COMPREHENSIVE PERMIT PROCESS UNDER THE LOCAL INITIATIVES PROGRAM: THE EXPERIENCES OF FIVE DEVELOPMENT PROJECTS

by

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ABSTRACT

The Local Initiative Program (LIP) is a State housing program established in 1990 to give local governments more flexibility in their efforts to provide low and moderate income housing by overriding overly restrictive local zoning ordinances and by-laws. Administered by the EOCD, the LIP is intended to liberalize subsidized housing inventory threshold by allowing developers and municipalities to create affordable housing without the necessity of State subsidies.

Since January 1990, there have been 27 LIP applications to construct low and moderate income housing. All except 4 have been approved by the EOCD. Five "successful" cases that have used the LIP process are examined in the thesis. By studying these cases, one can see the role of the local government and the circumstances under which each project took place.

This thesis attempts to analyze the effectiveness of the LIP in getting housing built in the Commonwealth using the comprehensive permit process. The first part of the thesis outlines the comprehensive permit process as it existed in the past. The second part of the thesis introduces the LIP and the reactions from cities and towns. The thesis concludes that LIP provides the necessary ingredients to encourage municipalities to build affordable housing. Given time, LIP allows the communities supporting low and moderate income housing to use local subsidies and actions to better plan short- and long-term housing needs.

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INTRODUCTION

The Local Initiative Program (LIP) is a state housing program established in 1980 to give local governments more flexibility in their efforts to provide low and moderate income housing by overriding overly restrictive local zoning ordinances and by-laws. The purpose of the Program is to liberalize subsidized housing inventory threshold by allowing developers and municipalities to create affordable housing without the necessity of state subsidies. A central question about the LIP is how it helps the local governments to get affordable housing built according to Massachusetts General Law, Chapter 40B, known as the Anti-Snob Zoning Act.

The Act, created in 1969, establishes an unusual mechanism by providing comprehensive permits for the construction of low or moderate income housing to non-profit, private, or limited-dividend developers without regard to consistency with local ordinances and bylaws. If the municipalities have not met the State's statutory requirement for having provided adequate subsidized housing, the State can override the local zoning board's decision to deny comprehensive permits or to grant them with onerous conditions. In recent years, the dissatisfactions with the Anti-Snob Zoning Act prompted a Special Legislative Commission to review the Act. LIP is a program that emerged from the Commission's recommendations.

This thesis attempts to analyze the effectiveness of the LIP in

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1 The Act has many names. It is often called "Chapter 774" because it was enacted into law as Chapter 774 of the Acts of 1969. Some refer to the Act as "Chapter 40B" because it is codified in Chapter 40B, Section 20-23 of the Massachusetts General Laws. Others refer to the Act as "Anti-Snob Zoning Act" because it was passed to promote residential integration in the suburbs.
getting housing built using this comprehensive permit process. Chapter 1 introduces the Chapter 774, as it existed in the past. In Chapter 2, the reactions to Chapter 774 and the LIP process will be analyzed. Chapter 3 introduces some hypotheses about why towns have adopted locally initiated efforts to provide housing. Some local-initiated measures are to be examined. By studying "successful" cases that have used the LIP process in Chapter 4, one can see the role of the local government and the circumstances under which each project took place. The cases illustrate the issues involved in the comprehensive permit process as municipalities confront affordable housing production. In cases where the LIP process was helpful in obtaining comprehensive permits, were there any changes made to the projects? The concluding chapter attempts to answer why towns have used LIP in building affordable housing projects. What concessions were made to make the projects feasible? What have towns gained by using LIP?
CHAPTER ONE: HISTORY OF CHAPTER 774 AND THE IMPACT OF THE LAW

1.1 Low and Moderate Income Housing in Massachusetts

The Commonwealth has had a long history of strong local autonomy. Over the years, cities and towns have created their own land use policies. Municipalities exercise basic rights over local development controls with the State oversight in building and health codes and wetland rules. Sometimes, local development controls have taken the form of restrictive regulations, such as minimum lot sizes or maximum building heights. These regulations have effectively increased housing costs, thus excluding low and moderate income housing in suburban communities. They have prevented certain groups, such as young and elderly people and public employees from living within many municipalities. As municipalities face increasing development pressures, they have defended their policies as necessary regulatory mechanisms to control unwanted growth.

An argument for controlled or managed growth is to allow communities to preserve their residential character. By selecting the development projects according to zoning practices, the towns can maintain the desired income mix of the communities. The State, concerned by the unavailability of affordable housing in the suburbs, came up with measures to stimulate town's cooperation in providing subsidized housing for low and moderate income residents.
In 1967, a Legislative Research Council report was commissioned by Senate Order No. 935 to examine the effects of local restrictive zoning practices. It showed that the "interplay of these municipal regulations determines, in substantial degree, the extent to which additional modest income housing is possible in relation to the local supply of 'buildable' land." The Report concluded with a plan that would preserve the power of cities and towns to direct their development, but would allow the State circumvention of exclusionary zoning by-laws if their enforcement would be in conflict with the State's need for more low and moderate income housing.

The Commonwealth has been responsive to providing financing programs in affordable housing. The Massachusetts Housing Finance Agency (MHFA) provides low interest loans to private developers who agree to include some low and moderate income units in their developments. In recent years, the Executive Office of Communities and Development (EOCD) and MHFA have administered many programs to help local government to provide housing. For instance, Chapters 705, 667, and 689 programs of the EOCD provide local housing authorities and other local agencies with funds to construct family, elderly and handicapped housing. During the 1980s, the State introduced SHARP, R-DAL and TELLER programs, which provided low-cost financing to mixed-income rental housing. These programs require the rental projects set aside 20-25% of their units for families with incomes of 50-80% of the area's median income. In

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2 p. 91, Report of the Legislative Research Council Relative to Restricting the Zoning Power to City and county Governments.
1986, the Homeownership Opportunity Program (HOP) was created. A major source of State housing subsidy under Governor Dukakis, HOP was administered by the Massachusetts Housing Partnership (MHP) and was utilized along with low-interest mortgage money from MHFA by many private and non-profit developers to build housing for purchase by low and moderate income residents. Residents with the HUD-approved qualifying income could utilize the HOP funding to purchase affordable housing units under Chapter 774. In most cases, the use of these programs in combination with Chapter 774 allows those wishing to develop low and moderate income housing to bypass local zoning regulations to get their projects built.

1.2 The Anti-Snob Zoning Act

In 1969, Massachusetts became the first state in the nation to pass legislation that overrode local zoning to facilitate construction of low and moderate income housing. The zoning bill was introduced under a set of unusual circumstances--it was proposed by a coalition of urban legislators in retaliation for the passage of a school racial imbalance bill four years earlier. It was widely believed that the zoning bill would never become law because the suburban legislators would not support a measure "which attempted to drive a wedge into the 'Home Rule' so jealously guarded by their constituents." (p. 139, Engler). However, the zoning bill was passed by a 2-vote margin; many of the conservative urban representatives who had voted against the school bill cast their votes for the zoning bill.
The Anti-Snob Zoning Act (M.G.L. Chapter 40B, Section 21) provides an expedited hearing and review procedure for affordable housing proposals in Massachusetts cities and towns. It allows "any public agency or limited dividend or non-profit organization proposing to build low or moderate income housing" to submit to the local Zoning Board of Appeals (ZBA) a single application for a permit to build low or moderate income housing in lieu of separate applications to the various local boards. The ZBA then notifies each of the local boards (e.g. Board of Health, Planning Board) of the application for a comprehensive permit. The ZBA has 30 days to hold public hearings, and must render a decision, based on a majority vote, within forty days after the termination of the public hearing. In acting on behalf of all local boards, the ZBA has the power to grant any permit which could be granted by a local board acting under any local bylaw or ordinance. This centralized review process can save enormous time and money for the developers. The decision from the ZBA can be one of the following for the application for comprehensive permit: 1. Approved as proposed. 2. Approved with conditions. 3. Denied.

