

BANKER & TRADESMAN

THE REAL ESTATE, BANKING AND COMMERCIAL WEEKLY FOR MASSACHUSETTS

A PUBLICATION OF THE WARREN GROUP

RENOVATION

Commercial Development's New Tools for Towns

Come Springtime, Non-Profit Will Move Into Renovated School

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SPECIAL TO BANKER & TRADESMAN

Commercial developers have long known that the arduous local permitting process in Massachusetts associated with just about any project can dramatically affect transaction costs and financial risk. The economic downturn driven by the uncertainty in credit markets and falling real estate values have only increased those risks.

However, at the same time, legislative changes and court decisions attempting to simplify and streamline the local development process provide a potential bright spot for the commercial development community. But there are three revisions to local permitting that may lower risk and transaction costs, particularly in a difficult real estate market.

Two legislative changes create incentives for municipalities to establish specialized permitting areas in order to clear away local permitting hurdles. First, under Chapter 43D, enacted in 2006, municipalities, in exchange for state grants, accept provisions for streamlined permitting and the designation of "Priority Development Sites."

Two years after its creation, dozens of sites in municipalities across the Commonwealth have been approved and local regulations put in place in an attempt to lure developers and tenants alike with the potential for speed and clarity in the permitting process. Because Priority Development Sites must be pre-zoned for industrial, commercial or mixed-use development and be eligible for development or redevelopment of at least 50,000 square feet of gross floor area, Chapter 43D Priority Development Sites may be good locations for commercial developers looking for a streamlined and more predict-

able permitting process.

In exchange for grants of up to \$100,000 and other incentives, participating municipalities must agree to render permitting de-

isions on Priority Development Sites within 180 days and must identify all necessary permits for a project, appoint a single municipal contact for streamlined permitting, and amend bylaws and other regulations to comply with the mandatory 180-day permit timeline. Priority Development Sites must be approved by both a local authority and the state Interagency Permitting Board.

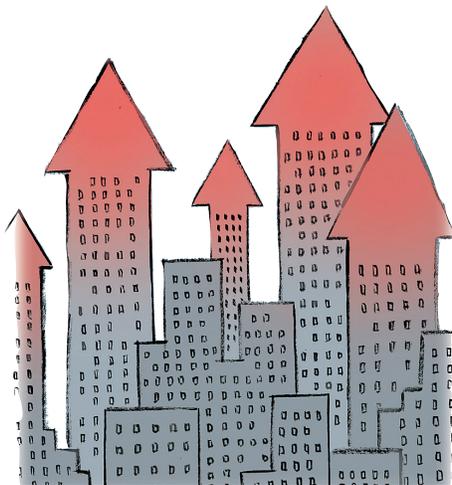
Smart Growth

As of July 7, 2008, the Executive Office of Housing and Economic Development listed 69 Priority Development Sites in 44 cities and towns as approved by the Interagency Permitting Board. Twenty four of these municipalities had completed the opt-in process so that the 180-day permitting commitment has begun.

Similarly, the legislature passed Chapter 40R in 2004 and regulations were promulgated in 2005 with the goal of encouraging development based on "smart growth" principles such as mixing land uses, increasing density, and utilizing multiple transportation alternatives. Chapter 40R is another opt-in scheme that encourages municipalities to create smart growth zoning districts in exchange for incentive payments from the state. For developers, 40R districts provide an opportunity for higher density projects with as-of-right development of residential and mixed uses under clear performance standards.

Chapter 40R functions by establishing minimum standards for smart growth overlay districts, which are incorporated into local zoning bylaws. Eligible sites must meet one of three location criteria: (1) areas near public transportation stations; (2) areas of

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MUNICIPALITIES WITH CHAPTER 43D PRIORITY DEVELOPMENT SITES*

Amesbury
Belmont
Boston
Bridgewater
Brockton
Chelsea
Dartmouth
Grafton
Haverhill
Holyoke
Kingston
Lakeville
Lawrence
Lunenburg
Lynnfield
Natick
North Andover
North Reading
Northampton
Norwood
Plymouth
Reading

MUNICIPALITIES WITH APPROVED CHAPTER 40R SMART-GROWTH OVERLAY DISTRICTS*

Amesbury
Athol
Attleboro
Billerica
Burlington
Canton
Dalton
Deerfield
Douglas
Grafton
Groton
Haverhill
Leominster
Lowell
Marlborough
Medway
North Andover
North Reading
Palmer
Pittsfield
Shrewsbury
Uxbridge
Walpole
Worcester

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concentrated development including town centers and village districts; and (3) areas that are otherwise highly suitable places for residential or mixed-use smart growth based on factors such as existing infrastructure.

As of June 3, 2008, DHCD had approved 21 districts, four were pending, and four under review. In Haverhill, for example, the Haverhill Mills mixed-use development became the second project to proceed under a smart growth overlay district. The Haverhill Mills project is a redevelopment of four mill buildings into a 305-unit mixed-income apartment

complex and retail space.

A Broader View

Long known as the state's primary tool for the creation of affordable housing, recent developments have confirmed that Chapter 40B also may be utilized to develop not only affordable housing, but also mixed-use projects including a commercial component.

Chapter 40B is the "anti-snob zoning" act that allows developers of projects meeting certain affordability standards to override restrictive local zoning requirements and pursue a single "Comprehensive Permit" for the project. Last

year, the Supreme Judicial Court confirmed that a commercial use may be included as part of a housing development permitted under Chapter 40B and does not alter the authority of the local zoning board of appeals to grant waivers from local zoning requirements for the project.

Chapters 43D, 40R and 40B are not without their deficiencies. They are by no means panaceas capable of eliminating all delay, cost and risk associated with local permitting. Nonetheless, they are deserving of a close look by commercial developers intent on growing their real estate portfolios while good land value opportunities are available. ■

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