
3. Boston's Development Process

Boston's Development Process

As a City that relies on the property tax for two-thirds of its operating revenue and depends on its property tax revenue to increase by more than 2.5% each year to fund its operating budget growth, Boston requires a steady flow of new development to maintain its fiscal health, balance its budget, provide basic services and finance any new initiatives. New business development, especially for commercial development in the high-value urban core and now the Seaport District, is most beneficial to the City in terms of revenue generation. Business properties also impose less of a cost burden on their requirements for city services, thus providing a cross-subsidy to the neighborhoods of the City.

Boston's approach to development, along with disciplined financial management, plays a critical role in maintaining the City's fiscal health as the demands on city services increase and unfunded liabilities are addressed. Important to development success in Boston are policies regarding the operation of the Boston Redevelopment Authority (BRA) and refinements to the City's Zoning Code. These policies, which include real estate tax incentives, development exactions, and mitigation review, have and will continue to affect the growth of new development projects in Boston. This section provides an overview of the development process, including the history and authority of the BRA, Zoning Process, key policies of the City and the role of city Departments and Commissions in the development process.

The Boston Redevelopment Authority

The Boston Redevelopment Authority (BRA) was created in 1957 to oversee urban renewal projects in Boston (M.G.L. c. 121 §26QQ). In 1960, the BRA's responsibilities grew to include the redevelopment powers formerly

conferred on the Boston Housing Authority and the function of the Boston Planning Board. In 1993, the BRA administratively merged with the Economic Development and Industrial Corporation of the City of Boston, which was created in 1971 under Chapter 121C to implement local economic development plans and projects. Consequently, the BRA has become the agency responsible for most of the City's planning, zoning, and economic development.

As the City's planning agency, the BRA is responsible for the City's ongoing comprehensive rezoning effort. BRA staff members conduct special planning studies and solicit community involvement. Following this, the BRA Board may petition the Boston Zoning Commission to adopt new neighborhood zoning districts, special overlay districts or other zoning amendments.

The BRA also reviews large and complex development projects. Under Article 80 of the Boston Zoning Code, the BRA is responsible for comprehensive review of all development projects over 20,000 square feet or containing 15 or more units. The BRA conducts design, impact, and zoning review; coordinates the public comment and review processes; and enters into Cooperation, Affordable Housing, and other regulatory agreements with developers. Finally, the BRA makes recommendations to the Boston Board of Appeal, which issues conditional use permits, variances, and other zoning relief.

Finally, as the City's urban renewal and economic development authority, the BRA is responsible for guiding real estate and business development throughout the City. This function is achieved in a number of ways. The BRA guides development through its urban renewal powers granted under M.G.L. Chapters 121A and 121B. Chapter 121A may

provide tax incentives for redevelopment of substandard areas by private developers. Similarly, Chapter 121B grants the BRA power to administer urban renewal plans and develop properties throughout the City (MGL c. 121B, §§46–48). Further, Section 46(f) of Chapter 121B grants the BRA authority to exercise urban renewal authority independent of an urban renewal plan or project. urban renewal powers also enable the BRA to facilitate development through eminent domain and land disposition.

The Boston Zoning Code

In 1956, the Massachusetts legislature passed the Zoning Enabling Act in an effort to attract new development and capital investment in the City and keep pace with changing metropolitan growth trends (Chapter 665 of the Acts of 1956). The Enabling Act gives the Boston Zoning Commission authority to adopt and amend zoning regulations for the City of Boston. The Zoning Commission comprises 11 members, appointed by the Mayor and nominated by specified organizations representing architects, builders, labor unions and residential neighborhood organizations. In 1963, the Zoning Commission adopted the collection of zoning regulations now known as the Boston Zoning Code.

At the time of the enactment of the Zoning Code in 1963, the City's economy was largely manufacturing and saw little demand for development or expansion. By the mid 1980s, however, the City had experienced a boom in the commercial, service, technology, medical and academic sectors. This increase led to real estate development of institutional and commercial spaces, particularly in the downtown core of the Financial District and Back Bay. The growth of these industries, and the decline of the manufacturing base, led to an influx of professionals and high technology

Elements of the Flynn Administration's Comprehensive Rezoning Plan

- 1) Rezoning the entire City
- 2) Increasing citizen participation in planning and development
- 3) Tougher downtown development restrictions
- 4) The creation of targeted development areas
- 5) Expansion of the linkage program relating development to housing and job production
- 6) Incentives for housing production
- 7) Measures to preserve and improve open space
- 8) Preservation of about 255 buildings
- 9) Improvement of the City's transportation facilities.

work forces and a demand for housing development downtown.

The widespread boom in housing and commercial development created concerns about its impact to Boston's neighborhoods, historic resources and public space and as to whether the 1964 Zoning Code was too outdated to deal with these impacts. In response to these concerns, in June 1985, the Flynn Administration announced a comprehensive growth management plan to regulate new development. Among other initiatives, the plan called for a rezoning of the entire City and expansion of citizen participation in the development process. Shortly thereafter, the Boston Redevelopment Authority and the Zoning Commission began a comprehensive rezoning effort.

