

**Comprehensive Permit Rules
of the
Easthampton Zoning Board of Appeals**

(Originally Adopted June 17, 2002)

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1.00 Purpose and Context

The Massachusetts Comprehensive Permit Law (M.G.L. ch. 40B, §§ 20-23 of the General Laws, enacted as Chapter 774 of the Acts of 1969) encourages the construction of affordable housing using locally granted permits. The law enables a local Zoning Board of Appeals (ZBA), in consultation with other Local Boards and Officials, to grant a single permit to an eligible developer proposing state or federally sponsored low or moderate income housing. It also permits the Board to override local requirements and regulations that are inconsistent with affordable housing needs if environmental and planning concerns have been addressed. For instance, the ZBA may permit construction of housing at a density greater than that allowed by local zoning. State requirements may not be overridden.

A developer who is denied a Comprehensive Permit may appeal the decision of the Zoning Board of Appeals to the state Housing Appeals Committee if less than 10 percent of the community's housing stock is subsidized housing. The developer may also appeal to the Committee if the permit is granted, but with conditions that may render the proposal economically unfeasible. These rules establish procedures for applications to the Easthampton ZBA for Comprehensive Permits granted under the Commonwealth's Comprehensive Permit Law. These rules are required by M.G.L. ch. 40B, §21 and by 760 CMR 56.05. The purpose of that act and these rules is to facilitate the development of affordable housing in Massachusetts. Further explanation of the background

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and purpose is provided in the regulations of the Housing Appeals Committee, 760 CMR 30, 760 CMR 31, and 760 CMR 56.

These rules alone are not sufficient to describe Comprehensive Permit procedures before the Zoning Board of Appeals. They must be read in conjunction with and implemented in a manner consistent with the complete regulations of the Housing Appeals Committee, 760 CMR 56 and with the Guidelines for Local Review of Comprehensive Permits, published periodically by the Department of Housing and Community Development. In addition, the Board's general rules for conduct of hearings under M.G.L. ch. 40A apply to Comprehensive Permit applications. In case of inconsistency or conflict between those general rules for conduct and these rules, these rules shall govern.

2.00 Definitions

- (a) **Board:** the Zoning Board of Appeals established under M.G.L. ch. 40A, §12 also referred to as “ZBA.”
- (b) **Consistent with Local Needs:** means either that (a) one or more of the grounds set forth in 760 CMR 56.03(1) have been met, or (b) Local Requirements and Regulations imposed on a Project are reasonable in view of the regional need for Low and Moderate Income Housing, considered with the number of Low Income Persons in the affected municipality and with Local Concerns, and if such Local Requirements and Regulations are applied as equally as possible to both subsidized and unsubsidized housing.
- (c) **Local Board:** any Local Board or Official, including, but not limited to any Board of Survey; Board of Health; Planning Board; Conservation Commission; Historical Commission; Water, Sewer, or other Commission or District; Fire, Police, Traffic, or other Department; Building Inspector or similar of Official or Board; City Council. All Boards, regardless of their geographical jurisdiction or their source of authority (that is, including Boards created by special acts of the legislature or by other legislative action) shall be deemed Local Boards if they perform functions usually performed by locally created Boards.
- (d) **Local Concern:** means the need to protect the health or safety of the occupants of a proposed Project or of the residents of the municipality, to protect the natural environment, to promote better site and building design in relation to the surroundings and municipal and regional planning, or to preserve open spaces. See 760 CMR 56.07(3) (c - g).
- (e) **Local Initiative Project:** means a Project for which the project eligibility application is submitted by the Chief Executive Officer of the municipality under 760 CMR 56.04(2), in accordance with the Department of Housing and Community Development’s Local Initiative Program (“LIP”).
- (f) **Local Requirements and Regulations:** means all local legislative, regulatory, or other actions which are more restrictive than state requirements, if any, including local zoning and wetlands ordinances or by-laws, subdivision and board of health rules, and other local ordinances, by-laws, codes, and regulations, in each case which are in effect on the date of the Project’s application to the Board.

