

MIT Report: Many Chapter 40B Projects Aren't Being Built

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Reporter

Developers seeking permits to build mixed-income housing under the state's controversial anti-snob zoning law are finding ways to work with towns and win approval in most cases. But even though permits are issued, a substantial number of projects aren't being built because of abutter lawsuits and other challenges, according to a new study by the MIT Center for Real Estate.

The study, scheduled to be released today, found that almost 90 percent of developers applying for a comprehensive permit under Chapter 40B in Greater Boston between 1999 and 2005 ultimately received a permit. But just 55 percent had secured building permits by this year's first quarter.

In addition, the study, which traced the fate of 369 applications in 95 cities and towns, shows that developers appealed about one-quarter of permit applications to an administrative court. Developers who are denied a permit, or granted a permit with conditions with which they disagree, can appeal to the Housing Appeals Committee.

Developers appealed 26 percent of applications to the HAC, according to the study, challenging a widely held belief that developers and towns are battling against each other in court over Chapter 40B housing proposals.

Lynn Fisher, a report author and assistant professor of real estate at MIT, said that finding might surprise many observers who believe a large number of permit applications end up at the HAC. "In talking to people about 40B, everyone talks about how contentious it is between developers and towns," she said.

Chapter 40B allows developers to override local zoning in exchange for setting aside 25 percent of a project's units for lower-income households.

Fischer said one reason 40B projects aren't being built is because they are being held up by lawsuits from abutters, conservation groups and other parties.

"I think people aren't aware of the way abutter appeals fit into this. They fit in at the bottom, after the whole process has run its course as its supposed to," said Henry Pollakowski, director of the Housing Affordability Initiative at the MIT Center for Real Estate.

Pollakowski said Chapter 40B has become the prime vehicle for building multifamily housing in suburban communities. That's because most of the suburban communities in Greater Boston zone for single-family housing on large lots. Less than 1 percent of the land in 144 cities and towns in Greater Boston is zoned for multifamily housing, he noted.

"It's striking how few people realize that 40B is responsible for a very large share of the multifamily housing that gets built in the suburbs," he said.

Fisher said that some developers of projects, particularly those that have been proposed in the last few years, may be holding off on obtaining building permits because of the softening housing market. But Fisher noted that only a small number, 24 percent, of projects that received a permit but haven't yet been built received a permit in the last three years.

A report released in April showed that the number of Chapter 40B proposals has dropped off largely because of the slowing real estate market.

Chapter 40B has drawn criticism from some community leaders and politicians who say developers are abusing

the law to build overly dense projects that strain local resources and don't fit into communities. Controversy also has centered on developer profits.

Massachusetts Inspector General Gregory Sullivan initiated an ongoing investigation of 40B projects last year and his office found that a handful of developers inflated expenses and reaped profits that should have been returned to communities.

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