

August 12, 2011

By Hand Delivery

Office of Attorney General Martha Coakley
McCormack Building
One Ashburton Place
Boston, MA 02108
Attention: Peter Sacks, Assistant Attorney General

Re: Initiative Petition No. 11-24

Dear Mr. Sacks:

On behalf of the Citizens' Housing and Planning Association, the Jewish Alliance for Law and Social Action, the Lawyers Clearinghouse, the Massachusetts Affordable Housing Alliance, and the Massachusetts Association of Community Development Corporations, we write to respectfully urge the Attorney General to exercise her gate-keeping function under Article 48 of the Amendments to the Massachusetts Constitution ("Article 48") and to refuse to certify Initiative Petition No. 11-24 (the "2011 Petition," attached hereto at *Exhibit 1*).

The 2011 Petition proposes certain draconian amendments to Massachusetts General Laws Chapter 40B, Sections 20-23, commonly known as the Comprehensive Permit Act or Chapter 40B ("Chapter 40B"). Each of these proposed amendments drastically reduces the reach of Chapter 40B, and collectively they would virtually eliminate the construction of new affordable housing under Chapter 40B – exactly the outcome sought by a ballot initiative that was certified by the Attorney General in 2009 and subsequently defeated at the polls in November 2010 (Petition No. 09-02, hereinafter the "2009 Petition," attached hereto at *Exhibit 2*). Article 48 of the Constitution says these petitioners are not allowed to pursue substantially the same initiative within the amount of time that has passed since the voters decided on the issue in 2010. Therefore, we respectfully urge the Attorney General to refuse certification of the 2011 Petition.

The Attorney General's Role as Gatekeeper

Article 48 of the Massachusetts Constitution provides that "the people reserve to themselves the popular initiative, which is the power of a specified number of voters to submit constitutional amendments and laws to the people for approval or rejection." However, Article 48 expressly and absolutely prohibits some types of initiatives. Included among these is any

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initiative petition that is “either affirmatively or negatively, substantially the same as any measure which has been qualified for submission or submitted to the people at either of the two preceding biennial state elections.”

Article 48 requires the Attorney General to review every proposed initiative petition to ensure it meets the requirements of Article 48. The Attorney General is required to certify an initiative measure if the requirements enumerated in Article 48 are met; and she is required to refuse to certify the measure if those requirements are not met. The Supreme Judicial Court described the Attorney General’s gate-keeping function as follows: “Under Article 48, the Attorney General serves as the first line of defense against ... invalid initiative provisions.” *Carney v. Attorney General*, 447 Mass. 218, 225 (2006) (citing *Yankee Atomic Elec. Co. v. Sec’y of the Commonwealth*, 402 Mass. 750, 757 (1988)). When considering certification, the Attorney General “must ‘assess what a proposed initiative does in its various aspects or subjects.’” *Id.* (quoting *Massachusetts Teachers Ass’n v. Sec’y of the Commonwealth*, 384 Mass. 209, 221 (1981)). In other words, she is obligated “to ferret out ... improper initiative petitions.” *Id.* (quoting *Yankee Atomic Elec. Co., supra*).

In this case, for the reasons set forth below, the 2011 Petition is “substantially the same” as the 2009 Petition, and therefore it is invalid. The Attorney General should exercise her duties as gate-keeper and refuse to certify it.

Factual Background

Chapter 40B was adopted in 1969 to remedy the shortage of affordable housing in the Commonwealth. The means by which Chapter 40B achieves this legislative goal was summarized by the Attorney General in the summary she prepared to accompany the 2009 Petition. That summary provided as follows:

[Chapter 40B] allows a qualified organization wishing to build government-subsidized housing that includes low- or moderate-income units to apply for a single comprehensive permit from a city or town’s zoning board of appeals (ZBA), instead of separate permits from each local agency or official having jurisdiction over any aspect of the proposed housing.

Under [Chapter 40B], the ZBA holds a public hearing on the application and considers the recommendations of local agencies and officials. The ZBA may grant a comprehensive permit that may include conditions or requirements concerning the height, site plan, size, shape, or building materials of the housing. Persons aggrieved by the ZBA’s decision to grant a permit may appeal it to a court. If the ZBA denies the permit or grants it with conditions or requirements that make the housing uneconomic to build or to operate, the applicant may appeal to the state Housing Appeals Committee (HAC).

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After a hearing, if the HAC rules that the ZBA's denial of a comprehensive permit was unreasonable and not consistent with local needs, the HAC orders the ZBA to issue the permit. If the HAC rules that the ZBA's decision issuing a comprehensive permit with conditions or requirements made the housing uneconomic to build or operate and was not consistent with local needs, the HAC orders the ZBA to modify or remove any such condition or requirement so as to make the proposal no longer uneconomic. The HAC cannot order the ZBA to issue any permit that would allow the housing to fall below minimum safety standards or site plan requirements. If the HAC rules that the ZBA's action was consistent with local needs, the HAC must uphold it even if it made the housing uneconomic. The HAC's decision is subject to review in the courts. ...

Requirements are considered "consistent with local needs" if more than 10% of the city or town's housing units are low- or moderate-income units or if such units are on sites making up at least 1.5% of the total private land zoned for residential, commercial, or industrial use in the city or town. ...

Chapter 40B has proven to be an effective means of creating affordable housing in Massachusetts. As of October 2009, approximately 56,000 units in over one thousand developments have been created under the statute. Approximately 39,000 of that number are rental apartments, and 17,000 are homeownership units.¹ The impact of Chapter 40B can also be seen in the changes in the Commonwealth's Subsidized Housing Inventory over time. In 1972, more than half of all Massachusetts cities and towns had no affordable housing units,² whereas, by 2011, only 31 lacked any subsidized housing – and these were among the most sparsely populated rural towns in the Commonwealth, none exceeding 1,000 total residences.³ Moreover, by June 2011, 39 cities and towns had met Chapter 40B's 10 percent housing unit threshold, and another 37 had exceeded 8 percent. Statewide, approximately 9% of the total housing stock was qualifying affordable units.⁴

¹ See Citizens' Housing and Planning Association's "Fact Sheet on Chapter 40B" (attached hereto at *Exhibit 3*).

² See *The Record on 40B: The Effectiveness of the Massachusetts Affordable Housing Law*, Executive Summary (June 2003) (attached hereto at *Exhibit 4*).

³ Department of Housing and Community Development ("DHCD") Subsidized Housing Inventory (updated June 30, 2011) (the "SHI") (attached hereto at *Exhibit 5*). DHCD has submitted a letter certifying that all of the facts and data contained in this letter are accurate and reliable. See Letter of Deborah J. Goddard, DHCD Chief Counsel, dated August 12, 2011 (copy attached hereto at *Exhibit 6*).

⁴ See SHI.

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Opponents of affordable housing have tried multiple times to use the initiative petition process to undermine Chapter 40B. Their first attempt, Petition No. 07-02 (the “2007 Petition”), did not reach the statewide ballot because the petitioners did not collect the required number of signatures. Undeterred, they tried again in 2009, this time succeeding in getting the 2009 Petition on the ballot. The first section of the 2009 Petition provided simply that “Chapter 40B, sections 20 through 23, inclusive of the General Laws are hereby repealed.” The 2009 Petition was soundly rejected at the polls.

The 2011 Petition now before the Attorney General is brought by many of the same individuals who were behind the failed 2007 Petition and the failed 2009 Petition.⁵ Unlike its predecessors, the 2011 Petition does not expressly “repeal” Chapter 40B, but it proposes changes to the law that would effectively render it inapplicable and ineffective in most of the Commonwealth. These proposed amendments include:

1. An amendment that would change the affordable housing safe harbor of each municipality from 10 percent of its housing stock to only 3 percent of its housing stock, thereby vastly increasing the number of cities and towns which can say “no” to affordable housing without review in an administrative or judicial appeal.
2. An amendment that would prohibit “limited dividend organizations” from utilizing Chapter 40B, a change that would effectively gut Chapter 40B since these entities are responsible for most of the affordable housing produced under Chapter 40B.
3. An amendment that would strip Chapter 40B of its defining characteristic, by make comprehensive permits no longer “comprehensive” and allowing multiple local entities permitting jurisdiction over the development.

⁵ John V. Belskis, a resident of Arlington, is the lead proponent of both the 2009 Petition and the 2011 Petition (as well as the 2007 Petition). Other individuals who signed both petitions include Helen Belskis, William G. Green and Richard G. Potts. Jonathan Witten is the attorney representing the petitioners who are signatories to the 2011 Petition, and he also was counsel to the petitioners who signed the 2009 Petition and the 2007 Petition.