From the mid-1980s through present day, sections of the City have been rezoned with district-specific zoning regulations. These districts are often further amended in response to planning initiatives or to drive development.

Comprehensive Rezoning Since the mid-1980s, the BRA and the Zoning Commission have been engaged in an effort to rezone the City's neighborhoods. As part of the rezoning effort, the BRA and Zoning Commission create customized zoning articles and amendments to reflect and preserve the character of Boston's many neighborhood and geographical areas. The current Boston Zoning Code contains both the new provisions adopted in the rezoning process and the earlier portions of the Zoning Code affecting areas that have not yet been rezoned, known as the "base code".

New district regulations have been adopted for the City's downtown and waterfront areas and for most of the neighborhoods. Planning is underway or anticipated for rezoning the remaining neighborhoods. Since 1989, and as of the time of this writing, approximately 90% of the land area of the City has been rezoned.

The rezoning process takes approximately four years per district. A planning representative from the BRA is assigned a neighborhood or area undergoing rezoning, who then meets with the local neighborhood group and makes recommendations about zoning and mapping to the BRA Board. The Board then reviews the recommendation and, if approved, submits them to the Zoning Commission. The Zoning Commission then holds public hearing to make a final decision.

Each new district is recorded as a separate article in the Zoning Code. Volume II (Articles 38 through 49) and Volume III (Articles 50 through 73) of the Code comprise the district zoning articles for the Downtown and Neighborhood districts, respectively. These district articles are frequently amended by the Zoning Commission. Amendments can be citywide zoning changes, i.e. permitting a newly legalized use, or district/sub-district specific, i.e. modifying height and density requirements in a district/sub-district to spur development.

Interim Planning Overlay Districts (IPODs)

To prevent harmful development from occurring during the rezoning process, the BRA and Zoning Commission create interim planning overlay districts (IPODs). IPODs control zoning until the rezoning process is complete. They protect neighborhoods from inappropriate development during the planning process and until permanent zoning regulations can be prepared and adopted. IPODs require that all new development meeting specific thresholds, obtain an IPOD permit from the Zoning Board of Appeal in order to conform with the standards, and provisions of the IPOD. IPODs are generally in effect for 36 months or until the adoption of new zoning regulations. However, the Downtown Boston IPOD has been extended by the Zoning Commission since its enactment in 1987.

Appendix E lists all of the Downtown and Neighborhood districts with dates of approval.

Strategic Planning The BRA also conducts planning initiatives, which often lead to zoning changes in specific areas within a district. To institute a planning initiative, the Mayor or BRA identifies an area that is poised for growth. The BRA planning staff, with community involvement, then formulate principles and strategies regarding land use, urban design, transportation, and economic development, including recommendations for new zoning text and map amendments. The BRA Board then adopts a final strategic plan incorporating these principles and strategies. The Process concludes with the Zoning Commission adopting zoning amendments based on the recommendations in the strategic plan.

For example, following three years of community planning, the BRA Board adopted the Harrison-Albany Corridor Strategic Plan in November 2011. The Boston Zoning Commission adopted amendments to Article 64, *South End Neighborhood District*, (the South End's zoning article and map) in January 2012 based on this plan. The plan modified zoning in the section of the South End from the Massachusetts Turnpike to Massachusetts Avenue, between Harrison Avenue and Albany Street, to raise the height limit and called for infrastructure investment to rebuild pedestrian ways. The initiative contributed to new development plans in this area totaling approximately \$650 million for rental apartments, condominiums, commercial offices and retail space.

Public Involvement in the Zoning Process

The rezoning effort has proceeded incrementally and gradually to allow for extensive public participation in shaping the regulations. The Boston Zoning Code was amended in 1993 to make it easier for neighborhood residents to participate in the zoning process (Chapter 461 of the Acts of 1993). These amendments increased representation on the Zoning Commission and Board of Appeal and broadened public access to the process.

For example, the 1993 amendments required the Board of Appeal to schedule evening hearings when requested, and authorized the Board to continue hearings over several days to allow the appellant to meet with neighborhood organizations. The amendments also broadened the standing for private individuals to petition the Zoning Commission for zoning amendments. Under the amended provisions, any person who either resides in Boston or owns property in the City may petition the Zoning Commission to adopt an amendment to the Zoning Code. Formerly, such petitions could be brought only

by owners of property that would be affected by the proposed amendment. The amendments also made access to judicial review of Board of Appeal decisions more readily available.

To ensure that neighborhoods receive proper representation, each area subject to rezoning forms a Planning and Zoning Advisory Committee (PZAC). PZAC's are "any neighborhood-based committee appointed by the Mayor to render advice to neighborhood residents, the Mayor, city departments, and the Boston Redevelopment Authority regarding land use planning and zoning issues." (Zoning Code §2-36AA). PZACs are made up of residents and business leaders from a neighborhood.