1.3 Criteria Used in the Decision of the Housing Appeals Committee

If the application is denied, or granted with conditions that make building the project "uneconomic," the applicant can appeal, within 20 days after the date of the notice of decision, to the Housing Appeals Committee (HAC) within the Executive Office of Communities and Development (EOCD). HAC decides, in cases where
applications were denied, if the local Zoning Board's decision was "reasonable" and "consistent with local needs." The 5-member HAC, appointed each year by the Governor and the Secretary of EOCD, includes a city counselor, a selectman, and an employee of EOCD. HAC encourages the parties, the developer and the municipalities, to settle their differences before it hears the case. The HAC's power is limited to sustaining or overruling the ZBA decisions; it cannot attach conditions to its decisions.

To determine whether the decision is "reasonable" the Committee considers existing regional housing needs for low and moderate income housing as well as certain local standards of health, safety, open space, and building design. A decision by a local Zoning Board denying application for a comprehensive permit must prove that the local concerns about housing construction outweights the regional housing need.

To determine whether the decision is "consistent with local needs," HAC refers to the mathematical tests prescribed in the Act. The HAC could override the local zoning board's decision if the municipality has not met one of the following:

- **Housing Unit Minimum**: 10% of the total housing stock in the municipality must be low and moderate income housing;\(^3\)

- **General Land Area Minimum**: 1.5% of the municipality's total land area must be zoned for residential, commercial, or industrial use in low or moderate income housing use;

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\(^3\) Ten percent is the State threshold defined in Chapter 40B of M.G.L.
• **Annual Land Area Minimum**: construction of low and moderate income housing in any one year or land must comprise more than 0.3% of the total local land area, or ten acres, whichever is greater.

Only 6.8% of Massachusetts municipalities have met these conditions, and there are many different opinions of the value of these criteria. Some feel that towns whose affordable housing stocks fall below the thresholds have no control over development in their communities. Others have argued that the tests are important for two reasons: the criteria give developers more flexibility in building in municipalities that have not met their minimum obligations; and the Housing Unit Minimum (the 10% Rule) provides municipalities with a goal that they can actively pursue. Some have argued that the numerical guidelines allows the municipalities to retain some control over the nature and location of the subsidized housing they can absorb (p. 12, Azar).

If an application is approved with restrictions or conditions, the Committee decides whether the conditions would in fact render the project "uneconomic," defined to mean that the project would become financially infeasible to finance or develop. "Uneconomic" is evaluated "differently by the HAC depending on the guidelines of the housing subsidy program being used." For rental housing programs, for example, the project may be considered uneconomic if the

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4 As of December 2, 1988, EOCD record shows that only 24 out of 351 communities in the Commonwealth have met their 10% threshold under the law: Amherst, Belchertown, Beverly, Boston, Brockton, Cambridge, Chelsea, Fall River, Gardner, Greenfield, Holbrook, Holyoke, Lawrence, Leominster, Lowell, Lynn, Milford, New Bedford, North Adams, Northampton, Orange, Springfield, Upton, Worcester. Another 12 communities are at the 9% level. This represents 36 communities, or 10.26% of the communities in the Commonwealth have made a substantial investment in the production of affordable housing.
development and operating costs cannot be supported by the rents. Under homeownership programs, the projected development costs must be covered by the projected sales.\textsuperscript{5} In general, if conditions ordered by the Zoning Board of Appeals cause the housing programs to incur a less than reasonable rate of return, then the financial protection to the lenders is endangered and the project becomes uneconomic.

The phrase "Low or moderate income housing" in the Anti-Snob Zoning Act refers to any housing subsidized by the federal or state government under any program to assist the construction of low or moderate income housing. Since the inception of Chapter 774, state and public financial subsidy programs have been integral components to ensure the production of affordable housing.

1.4 Decisions by Housing Appeals Committee

With time, local communities realized that the HAC almost always overturns Zoning Board decisions—in favor of the developers. From the beginning of the program in 1969 through 1989, a total of 458 proposals were submitted to the local ZBAs, and approximately 43\%, or 200 cases, were appealed to the HAC. The cases represent decisions rendered between 1969-1989, excluding those pending or under review in 1989. The following table shows the disposition of cases appealed before HAC:

\textsuperscript{5} Q&A About the Comprehensive Permit Process.
Total Comprehensive Permits decided 458
Less:
Comprehensive permits granted by Board 238
Comprehensive permits granted with conditions 89
Total Permits Granted by Boards 327
COMPREHENSIVE PERMITS DENIED BY BOARD 131

Permits denied by the Board 131
Plus those allowed with conditions 89
Total 220

Approximately 200 out of 220 were appealed to the Housing Appeals Committee.
Disposition of cases by HAC:
TOTAL APPEALS 200
Less:
Settled by HAC (Permits granted by ZBA) 100
Decision for developers 70
Total resulting in permits after appeal 170

Decision denying permit 10
Appeals dropped 20
TOTAL APPEALS 200
Source: Murray Corman, Housing Appeals Committee Data, 1989

Out of the 200 cases appealed to the HAC, about 85% of the cases were settled at the state level by the granting of the permits. HAC performed both judicial and mediating roles in resolving these appeals. In the state appeals process, HAC's decisions are based on factual inquiries to determine whether the alleged problem actually exists (Azar). After reviewing the evidence, the Committee states its conclusion as to the validity and gravity of the objection under consideration. Overall, an extremely high proportion of zoning board
objections are dismissed as "insufficient to outweigh" the Housing Need.

An explanation for the local Zoning Board's decisions may reside in the political nature of the Act. A local Zoning Board may have made a political decision to deny the comprehensive permit out of a set of political circumstances before it even begins to examine the specifics of the developers' proposal. Often, if a project is perceived to carry negative impact to a town, the town officials will oppose the plans of the developer\(^6\). For example, during an election year, a city mayor and the Zoning Board in one town opposed an affordable housing project because of the pressures from constituents. Later, the mayor expressed in a conversation with a state official that he knew that if the project were denied at the local level, the HAC would overturn the decision by the local Zoning Board.\(^7\)

In some instances, ZBAs approved unfriendly or hostile 774s after negotiating with the developers to come to some settlements. HAC would hold a series of meetings and offer mediating services for the parties to come to stipulated agreements before continuing through the full hearing process. The local government's compliance with the negotiated process had two distinctive advantages: The built-project brings the municipalities closer to the State requirement of the 10% threshold, thereby reducing the chance that developers will enter the community in the future; at the same time,

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\(^6\) When the proposal receives the local government's support and has none but minor NIMBY (Not In My Back Yard) opposition from residents, it is considered a "friendly Chapter 774." If the project experiences oppositions from the local government, it's a "hostile Chapter 774."

\(^7\) Interview with the State Official, March 10, 1992.
the project may be approved by local zoning boards to avoid the time and costs of the legal trials at the state level. If that occurs, HAC’s decision for the development will leave the municipalities at a less advantageous position for negotiating the development’s terms and conditions.

Towns which do not comply with the housing needs of the State may face another threat—Executive Order 215. Promulgated in 1982, Executive Order 215 calls for the withholding of State discretionary grants such as those for open space, sewers, and economic development from communities found to be “unreasonably restrictive” of housing. So far, only five municipalities have been denied funding as a result of Executive Order 215; others have avoided this outcome through negotiated agreements with EOCD., committing themselves to a specific action such as a proposal and implementation of a housing plan. Executive Order 215 is independent of the 10% criteria and the comprehensive permit process. Although it is not a constant threat to the municipality, the reality is that the threats from the State do exist and towns can heed them or ignore them. If, for the sake of preserving community character, the communities do not follow the State guidelines, the municipalities might be penalized for their decision. Both Chapter 774 and Executive Order 215 exist as “sticks” to force local governments to accept housing developments. Those communities who have complied with both legislative orders will not be subjected to interventions from the State.