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As explained below, each of these proposed amendments severely limits the reach and effectiveness of Chapter 40B. Individually and collectively, these amendments would effectively repeal Chapter 40B.⁶

The 2011 Petition and 2009 Petition are Substantially the Same

Article 48 expressly prohibits an initiative petition that is “substantially the same as any measure which has been qualified for submission or submitted to the people at either of the two preceding biennial state elections.” In this case, the purpose and effect of the 2011 Petition clearly is the same as the 2009 Petition – to undermine the law responsible for the creation of most new affordable housing in the Commonwealth. Although the 2011 Petition would not achieve this end in *exactly* the same way as the 2009 Petition – it would not wipe Chapter 40B off the books entirely – the two petitions have substantially the same end.⁷ The 2009 Petition would have ended the construction of new affordable housing throughout the Commonwealth by repealing Chapter 40B. The 2011 Petition, if certified and adopted, will effectively end the construction of new affordable housing under Chapter 40B. Article 48 requires only that the Attorney General find the two petitions to be “*substantially* the same” in order for the 2011 Petition to be un-certifiable. In this case, the 2011 Petition is un-certifiable because it would substantially repeal Chapter 40B.⁸

⁶ The 2011 Petition also includes a fourth, fifth, and sixth section. Section 4 is a grandfathering clause, Section 5 is a severability clause, and Section 6 sets an effective date. None of these three final sections is self-executing and each is dependent upon the three substantive amendments in Sections 1-3. And the words in all three of these dependent sections are identical or nearly identical to the words used in the final three sections of the 2009 Petition. *See* 2009 Petition. The severability section at Section 5 of the 2011 Petition is exactly the same as the severability section at Section 3 of the 2009 Petition. The effective date sections are identical except, of course, for the effective date. And the grandfathering clauses, at Section 4 in the 2011 Petition and Section 2 in the 2009 Petition, are nearly identical.

⁷ The term “substantially the same” as it appears in Article 48 has not been given much, if any, gloss by the Supreme Judicial Court. In other contexts the phrase “substantially the same” has been held to mean “largely” the same, *Hamling v. United States*, 418 U.S. 87, 146 n.3 (1974), or “considerably” the same, *Deering Precision Instruments v. Vector Distribution Systems, Inc.*, 347 F. 3d 1314, 1321 (Fed. Ct. 2003). Whatever the precise meaning of this phrase in Article 48, it obviously does not and cannot mean *exactly* the same. Therefore, an initiative petition should be deemed to be “substantially the same” as an earlier petition if it has substantially the same purpose or would have substantially the same effect.

⁸ The Attorney General not only has the discretion to consider the likely impact of the 2011 Petition; she is obliged to do so. *See Yankee Atomic Elec. Co. v. Sec’y of the Commonwealth*, 402 Mass. 750, 756, 525 N.E.2d 369 (1988) (holding that the Attorney General is required to “consider a petition’s factual impact in determining whether to certify that a petition does not contain excluded subjects”); *Carney v. Attorney General*, 451 Mass. 803, 808-09 (2008) (the Attorney General has a “duty of factual review in a case involving a challenge to an initiative petition”). Thus, “while the Attorney General ‘is not to become involved with holding extensive hearings to determine the full factual impact of a petition,’ ... she should consider ‘the apparent factual impact flowing from a petition’s language’ as well as ‘facts which can be officially noticed.’” *Id.* “[O]fficial notice includes matters subject to judicial notice, as well as additional items of which an agency official may take notice due to the agency’s established familiarity

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- A. The reduction of the affordable housing safe harbor from 10 percent to 3 percent would substantially repeal Chapter 40B by placing 93% of the state's population outside of the statute's reach.

Chapter 40B states that a local decision to deny a comprehensive permit application is “consistent with local needs” if the low or moderate income housing in the city or town exceeds 10 percent of its overall housing stock. *See* M.G.L. c. 40B, § 20. Meeting the 10 percent threshold effectively exempts a municipality from Chapter 40B by making a denial of a comprehensive permit unreviewable by the Housing Appeals Committee or a court. “Once a town has met its statutory minimum [of 10%],” the Supreme Judicial Court has made clear, “it may deny a comprehensive permit. That denial is presumed to be consistent with local needs, and the applicant may not appeal” to the state Housing Appeals Committee. *Town of Wrentham v. West Wrentham Village, LLC*, 451 Mass. 511, 512 (2008). In short, once a town surpasses the 10% threshold it can no longer be compelled to favorably consider comprehensive permit applications to construct subsidized housing.

Section 1 of the 2011 Petition seeks to drastically lower the bar which cities and towns must clear to qualify for this exemption, from 10 percent to 3 percent. As it happens, most of the Commonwealth's cities and towns already exceed the 3 percent threshold, and those that do not are mostly the state's smaller towns. This component of the 2011 Petition would scale back the reach of Chapter 40B so drastically that it would be akin to a repeal: **93 percent** of the state's residents would live in a city or town that is effectively exempt from Chapter 40B.⁹ This would leave just 7 percent of the state's residents living in towns where Chapter 40B could be used for the purpose of overcoming local barriers that prevent the construction of new affordable housing.

- B. The elimination of limited dividend organizations from Chapter 40B would reduce the creation of affordable housing under Chapter 40B to a mere trickle, also constituting a substantial repeal of the law.

Chapter 40B allows only three types of applicants for comprehensive permits: public agencies, non-profit organizations, and limited dividend organizations (“LDOs”). *See* M.G.L. c.

with and expertise regarding a particular subject area.” *Id.* *See, e.g.*, Letter of Deborah J. Goddard, DHCD Chief Counsel, dated August 12, 2011 (attesting to the accuracy and reliability of the facts and data in this submission).

⁹ According to the last SHI, 109 towns had subsidized housing units comprising 3 percent or less of total housing units. *See* SHI. But these towns are among the state's smallest. The total population among these towns is just 486,879, or 7 percent of the state's total population of 6,547,629 as counted in the 2010 Census. *See* www.sec.state.ma.us/census (Secretary of State town-by-town population data) and, attached hereto at *Exhibit 7*, a chart listing the population for each of the 109 towns as drawn from the Secretary of State database; *see also* United States Census 2010 web page stating total Massachusetts population, attached hereto at *Exhibit 8* and available at <http://2010.census.gov/2010census/data>.

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40B, § 20 (definition of “low or moderate income housing”). Section 2 of the 2011 Petition would eliminate LDOs from the list of eligible applicants.

This portion of the 2011 Petition, too, is akin to an attempted repeal of the statute, because the vast majority of all subsidized housing units created under Chapter 40B are built by LDOs. Since 2000, approximately 88 percent of all comprehensive permit units on the Commonwealth’s subsidized housing inventory came from comprehensive permits issued to LDOs.¹⁰ LDOs are such important players under Chapter 40B because they are the only type that can use low income housing tax credits, one of the largest and most important funding sources for affordable housing projects. Therefore, all private for-profit entities and all entities utilizing Low Income Housing Tax Credits, including non-profit entities, must apply for comprehensive permits as LDOs. In addition, private for-profit LDOs generally have more financial capacity than public agencies or non-profits to undertake large scale projects and are therefore responsible for a significant amount of the units on the SHI. Because the vast majority of Chapter 40B projects are undertaken by LDOs, eliminating LDOs from Chapter 40B would reduce the construction of affordable housing in the Commonwealth to a trickle by eliminating the ability of all for-profit entities and most non-profit entities to utilize Chapter 40B to construct affordable housing.

As for the 7% of the state where – under the earlier-discussed proposed unit threshold reduction from 10% to 3% – Chapter 40B would still exist as binding law, taking LDO’s out of the equation as eligible builders would effectively kill the statute in those places as well. Of the modest amounts of subsidized housing that have been built in those smaller towns since 2000, only a small number were built by public agencies or non-profit organizations, the only two types of comprehensive permit applicants who would remain eligible following the disqualification of LDO’s.¹¹ So based on this historical evidence, removing LDO’s from the Chapter 40B equation would essentially end Chapter 40B development in those pockets of Massachusetts where, unlike the 93% of the state effectively exempted by the unit threshold change, the statute would still be mandatory. As with that unit threshold change, the elimination of LDO’s from the comprehensive permit process is substantially the same as a repeal.

- C. Chapter 40B’s permitting scheme will no longer be “comprehensive,” and therefore effectively repealed, if another local board within a municipality is also given the power to stop affordable housing projects by enforcing local bylaws.

In enacting Chapter 40B, the legislature employed two novel means to encourage the construction of low or moderate income housing. The 2011 Petition would undo both of those legislative strategies, thereby substantially repealing Chapter 40B.

¹⁰ See Chart entitled “Developments in Subsidized Housing Inventory (SHI) Approved or Completed Using Comprehensive Permits,” attached hereto at *Exhibit 9*.

¹¹ See *id.*

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As the Attorney General's description of the 2009 Petition stated, one of the two defining characteristics of Chapter 40B is that it "allows a qualified organization wishing to build ... low- or moderate-income units to apply for a single comprehensive permit from a city or town's zoning board of appeals ("ZBA"), instead of separate permits from each local agency or official having jurisdiction over any aspect of the proposed housing." This one-stop shopping at the ZBA is what makes the Chapter 40B permit a "comprehensive permit." As the Supreme Judicial Court has said, Chapter 40B was and is intended to "streamline and accelerate the permitting process for developers of low or moderate income housing in order to meet the pressing need for affordable housing." *Middleborough v. Housing Appeals Comm.*, 449 Mass. 514, 521 (2007).

The other defining characteristic of Chapter 40B is that a comprehensive permit can override any local requirement that is not consistent with the local need for affordable housing and not essential to the protection of public health and safety. *See, e.g., Taylor v. Board of Appeals of Lexington*, 451 Mass. 270, 277-78 (2008) (Chapter 40B "furtheres the Legislature's goal of increasing the supply of low and moderate income housing ... primarily by overriding local zoning restrictions"). The power to override unnecessary local obstacles to affordable housing is at the heart of Chapter 40B, and is essential to the continued construction of new affordable housing.

