



April 11, 2022

**BY ELECTRONIC MAIL: permitting@hamiltonma.gov
AND BY FIRST CLASS MAIL**

Hamilton Zoning Board of Appeals
Hamilton Town Hall
577 Bay Road
Hamilton, MA 01936

Re: Application for Comprehensive Permit – Off Asbury Street, Hamilton

Dear Members of the Board:

This firm represents certain residents of the Village at Canter Brook Farm, a 55+ community that directly abuts the proposed 45-unit apartment project off of Asbury Street, which is the subject of a pending comprehensive permit application under General Laws Chapter 40B. At the Board's first public hearing last week, I raised the question as to whether the Board could invoke a "safe harbor" under the Chapter 40B regulations, for recent progress in producing new affordable housing units under the Town's Housing Production Plan. I have since reviewed the facts and circumstances related to two recent affordable housing developments in town, and conclude that the Town may avail itself of the "housing production plan" safe harbor under 760 CMR 56.03(4). My analysis is provided below.

I. The Chapter 40B Regulation

Under the Chapter 40B regulations, there are several categories of "safe harbors" that, if applicable to a new Chapter 40B application, may be invoked by the local zoning board of appeals, resulting in any decision made by the board being immune from appeal. One of these safe harbors is the "housing production plan" safe harbor.

Hamilton has adopted a housing production plan, and the plan has been approved by the state Department of Housing and Community Development ("DHCD"). The plan sets a target of creating 14 affordable housing units per year, which is .5% of Hamilton's total housing stock (2,783 units). The state regulation provides that if town achieves its goal of creating affordable housing equaling .5% of its housing stock in any calendar year, it can request certification from DHCD. Once certified, the zoning board can invoke the housing production plan safe harbor. Importantly, DHCD's certification is retroactive to "the date upon which the municipality achieved its numerical target for the calendar year in question." 760 CMR 56.03(4)(f).

If a safe harbor is available to be invoked against a pending Chapter 40B application, it must be invoked within 15 days of the opening of the zoning board's public hearing, or else the board waives it. 760 CMR 56.03(8). To invoke the safe harbor, the board must take a vote, and then put the applicant on written notice (with a copy sent to DHCD). The applicant has the right to appeal the applicability of the safe harbor to DHCD, but must file the appeal within 15 days of the board's notice. This process tolls the 180-day deadline that the board has to close the public hearing after opening it under §56.05(3). Any party may appeal DHCD's determination to the state Housing Appeals Committee.¹

II. The Housing Production Plan Safe Harbor is Applicable.

Hamilton created more than 14 affordable housing units in 2021, and therefore the housing production plan safe harbor may, and should, be invoked by the Board for this application.

Hamilton's affordable housing efforts in 2021 started with the Harborlight project at 59-63 Willow Street. That project contains nine (9) affordable housing units out of 18 total units. While the project originally received site plan approval in 2019, which was modified in 2020, building permits did not issue until April 22, 2021.² The regulation governing the counting of new affordable units on the Town's subsidized housing inventory ("SHI") states that the units are eligible to be added to the SHI on the date of a zoning approval under General Laws Chapter 40A or Chapter 40B, or if there is no such approval, the date the building permit was issued. The Willow Street project was not the subject of Chapter 40A or Chapter 40B zoning approval, and therefore the operative date is April 22, 2021, the date on which the building permit was issued.³

The second project that created affordable housing in Hamilton in 2021 was the Habitat project that is coincidentally located across Asbury Street from the proposed Project. The Board issued a Chapter 40B comprehensive permit for that 10-unit project on November 3, 2021. All 10 units are affordable, and eligible to be added to the SHI.

Given that the Town achieved its target under the Housing Production Plan for 2021, it is entitled to certification, and it should ask for it under 760 CMR 56.03(4)(f). There should be no question that the affordable housing units created within the Willow Street and Habitat projects qualify to be counted on the SHI. As noted above, DHCD's certification is effective on the date the Town achieve the target, which is November 3, 2021, the date on which the Willow Street building permit was issued.⁴ Under the regulation, the certification is in effect for one year starting on the effective date (Nov. 3, 2021), and would expire on November 3, 2022.

¹ A copy of the relevant regulations is attached hereto as Exhibit A.

² A copy of the building permit is attached hereto as Exhibit B.

³ Site plan approval is not a "zoning approval under Chapter 40A" for purposes of the Chapter 40B regulation, because Chapter 40A contains no provisions for site plan review (unlike special permits and variances). As Professor Bobrowski states in his treatise *Handbook of Massachusetts Land Use and Planning Law*, site plan review "is entirely the creature of cities and towns and the judiciary." §9.08 (p. 9-19). Thus, the Planning Board's site plan review decisions have no effect on the counting of the Willow Street project's units.