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- (g) **Low Income Persons:** means all persons who, according to the latest available United States Census, reside in households whose net income does not exceed the maximum income limits for admission to public housing, as established by the Department of Housing and Community Development. The Department of Housing and Community Development's calculation shall be presumed conclusive on the Committee unless a party introduces authoritative data to the contrary. Data shall be authoritative only if it is based upon a statistically valid, random sample or survey of household income conducted in the relevant area since the latest available U.S. Census.
- (h) **Low or Moderate Income Housing:** means any units of housing for which a Subsidizing Agency provides a subsidy under any program to assist the construction or substantial rehabilitation of low or moderate income housing, as defined in the applicable federal or state statute or regulation, whether built or operated by any public agency or non-profit or Limited Dividend Organization. If the applicable statute or regulation of the Subsidizing Agency does not define low or moderate income housing, then it shall be defined as units of housing whose occupancy is restricted to an Income Eligible Household.
- (i) **Open Spaces:** means land areas, including parks, parkland, and other areas which contain no major structures and are reserved for outdoor recreational, conservation, scenic, or other similar use by the general public through public acquisition, easements, long-term lease, trusteeship, or other title restrictions which run with the land.
- (j) **Subsidizing Agency:** any agency of state or federal government that provides a subsidy for the construction or substantial rehabilitation of Low or Moderate Income Housing.
- (k) **Uneconomic:** means any condition imposed by a Board in its approval of a Comprehensive Permit, brought about by a single factor or a combination of factors, to the extent that it (a) makes it impossible for a public agency or a nonprofit organization to proceed in building or operating a Project without financial loss; or (b) makes it impossible for a Limited Dividend Organization to proceed and still realize a reasonable return in building or operating such Project within the limitations set by the Subsidizing Agency on the size or character of the Project, or on the amount or nature of the Subsidy or on the tenants, rentals, and income permissible, and without substantially changing the rent levels and unit sizes proposed by the Applicant. See 760 CMR 56.05(8) (d).

3.00 Filing, Time Limits, and Notice

3.01 The application for a Comprehensive Permit shall consist of:

- (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 other paved areas; and proposed landscaping improvements and open areas within the site.
 - (1) An Applicant proposing to construct or rehabilitate four (4) or fewer units may submit a sketch of the matters in sections 3.01(a) and 3.01(c) below, which need not have a signature by a registered architect, engineer, or landscape architect.

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- (2) All structures of five (5) or more units must have site development plans signed by a licensed architect, engineer, or landscape architect registered in the Commonwealth of Massachusetts;
 - (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 section 3.01(a), above;
 - (c) Preliminary, scaled, architectural drawings are required for each building. The drawings shall be signed by a registered architect, and shall include typical floor plans, typical elevations, and typical sections and shall identify the proposed 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) The written determination of Project Eligibility by the Subsidizing Agency showing that the Applicant fulfills the jurisdictional requirements of 760 CMR 56.04(1), that is:
 - (1) the Applicant shall be a public agency, a non-profit organization, or a limited dividend organization,
 - (2) the Project shall be fundable by a subsidizing agency under a low and moderate income housing subsidy program, and
 - (3) the Applicant shall control the site;
 - (h) A list of requested exceptions/waivers to local requirements and regulations, including local codes, ordinances, by-laws, or regulations
 - (i) The Zoning Board of Appeals may require additional information, including impact statements and input from Local Boards and departments, as appropriate to each individual site.
- 3.02 The application shall be accompanied by a filing fee based upon the number of proposed housing units times \$250 per unit. There shall be no filing fee for any Project proposed as a Local Initiative Project pursuant to 760 CMR 56.04(2).
- 3.03 Within seven (7) days of receiving a complete application, the ZBA shall notify each Local Board of the application by sending each Local Board a notice of the application and a copy of the list of Waivers required by 3.01(h). Based upon that list, the ZBA shall also, within the same seven (7) days, invite the participation of each Local Board which is deemed to be helpful or necessary in making its decision upon such application by providing such Local Board with a copy of the entire application.

4.00 Review Fees

4.01 If, after receiving an application, the Board determines that in order to review that application it requires technical advice unavailable from municipal employees, it may employ outside consultants. Whenever possible it shall work cooperatively with the Applicant to identify appropriate consultants and to negotiate payment of part or all of consultant fees by the Applicant. Alternatively, the Board may, by majority vote, require that the Applicant pay a reasonable review fee for the employment of outside consultants chosen by the Board alone.

4.02 A review fee may be imposed only if:

- (a) The work of the consultant consists of review of studies prepared on behalf of the Applicant, and not of independent studies on behalf of the Board,
- (b) The work is in connection with the Applicant's specific Project, and
- (c) All written results and reports are made part of the record before the Board.

4.03 A review fee may be imposed only after the Board has complied with the Uniform Procurement Act, M.G.L. ch. 30B, and the following additional requirements:

- (a) For services in an amount less than \$20,000.00, the Board shall issue an invitation for bids conforming to the requirements of M.G.L. ch. 30B, §5 or a request for proposals conforming to the requirements of M.G.L. ch. 30B, §6.
- (b) For services in an amount of \$20,000.00 or more, the Board shall issue a request for proposals conforming to the requirements of M.G.L. ch. 30B, §6.
- (c) For all services, whether in amounts less than or greater than \$ 20,000.00,
 - (1) the Applicant shall be given five days notice and opportunity to attach written comments to the invitation for bids or request for proposals,
 - (2) at least three bona fide bids or proposals shall be received, and
 - (3) the Applicant shall be given five days notice and opportunity to comment on all bids or proposals prior to the selection of the consultant and the award of a contract.
- (d) A bona fide bid or proposal shall include:
 - (1) the name of each person performing the work,
 - (2) the educational and professional credentials of each person performing the work,
 - (3) the work experience of each person performing the work,
 - (4) a description of the work to be performed,
 - (5) the hourly rate charged by each person performing the work, and
 - (6) all other expenses to be incurred.