8 Q&A About the Comprehensive Permit Process.
Summary: The responses of municipalities to Chapter 774 suggest that many local Zoning Board decisions may have been influenced by the towns' unwillingness to accept affordable housing not by the cited locational constraints of the projects that the boards cited. Many communities resist changes in their housing status quo, and also lack adequate legislative knowledge about the comprehensive permit process under Chapter 774. In sum, Chapter 774 was a politically and socially-motivated measure provided by the state government to allow “some checks and balances...at the local level.”\(^9\) It provided avenues to allow the developers to build affordable housing. However, its goal of furthering social and economic integration has been resisted by many communities because of political factors.

\(^9\) Martin Linsky, a former representative from Brookline, wrote the Anti-Snob Zoning Act.
C H A P T E R T W O: REACTION AND PROPOSAL TO AMEND THE ACT

2.1 A Special Commission and its Recommendation

The introduction of the Homeownership Opportunity Program (HOP) in the late-1980s and the increase in demand for housing as a result of employment expansion in the Commonwealth created numerous housing proposals at the local level. Readily available State funding during a period of peak real estate activity attracted many private developers to develop affordable housing projects using Chapter 774. For the developer, Chapter 774 provided not only the simplified permit process, but also brought in subsidies for the affordable units. The affordable units represented a substantial price reduction from the market sales prices. For example, in 1987, HOP subsidy units were sold at an average of $85,000-$110,000 at a time when the market housing price ranged between $167,000-$175,000. This represented a 37% to 55% reduction in the price (MFHA Data, 1987). Many communities complained that Chapter 774 was perceived to be an opportunity by the developers to enter into communities with strong real estate markets that had not met the 10% threshold mandated by Ch. 40B and to create affordable housing while offsetting these costs through the market-rate component of the program. For example, Andover faced 5 pending permits as a result of the HOP proposals (Commission Hearings).

Another reason that Chapter 774 was used instead of the local regulations can be explained as a function of the land market. For example, town zoning bylaws sometimes allow up to double the
usual density limit for affordable development. However, under Chapter 774, far greater increases are commonly allowed. Land owners and developers will try to use Chapter 774 comprehensive permits to increase density and, as a result, to inflate land value. Phil Herr has written that Chapter 774 effectively destroys the ability of the community to create subsidies for housing through locally-created measures, because a greater subsidy is available through the State's 774 process\textsuperscript{10}.

The proliferation of comprehensive permits in the late 1980s implied that once these permits were granted, there would be an addition of hundreds of units in communities. An increase in the number of housing units gave rise to local concerns over the impact on local services. Commonly cited problems were: increased traffic, an overburdened educational system, environmental problems, and water and sewer drainage. These local concerns, magnified by the numbers of permit applications and the intense political pressure on local cities and towns, brought about a special study in December 30, 1987 created by the state legislature to investigate the implementation of low and moderate income housing. The special commission was formed as a result of the 24 pieces of legislation that were filed by members of the General Court to address Chapter 774 of the Act of 1969. According to Murray Corman, Chairman of the HAC, the petitions filed to amend Chapter 40B ranged from a one-year moratorium on the submission of comprehensive permits to the repeal of Chapter 774 were simply too

many to be ignored by the Committee on Housing and Urban Development, to which all of the c. 40B petitions were referred. Because it feared "causing a scandal," the Committee addressed these concerns by appointing 20 legislators, who included both supporters and opponents of the Act, to serve on the commission.

A series of hearings were held throughout the Commonwealth to collect testimonies from various communities in order to appropriately substantiate the findings and recommendations. The issues discussed in the hearings were as follows:

*Environmental Impact:* In a meeting held on Cape Cod, towns articulated their concern that the importance of the environmental impact was not being adequately addressed by HAC's decisions overturning local ZBA decisions. Especially in the Cape Cod area which has one aquifer as the only source of water, the denial of building permits was sometimes thought to be necessary to protect the area's water supply and to address solid waste disposal. The communities on the Cape felt that their protection of water quality should not be interpreted as being "exclusionary" of affordable housing projects. For example, it would be illogical that Hyannis, zoned for one-acre single family lots, would allow an increased density of 4 units or more per acre; this would endanger the water supply for the entire community for the sake of serving affordable housing goal 11

*Conflicting Goals:* The aims of the EOCD conflicted with the aims of the Department of Environmental Protection (DEP). There was no uniform standard for projects that received approval from

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11 Hearing Minutes, Commission Report.
the EOCD but faced an unfavorable review from the DEP. For instance, in Waltham, a project received both a comprehensive permit and an order of condition from the Waltham Conservation Commission before the DEP rejected the proposal. The DEP interpreted an area in question as bordering vegetated wetlands "rather than isolated land subject to flooding," as had been the interpretation of the Waltham Conservation Commission. The State felt that the project, as designed, would adversely impact wetlands. In this case, an appeal of the DEP's decision by the developer would have taken up to two years--enough time to deter most developers from filing the appeal. Clearly, an agreement between the state agencies clarifying the permit procedures and regulations was needed in the near future.

_**Ten Percent Rule:**_ Most town officials felt that the10% guideline was more a mandate than a guideline. They see the fixed percentage as a number they must meet, but one that doe not address the individual municipality's housing needs. For example, Boston and Springfield reached the 10% threshold, but the need in these cities was far from being met. Towns felt that it was becoming very unproductive to focus on the 10% criterion as many towns tried to negotiate for a higher number of affordable units. The Chair of Barnstable Board of Selectmen pointed out that the Act had two sides of rules: communities that practiced discrimination should be subject to government intervention, and those that did not discriminate should not be subject to interference. Also, the rule created an irrefutable presumption, that is, if the10% threshold had
not been met, then a community would be forced to accept subsidized housing.

Furthermore, only certain types of units were counted toward fulfilling the 10% criteria. For example, units whose only subsidy came through the rental assistance money located by the tenant (e.g., Section 8 and Chapter 707) were not eligible in counting toward the 10% goal unless the development structure itself is subsidized. The logic behind this is that the rent subsidy is not a permanent inclusion of the affordable housing stock in a municipality. Most towns felt that if the units were affordable, then they serve the housing needs of the community and should be included in the statutory requirement.

**Funding and Other Programs:** Because of the scarcity of existing funds, the need for a program to provide front money via grants or loans existed. Many towns felt that efforts to produce affordable housing should be centered on the conversion of existing units, not building new units. They felt that the State should recognize the glut of houses that are "for sale" and should encourage innovative financial programs. For example, a housing specialist at a housing partnership talked about starting a community land trust to buy land and write the cost of existing units down to homeowners. The state should encourage local communities to create incentives which would allow the bridging of local government efforts by linking state programs to sewer and water improvements to local subsidy. At that time, Chapter 774 required that the affordable units be "state- or federal- financially subsidized" and did not allow for innovative programs.
During the Commissions Hearings, a participant suggested that the State establish inclusionary zoning, which would promise developers density bonuses in return for affordable housing production. Inclusionary zoning, however, would not include comprehensive permit or one-stop shopping of permit approvals. Many said that programs without state or federal subsidies should be counted toward the 10% threshold if long-term affordability is guaranteed through deed-restriction.