⁴ There is a confusing statement in the minutes of the Planning Board's August 18, 2020 meeting, suggesting that because the Willow Street project is "all rental," all 18 units in the development would count on the SHI (not just the

Notably, even if DHCD for some reason disagrees that the safe harbor is applicable here, the Board is not prejudiced; it has retained its right to conduct its review of the comprehensive permit application, and has the full 180-days to do that. Further, after invoking the safe harbor the Board can still conduct a public hearing and even approve the project if it wants to, on whatever terms and conditions the Board deems appropriate. The benefit of the safe harbor is that the Board's decision cannot be overturned on appeal by the Applicant, meaning that the Board can impose conditions without fear of the state vacating those conditions.

The bottom line is that the Board has nothing to lose, and everything to gain, by invoking the safe harbor with respect to this application. Further, the Town Planner should immediately request certification of the housing production plan, so that DHCD can confirm that the Town is in compliance. We respectfully request that the Board take this action at its meeting on Tuesday night (April 12, 2022).

Thank you for your consideration.

Very truly yours,

/s/ Daniel C. Hill

Daniel C. Hill

Encs.

cc: Clients

9 affordable units). This is an incorrect statement of the law. It is true that in rental projects approved by comprehensive permits under Chapter 40B, all of the units in the project count towards to the SHI (not just the affordable units), but that rule does not apply to non-40B projects such as the Willow Street project. Regardless, even if all 18 units in the Willow Street project were eligible to be counted in the SHI, the Town would then be eligible for a 2-year safe harbor, due to the creation of 28 housing units in 2021 – see 760 CMR 56.03(4)(f). If that were the case, the 2-year safe harbor would extend to November 3, 2023.

EXHIBIT A



THE COMMONWEALTH OF MASSACHUSETTS
William Francis Galvin, Secretary of the Commonwealth

REGULATION FILING AND PUBLICATION

1. Regulation Chapter, Number & Heading: **760 CMR.51.00 - 68.00**
2. Name of Agency: **DEPARTMENT OF HOUSING & COMMUNITY DEVELOPMENT**
3. This document is reprinted from the Code of Massachusetts Regulations and contains the following:
- 760 CMR 51.00 RESERVED**
 - 52.00 RESERVED**
 - 53.00 ALTERNATIVE HOUSING VOUCHER PROGRAM**
 - 54.00 MASSACHUSETTS LOW INCOME HOUSING TAX CREDIT PROGRAM**
 - 55.00 RESERVED**
 - 56.00 COMPREHENSIVE PERMIT; LOW OR MODERATE INCOME HOUSING**
 - 57.00 RESERVED**
 - 58.00 URBAN CENTER HOUSING TAX INCREMENT FINANCING (UCH-TIF) PROGRAM**
 - 59.00 SMART GROWTH ZONING OVERLAY DISTRICT**
 - 60.00 COMMUNITY-BASED HOUSING AND COMMUNITY DEVELOPMENT**
 - 61.00 DATA COLLECTION FOR GOVERNMENT ASSISTED HOUSING IN MASSACHUSETTS**
 - 62.00 COMMERCIAL AREA TRANSIT NODE HOUSING PROGRAM**
 - 63.00 PUBLIC HOUSING INNOVATION DEMONSTRATION PROGRAM**
 - 64.00 PUBLICLY-ASSISTED AFFORDABLE HOUSING PRESERVATION PROGRAM**
 - 65.00 THE MASSACHUSETTS SHORT-TERM HOUSING TRANSITION PROGRAM**
 - 66.00 HOUSING DEVELOPMENT INCENTIVE PROGRAM - CHAPTER 40V**
 - 67.00 ELIGIBILITY FOR EMERGENCY ASSISTANCE (EA)**
 - 68.00 COMMUNITY INVESTMENT GRANT AND TAX CREDIT PROGRAM**

Under the Provisions of Massachusetts General Laws, Chapter 30A, § 6, and Chapter 233, § 75, this document may be used as evidence of the original documents on file with the Secretary of the Commonwealth

Compiled as in full force and effect:

12/29/2017

State Bookstore

760CR51-59.00

\$15.75

760 CMR 51.00-64.00



A true copy attest:

WILLIAM FRANCIS GALVIN
Secretary of the Commonwealth

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(b) makes it impossible for a Limited Dividend Organization to proceed and still realize a reasonable return in building or operating such Project within the limitations set by the Subsidizing Agency on the size or character of the Project, or on the amount or nature of the Subsidy or on the tenants, rentals, and income permissible, and without substantially changing the rent levels and unit sizes proposed by the Applicant. See 760 CMR 56.05(8)(d).