Section 3 of the 2011 Petition seeks to eliminate the "comprehensive" nature of the comprehensive permit by requiring affordable housing developers to obtain multiple town permits, specifically, a wetlands permit from the local conservation commissions as well as a comprehensive permit from the ZBA. Thus it would undo one of the two defining characteristics of Chapter 40B, the ability of a developer of low or moderate income housing to obtain all local permits and approvals at one time, from one body. Furthermore, under this proposal, cities and towns could block affordable housing by strictly enforcing local wetlands regulations, without any regard for the town's need for affordable housing, or the measures taken to protect wetland values. Thus the 2011 Petition would also repeal the other distinctive feature at the heart of Chapter 40B, the power to balance local rules not essential to the protection of public health and safety with housing need, and to override the local rules if appropriate.

Simply put, the 2009 Petition sought to eliminate Chapter 40B comprehensive permits, and so does this portion of the 2011 Petition. In that regard the effect of the two Petitions is not just "substantially the same," but nearly identical.

Conclusion

For all of these reasons, the purpose and effect of the 2011 Petition is substantially the same as the 2009 Petition: to stop the production of much-needed affordable housing under Chapter 40B. The 2009 Petition would have repealed Chapter 40B outright. Now, less than one year after the voters rejected the blunt instrument of repeal, the 2011 Petition proposes changes

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

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to the same law that would effectively repeal it. Because the 2011 Petition would effectively repeal Chapter 40B, it is "substantially the same" as the 2009 Petition. Accordingly, the Attorney General should refuse to certify it.

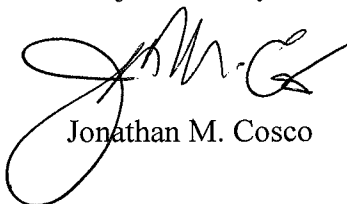
Very truly yours,



Paul D. Wilson

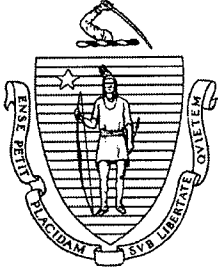


Benjamin B. Tymann



Jonathan M. Cosco

EXHIBIT 1



MARTHA COAKLEY
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS OFFICE OF THE ATTORNEY GENERAL

GOVERNMENT BUREAU
ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

(617) 727-2200
www.mass.gov/ago

Initiative Petition Information Sheet

Title of Petition: Initiative Petition for an Amendment to a Law Relative Comprehensive Permit and Regional Planning

Petition Number : 11-24

Proponents' Contact

Name: John V. Belskis

Residential Address: 196 Wollaston Avenue Arlington, MA 02476

Phone: 781-641-1441

Fax:

Email:

Business Address:

Phone:

Fax:

Proponents' Attorney

Name: Jonathan D. Witten Esq

Address: Huggins and Witten, LLC, 156 Duck Hill Road, Duxbury, MA 02332

Phone: 781-934-0084

Fax: 781-934-2666

Email: jon@hugginsandwitten.com

Optional:

Will the proponents propose a summary by the Monday, 5 days after the petition-filing deadline?

Yes No

Will the proponents submit a memo of law by the Friday 9 days after the petition-filing deadline?

Yes No

Please note that the above information will be made available to the public and particularly to possible opponents of certification. The Proponent and Proponents' Attorney (if any) will receive copies of any materials submitted by the public regarding certification.

AGO Staff Person Receiving Petition: PS
Date: 8/3/2011

Initiative Petition for an Amendment to a Law Relative Comprehensive Permit and Regional Planning

Be it enacted by the people, and by their authority:

SECTION 1: Chapter 40B, Section 20 shall be amended to delete of the words “in excess of ten per cent of the housing units” within the definition of “Consistent with local needs”, and substituted therefore the words, “in excess of three per cent of the housing units”.

SECTION 2: Chapter 40B, Sections 20-23 shall be amended to delete the words “limited dividend organization” where written.

SECTION 3: Chapter 40B, Section 20 shall be amended to include in definitions, “Local Board” the following sentence: “Notwithstanding any language to the contrary, a “Local Board” shall not include a municipal conservation commission established pursuant to G.L. c.40, 8C”.

SECTION 4: No provision of this act shall be interpreted as applying to, affecting, amending, or otherwise impairing the provisions of any project approved by a board of appeals pursuant to G.L. c.40B, s.20-23 before the effective date of this Act, provided that all dwelling units proposed within the project have received building permits pursuant to the State Building Code.

SECTION 5: The provisions of this act are severable, and if any provision of this act is found to be unconstitutional, contrary to law, or otherwise invalid by a court of competent jurisdiction, then the other provisions of this act shall continue to be in effect.

SECTION 6: This act shall take effect January 1, 2013.

Signed by:

John Belskis

Brian Taranto

Joseph J. Santore, Jr.

Louis S. Martone

Margaret A. Lynch

John R. McIsaac

Angela B. McIsaac

Helen Belskis

Umberto Centofante

Ann Donabedian

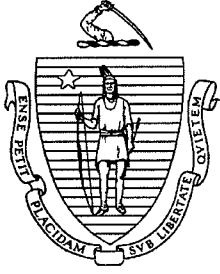
William G. Greene, Jr.

Jon Gersh

Mary L. Cole

Richard G. Potts

EXHIBIT 2



MARTHA COAKLEY
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS OFFICE OF THE ATTORNEY GENERAL

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Initiative Petition Information Sheet

Title of Petition: Initiative Petition for a Law Relative to Comprehensive Permits and Regional Planning

Petition Number 09-02
(to be filled in by Attorney General's Office staff)

Proponents' Contact

Name John Belskis
Residential Address 196 Wollaston Avenue
City Arlington State MA Zip 02476-7162
Phone 781-641-1441 Fax
Email j.belskis@verizon.net
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City Arlington State MA Zip 02476-7162
Phone 781-641-1441 Fax

Proponents' Attorney

Name Jonathan D. Witten Esq. Daley and Witten, LLC 156 Duck Hill Road
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Phone 781-934-0084 Fax 781-934-2666
Email jon@daleyandwitten.com

Optional:

Will the proponents propose a summary by the Monday, 5 days after the petition-filing deadline?
Yes No X

Will the proponents submit a memo of law by the Friday 9 days after the petition-filing deadline?
Yes No X

Please note that the above information will be made available to the public and particularly to possible opponents of certification. The Proponent and Proponents' Attorney (if any) will receive copies of any materials submitted by the public regarding certification.

AGO Staff Person Receiving Petition PS
(to be filled in by Attorney General's Office staff)

Date August 4, 2009
(to be filled in by Attorney General's Office staff)

Initiative Petition for a Law Relative to Comprehensive Permits and Regional Planning

Be it enacted by the People, and by their authority:

SECTION 1: Chapter 40B, sections 20 through 23, inclusive of the General Laws are hereby repealed.

SECTION 2: No provision of this act shall be interpreted as applying to, affecting, amending, or otherwise impairing the provisions of any project approved by a board of appeals or the Housing Appeals Committee pursuant to G.L. c.40B, s.20-23 before the effective date of this Act, provided that said project has been issued a building permit pursuant to the State Building Code for at least one (1) dwelling unit.

SECTION 3: The provisions of this act are severable, and if any provision of this act is found to be unconstitutional, contrary to law, or otherwise invalid by a court of competent jurisdiction, then the other provisions of this act shall continue to be in effect.

SECTION 4: This act shall take effect January 1, 2011.

Signed by:

<u>Name</u>	<u>Address</u>	
John Belskis	196 Wollaston Avenue	Arlington
Thomas E. Mellor	174 Tyngsboro Rd Apt 7	Chelmsford
Sabrina Curtis	34 Bonnie Avenue	Dracut
Cheryl Williams	157 Great Bay Street	Falmouth
Kristen K. McEvoy	89 Stonebridge Way	Groton
Brian Taranto	203 Wollaston Avenue	Arlington
Helen Belskis	196 Wollaston Avenue	Arlington
Pia Centofante	199 Wollaston Avenue	Arlington
Umberto Centofante	199 Wollaston Avenue	Arlington
Margaret A. Lynch	200 Wollaston Avenue	Arlington
Frances A. Lewis	111 Valentine Road	Arlington
Thelma Barros	1855 Washington Street #4M	Boston
William G. Greene Jr	27 Naushon Road	Billerica
Frederick Eugene Bernardin III	289 Oakland Avenue	Arlington
Lucy M. Fontanills	3 Paul Revere Road	Arlington
Rodolfo G. Belliardi	195 Webster Avenue	Cambridge
Gerard G.J. Fulginiti	78 Elm Street	Easton
Julie A. Regan	63 Elm Street	Easton
Amy MacMannis Freeland	51 Williams Street	Easton
Stephen M. Canty	9 Mullen Lane	Easton
Joanne Bodio Canty	9 Mullen Lane	Easton
Daniel B. Amorim	79 Elm Street	Easton
Virginia M. Hinchliffe	35 Williams Street	Easton
Bernadette C. Pare	99 Sheridan Street	Easton
Cynthia M. Webster	50 Elm Street	Easton
Gregory M. Webster	50 Elm Street	Easton
Dorothy A. Fulginiti	78 Elm Street	Easton
David B. Goldstein	4 Old Carriage Path	Groton
Lois Goldstein	Old Carriage Path	Groton
Dennis A. McEvoy	89 Stonebridge Way	Groton
Madison McEvoy	89 Stonebridge Way	Groton
Joseph J. Rand	79 Stonebridge Way	Groton
Rita M. Rand	79 Stonebridge Way	Groton
Tracy E. Wall	67 Stonebridge Way	Groton
Kevin F. Wall	67 Stonebridge Way	Groton
James W. Hartzell	33 Stonebridge Way	Groton
Karen A. Hartzell	33 Stonebridge Way	Groton
Richard G. Potts	13 Bayberry Street	Pepperell
Lynne L. Potts	13 Bayberry Street	Pepperell
Scott R. Menice	155 Heald Street	Pepperell
Constance B. Menice	155 Heald Street	Pepperell
Katherine M. Rosebush	157 Heald Street	Pepperell
Paul A. Doroski	157 Heald Street	Pepperell
Cynthia M. Yennaco	26 Bayberry Street	Pepperell
James F. Yennaco	26 Bayberry Street	Pepperell
Richard J. Yennaco	26 Bayberry Street	Pepperell
Judith A. Shattuck	101 Heald Street	Pepperell
Karen Whitcomb	15 Tucker Avenue	Pepperell
John P. McCormack	20B Essex Street	Boxford