Although responsibility for advising the City on new zoning and planning initiatives generally rests with a neighborhood's PZAC, other citizen's groups may serve in place of a PZAC in cases where there is already an existing group that can represent the interests of the neighborhood. For example, some neighborhoods may have existing Neighborhood Councils. Neighborhood Councils are citizens' groups, sometimes elected and sometimes appointed, that advise the Mayor and city departments on any issue of municipal concern.

Article 80 Development Review Process

In addition to the comprehensive rezoning effort, the Zoning Commission addressed citizen concerns throughout the development cycles of the 1980s by establishing issue-specific development review requirements in the Code. Over time, these development review procedures became redundant and confusing.

In response to this, in 1992, then-Mayor Raymond Flynn appointed a commission to

Types of Impacts and the BRA requirements under Large Project Review

- 1) **Transportation impact:** Transportation Access Plan to analyze the projects impact on the area's transportation network and parking supply, both during and after construction.
- 2) **Environmental impact:** Studies to determine the projects impact on wind, shadow, solar glare, air and water quality, effect on groundwater levels, relationship to wetlands, flood hazards, geological impacts, solid and hazardous waste, noise levels, construction impact and compliance with "green building" energy and design standards.
- 3) **Urban design impact:** Studies as to whether the project is architecturally compatible with surrounding structures, exhibits an architectural concept that enhances the urban design features of the area, augments the quality of the pedestrian environment and is consistent with the urban design guidelines established by the zoning for the projects location.
- 4) **Historic impact:** Analysis of a project's impacts on historical, architectural, archaeological or cultural resources of a district, site, building or structure listed in the State Register of Historic Places.
- 5) **Infrastructure systems impact:** Projections of the projects expected water and energy consumption and sewage usage along with the expected impacts on the capacity of water, sewer and energy infrastructure systems in place at the project site.

review the City's development process. This commission, known as the Walsh Commission, recommended a new zoning article to streamline the development review process.

Article 80, *Development Review and Approval*, was passed in 1996 under Mayor Thomas Menino "to provide clear, predictable, and unified requirements for the review of development projects throughout the City." The article consolidated a number of requirements for BRA and other agency review of real estate development and eliminated conflicting or unnecessary steps.

Four Types of Article 80 Project Review

Article 80 provides for two project impact reviews and two long-term planning reviews. Large Project Review and Small Project Review are project impact reviews and apply to individual projects of 20,000 or more square feet or 15 or more units. Planned Development Area Review and Institutional Master Plan Review are long-term plan reviews,

which include approval of comprehensive plans and zoning amendments. Projects may or may not be subject to both an impact review and a plan review before final approval. How the review process is managed and how many development exactions are imposed can have a real influence on the timeline for a project to receive final approval and on the ultimate feasibility of the proposed development.

1) **Large Project Review** applies generally to new development projects of 50,000 or more square feet, or rehabilitation projects of 100,000 or more square feet (Zoning Code §80B-2). The review process requires a developer to examine many different impacts of a proposed project and work with the BRA to mitigate those impacts. These impacts include impacts on traffic and parking, the environment, urban design, historic districts and structures, and water, sewer, electricity and other infrastructure.

The Large Project Review consists of four main stages: 1) Project Notification and Scoping Determination; 2) Draft Project Impact Report

and Preliminary Adequacy Determination; 3) Final Project Impact Report and Final Adequacy Determination; and 4) Certification and Implementation (Zoning Code §80B-5).

Article 80 encourages applicants to request a pre-review planning meeting with BRA staff members to discuss issues that may be raised by the proposed project. In the case of certain affordable housing or industrial projects, the BRA may determine that the proposed project qualifies for a waiver under Zoning Code §80B-2 and recommend that the BRA Board grant a waiver of the Article 80 process. Assuming the project is not subject to such a waiver, the project proponent will submit a Letter of Intent outlining the basic features of a project so that the BRA may begin to assemble groups for the review process.

Next, to initiate the Article 80 review process, a proponent will submit a Project Notification Form (PNF), which summarizes the project proposal. Upon its receipt, the BRA will publish notice of the PNF and initiate a 30-day development review/public comment phase. Within 5 days, the BRA will also forward the PNF to various city agencies for review, including the Boston Civic Design Commission (BCDC) if the project falls under BCDC jurisdiction.

During the development review/public comment phase, the developer receives comments from BRA staff members at BRA review meetings, and from public agencies at a city scoping session. The BRA must also hold a mandatory public meeting, after which the public is encouraged to submit written comments.

