fundability presumption in 760 CMR 31.01(2), however, the Board may present evidence as to the status of the project before the subsidizing agency.
- (b) Marketability of the project.
- (c) The applicant's ability to finance, construct, or manage the project.
- (d) The financial feasibility of the project, what constitutes a reasonable return for a limited dividend developer, or whether the applicant is likely to earn reasonable return, except that evidence may be heard which is directly relevant to the issue of whether conditions make the project uneconomic (see 760 CMR 31.06(3)).
- (e) Tenant selection procedures.

31.08: Decision and Appeal

(1) Decision. In accordance with M.G.L. c. 40B, § 22, the Committee shall render a written decision, based upon a majority vote, stating its findings of fact and conclusions, within 30 days after termination of the hearing unless such time has been extended by consent of the applicant.

- (a) If the Committee finds, in the case of a denial, that the decision of the Board was not consistent with local needs, it shall vacate such decision and shall direct the Board to issue a comprehensive permit to the applicant.
- (b) If the Committee finds, in the case of conditions imposed by the Board, that the conditions render the project uneconomic and that the conditions are not consistent with local needs, the Committee shall direct the Board to remove any such condition or to modify it so as to make the proposal economic.
- (c) If the Committee finds, in the case of conditions imposed by the Board, that the conditions render the project uneconomic and that the conditions are consistent with local needs, but that the conditions can be modified so as to make the project economic and to adequately protect health, safety, environmental, design, open space, and other local concerns, the Committee shall so modify the conditions.

(2) Conditions. The Committee or the Board shall not issue any order which would allow the building or operation of housing in accordance with standards less safe than the applicable building and site plan requirements of the subsidizing agency. The Committee or the Board, in its decision, may make a comprehensive permit subject to any of the following conditions or requirements:

- (a) The grant of a subsidy by a state or federal subsidizing agency;
- (b) Compliance with any requirement imposed by the subsidizing agency;

- (c) A finding by the subsidizing agency that the applicant is a public agency, a non-profit or limited dividend organization, or that the applicant has suitable interest in the proposed site;
- (d) The securing of the approval of any state or federal agency with respect to the proposed housing which the applicant must obtain before building;
- (e) Complete or partial waiver by the Board or the Committee of fees assessed or collected by local boards;
- (f) Other directions or orders to local boards designed to effectuate the issuance of a comprehensive permit and the construction of the approved housing, or
- (g) Any other condition consistent with the statute and with 760 CMR 31.00.

(3) Massachusetts Environmental Policy Act (MEPA). All projects before the Committee are subject to the MEPA, M.G.L. c. 30, §§ 61 through 62H.

(a) Where no Environmental Impact Report (EIR) is required, no M.G.L. c. 30, § 61 finding shall be required in the Committee's decision. In any such case, however, prior to issuance of a decision, the applicant shall serve upon the Committee pursuant to 760 CMR 30.08 the following:

1. a Certificate of the Secretary of Environmental Affairs pursuant to 301 CMR 11.06(1) that no EIR is required, or
2. a certificate from the subsidizing agency or the Department of Housing and Community Development pursuant to 760 CMR 30.06(9)(a) and 301 CMR 11.03(2) that no Environmental Notification Form (ENF) must be filed. (This certificate need not be refiled if it was served with the initial pleading; if such a certificate is not available, the Committee may rely on evidence admitted at the hearing or thereafter.)

(b) Where an EIR is required and a Final Environmental Impact Report (FEIR) has received a Certificate of the Secretary of Environmental Affairs of compliance pursuant to 301 CMR 11.09(4), the Committee may take official notice of the FEIR without prior notice to the parties pursuant to 760 CMR 30.10(2), and shall include in its decision findings as required by M.G.L. c. 30, § 61.

(c) Where an EIR is required and the FEIR has not received a Certificate of the Secretary of Environmental Affairs of compliance pursuant to 301 CMR 11.09(4), the Committee may delay its decision or it may render its decision, provided that the decision shall be subject to the following conditions:

1. that the comprehensive permit shall not be implemented until the Committee has fully complied with MEPA, and
2. that the Committee shall retain authority to modify the decision based upon findings or reports prepared in connection with MEPA. *Board of Appeals of Maynard v. H.A.C.*, 370 Mass. 64, 67, 345 N.E.2d 382 (1976).

(4) Lapse of Permits. If construction authorized by a comprehensive permit has not begun within three years of the date on which the permit becomes final, the permit shall lapse. The permit shall become final on the date of the Board or Committee decision if no appeal is filed. Otherwise, it shall become final on the date the last appeal is decided or otherwise disposed of. The Board or the Committee may set an earlier or later expiration date and may extend any expiration date. An extension may not be unreasonably denied nor denied due to other projects built or approved in the interim.

(5) Transfer of Permits. No comprehensive permit shall be transferred to a person or entity other than the applicant without the written approval of the Board or the Committee.

(6) Appeal. Any decision of the Committee may be reviewed in the superior court in accordance with the provisions of M.G.L. c. 30A.

(7) Appeal in MEPA Cases. Judicial review of a Committee decision which does not contain Massachusetts Environmental Policy Act findings, but rather contains the conditions required by 760 CMR 31.08(3)(c) shall not be delayed by such conditions.

31.09: Enforcement

(1) The Board shall carry out an order of the Committee within 30 days of its entry, and, upon failure to do so, the order of the Committee shall for all purposes be deemed the action of the Board.

(2) The Board and the Committee shall have the same power to issue permits or approvals as any local board which would otherwise act with respect to an application.

(3) A comprehensive permit issued by a Board or by order of the Committee shall be a master permit which shall subsume all local permits and approvals normally issued by local boards. Upon presentation of the comprehensive permit and subsequent detailed plans, all local boards shall issue all necessary permits and approvals after reviewing such plans only to insure that they are consistent with the comprehensive permit and applicable state and federal codes.

(4) After the issuance of a comprehensive permit, the Committee or Board may issue such orders as may aid in the enforcement of its decision. Also see 760 CMR 30.09(5)(c).

(5) The Committee or the applicant may enforce an order of the Committee in the Superior Court.

31.10: Effective Date of Amendments

760 CMR 31.07(1)(d), 31.07(1)(g), and 31.07(1)(h) shall apply to all applications for comprehensive permits filed after August 31, 2001.

REGULATORY AUTHORITY

760 CMR 31.00: M.G.L. c. 23B; c. 40B.

LPRevisions9-2-01\760CMR30631
8/31/01