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TOWN OF DUXBURY

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## BOARD OF APPEALS

### DUXBURY BOARD OF APPEALS MEETING MINUTES March 12, 2020 @ 7:30 p.m.

**ATTENDANCE:** Wayne Dennison, Judith Barrett, Kathleen Muncey, Borys Gojncyz, Philip Thorn

**CALL TO ORDER:** Wayne Dennison called the meeting to order.

#### ADMINISTRATIVE

A. 40B Training

B. Approve Meeting Minutes

**Members present:** Wayne Dennison, Judith Barrett, Kathleen Muncey, Borys Gojncyz & Philip Thorn

**Members Voting:** Wayne Dennison, Judith Barrett, Kathleen Muncey, Borys Gojncyz, Philip Thorn

**Other persons present at the hearing:** Angela Ball, Office Manager & Lauren Haché, Administrative Asst.

- Wayne Dennison states case# 2019-17 WB Builders is continued from tonight to March 26, 2020
- Judith Barrett announces should we start?
- Kathleen Muncey asks if there are meeting minutes to approve.
- Wayne Dennison asks has everyone read the meeting minutes.
- Angela Ball reads the minutes from November 6, 2019
- Wayne Dennison moves
- Judith Barrett second
- All in favor
- Judith Barrett reads the minutes to approve from December 12, 2019
- Wayne Dennison I move to accept
- Judith Barrett second
- All in favor
- Judith Barrett starts the presentation and slide show of the 40B training. She states that working with 40B or chapter 40B there is a lot of information. For example in Brookline (MA) there are currently 17 projected eligible plans in the works to reach that 10% threshold for the town. They are working on a Board of three. MHP is the Massachusetts Housing Partnership and they do the subsidizing, where the DHCD (The Department of Housing and Community Development) is the local initiative. What is this, where did it come from and why does it exist (pertaining to 40B)- these are the questions for the Community. There is the Regional Planning Law in place that has 4 sections of the statute to address regional planning. The law is to address the framework of the regional housing. SHI or the subsidized housing inventory is the inventory of affordable housing per town. Once the town has met or gone over 10%, they have met the quota. This is choice, not chance, meaning the equity access to safe neighborhoods, jobs etc. Basically what kinds of choices exist. There is a need to deconcentrate the low to moderate income areas for housing to try to create mixed income areas (statutory minima). Each region should have their fair share, but there are ways that the ZBA can deny a permit for 40B. The first reason is if you're over 10% in the community, essentially asking does it meet SHI requirements. Second, If you don't have the 10% SHI, there is a 1.5% or more of community land that is zoned for residential, commercial or industrial use that already has low to moderate income housing already in existence. Lastly, the comprehensive permit before the ZBA would lead to the construction of affordable housing on more than .3% of the total land area zoned in the community for residential or industrial use. So what does it mean if a city or town are under the 10% SHI, well then the developer will apply to the ZBA for a comprehensive permit under chapter 40B, then there are waiver requests from the

zoning board and other local regulators. After this happens, then there is a streamline process for projects with affordable housing units presumptive that the town should grant them, if possible.

- Judith Barrett Continues “affordable” housing counts towards the 10% statutory minimum or below 80% of area median income (AMI) which is determined by HUD, approved by state and federal housing subsidiary program and made available to income eligible households.
- Angela Ball asks can you tell me why that changed from 60% to 80% (AMI)?
- Judith Barrett answers most commonly it is 80% set by the section 8 program where essentially they all rely on income mean/eligibility. For Duxbury, the town is looped in the Boston-Cambridge-Quincy, MA-NH HUD metro FMR which HUD publishes once a year.
- Wayne Dennison asks about it being federal law, why hasn’t legislature checked the law (many communities are freezing 40B).
- Judith Barrett answers about group protecting the legislature, there are bills filed, but they taper off and never go through to the end. Income limits or household size are what is building affordable housing for people who actually need it. Some local preference is allowed, but it’s usually up to HUD to decide. In 1985 this whole concept of 40B was born. In some instances, the State At-Large can intervene for instance, Amesbury tried to regulate too far and the courts stepped in. There is a policy response – age restrictions bar people under 18, they will not count in the units, then it would no longer be a 40B-It has to have 10% and has to have 3+ bedrooms. These are all requirements of DHCH. There was the housing crash in the 90’s, where new construction was slowed and many towns were at their 10% quota for a decade. In the 2000’s the housing boom happened and most towns fell under the 10% and there was a revolt in housing production plans, the DHCD approves but the ZBA can still deny if there are too many schedules for 40B based on each town’s size. Duxbury’s goal is to have 28 low income units, then the board can take a year off. With 55 units in a year, the board can take 2 years off.
- Wayne Dennison asks by create, you mean approve?
- Judith Barrett continues
- Kathleen Muncey so is that Webster Point?
- Judith Barrett answers Duxbury has it’s housing plan expire 4/1/2024
- Philip Thorn asks what happens when two developers get a permit at the same time?
- Judith Barrett responds that there is a process and certain requirements necessary – the Applicant status has to be a Public Agency, Limited Dividend Organization or a non-profit. There needs to be evidence of site control (ownership) and the project eligibility letter from a subsidizing agency.
- Judi Barrett continues that a list of waivers is key, it’s what the Developer wants waived.
- Borys Gojnyecz states he has hypothetical question about if housing market crashes, can they modify the plans?
- Judi Barrett responds yes
- Judi Barrett continues the 40B permit timeline is page 16 in the packet, the difference is the 30 day rule-not the typical 65 days. Once the Public Hearing is opened, the Comprehensive Permit for a 40B is 30 days. There’s a safe harbor notification, department of housing commercial development DHCD. You have the right to understanding the impact of the development. Then you retain Peer Review Consultants to get a neutral review, review the waivers and deliberate logically. Once the Public Hearing is closed, you can no longer get any information from the Applicant. The Board then has three choices: Deny, but if you are under the 10% and deny, the town needs to prove with validity why. Second Approve with conditions, could that condition make the project uneconomical, you do not want to do that. Lastly, Approve the permit as is.
- Judi Barrett concludes the presentation and asks if there are any questions
- Borys Gojnyecz asks he can get a handout
- Kathleen Muncey asks who pays for the Peer Review(s)

- Judi Barrett responds that the Applicant pays, a 53G account is set up, the Applicant can contest two things.
- Kathleen Muncey asks how do you request the scope if a traffic study
- Judi Barrett responds that they use the same Consultant usually, 30B is awkward as it exempts people of related professions. Some communities have a list (Architect etc.) of Engineers to call.
- Borys asks were they the ones to do Duxbury?
- Angela Ball asks is there any guidance on what's considered a substantial change
- Judi Barrett states change in type of housing. Changing a subsidy is not typically grounds for this, Board probably wouldn't get involved. It depends on the impact and what it might be-remember that your jurisdiction is narrower.
- Wayne Dennison states Thanks again
- Wayne Dennison moves to adjourn
- Philip Thorn second.
- All in favor