At the BRA review meetings, BRA staff members give direction to the project proponent on the urban design and planning elements of a project. At the city scoping session a project proponent presents the project to representatives of the City of

Article 80 Review, Step-By-Step

- 1) Pre-review Meeting with BRA Staff (Optional)
- 2) Proponent issues Letter of Intent
- 3) Proponent files PNF; BRA publishes notice
- 4) 30-day Development Review/Public Comment Period
- 5) Scoping Determination within 45 Days after PNF Filed—*Possible waiver of steps 6-10.*
- 6) If no waiver: Proponent files DPIR; BRA publishes notice
- 7) Public Comment Period for 30, 45 or 75 days
- 8) BRA issues Preliminary Adequacy Determination within 15 days of end of Public Comment Period—*Possible waiver of steps 9-10.*
- 9) If no waiver: Proponent issues FPIR; BRA publishes notice
- 10) Public Comment Period for 30, 45 or 75 days
- 11) BRA Board holds public meeting and votes on Final Adequacy Determination within 15 days of end of Public Comment Period
- 12) Applicant enters into cooperation agreement and other regulatory agreements to implement mitigation commitments and other obligations of FPIR .
- 13) BRA issues Certification of Compliance.

Boston's public agencies, who ask questions and make recommendations. These agencies include the Boston Redevelopment Authority, Transportation Department, Environment Department, Landmarks Commission, Parks and Recreation Department, Public Works Department and a group of nominated neighborhood representatives known as an Impact Advisory Group (IAG). Further, during the development review phase, the BRA posts the PNF on its website and solicits comments on the project from the public.

Within 45 days of the filing of the PNF, the BRA will issue a Scoping Determination based on the PNF and on comments from the public, BRA staff members and city agencies. The Scoping Determination may waive the remainder of the Article 80 process or may require further review. In either case, the Scoping Determination may also include conditions for the mitigation of project impacts.

If the BRA determines that the PNF, together with any additional materials and comments received by the BRA, adequately describes the project's impacts, the Scoping Determination may recommend that the BRA Board waive further review and issue a Final Adequacy Determination. Prior to issuing such a determination, the BRA Board must provide public notice and allow for a 14-day public comment period. The BRA may attach mitigation conditions to this determination.

If the BRA deems that the project needs further review, the Scoping Determination may require the developer to modify the project's size, mass or design and prepare a Draft Project Impact Report (DPIR).

A DPIR presents technical analyses of project impacts in the areas identified by the Scoping Determination. Upon its receipt, the BRA will publish notice of the DPIR and take written comments from the public and public agencies. In response to this report, the BRA issues a Preliminary Adequacy Determination, which evaluates the DPIR against the Scoping Determination. The schedule for issuance of the Preliminary Adequacy Determination varies from 45 days to 90 days depending on the project's size and location. The public review period runs until 15 days before the Preliminary Adequacy Determination is due.

The Preliminary Adequacy Determination may reach one of two conclusions. If the BRA determines that the DPIR meets all of the

requirements of the Scoping Determination, the Preliminary Adequacy Determination may recommend that the BRA Board waive further review and issue a Final Adequacy Determination. As is the case with waiver by the Scoping Determination, a waiver at this stage may attach mitigations conditions, requires a 14-day public comment period, and is subject to approval by a vote of the BRA Board.

Alternatively, the Preliminary Adequacy Determination may require that the applicant submit a Final Project Impact Report (FPIR), which presents the technical analyses of project impacts in the areas identified by the Scoping and Preliminary Adequacy Determinations. The BRA will publish notice of the FPIR and hold a public meeting, or a public hearing if the project is subject to Development Impact Project exactions.

If BRA staff members approve of the FPIR, they will recommend that the BRA Board vote to issue a Final Adequacy Determination. (Zoning Code § 80B-5.5). The schedule for issuing the Final Adequacy Determination is the same as that for issuing the Preliminary Adequacy Determination. If the BRA Staff disapproves the FPIR, the applicant may submit a revised FPIR for review. The revised FPIR receives the same review as an original FPIR.

When authorizing a Final Adequacy Determination, the BRA Board will grant the Director authority to enter into a Cooperation Agreement with the developer and any other agreements necessary to enforce the mitigation measures outlined in the FPIR. The Cooperation Agreement may incorporate the terms of any other agreements that the developer may be required to enter into. The Cooperation Agreement either includes the Transportation Department as a party, or requires the Applicant to execute a separate agreement with the Transportation

Department, to ensure continued compliance with transportation provisions as specified in the FPIR. This agreement is known as a Transportation Access Plan Agreement (TAPA).

Upon satisfactory performance of its obligations under the terms of the Cooperation Agreement and any other agreements executed by the developer and the BRA, the Director of the BRA will issue a Certificate of Compliance to the developer. Once in possession of this certificate, the developer may apply for a building permit with the Commissioner of Inspectional Services.

2) Small Project Review applies to minor projects in Boston, defined by the BRA as projects that add between 20,000 and 49,999 square feet of gross floor area or result in the construction of fifteen or more new residential units. The purpose of Small Project Review is to provide a concise procedure for reviewing the design of projects that do not require Large Project Review but that can be expected to affect the surrounding area and public realm because of their size. Many of the requirements set forth by the BRA for small project approval are not taken from Article 80. Rather, the BRA has gone above and beyond the text of Article 80 to increase transparency and regulatory control in the development of small projects.