Dorothy E. McCormack	20B Essex Street	Boxford
Allison A. Hayes	54 Oak Ridge Road	Boxford
William N. Eckerson	112 Ipswich Road (FMV)	Boxford
Leah C. Wingardner	45 Batchelder Road	Boxford
Margaret L. Blundin	33 Rock Brook Way	Boxford
Irene J. Palaima	11 Carolina Way	Boxford
Beatrice Liberace	53 Georgetown Road	Boxford
Kenneth C. Seus	68 Middleton Road	Boxford
Timothy W. Galligan	38 Porter Road	Boxford

EXHIBIT 3

Fact Sheet on Chapter 40B

The State's Affordable Housing Zoning Law

Prepared by Citizens' Housing and Planning Association
October 2009

What is Chapter 40B?

Chapter 40B is a state statute, which enables local Zoning Boards of Appeals (ZBAs) to approve affordable housing developments under flexible rules if at least 20-25% of the units have long-term affordability restrictions. Also known as the Comprehensive Permit Law, Chapter 40B was enacted in 1969 to help address the shortage of affordable housing statewide by reducing unnecessary barriers created by local approval processes, local zoning, and other restrictions.

The goal of Chapter 40B is to encourage the production of affordable housing in all cities and towns throughout the Commonwealth. The standard is for communities to provide a minimum of 10% of their housing inventory as affordable. A total of 51 cities and towns have now met the 10% standard and three more have met the land area standard. Another 8 have met short-term planned production goals. For those communities that still fall below those thresholds, a 40B development can be proposed (communities above the 10% threshold can still accept 40B development proposals at their choice).

Many communities have used Chapter 40B to successfully negotiate the approval of quality affordable housing developments. The program is controversial, however, because the developer (nonprofit organizations or limited-dividend companies) has a right of appeal in communities that are below 10% or that are not temporarily appeal proof pursuant to a housing production plan if the local zoning board rejects the project or imposes conditions that are uneconomic.

Since its inception, Chapter 40B has been responsible for the production of affordable housing developments that in most cases could not have been built under traditional zoning approaches. Developments built through Chapter 40B include church-sponsored housing for the elderly, single-family subdivisions that include affordable units for town residents, multifamily rental housing developments, and mixed-income condominium or townhouse developments.

What Has Chapter 40B Accomplished?

Over 56,000 units in over 1,000 developments have been built under 40B statewide since the early 1970s or are in construction (an average size of less than 53 apartments or homes per development). This total includes approximately 29,000 affordable homes reserved for households below 80% of median income. Of the over 56,000 units, over 39,000 are apartments and almost 17,000 are homeownership units. The level of production is higher than any other single housing program available in the Commonwealth. There has been significant progress at the local level in recent years:

- Between 2002-2006, approximately 34% of all housing production in Greater Boston (excluding the City of Boston) was directly attributable to Chapter 40B, including nearly 80% of all rental housing production.
- Between 1998 and 2002, 82% of all new production of affordable housing units in communities below the 10% threshold was the direct result of 40B. This trend has continued with 40B

accounting for 71% of the new units added to the Subsidized Housing Inventory in Greater Boston (excluding Boston) between 2003 and 2006.

- Currently, 51 communities have exceeded the 10% threshold, up from 24 in 1997. Some towns that have recently exceeded the 10% threshold include: Amesbury, Bedford, Burlington, Canton, Concord, Danvers, Franklin, Georgetown, Hadley, Holbrook, Hudson, Lexington, Mansfield, Marlborough, Peabody, Pembroke, Quincy, Raynham, Stockbridge and Ware.
- Currently, 40 communities are at 8% or 9% - up from 17 in 2001- and are likely to reach the 10% threshold in the near future, including: Abington, Andover, Billerica, Braintree, Brookline, Clinton, Dartmouth, Hanover, Haverhill, Ipswich, , Littleton, Maynard, Orleans, Wenham, Westborough, and Westwood. There are another 53 communities at 6% or 7%, up from 52 in 2001.
- At present, 117 municipalities only need to produce or preserve less than 100 units to reach the 10% threshold.
- Chapter 40B has encouraged many cities and towns to form affordable housing committees to plan and implement a local strategy to build affordable housing in their community and has prompted almost 90 communities to develop affordable housing plans under the 2003 “planned production” regulation and the 2008 housing production plan regulation.

Who is Served by Chapter 40B Housing Developments?

In most cases today, Chapter 40B developments are communities with market rate and affordable homes, apartments or condominiums. The market rate units often serve middle-income singles, seniors and families who make between 100% and 150% of the area median income.

The affordable apartments/condominium and homes are reserved for seniors or families who make less than 80% of median household income for the area and generally are priced at 70% of median or below. Most of the residents in the affordable apartments and homes earn less than \$50,000 per year. Typical occupations include: health care (nurses, medical assistants, therapists, dental assistants); educators (teachers, counselors); retail employees; construction trades (carpenters, plumbers, electricians); office management and administrative staff; financial services (bookkeepers, payroll managers, accounting); human services; and other occupations critical to our state’s workforce. Additionally, a significant portion of the homeowners are retirees.

Below are the guidelines for the Greater Boston area:

Income Eligibility for Affordable Units in Boston Metropolitan Statistical Area

2009 Median Income for a Family of 4 - \$90,200

	1 PERSON	2 PERSON	3 PERSON	4 PERSON
80% of median	\$46,300	\$52,950	\$59,550	\$66,150

How Does a Development Qualify Under Chapter 40B?

To qualify for Chapter 40B, a development proposal must first receive a letter of project eligibility under a state or federal housing program, such as MassHousing, MassDevelopment, the Department of Housing and Community Development, or the U.S. Department of Housing and Urban Development. At least 25% of the units must be affordable to lower income households who earn no more than 80% of the area median income (Alternatively, for rental housing, the project can provide 20% of the units to households below 50% of median income.) Towns are allowed to establish a local preference for residents (currently, up to 70% of the units can be for local preference). Developers (whether for-profit or nonprofit) must also agree to restrict their profit to a maximum of 20% in for-sale developments and 10% per year for rental developments (unless indicated otherwise in the subsidy program or the comprehensive permit).

After a project has been determined to be eligible, the developer can submit an application for a comprehensive permit to the local Zoning Board of Appeals (ZBA). The ZBA is empowered to grant all local approvals necessary for the project after consulting with other relevant boards, such as the Planning Board, and the Board of Health. This results in a more streamlined review process at the zoning board, although it typically involves a number of hearing sessions. State regulations, such as the Wetlands Protection Act, Title 5, and all building codes, remain fully in effect under the comprehensive permit. Therefore, the local Conservation Commission will review the project regarding compliance with the state's Wetlands Protection Act.

In addition to the streamlined process, the Zoning Board of Appeals is authorized to apply more flexible standards than the strict local zoning by-law requirements. For example, a local zoning code may require two acres of land for each house or prohibit multifamily housing entirely. Under Chapter 40B, the developer can request and the Zoning Board of Appeals can approve a project with greater density, thereby making it financially feasible to develop affordable housing. ZBAs can also require projects to have a greater number of affordable units.

How Does the Local Review Process Work?

A developer acting under Chapter 40B submits a single application to the Zoning Board of Appeals. The zoning board notifies the applicable local boards and requests their recommendations. Within thirty days of the receipt of the application, the zoning board begins a public hearing, which lasts up to six months. The zoning board must issue a decision within forty days after ending the public hearing. The zoning board may approve the application as submitted, it can approve the project with conditions or changes, or it can deny the application altogether. If the board denies the application or imposes "uneconomic" conditions, the developer may appeal the decision to the Housing Appeals Committee if the project is in a community that is below 10%. The developer must still obtain various permits required by state statutes, such as wetlands protection, state highway access permits, and a local building permit.

Do Communities Have Control Over the Proposed Development?

Zoning boards and other town officials often work with developers to modify the project. Furthermore, the zoning board may include conditions and requirements on any aspect of the project such as height, density, site plan, utility improvements, or long-term affordability--provided these conditions do not make the development economically unfeasible.

