

Hopkinton Conservation Commission

Procedures Regarding Comprehensive Permit Applications

The Hopkinton Conservation Commission, upon request from the Zoning Board of Appeals, shall review plans provided by the ZBA or by an Applicant for a Comprehensive Permit under the State Chapter 40B Section 20-23 process. The following information and guidelines shall form the basis for reviews by the Commission.

- The Comprehensive Permit process does not set aside local Bylaws, but rather places the rulemaking authority for multiple local Boards under the coordination of the ZBA in order to simplify the permitting process for Applicants.
- The Mass Department of Housing and Community Development's Housing Advisory Committee, in providing 'Guidelines for Local Review of Comprehensive Permit Applications (see <http://www.state.ma.us/DHCD/components/hac>), has interpreted the enabling legislation to provide ZBA with the authority to act for all local Boards, including the Conservation Commission. There is some question whether Chapter 40B Sections 20-23 provides the authority to set aside Home Rule local bylaws, which, as non-zoning laws, may not fall under ZBA jurisdiction. Until subsequently clarified by case law, the Commission shall work closely and cooperatively with the ZBA to ensure that all applicable local regulations governing wetlands protection in Hopkinton under the home rule bylaw are applied to Comprehensive Permit projects consistently, fairly, and in the same manner as they would be applied to market-rate projects.
- Ch 40B Section 20-23 filings are clearly not exempt from the State Wetlands Protection Act, and do not constitute any form of Limited Project or other exemption under the State Wetlands Protection Act. If the project proposes work within an area subject to State jurisdiction under the Wetlands Protection Act (Chapter 131 Section 40 and its regulations 310 CMR 10), or within an area subject to local jurisdiction under the Bylaw (Chapter 206) and its regulations the Applicant must file the necessary permit applications with the Conservation Commission.
- All applicable fees, including consultants fees necessary to review and permit the project, are to be paid either by the Applicant or the ZBA, which has the authority to have applicable costs paid by the Applicant. Such fees must be reasonably related to costs incurred in reviewing the application and permitting the project and may not be higher than fees ordinarily charged for comparable permits.
- The enabling legislation, Section 21 of Chapter 40B states that before conducting the Comprehensive Permit hearing, "the board of appeals shall request the appearance at such hearing of such representatives of said local boards... and, in making its decision on said application, shall take into consideration the recommendations of the local boards...". HAC guidelines stress that "Input from local boards and professional staff is critical to sound, well documented permit decisions."
- The Housing Advisory Committee guidelines state "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.*" (italics added for emphasis)
- The Housing Advisory Committee guidelines state "The Conservation Commission and the Board of Health have separate jurisdictions, which are not subsumed within the

comprehensive permit process. They should conduct separate hearings relating to state requirements in their areas (i.e., the Wetlands Protection Act and state "Title 5" septic regulations). However, local bylaws or regulations enforced by these boards that are more restrictive than state requirements may be waived by the ZBA if requested by the applicant and if waiver is consistent with local needs.”

- The Housing Advisory Committee guidelines state ““In considering conditions that might be imposed on a project, the Zoning Board of Appeals should focus on the health, safety, environmental, design, open space, and planning impacts of the development. *The Board may impose conditions either to eliminate or to mitigate the adverse impact of the development.*” “Conditions must not be imposed in a manner that places additional burdens on an affordable housing development that would not be imposed in similar circumstances upon market-rate housing.”
- The statute requires that a comprehensive permit be granted when it is "consistent with local needs," and describes a balancing test. That is, on some sites it may be possible to build affordable housing that does not comply with certain local restrictions, but nevertheless *has no negative impact on local health, safety, environmental, design, open space, and planning concerns*. For other sites, the impact on these local concerns may be limited enough so that these concerns are outweighed by the need for low and moderate-income housing.

In accordance with the above information, the Commission shall review materials as provided by the ZBA or the Applicant for compliance with the Hopkinton Wetlands Protection Bylaw (Chapter 206 of the Code of the Town of Hopkinton). If conducted in parallel with the Commission’s review under the State Act, the Order of Conditions for the project shall clearly identify the provisions and conditions applicable under the State Act from those applicable under the local Bylaw.