Encourage Locally Initiated Programs: During the hearings, many town officials expressed that the role of local initiative processes should be emphasized more. They said that affordable housing projects may be feasible with the cooperative partnership of local governments or by the municipalities' lessening the hold on the supply of land. A change in the local aid formula could reward communities that create affordable housing-- for example, a city might decide to use land it owned for housing development. Another suggested possibility was to encourage the development of a Master Housing Plans within the municipalities so that the communities would have more cohesive goals with regard to their long-range housing plans. Some participants have suggested that cities and town can select appropriate sites and create their own Requests for Proposals to build housing that would count toward the 10% threshold. There were suggestions to provide local housing partnerships with greater control and decision making power in affordable housing construction. Town officials agreed that they should work to foster a less combative atmosphere.
ZBA Decisions: Local ZBAs felt that it was hard to justify their decisions with a HAC-sustainable objection. With regard to the language of the law, "reasonable" and "consistent with local needs" as used by the HAC were never clearly defined beyond the tests of statutory requirements and the local needs sufficiency test. Rulings by the HAC were decided on a case-by-case basis, which meant that the municipalities would learn about each issue as it was heard before the HAC. Many towns felt that ambiguities existed in the interpretation and acceptance of the law by the community especially when Chapter 774 was first promulgated.

Developers’ Testimony: Many thought that the appeals process often took a long time. According to the rules outlined in the statute, the maximum allowed from the day a developer applies to the local ZBA for a comprehensive permit to the day the HAC issues a decision is 140 days, or about four-and-a-half months. However, the process often took much longer. A HAC hearing can take months. In some cases, the entire process took up to 2 years.

The danger with the prolonged hearing process and the potential law suits is that the state funding could be lost in this time. Funding agencies often attach a time limit to their commitment. As in many HOP cases, developers were granted preliminary approvals of funding only to discover that the funding pool had dried up during the months they were engaged in the approval process.

In sum, although from 1969 to 1988, Chapter 774 resulted in the construction of many low and moderate income housing units, imperfect relationships sometimes emerged from these development
projects. Developers often felt thwarted by the combative process, and municipalities felt that they no longer controlled the use of their land. Many communities felt that the law more than twenty years old, badly needed to be amended. With time, many municipalities' felt that the attitude toward housing has gradually changed as they witnessed numerous affordable housing projects built.

Given the changes in the political reactions and attitudes toward affordable housing, the next question to be asked is: What types of roles can a community assume which would empower them in the approval process?

2.2 Local Initiative Program

Local Initiative Program (LIP) emerged as a result of the Special Commission's hearings. LIP is a program created by EOCD to provide the cities and towns with more control in their efforts to provide low and moderate income housing. Currently, two types of housing programs are supported under LIP:

- **Local Initiative Units**--This program recognizes local initiative actions and allows such largely unsubsidized units to be counted toward Chapter 774 threshold;

- **Comprehensive Permit Projects**--This program is for projects developed through the comprehensive permit process according to Massachusetts General Law, Chapter 40B, or Anti-Snob Zoning Act.
The purpose of the Local Initiative Units is to give municipalities greater incentives to create low and moderate income housing without state subsidies. This is done by allowing towns to use their own zoning regulatory power. The Local Initiative Units must result from a municipality's actions and are not developed through the comprehensive permit provisions. Municipal action is defined as:

1. Zoning-based approval, which includes rezoning, special permits, density bonus, site plan or subdivision approval.
2. Financial Assistance--funds raised, appropriated, or administered by the community.
3. Land or building provisions owned by the community and conveyed at below-market cost.

Since January 1990, there have been 27 applications for the LIP program. EOCD has approved 23 applications and 4 applications are currently under review. All but 2 of the applications are using Comprehensive Permits.\footnote{Phone Interview with Lionel Julio at EOCD.} Because of the frequent use of this aspect of the LIP program, this paper focuses on the comprehensive permit projects which allow the communities to develop housing without additional state subsidies through the flexible zoning and local approval process provided by Chapter 774.

The requirements needed for a comprehensive permit under LIP projects are:

- a minimum of 25% of the units set aside for low and moderate income housing units;
- a Regulatory Agreement with the EOCD;
• Use Restriction and an Affirmative Fair Housing Marketing Plan (both approved by the EOCD) and;
• the written approval of a Local Chief Official (e.g. Mayor or Chair of the Board of Selectmen) and from the Local Housing Partnership (if one exists).

A major difference between LIP and the previous comprehensive permit process under Chapter 774 is the meaning of "low and moderate income housing," which, in the past, has included all financially subsidized housing. This was changed to include "programs providing for subsidies in kind or through technical assistance or other support services."¹³ For example, technical assistance includes a broad range of financial and non-financial assistance to qualify for units under M.G.L. Chapter 40B. This gave towns more freedom to orchestrate a housing program they wanted without the assistance of a state-funding program.

Local support for projects is demonstrated by the written endorsement of the Board of Selectman and the written endorsement of the local housing partnership. This rule, however, is vague, and does not demonstrate the amount of the local support needed to carry out a project. Under LIP, EOCD will approve virtually all applications submitted for a comprehensive permit if the above conditions are met. The Process for obtaining a Comprehensive permit under LIP is as follows:

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¹³ Local Initiative Program, EOCD.
2.3 Local Initiative Program Analyzed

Since the establishment in January 1990, LIP has enjoyed an institutional standing within the comprehensive unit process. The purpose of the state housing program was to address the regional and state housing needs. The State has identified that the most critical housing needs in the Commonwealth are for families, people with special needs, and low-income families in particular. Judging from cases in which developers have used LIP to obtain comprehensive permits, the LIP process seems to be accepted immediately by the communities. Given that there were unfriendly 774 projects in the recent past, why did the towns accept LIP? Some elements identified as crucial in the LIP process are as follows:

**Close Cooperation between Developer and Town Official via a Town Agent:** An agent who represents the town commonly from the Local Housing Partnership or the Planning Board usually assumes the intermediary role in the approval process. Because the agents are from the Town Office and possess working knowledge of affordable housing concerns, they are best able to transmit information between the parties. Furthermore, because they are involved in the

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14 As the cases demonstrate, the EOCD may approve the application before or after the submission of the application for the comprehensive permit.
permit process from the outset, town officials and developers can begin to negotiate with developers to solve problems early on. The collaborative nature of the process increases the likelihood that local officials will cooperate and will understand the issues from the conceptual stages.

**Working with the Local Housing Partnership:** The Local Housing Partnership is encouraged to work with the developer from the early stages of the project. The local Housing partnership is a municipal advisory group whose responsibility is to encourage the municipality to provide low and moderate income housing. Housing Partnership members are appointed by the Chief Elected Official. In some cases, they are volunteers. The Housing Partnership furnishes state- and federal-program information and recommends projects to other boards.

**Market Forces:** Historic progression of the development projects leading to the LIP process. These factors are important because of the external market conditions such as the diminishing state funding and the market downturn which led many developers to use LIP.

**The Nature of Subsidized Funding:** In the years when HOP was nearly phased out, towns were left with little power to create their own affordable housing because the very definition of affordable housing required a sponsoring state- or federal-subsidizing agency. By changing the concept of the funding, towns can now utilize technical assistance instead of the state funding. This legitimates the funding process, and creates room to take advantage of opportunities.
The revisions to Chapter 774, which are embodied in the Local Initiative Program, gave towns substantial control of the housing projects via the local endorsement of town, and the permission to use local subsidies to count toward affordable housing. The requirement of an endorsement by the local chief official ensures that towns want to become part of the development process. Therefore, LIP virtually excludes the possibility of a hostile Chapter 774 from taking place. Developers whose projects are not accepted by the local officials may enter the comprehensive permit process (i.e. hostile Chapter 774). However, the LIP is likely to replace the standard Chapter 774 process; if a developer does not use LIP, it means that the town does not want the proposed development, and that is a situation that most developers prefer to avoid.

Summary: LIP provides greater flexibility and allows more control for towns to actively plan affordable housing consistent with the town's needs. The creation of the Housing Partnership, the changes in the legislation which require by the local official an endorsement, and the inclusion of non-financial assistance all but provided great opportunities for the towns to take proactive approaches instead of reacting to the state programs. The following Chapter examines the other locally initiated actions.
CHAPTER THREE: LOCALLY INITIATED ACTION

Some elements have been identified as the reasons why towns have adopted regulatory efforts to promote housing affordability in managing land use and growth. The communities adopting positive legislations range from small suburban and rural communities, and some have been known for their anti-affordable housing attitudes. There are many factors that may have caused the towns to adopt these changes.\textsuperscript{15}

1. Growth. The legislative changes occurred both in towns that experienced rapid growth and in towns that experienced slow growth. This suggests that growth pressure has little to do with prompting such controls.

