SENATE, No 2062

Report of the Senate committee on Post Audit and Oversight (pursuant to Section 63 of Chapter 3 of the General Laws, as most recently amended by Chapter 557 of the Acts of 1986) submitting a report entitled "Chapter 40B: Building Accountability into the Massachusetts Affordable Housing Program " (Senate, No. 2062).

CHAPTER 40B:

BUILDING ACCOUNTABILITY INTO THE MASSACHUSETTS AFFORDABLE HOUSING PROGRAM

A Report of the
Senate Committee on Post Audit and Oversight

June 2009

Massachusetts Senate
The Honorable Therese Murray
Senate President

Senator Marc R. Pacheco, Chair
Senator Susan C. Fargo, Vice Chair
Senator Steven A. Baddour
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Senate Post Audit & Oversight Committee

Senator Marc R. Pacheco, Chairman

It shall be the duty of the Senate Committee on Post Audit and Oversight (established under Section 63 of Chapter 3 of the General Laws) to oversee the development and implementation of legislative auditing programs conducted by the Legislative Post Audit and Oversight Bureau with particular emphasis on performance auditing. The Committee shall have the power to summon witnesses, administer oaths, take testimony and compel the production of books, papers, documents and other evidence in connection with any authorized examination or review. If the Committee shall deem special studies or investigations to be necessary, they may direct their legislative auditors to undertake such studies or investigations.

Senate Post Audit and Oversight Bureau

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The Committee would like to acknowledge the assistance of staff members Jessica Nordstrom, Ilda DaMota, Charles Basler, Mary Wasylyk, Amanda Chaves, Chris Ferreira, and Erin McNeill.

The Committee would also like to acknowledge the assistance of Inspector General Gregory Sullivan, Josh Giles, George Xenakis, Undersecretary of the Department of Housing and Community Development Tina Brooks, Seamus Kelley, and Deborah Goddard.

· EXECUTIVE SUMMARY ·

On September 18, 2008, the Senate Committee on Post Audit and Oversight ("Committee") conducted a hearing to examine issues surrounding Chapter 40B, the state's affordable housing development law. During the hearing Committee members listened to testimony from various parties, including the Inspector General, Gregory Sullivan, former Secretary of Housing and Economic Development, Dan O'Connell and the Undersecretary for Housing and Development, Tina Brooks. The Committee also solicited written testimony from a number of other entities, including Mass Housing Finance Authority (MHFA), Citizens Housing and Planning Association (CHAPA), Mass Housing Partnership (MHP), Massachusetts Home Builders Association and the Massachusetts Municipal Association (MMA).

While the initial focus of the hearing was on the cost certification process, it became evident that the Department of Housing and Community Development (DHCD) had taken steps to address many of the oversight issues that had plagued Chapter 40B projects for the past decade. In the past year and a half, DHCD, under the Patrick administration, has taken a necessary and proactive role in the administration of Chapter 40B projects and has reviewed and rewritten Chapter 40B regulations. For example, one of the changes DHCD implemented is a requirement that developers must pay a financial surety to ensure that the cost certification requirement is met and that any excess profits are identified and recaptured.

Although certain aspects of the cost certification process have been improved, thereby enhancing public oversight, concerns over the overall guidelines and regulations persist. The Inspector General testified that there were no procedures in place to identify which projects had been cost certified or which projects had reached completion but had not yet submitted cost certification papers to DHCD. The Committee was especially interested in the Inspector General's allegation that millions of dollars in excess profits might be owed to cities and towns by developers who had either failed to submit cost certifications or who submitted erroneous or falsified certifications. In addition to the cost certification process, the Committee heard testimony dealing with the newly implemented guidelines. The Committee was particularly concerned with the guidelines dealing with profit limitations, project density and the definition of "uneconomic."

After reviewing the testimony of the various parties and conducting an independent analysis of the new guidelines, the Committee makes the following findings and recommendations:

· FINDINGS AND RECOMMENDATIONS ·

FINDING ONE: Over the long history of the Chapter 40B program, there have been considerable gaps in program oversight. A recent investigation by the Massachusetts Inspector General revealed that the cost certification process for completed projects has been spotty at best. In recent years, MassHousing and DHCD have improved the cost certification process through the issuance of guidelines and regulations that have addressed some of the concerns raised by the Inspector General and others. While this new guidance has substantially improved the monitoring and oversight of 40B projects, there is a need for better tracking of completed cost certifications.