Small Project Review determines whether a project is consistent with the design guidelines and site plan standards established for the project location and for the City as a whole (Zoning Code § 80E-1). Unlike Large Project Review, the BRA does not require that a proponent of a small project file a Letter of Intent and there is no scoping session to determine project impacts.

Rather, a proponent of a small development project files an application similar to a Project Notification Form. Following this, the BRA

What is PDA Eligibility?

The maps contained in the Zoning Code designate certain areas that the BRA deems able to accommodate more massing or height as PDA-eligible areas. These areas tend to be in the urban core of the City, but can be located anywhere that the Zoning Commission seeks to establish a more flexible zoning law and encourage large-scale private development. If a proposed project is not located on a PDA-eligible site, the developer may petition the Zoning Commission to make a map and text amendment to create a PDA-eligible area. This would require public notice and a hearing before the Zoning Commission prior to the PDA review process beginning.

elicits comments during a 30-day comment period on the project design from city agencies and the public. After 30 days, the BRA will either grant a certificate of approval, or signify design components that must be modified by the developer for approval.

3) Planned Development Area (PDA) Review allows for the creation of special purpose zoning overlay districts based on comprehensive plans for major projects. (Zoning Code § 3-1A). PDA planning allows for zoning relief for large phased projects without requiring piecemeal review. To do this, PDA development plans create new zoning regulations for land within a specified area and describe all projects that may be built within that area both now and in the future. PDA development plans require that a project area be at least one acre in size and be located in a “PDA-eligible” area.

PDA Review is required to establish a PDA, if a project described in a PDA is changed, or if a project is added to a PDA plan. To initiate the PDA review process, a PDA proponent files a development plan application with the BRA. After such a filing, the BRA publishes notice

and circulates the application to city agencies, initiating a 30-day public comment window.

Once the BRA has assessed the application and received public comments, the BRA Board holds a public hearing to consider and vote on the development plan. If the Board determines that the application adequately articulates the proposed concept, and such a plan will not be “injurious to the neighborhood or otherwise detrimental to the public welfare,” it will approve the plan.

Subsequent to approving a PDA development, the BRA will recommend that the Zoning Commission adopt the plan and an accompanying special purposes overlay district for the project area. These districts specify special zoning controls for the project, which may deviate from the general zoning in terms of use, dimensions and parking. The Zoning Commission will hold a public hearing, after giving 20 days notice, and vote on the plan and overlay district. If approved by both the BRA and the Zoning Commission, the development plan and accompanying overlay district go to the Mayor for approval.

In addition to recommending special overlay zoning, a PDA development plan outlines the location, density, dimensions, appearance, types of use, open spaces, landscaping, traffic, and public transportation factors for any projects in the area. No project may be built within a PDA unless it is described in detail in the PDA development plan. The Commissioner of Inspectional Services enforces this provision by requiring a Certification of Consistency-issued by the BRA indicating that the project is consistent with the development plan-before issuing a building, use, or occupancy permit for any proposed project.

For a site of more than five acres, an applicant may seek designation of a PDA master plan rather than a PDA development plan. PDA master plans provide an approval of a general

development concept, including changes to the underlying zoning, but do not describe individual development projects in detail. In order to develop within a master plan, a proponent must also obtain a PDA development plan addressing all other aspects of a project. The approval process for PDA master plans is the same as for PDA development plans.

In addition to the PDA approval process, each individual project within the PDA must undergo either Large or Small Project Review, as described above, to assess the individual impacts of a particular project design to the surrounding area. However, these projects can proceed as-of-right if they comply with the zoning of the PDA.

4) Institutional Master Plan Review, similar to PDA review, is designed to provide for long-range planning of institutional expansion. Boston is home to 22 hospitals and 34 colleges and universities. These uses, known as institutional uses, require renovation and expansion of facilities more frequently than do other uses. It is important that growth in this area is not stifled by the zoning process, but also that this growth does not come at the expense of Boston’s neighborhoods.

IMP Review provides a special public review process for large institutions to balance these concerns (Zoning Code §80D-2.1). As with PDA review, IMP review allows for use, dimensions and parking requirements that vary from the underlying district zonings. However, unlike PDA development review, IMP review does not require a contiguous parcel. Rather, IMP review applies both to projects within one main development area, known as on-campus projects, as well as projects apart from that area, known as off campus projects.

Qualifying institutions are required to submit long-term development programs covering a minimum of ten years. Institutions must also

submit biennial updates including statistics on enrollment, employment and economic impacts. These plans allow the BRA and the community to evaluate an institution's proposed projects and the potential effects of institutional growth in the surrounding area. An IMP describes all planned development projects with specificity as to zoning relief that will be required. Once approved by the BRA and Zoning Commission, projects found to be in conformity with an IMP may precede as-of-right, subject only to Large or Small Project Review where necessary.

Public Involvement in Article 80 Review

The public plays an important role in the Article 80 development review process through the formation of Impact Advisory Groups (IAGs). IAGs advise the BRA on project impact and mitigation, review Corporation Agreements, and are encouraged to take part in community meetings for public review and discussion of proposed projects.