2. Are these towns housing partnership members? Out of the 19 towns that Herr analyzed, he designated 17 as Housing Partnership Members. There is a stronger motivation to becoming Massachusetts Housing Partnership (MHP) member and those pioneering successful adoption to positive regulatory change.

3. Are these towns meeting the Chapter 774 requirement? Only 3 of the 19 municipalities met the statutory test for the exemption from zoning overrides under Chapter 774. This suggests that the role of the State has a discernible difference in motivating regulatory efforts.

It seems that municipalities are likely to take proactive measures out of their own initiatives, not necessarily out of compliance with the State's regulations. Herr indicates that

\textsuperscript{15} Phil Herr, ”Partners in Housing: The Massachusetts Experience,” from \textit{The Journal of Real Estate Development}, April 30, 1989.
communities that are on positive regulations generally are subject to less State pressure than other communities. He states that the assistance to communities is more relevant to their proactive regulatory efforts than are "negative pressures through 774 and 215." 16

3.1 Sale of Public Real Estate

One way that a town can initiative a housing project through the comprehensive permit process is to use the Request for Proposal on land that it owns. Municipalities often convey land to selected developers at a negligible price. Using the Request for Developer Proposal approach, a city may have an advantage in negotiating for a longer lock-in period, price, percentage of affordable housing, etc. According to Mr. Polcaro, a Cape Cod developer, Request for Proposal's should be used by towns to build housing. According to him, the sale of public land allows towns to gain units for their residents, they keep the development cost down, and the town gets tax revenue from the market rate units. In this way, the town becomes a co-developer with the developer.

Given that the sale of public land is an ideal way to build houses, why was this approach not so prevalently used before? According to Mr. Sketchley, an affordable housing consultant, when the market was good, towns were inundated with permit

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applications. There was neither need nor time for towns to select sites. However, with the downturn in the real estate market, the towns could control housing development by selecting sites.\textsuperscript{17}

3.2 Technical Assistance

Another way in which a town can help to build housing is through non-financial assistance. For example, the town of Boxford assisted a project by preparing the LIP application to the EOCD. Several fees were waived such as the impact fee, the hearing fee, and the application fee. In addition, the Town received a grant of $25,000 from MHP to hire an outside consultant. The town showed its support by providing both monetary and support services.

3.3 Local Housing Partnership

According to Herr, another explanation for the changes in local attitudes toward housing comes from the formation of the State-local-private partnership advocated by Massachusetts Housing Partnership.\textsuperscript{18} The local housing partnership (LHP) was created to be an advocacy voice inside the local government, pressing for the utilization of state-authorized programs, and creating local initiatives. LHPs are typically composed of appointed representatives from various local agencies, real estate and development interests, finance, social advocacy organizations, and

\textsuperscript{17} Interview with Bill Sketchley.
residents. Most LHPs are established by local executive action although some are established by a local bylaw. There are currently LHPs in more than half of the Massachusetts municipalities.

An LHP's involvement affects the chances that a permit will be approved and the building built. LHPs have initiated projects, have acquired land for affordable housing. In some communities, LHP efforts have been on research and planning, building policy concurrence, and regulatory reform while in other communities, the Partnership may be engaged in buying land.

The creation of LHPs with the State's assistance helps to raise the visibility of local actions using the State programs. The measures created by LHPs ensure that the actions taken by LHP reflect the local concerns about housing growth and, at the same time, comply with state programs.

Newly formed local housing partnerships helped many municipalities to identify their housing needs. Besides affordable housing development, the intent of the partnership was to have the municipality utilize State programs in a market that may indicate a need for housing.

**Summary:** There are several hypothesis about why some municipalities have reversed themselves and now support affordable housing projects. As time went by, local governments became more educated about the process and the development projects. This learning-by-watching approach was necessitated by the State's Housing Appeals Committee's pro-developer decisions which have left the municipalities chagrined about the Anti-Snob Zoning Act.
As municipalities learned more about the State's position in defending the developers, most municipalities will not likely to take a chance in denying the application at the local level hoping that decision to be withhold at the State level. Furthermore, if the cases were settled at the State level, the municipalities may lose their leverage to negotiate for higher affordable units or units reserved for local residents.
CHAPTER FOUR: CASES

These five cases illustrate the successful LIP process in projects that have obtained comprehensive permits. These cases are "successful" because permits were approved by the local ZBAs without any state financed subsidies toward the regulatory relief. All the cases studied were either supported by the local government or initiated by the local officials. The cases will be used to determine whether the LIP process was effective in building low and moderate income housing.

4.1 Boxford

Located northeast of Boston, Boxford has a population of 6,266. In 1990, families constituted about 87.7% of the 2,016 households in town. The percentage of owner-occupied housing units stood at 95.5% and the median housing price was $320,700, twice the median housing price in Boston.\(^ {19} \) In Boxford, the qualifying income for buying a house at the median housing price was $90,390 (see Appendix 1). Out of the total number of housing units, 95.78% of these are single-unit housing structure (1990 Census).

Historically, Boxford has done little to construct affordable housing. In 1988, Boxford became one of five towns placed under the stipulations of Executive Order 215 by Governor Dukakis; the Town was ineligible for discretionary funds for parks, street work and other infrastructure repairs because of its unwillingness to build subsidized housing. Prior to the Andrew Farms project, there

\(^ {19} \) Assuming that the financial cost of purchasing a house is as follows: a 30-year amortization term at a 7% annual interest rate and a 10% down payment and other debt payments.
had been no affordable housing projects (January 1, 1990, EOCD Subsidized Housing Inventory).

*Andrew Farms*

The parcel was purchased by the Boxford resident developer, Douglas Conn and his partner, Mr. Bluemenreich. Mr. Conn purchased the 24.7 acre in 1989. Wanting to keep his crew members working, and to provide affordable housing to the town, Mr. Conn initially intended to construct 15 affordable housing units out of 60 total units of single-family detached and attached units using the Homeownership Opportunity Program. He switched to using Local Initiative Program after learning that the state funding for HOP had dried up because the overall state budget cuts by the new Weld Administration had largely diminished the available money for the construction of low and moderate income housing. Subsequently, Boxford's local government reduced the number of of affordable units by three, maintaining a 25% affordable housing set-aside.

Mr. Conn's plan was well-received by the local boards and was strongly supported by Boston Housing Partnership (BHP). Doug Conn formed a partnership with the Boxford Housing Partnership on which he commented, "Without the [support of the] partnership, there would not have been a project."\(^{20}\) However, the immediate abutters did not welcome the project. They filed a suit to block the development project.

\(^{20}\) Interview with Mr. Conn.
<table>
<thead>
<tr>
<th></th>
<th>Massachusetts</th>
<th>Boxford</th>
<th>Ashland</th>
<th>Millbury</th>
<th>Hamilton</th>
<th>Waltham</th>
<th>Boston City</th>
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<tr>
<td>Population</td>
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<td>6,266</td>
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<td>12,228</td>
<td>7,280</td>
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<td>Percent Family</td>
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<td></td>
<td>52.10%</td>
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<td>70.50%</td>
<td>73.40%</td>
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<td>$221,200</td>
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<td>Total Housing Units</td>
<td>2,472,000</td>
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<td>Median Rent</td>
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<td>Homeowner Vacancy(%)</td>
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<td>1.53%</td>
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<td>1.34%</td>
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<td>Rental Vacancy</td>
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<td>4.39%</td>
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<td>Single-unit Housing</td>
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<td>Structure(%)</td>
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<td>67.34%</td>
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<td></td>
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<td>5.00%</td>
<td>2.10%</td>
<td>5.00%</td>
<td>18.70%</td>
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</table>

Sources: MA Cities & Towns, 1990 Census of Population & Housing.
EOCD Subsidized Housing Inventory Level, January 1, 1990.
Mr. Conn had purchased a parcel of land with house on Silverbrook Road and he wanted to build a road on the parcel, leading to the house. The subdivision had a lapsed common scheme restriction which had stated the required distance between the lotline to certain structures such as houses. In December 1988, Upton Farm Association, a coalition of 42 abutters, most whom were long-time Topsfield and Boxford residents, claimed that the parcel of land purchased by Conn had a common scheme restrictions convenants intended to prevent the development of a road. The abutters attempted to reaffirm the scheme restriction, which had lapsed years ago.