RECOMMENDATIONS:

- DHCD should create and maintain a database of all 40B projects undertaken in Massachusetts. The agency should use this database to determine which projects are in compliance with cost certification requirements, which are out of compliance, and which projects are not yet ripe for cost certification submission. This database should be used to ensure that projects are cost certified as required and to recapture excess profits, if any, due to municipalities.

- DHCD should review pending legislation on Chapter 40B and incorporate legislative proposals into the Chapter 40B guidelines and regulations as appropriate.

FINDING TWO: In 2008 DHCD published new guidelines and regulations relating to Chapter 40B. While some of the guidelines are helpful for both communities and developers to understand the permitting process, certain substantive changes were made in guidelines that should have been implemented in a more rigorous and public manner through regulations.

RECOMMENDATIONS:

- DHCD should review all guidelines and solicit public comment from all interested parties regarding which guidelines would be better implemented as regulations. After deciding which guidelines should be rewritten as regulations, DHCD should immediately begin the regulatory process with respect to these guidelines.

- The legislature should enact legislation requiring that all regulations promulgated under Chapter 40B be laid before the legislature prior to adoption by DHCD.

FINDING THREE: When DHCD implemented its new rules, it eliminated the "uneconomic standard" promulgated by Mass Housing Partnership and adopted by Mass Development, MassHousing, Mass Housing Partnership, and DHCD.[1] The Mass Housing Partnership guideline relating to profit states that "A for-sale project should be considered uneconomic if the Return on Total Cost is less than 15% (i.e., if projected sales proceeds exceed development costs by less than 15%)." The current DHCD guideline on profitability sets the minimum profit limit to be not less than the maximum profit limit (which is limited to no more than 20% of total allowable development costs). Essentially, DHCD is advocating the rule that if a developer makes less than a 20% profit, the project is uneconomic.

RECOMMENDATION:

- With regard to profitability, DHCD should implement a clear standard with a 15% floor and 20% ceiling.

FINDING FOUR: In the current guidelines, the section on density, setting out number ranges, can be misleading and used by developers to inappropriately support an increase in units to a proposed development. By defining an acceptable range for units per acre, municipalities may lose their ability to negotiate with developers, simply due to the fact that a specific number "range" exists.

RECOMMENDATION:

- The density section relating to number ranges in the existing guidelines should be removed to avoid conflicts between developers and towns over appropriate and allowable sizes for proposed developments. In the alternative, DHCD should adopt the standard used by MassHousing (four times the underlying density or eight units per acre, whichever is greater) or develop a method to calculate density which is tied to existing zoning regulations.

FINDING FIVE: In response to *Board of Appeals of Woburn v. Housing Appeals Committee,*[2] DHCD implemented a new definition of "reasonable return" that says reducing the size of a proposed project by more than 5% will automatically be deemed "uneconomic" and the burden of proof is on the municipality to show the project is still economically viable.

RECOMMENDATION:

- DHCD should remove this language from the guidelines. The Committee further recommends that DHCD follow the advice of the Massachusetts Supreme Judicial Court in *Board of Appeals of Woburn v. Housing Appeals Committee* and clarify the definition of "uneconomic" through regulation.

· INTRODUCTION ·

The subject of this Senate Post Audit and Oversight Committee report is Chapter 40B, the state's affordable housing development law. Chapter 40B was enacted in 1969 in order to meet Massachusetts's need for affordable housing. The law allows developers to override exclusionary zoning practices if at least 25% of the units in the proposed development are affordable.[3]

In the past 40 years, over 48,000 units in almost 900 developments have been constructed using Chapter 40B.[4] Within these 900 developments, 26,000 affordable housing units have been set aside for families or individuals below 80% of the median income.[5] Chapter 40B has proven to be an innovative and effective method to encourage developers to build housing and at the same time meet the demand for affordable housing in Massachusetts.

Although Chapter 40B has produced much needed housing in communities across the Commonwealth, it has spurred a great deal of controversy during its 40 years of existence. Much of the criticism surrounding Chapter 40B comes from cities and towns who feel that they have lost control over local zoning and the ability to manage the type and size of developments being constructed in their communities.

In 2005 Massachusetts Inspector General Gregory Sullivan began to review a series of 40B projects. The Inspector General reviewed 10 projects in different communities with different developers, with the New England Fund (NEF) or the Housing Starts Program as subsidizing agency.