Over the past several years, the Massachusetts Housing Partnership has provided extensive technical assistance and support to more than 100 local ZBAs to help them with project review and negotiations with developers. Zoning Boards can also require developers to pay fees to help fund review of the application.

How Does the Appeals Process Work?

If the ZBA rejects the affordable housing development, the developer may be able to appeal the decision to the State Housing Appeals Committee (HAC), which can overrule the local decision unless the proposed development presents serious health or safety concerns that cannot be mitigated. This right of appeal is only available in communities where less than 10% of the year-round housing meets the statute's definition of low and moderate income housing or where low and moderate income housing exists on sites comprising less than 1.5% of the municipality's total land area zoned for residential, commercial, or industrial use.

The combination of flexible rules and a right of appeal has meant that the vast majority of Chapter 40B proposals are negotiated at the local level and approved by the local board of appeals. Issues such as density, buffer zones, conservation areas, and infrastructure improvements are typical items for negotiation. For those proposals that go to the State Housing Appeals Committee, the record has generally been in favor of allowing reasonable projects to move forward.

A 2007 study found that 80% of applications filed between 1999 and 2005 were approved at the local level. The majority of the cases appealed to the Housing Appeals Committee are resolved without a decision. A 2003 study of 415 cases appealed to the Housing Appeals Committee found that 69% were either withdrawn, dismissed, or resolved through negotiation; this trend has continued.

How Do Units Count Toward the State's 10% Affordable Housing Goal?

- 1) They must be part of a "subsidized" development built or operated by a public agency, non-profit, or limited dividend organization.
- 2) At least 25% of the units in the development must be income restricted to families with incomes of less than 80% of median and have rents or sale prices restricted to affordable levels. These restrictions must run at least 30 years.
- 3) The development must be subject to a regulatory agreement and monitored by a public agency or non-profit organization.
- 4) Owners must meet affirmative marketing requirements.

What Regulatory Changes Have Been Made to Chapter 40B in Recent Years?

DHCD has made numerous changes to the Chapter 40B regulations since 2001 and updated and revised the regulations in February 2008 to create a single, comprehensive regulation that codified policies and guidelines that had evolved over the years, including policies established by court rulings and administrative decisions by the Housing Appeals Committee. It also issued comprehensive program guidelines.

The new regulation and guidelines incorporate and update many revisions first developed between 2001 and 2003 as well as procedures established in 2006 and 2007 (smart growth guidelines, MassHousing cost certification and project eligibility guidelines and a DHCD universal deed rider that survives foreclosure).

The new guidelines require subsidizing agencies to more extensively review project designs and how they fit into the neighborhood context and town planning efforts. They also make it easier for communities to become temporarily appeal-proof by lowering the number of subsidized housing units they must create each year to demonstrate that they are making progress toward the 10% goal and giving them more flexibility regarding when units first count toward the 10% goal.

Major changes adopted since 2001 are described below, with revisions to date also noted:

- Limiting project size limit 150-300 units, depending on the size of the community unless the ZBA chooses to allow a larger project (the 2008 regulation lowers the threshold in communities with less than 2500 year round units to 6% of year round housing).
- Requiring compliance with extensive audit and cost-certification guidelines regarding the profit limitations imposed on 40B developments.
- Requiring developers to ensure completion of cost-certification through credit, bond, or cash ranging from \$25,000-\$100,000.
- Enabling municipalities to reject a 40B application if a developer submitted an application for the same site for a non-40B development within the previous 12 months.
- Allowing municipalities that have hearings underway on three or more projects to defer hearing additional projects if the hearings underway involve a larger number of units.
- Allowing group homes, accessory apartments, locally assisted units, and units funded under the Community Preservation Act to count toward a community's 10% goal.
- Enabling a community to deny a comprehensive permit if that community has made recent progress on affordable housing. Effective in February 2008, this is defined as either: an increase in affordable housing units that is at least 1% of the town's year-round housing units over the previous 24 months or a 0.50% increase plus an approved housing plan over the previous 12 months. (Prior to the 2008 revision, the thresholds were 1.5% and 0.75% respectively.)
- Allowing units to count on the subsidized inventory as soon as a comprehensive permit is issued rather than having to wait until a building or occupancy permit is issued. The 2008 revisions also allow towns to add units if the locality has approved a comprehensive permit but issuance is delayed by litigation filed by a party other than the Zoning Board of Appeals.
- Requiring DHCD and the local chief elected official to be notified when a developer applies to the ZBA.
- Requiring a 30-day comment period for communities from the time a 40B application is filed. The subsidizing agency must consider the community's comments when issuing a site letter.
- Mandating that site approval letters contain more extensive, standardized information (the 2008 regulations require the subsidized agency to take into account "the municipal actions previously taken to meet affordable housing needs...")
- Requiring developers who want to access financing from the New England Fund to obtain a site approval letter from a state agency. The state agency then monitors and oversees the project.

- Updating the subsidized housing inventory every two years (communities can submit changes to DHCD at anytime).

EXHIBIT 4

The Record on 40B:
**The Effectiveness of the Massachusetts
Affordable Housing Zoning Law**

A Report by Citizens' Housing and Planning Association
(617) 742-0820
www.chapa.org

June 2003

EXECUTIVE SUMMARY

In 1969, Massachusetts enacted a law that was intended to increase the supply and improve the distribution of housing for low and moderate income families by making it easier to develop affordable housing, especially in communities where local zoning and other restrictions hindered its construction. The law established a streamlined process for qualified developers to use when proposing subsidized housing and provided for a limited override of local regulations that impeded its development.

In the 34 years since passage of Chapter 40B, nearly 30,000 units of housing in more than 200 communities have been built using its provisions. Of these units, 65% are restricted for households earning less than 80% of the area median income.

The Current Climate

Rents and home prices have risen dramatically, outstripping income growth. High housing costs are undermining the state's economic competitiveness and have made affordable housing a concern for people at all income levels. There has been some softening in the rental market, but rent levels and home prices remain among the highest in the nation while construction starts are among the lowest. Against this backdrop, Chapter 40B remains one of the few tools available to expand the state's affordable housing supply.

Whenever 40B utilization increases, so does the public debate surrounding it. Requests for comprehensive permits are now at an all-time high. A growing number of communities have raised concerns regarding the size and density of proposed 40B developments and their land use, environmental, and fiscal impacts. In response, more than seventy bills have been filed in the Legislature to amend, alter, or abolish the statute. And for the second time in fifteen years, a governor has appointed a special committee to review the statute's implementation.

While the fiscal impact of new housing development dominates much of the housing debate, it is the turnover of the existing stock, and the attendant demographic and economic shifts that is fueling the growth pressures in many Massachusetts cities and towns. For every new housing unit that is built, three existing homes are sold to new owners. Increasingly, the transfer is from an empty nester to families with young children.

What has happened is that 40B has become the lightning rod in a much larger debate over land use and growth management because it is one of the only tools currently available to overcome local obstacles to building new housing of any type in communities where demand and land exist. High land and development costs, restrictive zoning, and fragmented land use decision-making have all contributed to the challenge of developing new affordable housing.

Legacy of Lagging Production

Since the 1991-92 recession, housing production in Massachusetts has not kept pace with demand, especially in areas of job growth. The number of households increased by 9 percent during the 1990s, but the number of housing units increased by only 6 percent. Most of the new households were accommodated in existing vacant units, driving the rental vacancy rate down from 6.9 percent in 1990 to 3.5 percent a decade later, and the homeowner vacancy rate from 1.7 percent to 0.7 percent. Statewide, the median price of a single family home has doubled since 1994.

The number of housing units permitted annually in Massachusetts has declined significantly over the past several decades: from 31,000 units per year during the 1970s to 28,000 per year in the 1980s to only 17,000 per year since. The decline in multi-family units (units in structures of 5+ units) has been even more dramatic, dropping from an average of 14,000 units per year in the 1970s to 7,000 per year in the 1980s to only 1,300 per year for much of the 1990s, before picking up in the past five years.

Many of the Commonwealth's towns have large lot zoning (in excess of one acre per unit) and make no provision at all for multi-family or higher density housing--even where their historical development patterns did. The units that do get built, mostly detached single-family construction, represent the high end of the market in nearly every community. An analysis of housing units permitted between 1995-2001 revealed that nearly half of the municipalities in the Commonwealth permitted only single-family construction during those seven years. In three quarters of the communities, 90 percent of the units permitted were single family.

40B's Role in Expanding Affordable Housing Production

Chapter 40B has contributed substantially to expanding the state's supply of affordable housing for low and moderate income people. Nearly 500 housing developments, totaling nearly 30,000 units have been built under its provisions. Another 30 developments containing 3,600 units have been approved and are expected to begin construction during the first half of 2003.

Overall, comprehensive permits represent almost 20 percent of all units added to the State's Subsidized Housing Inventory since Chapter 40B took effect and more than one-third of the new units built in communities that were not already at the 10 percent threshold. In recent years, 40B's role has become even more prominent. Since 1997, more than 80% of the affordable housing production in communities under the 10% goal used 40B to build this housing.

While many communities have been able to add "qualified" units to their inventory without using 40B, most have used it at least once. Some 285 communities have added new subsidized units since 1972, and comprehensive permits were used for more than half the production in 85 of these. In 22 communities, comprehensive permits were required 100 percent of the time.