In October 2000, then-Mayor Thomas Menino outlined the IAG process in an Executive Order entitled "An Order Relative to the Provision of Mitigation by Development Projects in Boston". This Executive Order, which was adopted by the BRA Board, provides a framework for the members of the community to advise the BRA on impacts of a project. The Mayor further amended the process in April 2001, in "An Order Further Regulating the Provision of Mitigation by Development Projects in Boston", which increased the representation by local elected officials.

For both project impact reviews and long-range plans, Article 80 requires public notification at the outset, both through the neighborhood groups and through published notices. At the outset of the Article 80 review process, the Mayor may appoint an IAG to advise the BRA during the Article 80 process. IAGs contain up to 15 members. Two members are nominated

each by the State Senator, State Representative and District City Councilor of the area impacted. The remaining members of the IAG are appointed by the Mayor from recommendations by residents, businesses, community organizers and City Councilors. The IAG must be invited to attend the project scoping sessions and must be consulted prior to execution of any cooperation agreement between the BRA and an applicant.

Institutional Task Forces and Citizens Advisory Committees (CACs) provide further public review. Institutional Task Forces are created to review projects compliance with Institutional Master Plans (IMP), as part of the Article 80 Large project review of institutional projects. CACs have been created to review projects proposed on Massachusetts Turnpike Air Rights Parcels. CACs may also advise in place of IAGs for certain large projects that are particularly complex or require multiple phases. Institutional Task Forces and CACs are appointed by the Mayor subject to nomination by elected officials, the Mayors Office of Neighborhood Services and the BRA.

Article 80 Agreements Following BRA Board approval, certain agreements must be executed by a developer before a project may commence. These agreements bind the City and developer to agreements reached as part of the development review.

Cooperation Agreement Executed by the developer and the BRA after the completion of the Article 80 review process. The Cooperation Agreement covers design review, modifications to the project, and mitigation.

Construction Management Plan (CMP) Executed by the developer and the Boston Transportation Department. The CMP memorializes construction-related parking and traffic impacts and mitigation measures to be implemented during construction.

Transportation Access Plan Agreement (TAPA) Executed by the developer and the Boston Transportation Department. The TAPA memorializes monitoring mechanisms and mitigation measures to address any negative transportation impacts from the construction and operation of the project.

Boston Residents Construction Employment Plan Executed by the BRA, Boston Employment Commission and the developer that sets forth the developers path of compliance with the Boston Residents Jobs Policy (BRJP). The BRJP requires developers seek best efforts to ensure 50% of all workers on the project be Boston residents, 25% of all workers on the project be minorities, and 10% of all workers on the project be women.

Boston Permanent Employment Agreement Executed by the Mayor's Office of Jobs and Community Service and the developer. The Permanent Employment Agreement ensures employment opportunities in the project are available to Boston residents.

Affirmative Marketing Plan Executed by the Boston Fair Housing Commission and the developer. The Affirmative Marketing Plan ensures compliance with the City's Affirmative Fair Housing Marketing Program, which ensures access to housing for all Boston residents.

Development Impact Project (DIP) Agreement, Affordable Housing Agreement, Affordable Rental Housing Agreement and Affordable Housing Contribution Agreement Executed as part of the housing and jobs mitigation measures.

Mitigation Mechanisms

Development in the City, particularly in the Downtown, Back Bay and Seaport Districts, provides an opportunity for the City to share the resulting financial benefits with other parts

What is a Development Impact Project?

Boston Zoning Code § 80B-7(2)(a): "Development Impact Project" is a proposed project that:

- (i) Requires Zoning Relief; and
- (ii) Proposes to include one or more Development Impact Uses [including office, retail business, service, institutional, educational, hotel/motel, or other uses that result in the reduction in the supply of low and moderate income dwelling units] occupying an aggregate gross floor area of more than one hundred thousand (100,000) square feet; and
- (iii) Proposes to: (i) erect a structure or structures having a total gross floor area of more than one hundred thousand (100,000) square feet; (ii) enlarge or extend a structure or structures so as to increase its (or their) gross floor area by more than one hundred thousand (100,000) square feet; or (iii) substantially rehabilitate a structure or structures having, or to have after rehabilitation, a gross floor area of more than one hundred thousand (100,000) square feet.

of the City as well as mitigate impacts in the areas of the development

The Linkage Program and the Inclusionary Development Program (IDP) exist in Boston's development process to ensure that the benefits of real estate development are shared in the neighborhoods to address the affordable housing and employment training needs of city residents. The Linkage program applies to commercial and institutional development, while the IDP applies to residential development.