Use Restriction – means a deed restriction or other legally binding instrument in a form consistent with Department guidelines and, in the case of a Project subject to a Comprehensive Permit, in a form also approved by the Subsidizing Agency, which runs with the land and is recorded with the relevant registry of deeds or land court registry district, and which effectively restricts the occupancy of a Low or Moderate Income Housing unit to Income Eligible Households during the term of affordability. A Use Restriction shall contain terms and conditions for the resale of a homeownership unit, including definition of the maximum permissible resale price, and for the subsequent rental of a rental unit, including definition of the maximum permissible rent. A Use Restriction shall require that tenants of rental units and owners of homeownership units shall occupy the units as their domiciles and principal residences. A Use Restriction may require that an Income Eligible Household must have a lower percentage of area median income than 80%. For enforcement of Use Restrictions, see 760 CMR 56.05(13).

Waiver – means an exception from a use, dimensional, or other restriction of local requirements and regulations, granted to a Project through a Comprehensive Permit. See 760 CMR 56.05(7).

56.03: Methods to Measure Progress Toward Local Affordable Housing Goals

(1) A decision by a Board to deny a Comprehensive Permit, or (if the Statutory *Minima* defined at 760 CMR 56.03(3)(b) or (c) have been satisfied) grant a Comprehensive Permit with conditions, shall be upheld if one or more of the following grounds has been met as of the date of the Project's application:

- (a) the municipality has achieved one or more of the Statutory *Minima*, in accordance with 760 CMR 56.03(3);
- (b) the Department has certified the municipality's compliance with the goals of its approved Housing Production Plan, in accordance with 760 CMR 56.03(4);
- (c) the municipality has made recent progress toward the Statutory *Minima*, in accordance with 760 CMR 56.03(5);
- (d) the project is a large project, as set forth in 760 CMR 56.03(6); or
- (e) a related application has previously been received, as set forth in 760 CMR 56.03(7).

For the purposes of 760 CMR 56.03, units of SHI Eligible Housing shall be counted only if they satisfy the requirements for listing on the SHI in accordance with 760 CMR 56.03(2). A Board decision based on one or more of the grounds set forth in 760 CMR 56.03(1) shall be made solely in accordance with the procedure set forth in 760 CMR 56.03(8). Such a denial shall be without prejudice, and it shall not preclude re-filing of the Comprehensive Permit application at a later date.

Notwithstanding the foregoing, a Board may at its sole discretion elect to proceed with the full local hearing, and ultimately to approve a Comprehensive Permit, even though one or more of the above grounds have been met. If a Board so elects, such election shall not be grounds for an appeal taken pursuant to 760 CMR 56.03(8)(a).

(2) Subsidized Housing Inventory.

(a) The Department shall maintain the SHI to measure a municipality's stock of SHI Eligible Housing. The SHI is not limited to housing units developed through issuance of a Comprehensive Permit; it may also include SHI Eligible Housing units developed under M.G.L. chs. 40A, c. 40R, and other statutes, regulations, and programs, so long as such units are subject to a Use Restriction and an Affirmative Fair Marketing Plan, and they satisfy the requirements of guidelines issued by the Department.

(b) Units shall be eligible to be counted on the SHI at the earliest of the following:

- 1. For units that require a Comprehensive Permit under M.G.L. c. 40B, § 20 through 23, or a zoning approval under M.G.L. c. 40A or completion of plan review under M.G.L. c. 40R, the date when:

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- a. the permit or approval is filed with the municipal clerk, notwithstanding any appeal by a party other than the Board, but subject to the time limit for counting such units set forth at 760 CMR 56.03(2)(c); or
 - b. on the date when the last appeal by the Board is fully resolved;
 2. When the building permit for the unit is issued;
 3. When the occupancy permit for the unit is issued; or
 4. When the unit is occupied by an Income Eligible Household and all the conditions of 760 CMR 56.03(2)(b) have been met (if no Comprehensive Permit, zoning approval, building permit, or occupancy permit is required.)
- (c) Time Lapses. If more than one year elapses between the date of issuance of the Comprehensive Permit or zoning approval under M.G.L. c. 40A or completion of plan review under M.G.L. c. 40R, as that date is defined in 760 CMR 56.03(2)(b)1., and issuance of the building permit, the units will become ineligible for the SHI until the date that the building permit is issued. If more than 18 months elapse between issuance of the building permits and issuance of the certificate of occupancy, the units will become ineligible for the SHI until the date that the certificate of occupancy is issued. If a Comprehensive Permit or zoning approval lapses permanently, the units become permanently ineligible for the SHI. Notwithstanding the foregoing, if a Comprehensive Permit or zoning approval permits a project to be constructed in phases, and provided that:
1. each phase contains at least 150 units;
 2. each phase contains the same proportion of SHI Eligible Housing units as the overall project; and
 3. the projected average time period between the start of successive phases does not exceed 15 months, then the entire project shall remain eligible for the SHI so long as the phasing schedule set forth in the permit approval continues to be met. If more than one year elapses between the date of issuance of the Comprehensive Permit or zoning approval under M.G.L. c. 40A or completion of plan review under M.G.L. c. 40R, as that date is defined in 760 CMR 56.03(2)(b)1., and final resolution of any pending appeal by a party other than the Board, the units will become ineligible for the SHI until the date that the last appeal is fully resolved.
- (d) Enforcement and Termination of Use Restrictions. Use Restrictions shall be enforced in accordance with 760 CMR 56.05(13), except that an agency of municipal government may enforce the Use Restriction for a unit not subject to a Comprehensive Permit. Units shall no longer be eligible for inclusion on the SHI upon expiration or termination of the initial Use Restriction, unless a subsequent Use Restriction has been imposed in accordance with the requirements of 760 CMR 56.05(13).
- (e) Municipal Certification. Each municipality shall provide to the Department, once every two years, a statement certified by the Chief Executive Officer, in such form and upon such schedule as may be required by the Department, as to the number of SHI Eligible Housing units eligible to be listed on the SHI, other than those within a Project subject to a Comprehensive Permit.
- (f) Biennial Updates. The SHI shall be updated by the Department once every two years, or more frequently if information is provided by the municipality or otherwise received and verified by the Department. The Department shall administer the SHI in accordance with its own procedures, as set forth in 760 CMR 56.00 and guidelines of the Department.
- (3) Computation of Statutory Minima
- (a) Housing Unit Minimum. For purposes of calculating whether the city or town's SHI Eligible Housing units exceed 10% of its total housing units, pursuant to M.G.L. c. 40B, § 20 and 760 CMR 56.00, there shall be a presumption that the latest SHI contains an accurate count of SHI Eligible Housing and total housing units. In the course of a review procedure pursuant to 760 CMR 56.03(8), a party may introduce evidence to rebut this presumption, which the Department shall review on a case-by-case basis, applying the standards of eligibility for the SHI set forth in 760 CMR 56.03(2). The total number of housing units shall be that total number of year-round units enumerated for the city or town in the latest available United States Census.
 - (b) General Land Area Minimum. For the purposes of calculating whether SHI Eligible Housing exists in the city or town on sites comprising more than 1½% of the total land area zoned for residential, commercial, or industrial use, pursuant to M.G.L. c. 40B, § 20:

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1. Total land area shall include all districts in which any residential, commercial, or industrial use is permitted, regardless of how such district is designated by name in the city or town's zoning bylaw;
2. Total land area shall include all unzoned land in which any residential, commercial, or industrial use is permitted;
3. Total land area shall exclude land owned by the United States, the Commonwealth or any political subdivision thereof, the Department of Conservation and Recreation or any state public authority, but it shall include any land owned by a housing authority and containing SHI Eligible Housing;
4. Total land area shall exclude any land area where all residential, commercial, and industrial development has been prohibited by restrictive order of the Department of Environmental Protection pursuant to M.G.L. c. 131, § 40A. No other swamps, marshes, or other wetlands shall be excluded;
5. Total land area shall exclude any water bodies;
6. Total land area shall exclude any flood plain, conservation or open space zone if said zone completely prohibits residential, commercial and industrial use, or any similar zone where residential, commercial or industrial use are completely prohibited.
7. No excluded land area shall be counted more than once under the above criteria.

Only sites of SHI Eligible Housing units inventoried by the Department or established according to 760 CMR 56.03(3)(a) as occupied, available for occupancy, or under permit as of the date of the Applicant's initial submission to the Board, shall be included toward the 1½% minimum. For such sites, that proportion of the site area shall count that is occupied by SHI Eligible Housing units (including impervious and landscaped areas directly associated with such units).