40B's Role in Distributing Affordable Housing More Equitably

More than 200 communities had no subsidized housing at all in 1972. Today that number is down to 42, and most of these are small, rural towns served by regional housing authorities. In 1972, the state's 15 most populous cities accounted for 69 percent of all subsidized housing. Even though these municipalities have nearly doubled their number of subsidized units, they now account for only 53 percent of the state's subsidized housing as more smaller cities and towns have added units.

Types of Housing Created and Populations Served Under 40B

- There are more than 4,000 units of locally owned and managed public housing in 135 developments in 93 communities, all of which house low and moderate income residents
- There are 18,000 units of privately-owned rental housing in more than 200 developments in 114 communities, two thirds of which are available for low and moderate income occupancy.
- There are homeownership developments in 84 communities, with more than 5,000 units, nearly one third of them affordable to homebuyers earning less than 80 percent of the area median income.

Chapter 40B developments have been built by a mix of developers: 55 percent by limited dividend corporations, 32 percent by local housing authorities and 15 percent by nonprofit organizations. The housing has served a variety of local needs: approximately 57 percent of the developments (45 percent of the units) were built for families, 33 percent (52 percent of the units) for the elderly and 10 percent (3 percent of the units) for populations with special needs.

Housing Appeals Committee

Two-thirds of the developments that have been built under the comprehensive permit were approved at the local level, and one-third were built after the developer appealed a local decision to the Housing Appeals Committee (HAC). Through 2002, 419 appeals had been filed with the HAC, half between the years 1986-1989 and 2001-2002.

The disposition of Housing Appeals Committee cases are as follows:

- 45% of the cases were withdrawn, dismissed, or settled independently of HAC
- 24% of the cases involved a negotiated settlement
- 31% of the cases resulted in an actual decision by the Housing Appeals Committee. Of these rulings, 84% were ruled in favor of the developer and 16% were ruled in favor of the municipality.

Recent Progress

More communities are developing affordable housing strategies and timetables to expand housing options and attain the 10 percent goal, and DHCD has issued guidance to other communities that wish to do likewise. There are now 32 communities that have already exceeded the 10 percent goal, up from 23 in 1997. There are 8 other communities at 8 or 9 percent and another 15 at 6 or 7 percent. Fifty-five communities need to produce or preserve 200 units or less to reach the 10 percent goal.

Below is a list of some communities that have made significant recent progress:

<u>Community</u>	<u>Last 4 Yrs</u>	<u>Previous 30 Yrs</u>
Marlboro	588 units	488 units
Westborough	543 units	195 units
Peabody	476 units	711 units
Danvers	443 units	253 units
Wilmington	331 units	119 units
Abington	330 units	72 units
Raynham	275 units	193 units
Tyngsboro	266 units	116 units
Georgetown	210 units	140 units
Hadley	160 units	37 units

Much has changed in the decades since 40B's enactment. The magnitude of the housing crisis has grown, the resources available to address it have been reduced significantly, and many of the players and rules have changed. But by any objective standard, Chapter 40B has compiled an impressive record of increasing the supply and improving the distribution of low and moderate income housing in the Commonwealth.

EXHIBIT 5

Department of Housing and Community Development
Chapter 40B Subsidized Housing Inventory (SHI)
as of June 30, 2011*

Community	2010 Census Year Round Housing Units	Total Development Units	SHI Units	%
Abington	6,364	504	471	7.4%
Acton	8,475	897	519	6.1%
Acushnet	4,097	127	97	2.4%
Adams	4,337	324	324	7.5%
Agawam	12,090	504	472	3.9%
Alford	231	0	0	0.0%
Amesbury	7,041	859	495	7.0%
Amherst	9,621	1125	1023	10.6%
Andover	12,324	1327	1044	8.5%
Aquinnah	158	41	41	25.9%
Arlington	19,881	1307	1102	5.5%
Ashburnham	2,272	147	32	1.4%
Ashby	1,150	0	0	0.0%
Ashfield	793	2	2	0.3%
Ashland	6,581	348	243	3.7%
Athol	5,148	255	255	5.0%
Attleboro	17,978	1198	1198	6.7%
Auburn	6,808	212	212	3.1%
Avon	1,763	74	74	4.2%
Ayer	3,440	463	293	8.5%
Barnstable	20,550	1839	1357	6.6%
Barre	2,164	82	82	3.8%
Becket	838	0	0	0.0%
Bedford	5,322	979	857	16.1%
Belchertown	5,771	396	370	6.4%
Bellingham	6,341	582	532	8.4%
Belmont	10,117	328	328	3.2%
Berkley	2,169	130	15	0.7%
Berlin	1,183	222	101	8.5%
Bernardston	930	24	24	2.6%
Beverly	16,522	1935	1859	11.3%
Billerica	14,442	1432	1186	8.2%
Blackstone	3,606	165	123	3.4%
Blandford	516	2	2	0.4%
Bolton	1,729	192	63	3.6%
Boston	269,482	50116	48503	18.0%
Bourne	8,584	1189	568	6.6%
Boxborough	2,062	324	24	1.2%
Boxford	2,730	64	23	0.8%
Boylston	1,765	26	26	1.5%
Braintree	14,260	1646	1125	7.9%
Brewster	4,803	299	252	5.2%
Bridgewater	8,288	222	214	2.6%

Brimfield	1,491	89	89	6.0%
Brockton	35,514	4486	4486	12.6%
Brookfield	1,452	46	40	2.8%
Brookline	26,201	2554	2122	8.1%
Buckland	866	5	5	0.6%
Burlington	9,627	1383	981	10.2%
Cambridge	46,690	7207	7117	15.2%
Canton	8,710	965	860	9.9%
Carlisle	1,740	52	46	2.6%
Carver	4,514	126	126	2.8%
Charlemont	615	6	6	1.0%
Charlton	4,774	52	52	1.1%
Chatham	3,460	174	174	5.0%
Chelmsford	13,741	1293	966	7.0%
Chelsea	12,592	2192	2187	17.4%
Cheshire	1,481	0	0	0.0%
Chester	585	50	50	8.5%
Chesterfield	524	27	27	5.2%
Chicopee	25,074	2598	2561	10.2%
Chilmark	418	3	3	0.7%
Clarksburg	706	8	8	1.1%
Clinton	6,375	560	560	8.8%
Cohasset	2,898	105	91	3.1%
Colrain	731	4	4	0.5%
Concord	6,852	738	713	10.4%
Conway	803	0	0	0.0%
Cummington	426	16	16	3.8%
Dalton	2,860	160	160	5.6%
Danvers	11,071	1362	999	9.0%
Dartmouth	11,775	975	934	7.9%
Dedham	10,115	1142	1097	10.8%
Deerfield	2,154	32	32	1.5%
Dennis	7,653	351	337	4.4%
Dighton	2,568	408	150	5.8%
Douglas	3,147	183	140	4.4%
Dover	1,950	69	18	0.9%
Dracut	11,318	928	595	5.3%
Dudley	4,360	99	99	2.3%
Dunstable	1,085	30	0	0.0%
Duxbury	5,532	438	405	7.3%
East Bridgewater	4,897	229	167	3.4%
East Brookfield	888	0	0	0.0%
East Longmeadow	6,072	499	431	7.1%
Eastham	2,632	58	49	1.9%
Easthampton	7,567	532	476	6.3%
Easton	8,105	351	248	3.1%
Edgartown	1,962	84	84	4.3%
Egremont	596	0	0	0.0%
Erving	778	2	2	0.3%

Essex	1,477	40	40	2.7%
Everett	16,691	1304	1304	7.8%
Fairhaven	7,003	495	495	7.1%
Fall River	42,650	4858	4762	11.2%
Falmouth	14,870	1226	962	6.5%
Fitchburg	17,058	1667	1666	9.8%
Florida	335	0	0	0.0%
Foxborough	6,853	595	555	8.1%
Framingham	27,443	2901	2901	10.6%
Franklin	11,350	1626	1072	9.4%
Freetown	3,263	106	88	2.7%
Gardner	9,064	1243	1243	13.7%
Georgetown	3,031	374	362	11.9%
Gill	591	25	25	4.2%
Gloucester	13,270	956	921	6.9%
Goshen	440	8	8	1.8%
Gosnold	41	0	0	0.0%
Grafton	7,160	531	318	4.4%
Granby	2,451	68	68	2.8%
Granville	630	10	10	1.6%
Great Barrington	3,072	291	219	7.1%
Greenfield	8,325	1175	1165	14.0%
Groton	3,930	269	197	5.0%
Groveland	2,423	132	75	3.1%
Hadley	2,200	259	259	11.8%
Halifax	2,971	28	28	0.9%
Hamilton	2,783	124	84	3.0%
Hampden	1,941	60	60	3.1%
Hancock	326	0	0	0.0%
Hanover	4,832	438	438	9.1%
Hanson	3,572	265	143	4.0%
Hardwick	1,185	33	33	2.8%
Harvard	1,982	279	108	5.4%
Harwich	6,121	327	327	5.3%
Hatfield	1,549	47	47	3.0%
Haverhill	25,557	2306	2084	8.2%
Hawley	137	0	0	0.0%
Heath	334	2	2	0.6%
Hingham	8,841	2283	522	5.9%
Hinsdale	918	0	0	0.0%
Holbrook	4,262	439	439	10.3%
Holden	6,624	541	193	2.9%
Holland	1,051	29	29	2.8%
Holliston	5,077	316	202	4.0%
Holyoke	16,320	3423	3380	20.7%
Hopedale	2,278	111	111	4.9%
Hopkinton	5,087	299	168	3.3%
Hubbardston	1,627	53	53	3.3%
Hudson	7,962	904	733	9.2%