The Inspector General found numerous problems with the cost certification process, including understated profits, undisclosed related party transactions and accounting "fictions."[6] The Inspector General described the cost certification process as "broken" and his review

> "…revealed that reported developer profits were routinely and substantially understated. The results, in many cases, were profit windfalls to the developers which deprived the respective municipalities of the excess profits that should have been paid to the municipality under regulatory agreements."[7]

Many legislators have also weighed in on the Chapter 40B debate. In April, 2008, members of the Senate requested that the Senate Committee on Post Audit and Oversight look into certain aspects of Chapter 40B.[8] These concerns brought to the Committee by legislators, as well as investigations by the Inspector General, prompted the Committee's hearing in September and subsequent investigation and report.

· COST CERTIFICATION AND POTENTIAL EXCESS PROFITS ·

The Inspector General's Recommendations

As a result of his investigation, the Inspector General made numerous recommendations to DHCD for improvements to the cost certification process.[9] The Inspector General recommended that the following changes be implemented:

- Prequalification by DHCD of Certified Public Accountants, Appraisers and Monitoring Agents.
- Allow municipalities to choose CPAs, Appraisers and Monitoring Agents from the prequalified list.
- Require developers to submit all applications and cost certifications under pains and penalties of perjury.
- Impose sanctions against developers who fail to submit cost certifications in a timely fashion.
- Require that all projects be audited, preferably under Government Auditing Standards rather than CPA standards.
- Adopt substantive changes to the Chapter 40B program via regulation, not guidelines.

The Agency's Response

In response to the Inspector General's recommendations and the Committee's investigation, DHCD has agreed to the following changes, some of which have begun to be implemented.

- A database has been created that will be used to track all 40B projects. The database includes all projects for which site eligibility letters have been issued by DHCD, MassHousing, MassDevelopment, MHP, HUD, Town of Barnstable, Barnstable Home Consortium and the Federal Home Loan Bank of Boston.
- Substantial changes to the 40B program were made by the agency in 2008 through the issuance of revised guidelines. The following changes directly address the Inspector General's concerns regarding cost certification:
    - The subsidizing agency will randomly assign an appraiser for a 40B project from a list approved by DHCD.

- Developers may only hire Certified Public Accountants that have been prequalified by DHCD in order to perform cost certifications in connection with 40B projects.
- Developers must post a surety for all projects receiving final approval after April 1, 2008.[10]

In the fall of 2008, at the suggestion of the Committee, DHCD worked with the subsidizing agencies to develop a database of Chapter 40B projects. Prior to 2008, a comprehensive database was not maintained across the subsidizing agencies. Each subsidizing agency was responsible for its own unique tracking system. The database contains information from five agencies, starting with projects assisted through the Local Initiative Program managed by DHCD. The earliest projects in the database received site eligibility letters in 1990.[11]

According to DHCD, of the 1,118 projects included in the database only 135 have submitted cost certifications. Most of these (approximately 725 projects) have not reached the stage at which they would be required to submit cost certifications. Approximately 151 projects are potentially "out of compliance," meaning that they should have already submitted cost certifications but have not done so. The remaining projects did not proceed to construction or were undertaken by nonprofits and therefore not required to submit cost certifications.[12]

The Committee's Recommendations

The Committee commends DHCD on the creation of the project database and urges the agency to ensure that all 40B projects are in compliance with the cost certification requirement. The agency should also impose sanctions on developers that fail to submit the cost certification in a timely fashion. The Committee further recommends that DHCD investigate the feasibility of auditing some or all of the completed cost certifications to determine if excess profits are owed to municipalities. The Committee recommends that DHCD work with the Inspector General and State Auditor to develop a system for auditing completed cost certifications, given the limited resources available to the various agencies.

The Committee also recommends that DHCD issue all substantive changes to the cost certification process through regulations, after notice and a public hearing (see "*Regulations and Guidelines*," below). Interested parties should have an opportunity to comment on the agency's draft regulations prior to their adoption. The Committee urges DHCD to include in its new proposed regulations a requirement that all developer cost certifications be made under the pains and penalties of perjury.

In addition to the proposed regulatory changes, legislation is currently pending that would address many of the concerns raised by the Inspector General. Filed at the request of the Inspector General, *An Act Relative to 40B Cost Certification* would impose penalties on developers who fail to comply with the cost certification process. The Committee recommends that the legislature consider whether this and other bills filed this

session regarding Chapter 40B include changes that should be enacted in order to improve the Comprehensive Permit process.