(c) Annual Land Area Minimum. For purposes of calculating whether the application before the Board would result in the commencement in any one calendar year of construction of Low or Moderate Income Housing on sites comprising more than 0.3 of 1% of the city or town's land area or ten acres, whichever is larger, pursuant to M.G.L. c. 40B, § 20:

1. Total land area of the municipality and the land area occupied by Low or Moderate Income Housing shall be calculated in the manner provided in 760 CMR 56.03(3)(b);
2. If 0.3 of 1% of total land area is less than ten acres, the minimum for sites occupied by Low or Moderate Income Housing shall be ten acres;
3. The relevant calendar year shall be the calendar year period of January 1st through December 31st that includes the Applicant's projected date for initiation of construction;
4. Any Low or Moderate Income Housing for which construction is expected to commence within the calendar year, other than that proposed by the Applicant, must have received a final approval by the Subsidizing Agency prior to the date of the Applicant's initial submission to the Board, in order to be included towards the 0.3 % or ten acres;
5. Development and construction work in connection with Low or Moderate Income Housing shall be proceeding in good faith to completion insofar as is reasonably practicable, in order for such housing to be included towards the 0.3% or ten acres minimum.

Only sites of SHI Eligible Housing units inventoried by the Department or established according to 760 CMR 56.03(3)(a) as under permit as of the date of the Applicant's initial submission to the Board, and expected to commence construction within the relevant calendar year, shall be included toward the 0.3 % or ten acres minimum. For such sites, that proportion of the site area shall count that is occupied by SHI Eligible Housing units (including impervious and landscaped areas directly associated with such units).

(d) Evidence regarding Statutory *Minima* submitted under 760 CMR 56.03(3) shall comply with any guidelines issued by the Department.

(4) Housing Production Plans.

(a) A Housing Production Plan (HPP) may shall be developed and reviewed in accordance with 760 CMR 56.03(4) and guidelines adopted by the Department. The HPP shall contain at a minimum the following elements, covering a time period of five years:

1. Comprehensive housing needs assessment;
2. Affordable housing goals; and
3. Implementation strategies.

(b) Comprehensive Housing Needs Assessment. The HPP must establish a strategic plan for municipal action with regards to housing, based upon a comprehensive housing needs assessment that examines:

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1. the most recent available census data of the municipality's demographics and housing stock, together with a projection of future population and housing needs, taking into account regional growth factors, that covers the entire time period of the plan;
 2. development constraints and limitations on its current and future needs, and the municipality's plans to mitigate those constraints; and
 3. the capacity of the municipality's infrastructure to accommodate the current population and anticipated future growth, including plans for enlargement or expansion of existing infrastructure systems to ensure that both current and future needs are met.
- (c) Affordable Housing Goals. The HPP shall address the matters set out in the Department's guidelines, including:
1. a mix of types of housing, consistent with local and regional needs and feasible within the housing market in which they will be situated, including rental, homeownership, and other occupancy arrangements, if any, for families, individuals, persons with special needs, and the elderly;
 2. a numerical goal for annual housing production, pursuant to which there is an increase in the municipality's number of SHI Eligible Housing units by at least 0.50% of its total units (as determined in accordance with 760 CMR 56.03(3)(a)) during every calendar year included in the HPP, until the overall percentage exceeds the Statutory Minimum set forth in 760 CMR 56.03(3)(a).
- (d) Implementation Strategies. The HPP shall address the matters set out in the Department's guidelines, including an explanation of the specific strategies by which the municipality will achieve its housing production goal, and a schedule for implementation of the goals and strategies for production of units, including all of the following strategies, to the extent applicable:
1. the identification of zoning districts or geographic areas in which the municipality proposes to modify current regulations for the purposes of creating SHI Eligible Housing developments to meet its housing production goal;
 2. the identification of specific sites for which the municipality will encourage the filing of Comprehensive Permit applications;
 3. characteristics of proposed residential or mixed-use developments that would be preferred by the municipality (examples might include cluster developments, adaptive re-use, transit-oriented housing, mixed-use development, inclusionary housing, *etc.*); and/or
 4. municipally owned parcels for which the municipality commits to issue requests for proposals to develop SHI Eligible Housing; and/or
 5. participation in regional collaborations addressing housing development.
- (e) Review and Approval of Housing Production Plans. A HPP shall be adopted by the municipality's planning board, its conservation commission, and its select board or city council, following which the Chief Executive Officer may submit the HPP to the Department for its approval. The Department shall conduct an initial 30-day completeness review, and it will notify the municipality of any deficiency and offer an opportunity to remedy the deficiency. Within 90 days after the Department's finding that the HPP is complete, the Department shall approve the HPP if it meets the requirements specified herein; otherwise, it shall disapprove the HPP. The Department shall notify the municipality of its decision to either approve or disapprove a HPP in writing. If the Department disapproves a HPP, the notification shall include a statement of reasons for the disapproval. If the Department fails to mail notice of approval or disapproval of a HPP within 90 days after its receipt, it shall be deemed to be approved. A municipality that originally submitted a HPP that had been disapproved may submit a new or revised HPP to the Department at any time.
- A municipality may amend its HPP from time to time if the Department approves the amendment upon the finding that the amended HPP meets the requirements of 760 CMR 56.03(4). The Department shall have the discretion to require the full 90-day review process for a major amendment to a HPP. A HPP shall be updated and renewed within five years of the date of its approval by the Department, through the full 90-day review process set forth above, or as the Department may otherwise require. The Department may, at its sole discretion, elect to treat a major amendment as a renewed HPP.