4.04 All fees assessed pursuant to this section shall be reasonable in light of:

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- (a) the complexity of the proposed Project as a whole,
 - (b) the complexity of particular technical issues,
 - (c) the number of housing units proposed,
 - (d) the size and character of the site,
 - (e) the projected construction costs, and
 - (f) fees charged by similar consultants in the area.
 - (g) As a general rule, the Board will not assess any fee greater than the amount which might be appropriated from town or city funds to review a similar town or city project.
- 4.05 Any invitation for bids or request for proposals shall indicate that award of the contract is contingent upon payment of a review fee. If the Applicant fails to pay the review fee within fourteen (14) days of receiving written notification of selection of a bidder or offer, the Board may deny the Comprehensive Permit.
- 4.06 Prior to paying the review fee, the Applicant may appeal the selection of the consultant to the City Council within twenty (20) days of the consultant's selection.
- (a) The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum, required qualifications.
 - (1) The minimum qualifications shall consist either of an educational degree in or related to the field at issue or three or more years of practice in the field at issue or a related field.
 - (b) The required time limits for action upon the application by the Board shall be extended by the duration of the appeal. In the event that no decision is made by the City Council within one (1) month following the filing of the appeal, the selection made by the Board shall stand.
- 4.07 Each review fee shall be deposited in a special account established by the municipal treasurer pursuant to M.G.L. ch. 44, §53G.
- (a) Funds from the special account may be expended only for the purposes described in section 4.02, above, and in compliance with the Uniform Procurement Act, M.G.L. ch. 30B.
 - (b) Within thirty (30) days of the completion of the Project or of such time as the Applicant formally withdraws the proposal, the Applicant shall receive a final report of funds in the special account and shall be paid any unspent excess in the account, including accrued interest.
 - (c) The Municipal Accountant shall submit annually a report of the special account to the Chief Elected Body and Chief Administrative Official of the municipality for their review. This report shall be published in the city's annual report.

5.00 Public Hearing

5.01 The Board shall hold a public hearing within thirty (30) days of its receipt of a complete application. It may request the appearance of representatives of Local Boards as it considers necessary or helpful in reviewing the application. In making its decision, the Board shall take into consideration the recommendations of Local Boards and Officials, but shall not be required to adopt the same positions.

- (a) A public hearing must not extend beyond 180 days from the date of the opening of the hearing, presuming that the Applicant has made timely submissions of materials in response to reasonable requests of the Board, except with the written consent of the Applicant.
- (b) Public hearings must be held pursuant to the public notification requirements of M.G.L. ch. 40A § 11.

5.02 Scope of Board Hearing

- (a) Consistency with Local Needs is the central issue in all Comprehensive Permit applications before the Board. Not only must all Local Requirements and Regulations applied to the Applicant be Consistent with Local Needs, but the decisions of the Board must also be Consistent with Local Needs (see 6.03).
- (b) The Board shall not address matters in the hearing that are beyond its jurisdiction under M.G.L. ch. 40B §§ 20-23 and 760 CMR 56.
 - (1) Matters outside the jurisdiction of the Board include but are not limited to City resources that are beyond a reasonable nexus of impact (schools, public infrastructure, water & sewer, traffic, etc.)
- (c) The Board is limited in scope to matters of Local Concerns that:
 - (1) Protect the health or safety of the occupants of a proposed Project or of the residents of the municipality,
 - (2) Protect the natural environment,
 - (3) Promote better site and building design in relation to the surroundings and municipal and regional planning, and
 - (4) Preserve open spaces.

6.00 Decisions and Conditions

6.01 The Board shall render a decision, based on a majority vote of the Board, within forty (40) days after termination of the public hearing, unless such time period is extended by written agreement of the Board and the Applicant.

- (a) The hearing is deemed terminated when all public testimony has been received and all information requested by the Board has been received.
- (b) The Board shall within fourteen (14) days of the majority vote file its decision with the City Clerk and forward copies to the Applicant and to the Department of Housing and Community Development.

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6.02 The Board may dispose of the application in the following manner:

- (a) Approve a Comprehensive Permit on the terms and conditions set forth in the application;
- (b) Approve a Comprehensive Permit with conditions with respect to height, site plan, size, shape, or building materials that address matters of Local Concern and do not in aggregate render the construction or operation of such Project uneconomic; or
- (c) Deny a Comprehensive Permit as not Consistent with Local Needs if the Board finds that there are no conditions that will adequately address local concerns.