· REGULATIONS AND GUIDELINES ·

The Need for a Regulatory Process

The Comprehensive Permit Statute, St. 1969, c. 774, now codified at M.G.L. c.40B, §§20 - 23 was enacted by the legislature to "address the shortage of low and moderate income housing in Massachusetts and to reduce regulatory barriers that impede the development of such housing."[13] Along with the statute, regulations to implement the statutory scheme are forth in 760 CMR 56.00, updated most recently in February 2008. In addition to the statute and accompanying regulations, DHCD published the "Comprehensive Permit Guidelines" in July 2008 to supplement the existing regulations.

These guidelines cover a broad array of issues relevant to Chapter 40B such as the Subsidized Housing Inventory,[14] Housing Production Plans[15] and Affirmative Fair Housing Marketing Plans. In addition these guidelines include a section that outlines the responsibilities of subsidizing agencies.[16] After reviewing the guidelines, the Committee is of the opinion that certain sections should be rewritten and issued as regulations.

Regulations, unlike guidelines, have the force of law. When substantive aspects of Chapter 40B are governed by guidelines as opposed to regulations, there exists an opportunity for these rules to be applied unevenly from case to case. While the Committee understands the need for flexibility in certain instances, guidelines should not be used as a substitute for regulations. Guidelines also do not go through a rigorous administrative process involving public comment and hearings. Instead, they can be written with no input or guidance from any party outside the agency. Implementation of rules and standards in such a manner undermines the public's (including cities and towns) ability to have any meaningful participation in the process of implementing Chapter 40B's statutory scheme.

The Committee recommends that DHCD solicit input from various parties, including local elected officials, housing advocacy groups, developers, attorneys and other interested groups on which of the current guidelines should be codified as regulations. The Committee also suggests that DHCD specifically look at Section IV in the guidelines, *Responsibilities of Subsidizing Agencies*. This section contains many provisions that operate more like rules and regulations than guidelines. The regulatory process should begin as soon as possible so that new regulations may be implemented without delay. When the regulations come up for hearings, all interested parties must be given adequate and sufficient notice so that they may participate in the process if they choose.

Finally, the Committee recommends that the General Court enact legislation requiring that any regulations related to Chapter 40B be laid before the legislature prior to adoption. The legislation should include the following:

- A copy of the regulations will be filed by the agency with the clerk of the house of representatives and of the senate who will refer the regulations to the joint committee on housing for review;
- Within thirty days after filing, the joint committee on housing will hold a public hearing on the regulations and standards, issue a report, and file a copy of the report with DHCD;
- DHCD will adopt final regulations, making such revisions to the regulations as it deems appropriate in view of the committee's report and will file a copy of the revised regulations with the chairpersons of the joint committee on housing;
- At least 30 days after filing the revised regulations with the joint committee on housing, DHCD will file the final regulations and standards with the state secretary, at which point the regulations will take effect.

Profit Limitations

When DHCD implemented its new rules, it eliminated the "uneconomic standard" promulgated by Mass Housing Partnership and adopted by various subsidizing agencies in the early 2000s. The Mass Housing Partnership guideline relating to profit states:

> "A for-sale project should be considered uneconomic if the Return on Total Cost is less than 15% (i.e., if projected sales proceeds exceed development costs by less than 15%)."[17]

This standard, although never formally implemented by DHCD, was used by the various subsidizing agencies when determining if a project would be economically viable.

However, the latest DHCD definitions have abandoned this well-established standard. The current guideline on *Reasonable Return* states:

> "reasonable return means...with respect to building or operating a Project, profits and distributions actually realized by the Developer that are not less than the limitations set forth in Part IV.C"[18]

In addition, Part IV.C of the guidelines (*Limitations on Profits and Distributions*) states:

> "Profit to the Developer… shall be limited to no more than 20% of total allowable development costs, and such other sums as the Subsidizing Agency may determine."[19]

By reading the current definition of *Reasonable Return* in conjunction with the section on *Limitations on Profits and Distributions* it is clear that DHCD sets the minimum profit

limit to be not less than the maximum profit limit. Essentially, DHCD is advocating the rule that if a developer makes less than a 20% profit, the project is uneconomic.

After reviewing the various factors that determine profitability, the Committee recommends that DHCD revise the rule on profitability and include the established MHP standard. Setting a profit minimum (15%) along with a profit maximum (20%) will allow flexibility in determining the economic viability of projects. DHCD may also want to consider conducting a survey of profitability of comparable affordable housing projects throughout the nation to determine an appropriate range for profits.