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(f) Certification of Municipal Compliance. A municipality may request that the Department certify its compliance with an approved HPP if it has increased its number of SHI Eligible Housing units in an amount equal to or greater than its 0.50% production goal for that calendar year. SHI Eligible Housing units shall be counted for the purpose of certification in accordance with the provisions for counting units under the SHI set forth in 760 CMR 56.03(2). Requests for certification may be submitted at any time, and the Department shall determine whether a municipality is in compliance within 30 days of receipt of the municipality's request. If the Department determines the municipality is in compliance with its HPP, the certification shall be deemed effective on the date upon which the municipality achieved its numerical target for the calendar year in question, in accordance with the rules for counting units on the SHI set forth in 760 CMR 56.03(2).

A certification shall be in effect for a period of one year from its effective date. If the Department finds that the municipality has increased its number of SHI Eligible Housing units in a calendar year by at least 1.0% of its total housing units, the certification shall be in effect for two years from its effective date.

(5) Recent Progress Toward Housing Unit Minimum. Recent progress toward a municipality's *Statutory Minima* shall mean that the number of SHI Eligible Housing units that have been created within the municipality during the 12 months prior to the date of the Comprehensive Permit application, evidenced by being inventoried by the Department or established according to 760 CMR 56.03(3)(a) as occupied, available for occupancy, or under permit as of the date of the Applicant's initial submission to the Board, is equal to or greater than 2% of the municipality's total housing units, as determined in accordance with 760 CMR 56.03(3)(a).

(6) Review of Large Projects. A large project shall be defined as follows:

- (a) in a municipality which has a total number of 7,500 or more housing units (as determined in accordance with 760 CMR 56.03(3)(a)), the application for a Comprehensive Permit involves construction of more than 300 housing units or a number of housing units equal to 2% of all housing units in the municipality, whichever number is greater; or
- (b) in a municipality which has between 5,000 and 7,500 housing units exclusive, as so enumerated, the application for a Comprehensive Permit involves construction of more than 250 housing units; or
- (c) in a municipality which has between 2,500 and 5,000 housing units inclusive, as so enumerated, the application for a Comprehensive Permit involves construction of more than 200 housing units; or
- (d) in a municipality which has less than 2,500 housing units, as so enumerated, the application for a Comprehensive Permit involves construction of a number of housing units equal to 6% of all housing units in the municipality.

(7) Related Applications. For the purposes of 760 CMR 56.03(7), a related application shall mean that less than 12 months has elapsed between the date of an application for a Comprehensive Permit and any of the following:

- (a) the date of filing of a prior application for a variance, special permit, subdivision, or other approval related to construction on the same land, if that application was for a prior project that was principally non-residential in use, or if the prior project was principally residential in use, if it did not include at least 10% SHI Eligible Housing units;
- (b) any date during which such an application was pending before a local permit granting authority;
- (c) the date of final disposition of such an application (including all appeals); or
- (d) the date of withdrawal of such an application.

An application shall not be considered a prior application if it concerns insubstantial construction or modification of the preexisting use of the land.

(8) Procedure for Board Decision.

- (a) If a Board considers that, in connection with an Application, a denial of the permit or the imposition of conditions or requirements would be consistent with local needs on the grounds that the *Statutory Minima* defined at 760 CMR 56.03(3)(b) or (c) have been satisfied or that one or more of the grounds set forth in 760 CMR 56.03(1) have been met, it must do so according to the following procedures. Within 15 days of the opening of the local hearing

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for the Comprehensive Permit, the Board shall provide written notice to the Applicant, with a copy to the Department, that it considers that a denial of the permit or the imposition of conditions or requirements would be consistent with local needs, the grounds that it believes have been met, and the factual basis for that position, including any necessary supportive documentation. If the Applicant wishes to challenge the Board's assertion, it must do so by providing written notice to the Department, with a copy to the Board, within 15 days of its receipt of the Board's notice, including any documentation to support its position. The Department shall thereupon review the materials provided by both parties and issue a decision within 30 days of its receipt of all materials. The Board shall have the burden of proving satisfaction of the grounds for asserting that a denial or approval with conditions would be consistent with local needs, provided, however, that any failure of the Department to issue a timely decision shall be deemed a determination in favor of the municipality. This procedure shall toll the requirement to terminate the hearing within 180 days.