Hull	4,964	100	100	2.0%
Huntington	919	61	61	6.6%
Ipswich	5,735	517	445	7.8%
Kingston	4,881	347	170	3.5%
Lakeville	3,852	701	150	3.9%
Lancaster	2,544	192	104	4.1%
Lanesborough	1,365	20	20	1.5%
Lawrence	27,092	3807	3788	14.0%
Lee	2,702	173	176	6.5%
Leicester	4,231	148	148	3.5%
Lenox	2,473	179	179	7.2%
Leominster	17,805	1455	1418	8.0%
Leverett	792	0	0	0.0%
Lexington	11,946	1441	1326	11.1%
Leyden	300	2	2	0.7%
Lincoln	2,153	299	227	10.5%
Littleton	3,443	420	269	7.8%
Longmeadow	5,874	267	267	4.5%
Lowell	41,308	5247	5212	12.6%
Ludlow	8,337	182	182	2.2%
Lunenburg	4,037	132	132	3.3%
Lynn	35,701	4424	4423	12.4%
Lynnfield	4,319	626	313	7.2%
Malden	25,122	2706	2638	10.5%
Manchester	2,275	122	110	4.8%
Mansfield	8,725	980	934	10.7%
Marblehead	8,528	399	332	3.9%
Marion	2,014	101	90	4.5%
Marlborough	16,347	1656	1592	9.7%
Marshfield	9,852	745	538	5.5%
Mashpee	6,473	240	224	3.5%
Mattapoisett	2,626	70	70	2.7%
Maynard	4,430	365	365	8.2%
Medfield	4,220	203	185	4.4%
Medford	23,968	1666	1640	6.8%
Medway	4,603	279	227	4.9%
Melrose	11,714	969	894	7.6%
Mendon	2,072	106	49	2.4%
Merrimac	2,527	402	146	5.8%
Methuen	18,268	1927	1638	9.0%
Middleborough	8,921	768	413	4.6%
Middlefield	230	18	18	7.8%
Middleton	3,011	94	94	3.1%
Milford	11,379	997	724	6.4%
Millbury	5,592	244	221	4.0%
Millis	3,148	164	113	3.6%
Millville	1,157	20	20	1.7%
Milton	9,641	567	435	4.5%
Monroe	64	0	0	0.0%

Monson	3,406	169	169	5.0%
Montague	3,926	427	395	10.1%
Monterey	465	0	0	0.0%
Montgomery	337	0	0	0.0%
Mount Washington	80	0	0	0.0%
Nahant	1,612	48	48	3.0%
Nantucket	4,896	180	122	2.5%
Natick	14,052	1655	1367	9.7%
Needham	11,047	858	836	7.6%
New Ashford	104	0	0	0.0%
New Bedford	42,816	5195	5164	12.1%
New Braintree	386	0	0	0.0%
New Marlborough	692	0	0	0.0%
New Salem	433	1	1	0.2%
Newbury	2,699	94	94	3.5%
Newburyport	8,015	722	629	7.8%
Newton	32,346	2537	2444	7.6%
Norfolk	3,112	144	111	3.6%
North Adams	6,681	885	873	13.1%
North Andover	10,902	1193	694	6.4%
North Attleborough	11,553	293	293	2.5%
North Brookfield	2,014	142	142	7.1%
North Reading	5,597	607	536	9.6%
Northampton	12,604	1515	1452	11.5%
Northborough	5,297	711	598	11.3%
Northbridge	6,144	393	378	6.2%
Northfield	1,290	30	30	2.3%
Norton	6,707	723	413	6.2%
Norwell	3,652	294	139	3.8%
Norwood	12,441	731	719	5.8%
Oak Bluffs	2,138	155	146	6.8%
Oakham	702	0	0	0.0%
Orange	3,461	441	377	10.9%
Orleans	3,290	324	294	8.9%
Otis	763	0	0	0.0%
Oxford	5,520	402	402	7.3%
Palmer	5,495	436	378	6.9%
Paxton	1,590	12	12	0.8%
Peabody	22,135	2131	2016	9.1%
Pelham	564	3	3	0.5%
Pembroke	6,477	778	630	9.7%
Pepperell	4,335	137	122	2.8%
Peru	354	0	0	0.0%
Petersham	525	0	0	0.0%
Phillipston	658	6	6	0.9%
Pittsfield	21,031	2077	2023	9.6%
Plainfield	283	15	15	5.3%
Plainville	3,459	223	189	5.5%
Plymouth	22,285	901	861	3.9%

Plympton	1,039	43	43	4.1%
Princeton	1,324	20	20	1.5%
Provincetown	2,122	168	127	6.0%
Quincy	42,547	4093	4093	9.6%
Randolph	11,980	1265	1265	10.6%
Raynham	5,052	602	487	9.6%
Reading	9,584	883	684	7.1%
Rehoboth	4,252	108	36	0.8%
Revere	21,956	2132	2122	9.7%
Richmond	706	0	0	0.0%
Rochester	1,865	8	8	0.4%
Rockland	7,030	454	408	5.8%
Rockport	3,460	136	136	3.9%
Rowe	177	0	0	0.0%
Rowley	2,226	118	88	4.0%
Royalston	523	3	3	0.6%
Russell	687	18	18	2.6%
Rutland	2,913	93	93	3.2%
Salem	18,998	2549	2350	12.4%
Salisbury	3,842	515	299	7.8%
Sandisfield	401	0	0	0.0%
Sandwich	8,183	545	309	3.8%
Saugus	10,754	831	742	6.9%
Savoy	318	14	14	4.4%
Scituate	7,163	359	314	4.4%
Seekonk	5,272	86	83	1.6%
Sharon	6,413	462	462	7.2%
Sheffield	1,507	30	30	2.0%
Shelburne	893	51	51	5.7%
Sherborn	1,479	41	34	2.3%
Shirley	2,417	60	60	2.5%
Shrewsbury	13,919	856	856	6.1%
Shutesbury	758	2	2	0.3%
Somerset	7,335	277	258	3.5%
Somerville	33,632	3226	3118	9.3%
South Hadley	7,091	379	379	5.3%
Southampton	2,310	44	44	1.9%
Southborough	3,433	441	117	3.4%
Southbridge	7,517	496	496	6.6%
Southwick	3,852	221	195	5.1%
Spencer	5,137	276	240	4.7%
Springfield	61,556	10375	10098	16.4%
Sterling	2,918	270	163	5.6%
Stockbridge	1,051	117	117	11.1%
Stoneham	9,399	508	502	5.3%
Stoughton	10,742	1746	1489	13.9%
Stow	2,500	301	143	5.7%
Sturbridge	3,759	262	211	5.6%
Sudbury	5,921	422	281	4.7%

Sunderland	1,718	6	6	0.3%
Sutton	3,324	127	45	1.4%
Swampscott	5,795	217	211	3.6%
Swansea	6,290	256	245	3.9%
Taunton	23,844	1883	1771	7.4%
Templeton	3,014	483	205	6.8%
Tewksbury	10,803	1264	967	9.0%
Tisbury	1,965	122	110	5.6%
Tolland	222	0	0	0.0%
Topsfield	2,157	142	124	5.7%
Townsend	3,356	166	126	3.8%
Truro	1,090	10	10	0.9%
Tyngsborough	4,166	521	278	6.7%
Tyringham	149	0	0	0.0%
Upton	2,820	223	178	6.3%
Uxbridge	5,284	372	245	4.6%
Wakefield	10,459	936	602	5.8%
Wales	772	61	61	7.9%
Walpole	8,984	475	475	5.3%
Waltham	24,805	1773	1764	7.1%
Ware	4,539	446	446	9.8%
Wareham	9,880	884	754	7.6%
Warren	2,202	112	112	5.1%
Warwick	363	0	0	0.0%
Washington	235	0	0	0.0%
Watertown	15,521	1161	998	6.4%
Wayland	4,957	280	216	4.4%
Webster	7,788	713	692	8.9%
Wellesley	9,090	514	482	5.3%
Wellfleet	1,550	37	37	2.4%
Wendell	419	2	2	0.5%
Wenham	1,404	169	116	8.3%
West Boylston	2,729	288	189	6.9%
West Bridgewater	2,658	125	63	2.4%
West Brookfield	1,578	62	62	3.9%
West Newbury	1,558	86	32	2.1%
West Springfield	12,629	442	442	3.5%
West Stockbridge	645	0	0	0.0%
West Tisbury	1,253	38	23	1.8%
Westborough	7,304	721	671	9.2%
Westfield	16,001	1095	1095	6.8%
Westford	7,671	667	371	4.8%
Westhampton	635	0	0	0.0%
Westminster	2,826	273	86	3.0%
Weston	3,952	250	137	3.5%
Westport	6,417	458	224	3.5%
Westwood	5,389	615	497	9.2%
Weymouth	23,337	1857	1833	7.9%
Whately	654	2	2	0.3%

Whitman	5,513	218	218	4.0%
Wilbraham	5,442	256	255	4.7%
Williamsburg	1,165	76	76	6.5%
Williamstown	2,805	147	147	5.2%
Wilmington	7,788	939	711	9.1%
Winchendon	4,088	345	345	8.4%
Winchester	7,920	150	148	1.9%
Windsor	387	0	0	0.0%
Winthrop	8,253	642	642	7.8%
Woburn	16,237	1305	1137	7.0%
Worcester	74,383	9603	9591	12.9%
Worthington	553	22	22	4.0%
Wrentham	3,821	268	164	4.3%
Yarmouth	12,037	514	407	3.4%
Totals	2,692,186	271,906	245,042	9.1%

*This data is derived from Information provided to the Department of Housing and Community Development (DHCD) by individual communities and is subject to change as new information is obtained and use restrictions expire. This data is subject to change pending the completion of DHCD's upcoming biennial update.