The case was heard in the Massachusetts Land Court. The judge's decision was for the developer; the court had found that the abutters could not reaffirm a lapsed common scheme on a subdivision. A settlement was negotiated out of court.

A comprehensive permit had been filed prior to the suit. The Permit was granted to the developer on February 5, 1990, after the Upton Association suit had been settled. Twenty days after the issuance of the comprehensive permit, about 10 abutters appealed the comprehensive permit decision to the Massachusetts Superior Court citing the anticipated traffic and environmental impact of the development. The Court ruled in favor of the developer. The remuneration was settled out of court.

According to Mr. Conn, the suit with the abutters had to be settled in the State's Superior Courts rather than the Housing Appeals Committee. Both the State’s Superior Court and the Land
Court heard the abutters' cases because the suits involved had no bearing on the conditions of the comprehensive permit but stemmed from the dissatisfactions of the abutters, and are outside of the HAC's judicial oversight. Because the non-HAC judicial tribunal hears cases other than the appeals for the comprehensive permits, the length of time in which the cases were heard took longer than that of the HAC.

A LIP application was approved by EOCD one year later. The project is currently under construction.

4.2 Ashland

Located 21 miles west of Boston, Ashland has a population of about 12,066. There are 4,606 households, of which 70.5% are families. In 1990, 71.46% of the housing structures were single-unit structure. About 74% of Ashland's houses are occupied by owners, and in 1990, the homeowner vacancy rate was 1.53%. The median housing value is $167,800, requiring an income of $47,295.21

_Sudbury Park_

Numerous private development projects in the late 1980s lowered the towns' affordable housing inventory level to 6.38% in 1990 from a previous level of about 8%. At the same time, Ashland was conscious of its housing needs, and took proactive measures to address the "gap" in its affordable housing stock. Ashland's Affordable Housing Committee began to look for possible sites

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21 Data from 1990 Census.
which the town could convey to developers. Ashland's Board of Selectmen approved the Request for Developer Proposal for a parcel owned by the Town.

The selected developer team, Messrs. Polcarol and Sketchley, proposed to build 26 units of single-family detached units of which 10 would be affordable on 7 acres of land. The Town conveyed the subdivision at a discount to the developer and any proceeds will go to the Housing Improvement Program in a nearby neighborhood. Construction is scheduled to begin in May 1992. The construction will begin with 1 unit as a model house; Mr. Polcaro, the developer, will secure funding through private sources and upon the sales of the unit, will borrow the rest of the construction loan from banks. The anticipated time for construction is around 1.5 years.

4.3 Millbury

Millbury has a population of 12,228 living in 4,584 households, of which 73.4% are families. The median housing price in 1990 was $134,000, requiring an annual income of $37,937 to buy a home at the median price. 70.9% of the housing units were owner-occupied, and 67.3% of the town's housing units were single-unit structure (1990 Census). According to the EOCD, in 1990, 5% of Millbury's housing units were subsidized.
Elmwood Heights

In 1988-89, the developer Domicile, Inc. received a special permit to build six-four unit condominiums on approximately 5 acres of land. The project, Elmwood Heights, was adversely affected by the real estate market and the first-built unit was foreclosed after the developer failed to sell it. The developer, together with the town's planning director, Dave Hulseberg, worked to redesign the project to include affordable units.

According Mr. Hulseberg, a redesigned project was the best possible solution for all parties. He felt that a foreclosed project was a "cancer" to the town. Not only would the town not receive financial benefits from a foreclosed projects, but the residents would also lose house ownership opportunities, and the abutters' land value would be lowered because of the incomplete project.

A redesign of the project using HOP was initially proposed by the planning board. A site approval letter was issued by the MHFA. The number of units would remain as before, with the design changed from condominiums to single-family attached units (see Site Plans). The new design would contain 12 single-family attached units. As a result, the Town gained eight affordable housing units after the planner designed and the town-supported a project conversion.

The project re-design was approved by the various board and officers at Millbury. When the HOP was funding phased out, the developer used comprehensive permit under the LIP to convert the condominiums into affordable housing for first-time homebuyers.

22 Interview with Mr. Hulseberg, March 26, 1992.
The following changes in housing design were made:

**Before redesign:**
- 5-4 unit & 2 duplexes mkt-rate condo with associated site improvements.
- *Private Funding*

**After redesign:**
- *9-duplexes of attached townhouses at market rate, and 3-duplexes of affordable units.*
- *Was to use HOP before switching over to ASAP/LIP.*

A question was raised about the special permit which had been changed to comprehensive permit using LIP. Why was there as change from a special to a comprehensive permit? According to Dave Hulseberg, the permit required the developers to seek approval from a number of boards. The comprehensive permit, with its greatly simplified approval process, was ideal for the redesigned project, which required many variances. The switch to the comprehensive permit saved time and was very effective in this case. The project is near completion and both the built and affordable units are all occupied.

4.4 Hamilton

In 1990, Hamilton had a population of 7,280. It is about 25 miles northeast of Boston. Hamilton's neighbors Topsfield and Wenham are both known for their exclusive neighborhoods. With a 2-acre zoning law, Hamilton also has strict zoning requirements. In

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23 Zoning Enabling Act, Section 9-1.
1989, Hamilton had a median household income of $52,083 (Hamilton Housing Authority Data). The median housing price was $221,200 in 1990. The owner-occupied units consist of 80.6% of the 2635 housing units. Hamilton had 80.4% families out of the total households. The total number of single-unit housing structure out of the total housing units was 84.9%. In the Fall of 1988, both Topsfield and Hamilton were placed under Executive Order 215 because of their unwillingness to provide affordable housing. EOCD's count of Hamilton's subsidized housing inventory on January 1, 1990 was 2.1%.

Asbury Woods

In 1988, a town developer, Paul Ricker, purchased land in the older part of Hamilton and decided to build affordable housing units on the lots. The market situation was not suitable for the construction of large-lot housing; Mr. Ricker wanted to build affordable housing which, with a higher number of density, would reduce the adverse effects of exclusionary zoning. The minimum lot area of 80,000 sq. ft. requirement in the Groundwater Protection Overlay District was reduced by the Zoning Board to 8,000 sq. ft after the Town and the developers' engineers agreed that the effluent discharge from the increased density will be insignificant to the project. Asbury Woods would become the first affordable housing project for families in the Town of Hamilton. The Board of Selectmen approved the project because "the proposal is relatively modest in size, the site is well-located, environmental impacts
appear controllable thus far, and design is compatible with the existing neighborhood."^{24}

Besides a letter of support from the local housing partnership, the town also provided assistance in the following: the Planning Board staff helped to organize for the lottery; the Planning Board devoted staff time to Housing Partnership; assistance was provided in the comprehensive permit process and the issuance of the permit; waiving many LIP application/filing fees for the affordable units; granting variances and waivers from local development regulations; and applying MAP grant to provide consulting assistance to facilitate the project.\(^25\)

The project proceeded with the full support of the local government, except that the Board of Health and the Conservation Commission required the developer to provide detailed studies of drainage and septic designs. The Board of Health was especially concerned that the process eliminated the usual subdivision review, which gave the Board of Health the opportunity to examine calculations for each lot's septic system and site drainage. The applicant preferred to do detailed designs and submit studies after the approval of the comprehensive permit. According to Mr. Ricker, the developer bears more financial risk if costs for such studies are incurred before there is some assurance that the overall concept will be approved.