(b) For purposes of 760 CMR 56.03(8), the total number of SHI Eligible Housing units in a municipality as of the date of a Project's application shall be deemed to include those in any prior Project for which a Comprehensive Permit had been issued by the Board or by the Committee, and which was at the time of the application for the second Project subject to legal appeal by a party other than the Board, subject however to the time limit for counting such units set forth at 760 CMR 56.03(2)(c).

(c) If either the Board or the Applicant wishes to appeal a decision issued by the Department pursuant to 760 CMR 56.03(8)(a), including one resulting from failure of the Department to issue a timely decision, that party shall file an interlocutory appeal with the Committee on an expedited basis, pursuant to 760 CMR 56.05(9)(c) and 56.06(7)(e)11., within 20 days of its receipt of the decision, with a copy to the other party and to the Department. The Board's hearing of the Project shall thereupon be stayed until the conclusion of the appeal, at which time the Board's hearing shall proceed in accordance with 760 CMR 56.05. Any appeal to the courts of the Committee's ruling shall not be taken until after the Board has completed its hearing and the Committee has rendered a decision on any subsequent appeal.

56.04: Project Eligibility; Other Responsibilities of Subsidizing Agency

(1) Project Eligibility. To be eligible to submit an application to a Board for a Comprehensive Permit or to file or maintain an appeal before the Committee, the Applicant and the Project shall fulfill, at a minimum, the following project eligibility requirements:

- (a) The Applicant shall be a public agency, a non-profit organization, or a Limited Dividend Organization;
- (b) The Project shall be fundable by a Subsidizing Agency under a Low or Moderate Income Housing subsidy program; and
- (c) The Applicant shall control the site.

Compliance with these project eligibility requirements shall be established by issuance of a written determination of Project Eligibility by the Subsidizing Agency that contains all the findings required under 760 CMR 56.04(4), based upon its initial review of the Project and the Applicant's qualifications in accordance with 760 CMR 56.04.

(2) Elements of Application. The Applicant shall submit an application for Project Eligibility to the Subsidizing Agency, with a copy to the Chief Executive Officer of the municipality and written notice to the Department, which shall include:

- (a) the name and address of the Applicant;
- (b) the address of the site and site description;
- (c) a locus map identifying the site within a plan of the neighborhood, accompanied by photographs of the surrounding buildings and features that provide an understanding of the physical context of the site;
- (d) a tabulation of proposed buildings with the approximate number, size (number of bedrooms, floor area), and type (ownership or rental) of housing units proposed;
- (e) the name of the housing program under which Project Eligibility is sought;
- (f) relevant details of the particular Project if not mandated by the housing program (including percentage of units for low or moderate income households, income eligibility standards, the duration of restrictions requiring Low or Moderate Income Housing, and the limited dividend status of the Applicant);

EXHIBIT B

TOWN OF HAMILTON
INSPECTIONAL SERVICES



PERMIT: BP 21-153

JOB WEATHER CARD

ADDRESS: 59-63 WILLOW STREET

Owner: TRAGGORTH CO. LLC

Date Issued: 04-22-2021

Fee: \$45,050

Contractor: KRANZ

Phone: 781-838-2533

Work to be done: CONSTRUCTION OF A NEW 18 UNIT, 23000
SQUARE FOOT, MULTI-FAMILY/RETAIL: MIXED USE
BUILDING WITH PARKING SPACES

PERMIT WILL BECOME NULL AND VOID IF CONSTRUCTION WORK IS NOT STARTED WITHIN SIX MONTHS OF THE DATE THE PERMIT IS ISSUED OR IF PERMIT NOT RENEWED ANNUALLY. WORK SHALL NOT PROCEED UNTIL THE BUILDING INSPECTOR HAS APPROVED THE VARIOUS STAGES OF CONSTRUCTION.

This permit conveys no right to occupy any street, alley or sidewalk or any part thereof, either temporarily or permanently. Encroachments on public property, not specifically permitted under the building code, must be approved by the jurisdiction. Street or alley grades may be obtained from the department of public works. The issuance of this permit does not release the applicant from the conditions of any applicable subdivision restrictions.

Approved plans must be retained on job and this card kept posted until final inspection has been made. Where a certificate of occupancy is required, such building shall not be occupied until final inspection has been made. All permits must be completed by the issuance of a Certificate of Completion or a Certificate of Occupancy.