Linkage Program Linkage is a legislatively authorized program that requires large scale commercial and institutional developers in Boston in need of zoning approval to make exaction payments for housing and jobs to the

City for every square foot a project is over 100,000 square feet. The program started in 1983 with the adoption of Article 26 of the Boston Zoning Code. Article 26 sought to balance new large-scale commercial development in Boston with increased housing needs. Real estate developers in need of zoning approval were required to contribute to the creation of low and moderate income housing. In 1986, Articles 26A and 26B expanded the program to include linkage payments for job training and to focus on mitigating impacts in specific areas where development occurred. Also in 1986, the Neighborhood Housing Trust (NHT) was established to manage linkage funds directed at housing. In 1987, the Neighborhood Jobs Trust (NJT) was established to manage linkage funds directed at job training.

The Linkage program was given further statutory authority through the passage of Chapter 371 of the Acts of 1987, which encompassed provisions of Articles 26, 26A and 26B. In 1996, the linkage program was incorporated into Article 80 of the Boston Zoning Code as part of an effort to streamline several zoning requirements into one article to facilitate the development process.

In 2001, Mayor Menino convened a panel of developers and advocates to study the successes of the Linkage Program. The recommendations of the panel led to a home rule petition, adopted in December of 2001, that raised both linkage fees by approximately 44% (Chapter 179 of the Acts of 2001). The petition updated the statute to allow for linkage fees to be raised based on a combined consumer price index ("CPI"), but not more frequently than at 3-year intervals (Chapter 170 of the Acts of 2001). Effective April 2006, the linkage fees were again increased by 10%. On October 17, 2013, the BRA Board authorized the Director to petition the Zoning Commission to increase the linkage fees again by approximately 6%. The Zoning Commission voted to approve the increase on November 13, 2013. The linkage exactions are

Affordability Standards

For purposes of affordable housing creation in the City of Boston, a unit is considered "affordable" if total housing costs, including either rent or estimated mortgage payments, do not exceed 30% of income. Income standards are defined in terms of Area Median Income (AMI). AMI is a statistic published by the United States Department of Housing and Urban Development for each Metropolitan Statistical Area (MSA). The figure represents the median income for the Boston area pursuant to standards in the Housing and Community development Act of 1974. Households earning between 80 and 120 percent AMI (\$75,500 to \$113,300 for a family of four) are considered "moderate-income"; below 80 percent AMI (less than \$75,000 for a family of four) "low-income"; below 50 percent AMI (less than \$47,200 for a family of four), "very low-income" and below 30 percent AMI (less than \$28,325 for a family of four), "extremely low-income." The 2013 AMI figures used by the BRA are presented in Appendix F.

currently set at \$8.74 per square foot for housing and \$1.67 per square foot for jobs creation.

The Boston Zoning Code outlines the City's linkage program (Zoning Code §80B-7). The program requires developers to sign a Development Impact Project (DIP) agreement with the Boston Redevelopment Authority (BRA) for proposed projects that meet certain criteria. Development Impact Projects include expansion, rehabilitation or new development projects that require zoning relief and devote more than 100,000 square feet to certain uses. DIP uses include commercial, office, institutional, hotel, or other uses that directly reduce the supply of affordable housing.

The BRA is responsible for the review of development projects. The BRA Board, upon the recommendation of BRA staff members,

holds a public hearing on the project and votes to authorize the Director of the BRA to enter into a DIP agreement.

The DIP agreement is a contract in which the developer agrees to pay a linkage fee, also known as a DIP exaction, over a specified number of years at a set rate. DIP exactions are paid to the Collector-Treasurer as the Managing Trustee of the two charitable trusts in the City, the Neighborhood Housing Trust (NHT) and the Neighborhood Jobs Trust (NJT). In lieu of paying a DIP exaction and with certain approval, a developer may choose to build housing or create job training programs directly.

Once a DIP agreement has been executed, the BRA Executive Director/Secretary certifies to the Boston Zoning Commission or the Board of Appeal, as appropriate, that the developer has signed a DIP agreement. Zoning relief can then be granted. The executed DIP agreement is also sent to the Collector-Treasurer.

Housing Linkage Exaction A housing exaction of \$8.74 for each square foot of gross floor area in excess of 100,000 square feet dedicated to DIP use is required to be paid by the respective developer. The housing exaction is made in equal annual installments, over seven years for developers of downtown projects and over 12 years for developers of neighborhood projects. If a developer elects, the present value of the entire amount due may be paid in year one. Otherwise, for developers of neighborhood projects, the first DIP payment is due upon the sooner of the issuance of a certificate of occupancy and 24 months after the issuance of a building permit. Developers of downtown projects must begin DIP payments when the building permit is issued. The remaining installments are due and payable annually on the anniversary of the first payment.

As an alternative to a direct payment, developers may fulfill their linkage obligation through direct involvement in housing

creation. The housing creation option requires developers to create new housing for low and moderate income residents of the City.

A developer may fulfill this by directly creating housing or by “causing to be created” housing units for occupancy. The cost of this creation must be equivalent to the housing payment the developer would have made. Homeowner units must be affordable for a minimum of 50 years and rental units must be affordable in perpetuity.