The Hamilton Board of Health (BOH) will not endorse the 23-lot plan until the Board is convinced that the 23 lots are feasible.

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^{25} Local Initiative Program Application to EOCD.
According to a memo to the Zoning Board of Appeals, the BOH delayed its recommendation to the ZBA until all health, and environmental concerns are cleared. The legitimate concerns in the Town's development projects are reflected by the care with which procedures have been followed. Their persistent actions can be interpreted as a concern to be careful about the project, not a threat to block the project. However, because of the persistence of the BOH, it took about eight months for the developer to receive the comprehensive permit. The permit was received in February 1991, and a LIP application to the EOCD was filed some months later. The project is currently under construction.

4.5 Waltham

Waltham has a population of roughly 57,878. The percentage of families in a total households of 228,464 is 50%. Out of the 250,863 total housing units, 31% are owner-occupied. In 1990, Waltham had a median housing price of $191,100. The proximity to Boston (10 miles west of Boston) is ideal for short commutes to Boston. Its accessibility to Routes 60, 117, and 128 are attractions for those who work along route 128. The total land area of Waltham is 13.52 square miles. Its 21,224 housing units make Waltham's population density one of the highest in the state. Waltham has a density of 4663.82 persons/sq mile compared to the States' density.

of 777.62 and Boston's population density of 11,859 persons/sq. mile.27

With its residential density, Waltham does not connote the zoning exclusiveness of its neighbors Lexington and Weston. Part of the reason that Waltham is so densely populated may be that Waltham has 1,700 firms, employing many commuters. The concentration of high-tech companies such as Polaroid, Hewlett-Packard, Raytheon, and G.T.E. has earned the area the title "Heartland of Industry and Electronics."28 In 1983, more than 34% of Waltham's workforce was employed in the manufacturing and business services sectors, compared to 10% of metropolitan Boston's workforce employed in the electric and electronic equipment and business services sectors.

Selection of Site--South Street

Because of its central location to the high-tech companies, the mid-1980s, a boom time for high-tech, brought many workers to Waltham. This created a large demand for houses and apartments. In addition, the students from Bentley and Brandeis Colleges also competed for apartments in the City. Janet Barry, Housing Specialist in Waltham's Housing Department, stated that in the mid-to late-1980s, Waltham had a housing vacancy rate of zero.29 Because of these conditions in 1986 the Mayor directed the City to

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27 From Miser, 1990 U. S. Census, and the Massachusetts Department of Revenue, Division of Local Services, Municipal Demographic Profile, 1990.
29 Interview with Janet Barry.
identify city-owned sites on which affordable housing units could be built.

Both the Law Department and the Waltham Housing Partnership assisted in finding an appropriate locus for the building of affordable housing. In the preliminary planning process, the city considered many possible lots with regard to title clearance, environmental regulations, and health hazards. The South Street site was identified as a result of a review by the city government of its inventory of City-owned land suitable for affordable housing development. The City of Waltham will donate the land at no cost in order to develop affordable housing. The South Street locus was chosen for the following reasons:

1. It lacks neighbors. The closest buildings are 140 ft. away and 50 ft. away (interview with Barry). The Beth Israel Memorial Cemetery abuts the site to the east and the Waltham-Weston Hospital is located immediately to the east of the cemetery. The Waltham Housing Authority is to the north. The Brandeis University university dormitories and outdoor recreational facilities adjoin the site on the west. This isolation reduced the possibility for neighborhood opposition.

2. Boston is accessible via bus or commuter trains.

3. Waltham has clear title to the site, reducing the legal procedures for title clearance.

4. The site is clear of major ledge or rocks that would have to be removed.

The City's contribution came in several forms: land donation, density increase, waiver of permit fees, and work by local staff. In
addition, after the negotiations with Waltham Hospital, the Waltham Housing Authority donated surplus land in addition to the City's parcel.

A Request for Developer Proposal with the purpose of selecting a proposal which is "responsive to the development guidelines will have the ready support of all levels of municipal decision-making and can expect minimal delays in moving forward." Stockard and Engler, Inc., and Paino Associates were selected to be the development team.

With the MHP grants of MAP and Challenge, the City retained planning consultants to complete a review of the site's feasibility for affordable housing development.

Current Status of the Project

A few weeks after a comprehensive permit was approved, the local conservation commission's order of project approval was overturned by the State Department of Environmental Protection (DEP). The state agency redefined one part of the subdivision to be bordering vegetated wetland which implied the loss of some land if the project were to proceed as designed. Because the DEP could supersede local conservation commission decisions, the decision of the DEP will remain in force until an appeal from the developer is heard.

30 Request for Developer Proposal, Mayor Stanley, letter of introduction.
The project has been redesigned so that the number of market-rate units is reduced by two while the number of affordable units is kept the same at 13 units\textsuperscript{31}.

\textsuperscript{31} Phone interview with Mr. Engler, April 1992.
<table>
<thead>
<tr>
<th>Project Type</th>
<th>Andrew Farms</th>
<th>Sudbury Park</th>
<th>Elmwoods Heights</th>
<th>Asbury Wood South Street</th>
<th>Boxford</th>
<th>Ashland</th>
<th>Millbury</th>
<th>Hamilton</th>
<th>Walthm</th>
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</thead>
<tbody>
<tr>
<td>SF-detached</td>
<td>SF-detached</td>
<td>SF-attached</td>
<td>SF-detached</td>
<td>SF-detached</td>
<td>60 units w/15 affordable</td>
<td>26 units w/10 affordable</td>
<td>24 units w/8 affordable</td>
<td>23 units + 1 affordable existing/6 aff.</td>
<td>32 units/13 afford.</td>
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<td>Steve Kerlin, Director of Planning</td>
<td>Dave Hulseberg, Director of Planning</td>
<td>Candace Wheeler, Planning Coordinator</td>
<td>Janet Barry, Housing Specialist</td>
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<td>Developer or Town-Initiated</td>
<td>Developer</td>
<td>Town's Sale of Land</td>
<td>Developer</td>
<td>Developer</td>
<td>City's Sale of Land</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Local Housing Partnership Formed?</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
<td></td>
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<tr>
<td>Previous Program(s) Considered</td>
<td>HOP/774</td>
<td>HOP/774</td>
<td>HOP</td>
<td>HOP/774</td>
<td>HOP/774</td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Time Elapsed after LIP for Permit Approval</td>
<td>Comp Prmtn rec'd before LIP</td>
<td>3 months</td>
<td>Spol Prmtn and Comp Prmtn Issued before LIP</td>
<td>Comp Prmtn rec'd before LIP</td>
<td>8 months</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Issues Encountered in Comp. Prmtn Approval</td>
<td>Two lawsuits from abutters</td>
<td>None.</td>
<td>Change in project design</td>
<td>Compliance with Health Authority's add'l studies</td>
<td>After Prmtn: DEP's definit. vegetated wetland</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Current Status</td>
<td>Under construction</td>
<td>Scheduled to begin in May 1992</td>
<td>Building the last 2 units. Occupied</td>
<td>Under Construction some units occupied</td>
<td>Pending: redesign of project &amp; Appeal to DEP</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
CHAPTER FIVE: CONCLUSIONS

From the cases, what can be summarized about the LIP as a regulatory tool to provide affordable housing? Is LIP responsible for the municipalities' greater willingness to have affordable housing projects, or are there other factors?