EXHIBIT 6



COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF HOUSING &
COMMUNITY DEVELOPMENT

Deval L. Patrick, Governor ♦ Timothy P. Murray, Lt. Governor ♦ Gregory Bialecki, Secretary, EOHEd

August 12, 2011

Peter Sacks, Assistant Attorney General
Government Bureau
Office of Attorney General Martha Coakley
McCormack Building
One Ashburton Place
Boston, MA 02108

Re: Initiative Petition 11-24

Dear Attorney Sacks:

I am writing in connection with the letter dated August 12, 2011 submitted by Citizens' Housing and Planning Association, the Mass. Association of Community Development Corps., the Mass. Affordable Housing Alliance, the Jewish Alliance for Law and Social Action and the Lawyers Clearinghouse regarding certification of the Initiative Petition 11-24 (the Letter).

The Department of Housing and Community Development (DHCD) is the state agency with established familiarity and expertise regarding the Comprehensive Permit Law (M.G.L. Ch.40B). We maintain the subsidized housing inventory and oversee administrative responsibilities related to this law.

I have reviewed the underlying data provided in the Letter, and I am familiar with the source and methodology used to compile the data. Based upon my review and DHCD's familiarity and expertise, DHCD affirms that the facts and data contained in the Letter are accurate and reliable.

Sincerely,

A handwritten signature in cursive script that reads "Deborah J. Goddard".

Deborah J. Goddard
Chief Counsel

Cc: Steve Carvalho
Sean Caron, CHAPA

EXHIBIT 7

Population of Massachusetts Towns at 3% or Less on the DHCD Subsidized Housing Inventory

	Towns at 3% or less	SHI % (6/30/11)	Total Pop. (2010 Census)				
	Acushnet	2.40%	10,303				
	Alford	0.00%	8,485				
	Ashburnham	1.40%	6,081				
	Ashby	0.00%	3,074				
	Ashfield	0.30%	1,737				
	Becket	0.00%	1,779				
	Berkley	0.70%	6,411				
	Bernardston	2.60%	2,129				
	Blandford	0.40%	1,233				
	Boxborough	1.20%	4,996				
	Boxford	0.80%	7,965				
	Boylston	1.50%	4,355				
	Bridgewater	2.60%	26,563				
	Brookfield	2.80%	3,390				
	Buckland	0.60%	1,902				
	Carlisle	2.60%	4,852				
	Carver	2.80%	11,509				
	Charlemont	1.00%	1,266				
	Charlton	1.10%	12,981				
	Cheshire	0.00%	3,235				
	Chilmark	0.70%	866				
	Clarksburg	1.10%	1,702				
	Colrain	0.50%	1,671				
	Conway	0.00%	1,897				
	Deerfield	1.50%	5,125				
	Dover	0.90%	5,589				
	Dudley	2.30%	11,390				
	Dunstable	0.00%	3,179				
	East Brookfield	0.00%	2,183				
	Eastham	1.90%	4,956				
	Egremont	0.00%	1,225				
	Erving	0.30%	1,800				
	Essex	2.70%	3,504				
	Florida	0.00%	752				
	Freetown	2.70%	8,870				
	Goshen	1.80%	1,054				
	Gosnold	0.00%	75				
	Granby	2.80%	6,240				
	Granville	1.60%	1,566				
	Halifax	0.90%	7,518				
	Hamilton	3.00%	7,764				
	Hancock	0.00%	717				
	Hardwick	2.80%	2,990				
	Hatfield	3.00%	3,279				
	Hawley	0.00%	337				
	Heath	0.60%	706				
	Hinsdale	0.00%	2,032				
	Holden	2.90%	17,346				

Holland	2.80%	2,481				
Hull	2.00%	10,293				
Lanesborough	1.50%	3,091				
Leverett	0.00%	1,851				
Leyden	0.70%	711				
Ludlow	2.20%	21,103				
Mattapoisett	2.70%	6,045				
Mendon	2.40%	5,839				
Millville	1.70%	3,190				
Monroe	0.00%	121				
Monterey	0.00%	961				
Montgomery	0.00%	838				
Mount Washington	0.00%	167				
Nahant	3.00%	3,410				
Nantucket	2.50%	10,172				
New Ashford	0.00%	228				
New Braintree	0.00%	999				
New Marlborough	0.00%	1,509				
New Salem	0.20%	990				
North Attleboro	2.50%	28,712				
Northfield	2.30%	3,032				
Oakham	0.00%	1,902				
Otis	0.00%	1,612				
Paxton	0.80%	4,806				
Pelham	0.50%	1,321				
Pepperell	2.80%	11,497				
Peru	0.00%	847				
Petersham	0.00%	1,234				
Phillipston	0.90%	1,682				
Princeton	1.50%	3,413				
Rehoboth	0.80%	11,608				
Richmond	0.00%	1,475				
Rochester	0.40%	5,232				
Rowe	0.00%	393				
Royalston	0.60%	1,258				
Russell	2.60%	1,775				
Sandisfield	0.00%	915				
Seekonk	1.60%	13,722				
Sheffield	2.00%	3,257				
Sherborn	2.30%	4,119				
Shirley	2.50%	7,211				
Shutesbury	0.30%	1,771				
Southampton	1.90%	5,792				
Sunderland	0.30%	3,684				
Sutton	1.40%	8,963				
Tolland	0.00%	485				
Truro	0.90%	2,003				
Tyringham	0.00%	327				
Warwick	0.00%	780				
Washington	0.00%	538				
Wellfleet	2.40%	2,750				
Wendell	0.50%	848				
West Bridgewater	2.40%	6,916				
West Newbury	2.10%	4,235				
West Stockbridge	0.00%	1,306				

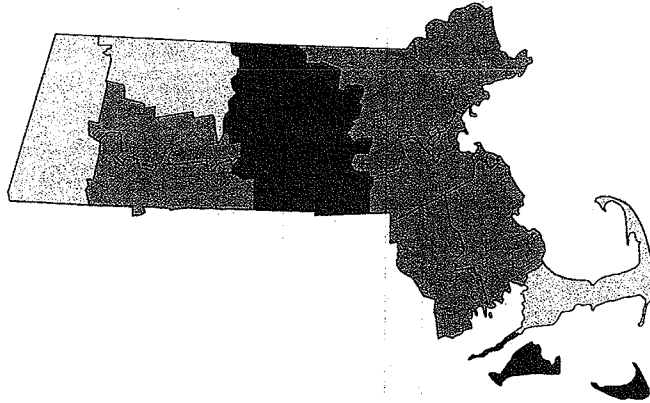
	West Tisbury	1.80%	2,740				
	Westhampton	0.00%	1,607				
	Westminster	3.00%	7,277				
	Whately	0.30%	1,496				
	Winchester	1.90%	21,374				
	Windsor	0.00%	899				
			486,879				

Source: DHCD Subsidized Housing Inventory (6/30/11); 2010 Census Data by Massachusetts Town

EXHIBIT 8

Massachusetts STATE POPULATION: 6,547,629

POPULATION CHANGE BY COUNTY: 2000-2010



STATE POPULATION BY RACE MASSACHUSETTS: 2010

PERCENT OF POPULATION	CHANGE 2000-2010
White alone 80.4%	-1.9% ↓
Black or African American alone 6.6%	26.5% ↑
American Indian and Alaska Native alone 0.3%	25.5% ↑
Asian alone 5.3%	46.9% ↑
Native Hawaiian and Other Pacific Islander alone -	-10.7% ↓
Some Other Race alone 4.7%	28.9% ↑
Two or More Races 2.6%	17.8% ↑

STATE POPULATION BY HISPANIC OR LATINO ORIGIN MASSACHUSETTS: 2010

PERCENT OF POPULATION	CHANGE 2000-2010
Hispanic or Latino 9.6%	46.4% ↑
Not Hispanic or Latino 90.4%	-

EXHIBIT 9

Developments in Subsidized Housing Inventory (SHI) Approved or Completed* Using Comprehensive Permits 2000 through Present				
Chart 1				
Statewide Total	No. of Projects	No. of SHI Units	No. of MA Towns	
	486	21,810	351	
Limited Dividend Org. Total	373	19,131		
Limited Dividend Org. Share	76.7%	87.7%		
Chart 2				
Towns 3% or Under on SHI	No. of Projects	No. of SHI Units	No. of MA Towns	
No. of Projects/Units by non-LDO's	8	64	109	
Source: Analysis of Project List underlying September 28, 2010 SHI and June 30, 2011 SHI Totals (Developer type and year occupancy started added by CHAPA based on review of public records and affordable units)				
*Defined as year occupancy started or units first became available				