An owner who obtains a Building Permit to do his/her own work, or an owner who hires an unregistered contractor (not registered in the Home Improvement Contractor (HIC) Program), will not have access to the arbitration program or guaranty fund under MGL c. 142A. Other important information on the HIC Program and Construction Supervisor Licensing (CSL) can be found in 780 CMR Regulations 110.R6 and 110.R5, respectively.

This card must be visible from the street. It is the responsibility of the person present for the inspections to ensure signatures are obtained from the required Town Officials. Failure to obtain a signature may result in a re-inspection fee of \$55. It is the responsibility of the applicant to ensure that once all the required approvals are obtained this card is returned to the

This Section For Official Use Only

Building Official Signature

Date

Building Code Edition: 9th Building Permit Number: 21-153

4, 22, 21



Town of Hamilton Building Permit Application

To Construct, Repair, Renovate Or Demolish



Massachusetts State Building Code, 780 CMR

APPLICANT : PLEASE COMPLETE SECTIONS #1-18 & ALL ON THE SECOND PAGE

1. Property Address:

59-63 Willow Street

2. Owner of Record:

Traggorth Companies LLC

(617) 817 2520

dave@traggorthcompanies.com

3. Roof Repairs and Replacement

4. Siding

5. Dumpster

6.

Number of Squares: _____

Type of Siding: _____

Yes No

A Trench Permit will not be required

Type of Shingle: _____

Sign off from Water Dept Required

Form signed by Fire Dept Required

A Trench Permit will be required

7. Brief, Specific, Description of Work:

Construction of a new, 18 unit 23,000 square foot multifamily dwelling, with parking and retail space

8. If demolishing a portion of a structure; what percentage is being demolished: 100 %

9. Year Built: 1960

10. Property Dimensions: 45,623 Lot Area

85.1 Frontage (ft)

11. Water Supply: Public Private

12. Number of Units in Building: 18

13. Zoning Information: _____
Zoning District Current Use
(Residential/Commercial)

14. Is the application for a Change of Use? Yes No

15. Outside Flood Zone? Yes No

16. Is the property located within the Bay Road Historic District?
Yes No

17. Item

18. Estimated Costs: (Labor and Materials)

Official Use Only

1. Building \$ 3,300,000

1. Building Permit Fee: \$50.00 - plus \$10/1,000 of Total Project Cost

2. Electrical \$ 280,000

2. Standard Town Application Fee \$ 50.00

3. Plumbing \$ 198,500

3. Total Project Cost \$ 4500 x 10 \$ 45,050

4. Mechanical (HVAC) \$ 232,000

4. Total Fees: \$ _____

5. Mechanical (Fire Suppression) \$ 489,500

5. Check No. 20121 Check Amount: \$ 45,050 Paid in Full

6. Total Project Cost: \$ 4,500,000

6. Date Received: 3, 18, 21

Construction Supervisor License (CSL)

Joseph F Kranz
Name of CSL Holder

3 Sycamore St.
No. and Street

Burlington, Ma 01803
City/Town, State, ZIP

(781) 838-2533
Telephone

jkranz@haxton-inc.com
Email address

-inc.com

CS-091630
License Number

05/28/2021
Expiration Date

List CSL Type (see below) U

Type	Description
U	Unrestricted (Buildings up to 35,000 cu. ft.)
R	Restricted 1&2 Family Dwelling
M	Masonry
RF	Roofing
WS	Window and Siding
SF	Solid Fuel Burning Appliances
I	Insulation
D	Demolition

Registered Home Improvement Contractor (HIC)

N/A

HIC Registration Number _____ Expiration Date 1/1

HIC Company Name or HIC Registrant Name _____

No. and Street _____ City/Town, State, ZIP _____

Telephone (____) _____ Email address _____

Provide the information below for all New Construction, or when substantial work is planned, or when determined necessary by the Building Inspector.

Total floor area (sq. ft.) 22,789 (including garage, finished basement/attics, decks or porch)

Gross living area (sq. ft.) 16,172 Habitable room count 40 Number of fireplaces 0

Number of bedrooms 22 Number of bathrooms 18 Number of half/baths 1

Type of heating system heat pump Type of cooling system heat pump

Number of decks/ porches: Enclosed _____ Open 8

By entering my name below, I hereby attest under the pains and penalties of perjury that all of the information contained in this application is true and accurate to the best of my knowledge and understanding.

Joe Kranz
Owner's or Authorized Agent's Printed Name and Signature

2/15/2021
Date