5.1 LIP as a Regulatory Tool

LIP has the necessary ingredients to make it a successful program for the construction of low and moderate income housing. The administrative changes under Chapter 774 resulting from the local dissatisfactions of the hostile Chapter 774 process addressed most concerns from municipalities. The necessary compromise between the Commonwealth and the cities and towns virtually guaranteed the success of the LIP upon its promulgation. Among the amendments, three factors can be identified as contributing to the greater acceptance of the LIP by communities: the construing of unrelated internal subsidy as meeting the definition of "subsidized low and moderate income housing"; density override; and utilization of a friendly process.

The non-financial subsidies from a municipality's site evaluation or the conveyance of public land to developers provided flexibility in building affordable housing. The relaxation in the language of the law for meeting the regulatory threshold enabled the developers to use the Local Initiative Program. This provision also encouraged other means such as the Sale of Public Land to build low
and moderate income housing to expand affordable housing level in some municipalities.

Without state funding, LIP encourages municipalities to design and implement new housing programs. For example, LIP has a local initiated units which recognizes municipal actions without the use of comprehensive permits. Provisions such as rezoning, or fund-raising should be encouraged to expand the repertoire of municipal tools in which to aid housing production.

The cases demonstrated that a major zoning relief sought by developers is the density override. The ease with which the comprehensive permit provides for the zoning relief and other variances allowed the developers to singly use the LIP in getting their projects approved. In the case of Waltham, an exception was required from Waltham's Zoning Ordinance, Article 3.4 to permit multifamily housing in the South Street locus. Boxford, having a 2-acre lot zoning regulation, supported a maximum of four dwelling units per buildable acre for the Andrew Farms project. In addition, the town also waived some health requirements associated with an increase in density. Combined with non-financial subsidies, the density override encouraged the adoption of LIP by communities.

Another provision which the developers used to build housing was the utilization of a friendly process. The joint effort of the town and the developer is shown in the cases of Hamilton, Millbury and Boxford, where comprehensive permits were issued before the LIP applications were filed at the EOCD. In Waltham, for example, besides the land donation, the density increase, comprehensive permit fee waiver, and the town officials' time all counted toward
the community support of the project in meeting regulatory relief of subsidized housing.

LIP is a process which gave affordable housing building a legal standing in the comprehensive permit process. The LIP cases also reveal the extent in which the municipalities want to see affordable housing built: Towns will work with developers to come up with funding if they want the project done; this is commonly accomplished by the overriding of the density regulation. In addition, towns and developers often reach an agreement regarding the number of affordable units so as to ensure that the project is feasible. Local officials typically asked for a higher number of affordable units. However, as the state funding slowly disappeared, the local government negotiated with the developers so that a reduced level meeting the minimum percentage of housing can still be maintained.

5.2 Other Considerations

The implementation of the Local Initiative Program has had support from the local government. While this could be credited to the Program which allow communities greater control of the projects, this phenomenon can be better explained by the transitional nature of the LIP. Municipalities currently see the LIP as a "substitute" for the previous HOP/774 combined programs. This may be a way to establish the LIP and to have the program be recognized by municipalities initially; however, with time, the LIP
would distinguish itself from the previous comprehensive permit approach and be adopted in more development projects.

Another consideration which may concern the time involved in obtaining the comprehensive permit process is the changes in the tribunal structure under LIP. More developer and local governments will probably use LIP, and will not likely to encounter oppositions from Town Officials. The project oppositions, if unrelated to the conditions cited by ZBA's permit approval, will have to be settled either in Land Court or State's Superior Court—both courts typically take more time to resolve the disputes. As a result, this may add uncertainty and risks to the development process.

Currently, the lower construction costs, favorable interest rate, and the supportive attitudes of many towns to build affordable housing all point to the likelihood of increased adoption of the comprehensive permits process. LIP has the necessary market and legislative potential to be widely-used. The combination of the local subsidies and the relaxation of regulations from the State provide opportunities to the communities that are supporting low and moderate housing to better plan for their short- and long-term needs. The result of the community-supported, friendly comprehensive permit process benefits those who need the low and moderate income housing in the near future.
APPENDIX 1
### Appendix I: Qualifying Income for Various Housing Costs

**Assumptions:**

**Financing Costs:**
- Interest Rate: 7%
- Loan Term (years): 30
- Down Payment: 10%

**Cost Variables:**
- Mortgage Insurance: 0.40%
- Hazard Insurance: 0.50%
- Real Estate Tax: 1.10%

**Other Fixed Debt Payments:**
- Car Payment: 0.80%
- Child Care: 0.90%
- Furniture: 0.20%

**Debt/Income Ratios:**

- a. Housing Costs/Income Ratio: 30%
- b. Total Long term Debt/Income: 36%

<table>
<thead>
<tr>
<th>Housing Costs</th>
<th>a. Pmt Limit on Basic Cost</th>
<th>b. Pmt Limit on All Debt</th>
<th>Qualify. Income</th>
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<tbody>
<tr>
<td>$150,000</td>
<td>$14,360</td>
<td>$15,220</td>
<td>$42,278</td>
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<td>$160,000</td>
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<td>$180,000</td>
<td>$17,233</td>
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<td>$18,190</td>
<td>$19,279</td>
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<td>$300,000</td>
<td>$28,721</td>
<td>$30,440</td>
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Boxford: $320,700 | $30,703 | $32,540 | $90,390
Ashland: $167,800 | $16,065 | $17,026 | $47,295
Millbury: $134,600 | $12,886 | $13,657 | $37,937
Hamilton: $221,200 | $21,177 | $22,444 | $62,345
Waltham: $191,100 | $18,295 | $19,390 | $53,862

Source: Author's Calculations.
ARTICLES AND REPORTS


Ruben, Elisabeth A., and Williams, Constance, Comprehensive Permits for Housing Lower Income Households in Massachusetts, Citizens Housing and Planning Associations, Boston, Massachusetts, Boston, December 1979.

EOCD, Executive Order 215 Community Status Report, Fall 1988.

EOCD, 1990 Subsidized Housing Inventory, April 30, 1990.


Dabilis, Andrew, "Many Communities Lag on Affordable Housing," The Boston Globe, Metro/Region Section, November 15, 1988.

DOCUMENTS


Massachusetts Housing Partnership, "Questions and Answers About the Comprehensive Permit Process," prepared by Stockard and Engler, Inc.


EOCD, Local Initiative Program, Application and Overview, January 1992."

EOCD, Model Local Rules, Comprehensive Permit Rules of the Zoning Board of Appeals, Prepared by The Housing Appeals Committee, October 1, 1990.

INTERVIEWS

Murray Corman, Chairman, Massachusetts Housing Appeals Committee, March 1992.


Lionel Julio, Private Housing Department, Executive Office of Communities and Development, March and April, 1992.


Former Representative August Grace, March 18, 1992.

CASES:

BOXFORD: Andrew Farms

Town of Boxford, Notice of Decision on Comprehensive Permit, Board of Appeals, February 5, 1990.

Interview with Mr. Conn, Developer, March and April, 1992.

Interview with Audrey Romaesco, March, 1992.

Letter from EOCD to Boxford Board of Selectmen, March 20, 1991.

ASHLAND: Sudbury Park


Interview with Steve Kerlin, Town Planner, February, 1992.


MILLBURY: Elmwood Heights

Town of Millbury, Notice of Comprehensive Permit, Board of Appeals, December 3, 1990.


Application for a Special Permit, July 9, 1987.

Interview with Dave Hulseberg, Town Planner, March 26, 1992.

HAMILTON: Asbury Woods


Hamilton Local Initiative Program Application, April 1991.

Interview with Candace Wheeler, February and March, 1992.


WALTHAM: South Street


Request for Developer Proposal, City of Waltham, August, 1990.

City of Waltham, Housing Partnership Committee, Housing Information Package.

Interview with Mr. Engler, Stockard and Engler, Inc., February and March, 1992.

Interview with Janet Barry, Housing Specialist, City of Waltham, March and April, 1992.