



## LWVM Affordable Housing Study: Part 3

### Massachusetts Legislation To Develop Affordable Housing – Chapter 40B

By Jane Nash, LWVM Affordable Housing Study Committee co-chair

Previous articles in this series covered the need for affordable housing, the history of zoning in the US, and Massachusetts' zoning law 40A. This and subsequent articles will focus on Massachusetts laws that seek to create more affordable housing.<sup>1</sup>

#### Massachusetts' Affordable Housing Zoning Law

In 1969 the Massachusetts Legislature enacted and the Governor signed Chapter 774, officially titled "An Act Providing for the Construction of Low or Moderate Income Housing in Cities and Towns in Which Local Restrictions Hamper Such Construction." Today this law is generally known as Chapter 40B for the sections that created the comprehensive permit.

By streamlining the permitting process for qualified developments, 40B intends to increase the supply and improve the distribution of affordable housing. First, it created the comprehensive permit (CP) process, by which developers can apply to the local Zoning Board of Appeals for a single permit to approve housing developments if at least 20-25% of the units have long-term affordability restrictions. This replaces the usual process of getting separate approvals from a variety of local permitting agencies (for example, the Board of Health and the Conservation Commission).

Under the comprehensive permit the developer can request waivers of zoning and other local requirements if it is proved that such waivers are necessary to ensure the economic feasibility of the project.

The CP process in no way allows the negating of zoning, health or conservation laws that will endanger the community or its citizens. Builders are still required to meet all building codes. Only a public agency, a nonprofit organization, or a limited dividend corporation may apply for a comprehensive permit, and the development must have already been approved under a state or federal housing program such as MassHousing or the U.S. Department of Housing and Urban Development. A community is exempt from 40B regulations if 10% of its total year-round housing stock is considered affordable.

Second, Chapter 40B establishes an appeals process for developers. If a zoning board in a community that

does not meet the 10% affordable-housing requirement denies or makes decisions that would make a project uneconomic, a developer can appeal to the state Housing Appeals Committee. Denials are upheld if the municipality can show that the development presents a serious health and safety issue that cannot be mitigated.

#### Successes

Chapter 40B has played a critical role in the production of affordable housing in Massachusetts. According to the Citizens' Housing and Planning Association in January 2006:

- 43,000 units in 736 developments have been created under 40B statewide since the early 1970s (an average size of less than 60 apartments or homes per development).
- This includes approximately 23,000 affordable homes reserved for households with incomes below 80% of a region's median income.
- Of the 43,000 units, approximately 31,000 are apartments and 12,000 are homeownership units. The level of production is higher than any other single housing program available in the state.

#### Challenges and Local Concerns

Despite these successes, many people have raised concerns about the law.

- Insufficient affordable housing has been built under 40B. As of January 2006, only 47 of the state's 351 communities had achieved the 10% goal.
- There is a lack of adequate funding. While some funding increases were approved recently, state spending on affordable housing had been cut.
- Communities reach their goal of 10% only to lose it again for a variety of reasons.
- Local officials would like to have more control over the number of units being built under 40B.
- The methodology of counting units to reach the 10% goal has been questioned.
- The valuation of low or moderate income housing is not considered fair or equitable.
- There appears to have been a lack of proper controls and oversight. The Massachusetts Inspector General's office has said that "some developers are reaping eye-popping profits and taking advantage of a system that provides little scrutiny or oversight."

---

<sup>1</sup> Due to space constraints, see the online version of this article at [www.lwvma.org/affordablehousing.shtml](http://www.lwvma.org/affordablehousing.shtml) for a comprehensive list of references and sources.