Density

Included in the current guidelines is a section on design which is meant to be used as guidance in determining project eligibility.[20] The main topics described in this section include, *Relationship to Adjacent Building Typology, Relationship to Adjacent Streets* and *Density*. While the guidelines address the need for project site plans and designs to relate to the existing "development patterns" of the community, the very nature of Chapter 40B and its mechanism of overriding local zoning and regulatory barriers makes that task very difficult. Out of these three main sections, the Committee found that certain parts in the "Density" section were the least helpful in giving guidance on design, as it relates to the local community in which the project is situated.

The "Density" section reads:

> "Density– -- Appropriate density of residential dwellings depends upon a myriad of interconnected factors and must be determined case by case. However, the following guidance indicates a range of density (units per Buildable Acre) that can be achieved for each building typology while maintaining appropriate ratios of dwelling space to parking and open space across a broad range of local development patterns.
>
> - Low Rise/Town Houses 8 – 40
> - Garden Style Apartments 25 – 70
> - Midrise 40 – 160
>
> The calculation of units per Buildable Acre provides a measurement related to assessing site plan and design considerations in the context of design review by the Subsidizing Agency. It does not equate with, nor should it be substituted for, a zoning calculation that would be based upon local by-law definitions such as FAR."

While the section above points out that appropriate density depends upon a myriad of factors, the inclusion of number ranges for each type of building typology is problematic. The Committee believes that by setting forth number ranges, especially with such wide ranges, municipalities will have a difficult time arguing that the density of a particular

project is not appropriate for its community. For example, a low rise/town house building with 40 units may be appropriate in one community but totally incompatible in another. Communities vary widely in terms of existing zoning densities, development patterns and access to services. Standard density ranges applied similarly across all communities could have a negative effect, leaving communities unable to meaningfully negotiate with the developer.

The Committee recommends that DHCD remove the number ranges set forth in the density section. In the alternative, DHCD should consider developing standards for density (through regulation) that are somehow related to the existing zoning in a community. This would allow density to be increased, but at a rate relative to existing zoning. Calculating density by using the underlining zoning could be more sustainable than applying a series of number ranges broadly across differing communities. The Committee recommends that DHCD use the standard previously put forth by MassHousing and followed by various agencies. This guideline proposes that the appropriate density for homeownership projects should be eight units per acre or four times the allowable zoning in the vicinity of the site, whichever is greater.[21]

Reasonable Return and Uneconomic

In *Board of Appeals of Woburn v. Housing Appeals Committee*[22] the Massachusetts Supreme Judicial Court ("SJC") ruled that the Housing Appeals Committee ("HAC") cannot consider a condition imposed by a local board of appeals on a comprehensive permit that reduces the size of a project to be a "de facto" denial of the project. The SJC found that for the HAC to modify or remove a condition, the developer must show that the challenged condition makes the project uneconomic. If the developer is able to show that a condition is uneconomic the burden then shifts to the local zoning board to demonstrate that the condition is consistent with local needs. The SJC highlighted that this outcome was based on the plain language of the statute.

In a concurring opinion, Chief Justice Margaret Marshall cautioned that under the current law, local zoning boards could inadvertently discourage affordable housing development by imposing conditions that make projects "barely" economic (yet not uneconomic), and thus financially undesirable for a developer to follow through with the project. She states

> "Our decision thus allows a local board unfettered discretion to stymie the construction of an affordable housing project without actually denying it or rendering it uneconomic."[23]

Therefore, the Chief Justice urged DHCD to use its broad regulatory authority under Chapter 40B to give further clarification to the term "uneconomic" taking into consideration the *Woburn* decision.

In response to *Woburn*, DHCD amended its Comprehensive Permit Guidelines which had recently been implemented. Specifically, the Guidelines now include within the definition of "reasonable return":

> "A condition imposed by the Board to decrease the number of units of a Project by 5% or more shall create a rebuttable presumption that the Developer will not be able to achieve a reasonable return. While rebuttable, this presumption shifts both the burden of producing evidence and the ultimate burden of persuasion from the Developer to the Board on both the 'reasonable return' and 'uneconomic' issues."[24]

While the Committee agrees that clarification should be given to the term "uneconomic" we do not agree that this clarification should be given through guidelines. In *Woburn*, Chief Justice Marshall specifically states,

> "I conclude that regulations, promulgated after notice and comment, further defining uneconomic…would fall within the department's broad authority and would provide clear standards to enable consistent decisions-making by the HAC."[25]

Therefore, the Committee is recommending that DHCD completely remove the above amendment to the *guidelines* and implement a properly vetted *regulation* that clarifies the definition of "uneconomic."