6.03 In accordance with 760 CMR 56.03(1 & 8), the Board may deny a Comprehensive Permit if:

- (a) The City has achieved one of more of the Statutory Minima, in accordance with 760 CMR 56.03(3); or
- (b) The Department of Housing and Community Development has certified that the City is in compliance with the goals of the approved Housing Production Plan, in accordance with 760 CMR 56.03(4); or
- (c) The City has made recent progress towards the Statutory Minima, in accordance with 760 CMR 56.03(5); or
- (d) The Project is a large project, as defined in 760 CMR 56.03(6); or
- (e) A related Application has been received in the previous 12 months and is in accordance with 760 CMR 56.03(7).

6.04 The Board shall not issue any order or impose any condition:

- (a) that would allow the building or operation of the Project in accordance with standards less safe than the applicable building and site plan requirements of the Subsidizing Agency; or
- (b) that would deviate from the project eligibility requirements of the Subsidizing Agency; or
- (c) that would require the Project to provide more Low or Moderate Income Housing units than the minimum threshold required by the Department of Housing and Community Development's guidelines.

7.00 Appeals

7.01 If the Board approves the Comprehensive Permit, any person aggrieved may appeal within the time period and to the court provided in M.G.L. ch. 40A, §17.

7.02 If the Board denies the Comprehensive Permit or approves the permit with unacceptable conditions or requirements, the Applicant may appeal to the Housing Appeals Committee as provided in M.G.L. ch. 40B, §22 and 760 CMR 56.06.

8.00 Modification and Amendment

- 8.01 If after a Comprehensive Permit is granted by the Board, including by order of the Housing Appeals Committee pursuant to 760 CMR 56.07(5), an Applicant desires to change the details of its Project as approved by the Board or the Housing Appeals Committee, it shall promptly notify the Board in writing, describing such change. Within twenty (20) days the Board shall determine and notify the Applicant whether it deems the change substantial or insubstantial, with reference to the factors set forth at 760 CMR 56.07(4).
- 8.02 If the change is determined to be insubstantial or if the Board fails to notify the Applicant by the end of such 20-day period, the Comprehensive Permit shall be deemed modified to incorporate the change.
- 8.03 If the change is determined to be substantial, the Board shall hold a public hearing within thirty (30) days of its determination and issue a decision within forty (40) days of termination of the hearing, all as provided in sections 5.01 and 6.00 and M.G.L. ch.40B, §21.
- (a) Only the changes in the Project or aspects of the Project affected thereby shall be at issue in such hearing.
 - (b) An Applicant shall have the right at any time to withdraw its request for a change and to rely on the previously issued Comprehensive Permit.
 - (c) A decision of the Board denying the change or granting it with conditions which make the housing uneconomic may be appealed to the Housing Appeals Committee pursuant to M.G.L. c. 40B, § 22;
 - (d) 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.
- 8.04 Any objection to the determination by the Board that the change is substantial shall be brought before the Board by the Applicant within twenty (20) days of such determination.
- (a) The Applicant may elect to continue the proceedings before the Board and preserve its right to raise the objection in the context of its appeal to the Housing Appeals Committee pursuant to 760 CMR 56.05(11) (d).

9.00 Finality, Transfers, and Lapses of Comprehensive Permits

- 9.01 A Comprehensive Permit shall become final on the date that the written decision of the Board is filed in the office of the City Clerk, if no appeal is filed. Otherwise, it shall become final on the date the last appeal is decided or otherwise disposed.
- 9.02 Prior to substantial completion of a Project or a phase thereof, a Comprehensive Permit may be transferred to a person or entity other than the Applicant, upon written confirmation from the Subsidizing Agency that the transferee meets the requirements of 760 CMR 56.04(1) (a) and (b), and upon written notice to the Board and the Housing Appeals Committee (in the case of a Project granted a Comprehensive Permit under 760 CMR 56.07).

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- (a) Transfer of a permit shall not, by itself, constitute a substantial change pursuant to 760 CMR 56.07(4).
 - (b) After substantial completion, a Comprehensive Permit shall be deemed to run with the land.
- 9.03 If construction authorized by a Comprehensive Permit has not begun within three (3) years of the date on which the permit becomes final except for good cause, the permit shall lapse.
- (a) This time period shall be tolled for the time required to pursue or await the determination on any appeal on any other state or federal permit or approval required for the Project.
 - (b) The Board or the Committee may set a later date for lapse of the permit, and it may extend any such date. An extension may not be unreasonably denied or denied due to other Projects built or approved in the interim. Extension of a permit shall not, by itself, constitute a substantial change pursuant to 760 CMR 56.07(4).