· CONCLUSION ·

The Committee would like to commend both the Inspector General and DHCD for their participation over many months in its investigation. Chapter 40B is a complex and controversial program that has nonetheless allowed for the creation of many units of affordable housing in Massachusetts that would not otherwise have been constructed. Although future legislative changes to Chapter 40B may be in order, the program will be substantially improved if the recommendations in this report are implemented and if efforts to recapture any excess profits are undertaken.

[1]https://www.masshousing.com/portal/server.pt/gateway/PTARGS_0_210_365_0_0_18/Local40B%20ReviewDecisionGuidelines.pdf (see p. 21)
[2] *Board of Appeals of Woburn v. Housing Appeals Committee*, 451 Mass. 581 (2008).
[3] M.G.L. Ch. 40B, Section 20-22.
[4] Testimony of Secretary Dan O'Connell before the Senate Committee on Post Audit and Oversight, September 18, 2008.
[5] Ibid.
[6] See Inspector General Review of the Monitoring Process of the Limited Development Requirement Associated with Chapter 40B, letter to Thomas R. Gleason, Executive Director, MassHousing, September 2006.
[7] Ibid.
[8] See letter to Senate Committee on Post Audit and Oversight, April 10, 2008.
[9] See Documents related to Inspector General's investigation, available at http://www.mass.gov/ig/igpubl.htm.
[10] See Comprehensive Permit Guidelines, *Section IV. Responsibilities of the Subsidizing Agency*, issued February 2, 2008 and July 30, 2008, available at www.mass.gov/dhcd.
[11] Information provided by DHCD. The earliest dates for projects in the database are as follows: DHCD—1990; MassHousing—2001; MassDevelopment—2000; Massachusetts Housing Partnership—1993; Federal Home Loan Bank—2000.
[12] Information provided by Tina Brooks, Undersecretary, Department of Housing and Economic Development.
[13] See mass.gov/dhcd.
[14] List compiled by the Department of Housing and Economic Development containing the count of Low or Moderate Income Housing units by city or town
[15] An affordable housing plan adopted by a municipality and approved by the Department, defining certain annual increases in its number of SHI Eligible Housing units as described in 760 CMR §56.03(4).
[16] Any agency of state or federal government that provides a Subsidy for the construction or substantial rehabilitation of Low or Moderate Income Housing. If the Subsidizing Agency is not an agency of state government, the Department may appoint a state agency to administer some or all of the responsibilities of the Subsidizing Agency with respect to 760 CMR 56.00; in that case, all applicable references in these Guidelines to the Subsidizing Agency shall be deemed to refer to the appointed project administrator.
[17]https://www.masshousing.com/portal/server.pt/gateway/PTARGS_0_210_365_0_0_18/Local40B%20ReviewDecisionGuidelines.pdf
[18] See Comprehensive Permit Guidelines *Section* I.A, issued February 2, 2008 and July 30, 2008, available at www.mass.gov/dhcd.
[19] See Comprehensive Permit Guidelines *Section* IV.C, issued February 2, 2008 and July 30, 2008, available at www.mass.gov/dhcd.
[20] See 760 CMR 56.04(4)(c)): A determination of Project Eligibility, to be issued by the Subsidizing Agency after the close of the 30-day review period, shall make the following findings…that the conceptual project design is generally appropriate for the site on which it is located, taking into consideration factors that may include proposed use, conceptual site plan and building massing, topography, environmental resources, and integration into existing development patterns
[21] See MassHousing Memo, *"AND YOU THOUGHT YOU WERE DONE WHEN YOU ISSUED THE PERMIT: Everything You Always Wanted To Know About MassHousing's Post-Permit Implementation of the New England Fund Guidelines"* By Bob Ruzzo and Phyllis Zinicola (MassHosuing)- See p. 3.
[22] *Board of Appeals of Woburn v. Housing Appeals Committee,* 451 Mass. 581 (2008).
[23] *Board of Appeals of Woburn v. Housing Appeals Committee,* 451 Mass. 581 (2008), Chief Justice Marshall's concurring opinion.
[24] See Comprehensive Permit Guidelines *Section* I.A, issued February 2, 2008 and July 30, 2008, available at www.mass.gov/dhcd.
[25] *Board of Appeals of Woburn v. Housing Appeals Committee,* 451 Mass. 581 (2008), Chief Justice Marshall's concurring opinion.