All housing creation proposals must be recommended by the Neighborhood Housing Trust and approved by the BRA after a public hearing. The Department of Neighborhood Development (DND) is charged with managing housing projects and ensuring that a developer complies with the conditions put forth by the NHT and the BRA in the DIP agreement.

Jobs Linkage Exaction Similarly, a jobs exaction is required by developers in the amount of \$1.67 for each square foot of gross floor area in excess of 100,000 square feet dedicated to DIP use. The jobs exaction is paid in two equal installments, one prior to the issuance of a building permit for the project and a second due one year later.

As with the housing exaction, developers may opt to create jobs directly instead of paying the jobs exaction. Developers may create a job training program for city residents who will be employed on a permanent basis at the proposed project. The job creation option requires approval by the Director of the Mayor’s Office of Jobs and Community Service, which is housed within the BRA, and the Neighborhood Jobs Trust.

Distribution of Linkage Funds The guidelines for awarding DIP linkage funds are found in Zoning Code Article 80B-7. No less than 10% of housing linkage payment on projects located downtown and no less than 20% of such payments made by projects in the

neighborhoods must be reserved for use in the area directly impacted by the project. However, these housing quotas are only applied if the NHT finds that proposals for feasible housing projects can be developed in impacted areas. Similarly, no less than 20% of any job linkage payment must be reserved for use in the area surrounding the development project. The Neighborhood Housing Trust and the Neighborhood Jobs Trust are responsible for approving the distribution of funds for housing and job creation projects.

The Neighborhood Housing Trust (NHT) was established by ordinance in 1986 and confirmed by Chapter 371 of the Acts of 1987. The purpose of the Trust, as stated in the Declaration of Trust, is “to mitigate the extent to which Boston’s low or moderate income households are unable to afford decent, safe and sanitary housing within the City of Boston...[through the creation and retention] of housing for low and moderate income residents.” Toward that end, the NHT is entrusted with disbursing DIP funding. From its inception through December 31, 2012, the Neighborhood Housing Trust has committed \$133,804,969 in linkage funds. These funds have helped create or maintain 10,176 affordable housing units in 193 development projects throughout the City.

The NHT consists of seven Trustees: the President of the City Council or his or her designee, the Collector-Treasurer/Chief Financial Officer, and five mayoral appointees. The Collector-Treasurer serves as Managing Trustee and is responsible for maintaining the financial records and administering the Trust.

To receive NHT funding, an affordable housing project must meet eligibility and competitive criteria. All NHT awards must be used for housing development or rehabilitation for low or moderate income residents. Projects may be for homeownership, rental, cooperative or other forms of permanent or transitional housing. They may be new construction,

rehabilitation of abandoned or occupied rental property, or conversion of non-residential property.

A project must also be administered by an eligible entity. Any private, public, non-profit or for-profit development entity is eligible for NHT funding so long as the entity is 1) current on its taxes, 2) has no record of arson, and 3) has no record of fair housing violations. A developer must have full site control, and must present findings that the project is financially feasible and the developer is financially sound. Prior to receipt of Trust funds, a developer must agree to rules and regulations promulgated by the NHT for the use of funds.

In evaluating which applications the NHT will select for funding, special weight may be given to the number and percentage of affordable units, including units below 50% of median income or number of units beyond requirement; the number of units for special needs populations; the amount of NHT funds requested per affordable units; the developers capacity, track record, and readiness to proceed; the extent to which a project will provide employment, financial or managerial participation by minority- or woman- owned business enterprises; and the extent to which the neighborhood has or has not previously received linkage funds.

The Neighborhood Jobs Trust (NJT) was established by ordinance in 1987. The NJT’s purpose is to promote the public welfare by mitigating the extent to which Boston’s low or moderate income residents are unable to successfully compete for new employment opportunities resulting from DIP projects in the City. Because the DIP exaction for jobs is approximately 1/5 of the housing exaction, the NJT’s best use of its limited resources is to supplement already existing programs.

The NJT consists of the Collector-Treasurer of the City, who serves *ex officio*, one City

Councilor and one Trustee, who are both appointed by the Mayor.

NJT funding provides support for adult literacy programs, alternative education or GED programs, entry level job training, employee recruitment services, retraining programs for those in low-growth industries, employment counseling and job placement programs. The NJT specifically looks to support cutting-edge training activities that lead to high wage or non-traditional employment opportunities.

As with NHT awards, requests for NJT awards are evaluated by the Trustees with staff support from the Mayors Office of Jobs and Community Services (JCS), which is housed within the BRA. Any grant for jobs creation purposes is accompanied by a written agreement between the awardee and the JCS expressly ensuring grant money is spent in furtherance of the charitable purposes of the trust.

Inclusionary Development Policy (IDP) In 2000, Mayor Menino established the Boston Inclusionary Development Policy (IDP) through Executive Order as a response to rapidly raising home prices and a shortage of funding to provide affordable housing. The program was modified by subsequent Executive Orders in 2003, 2005, 2006 and 2007. In 2013, the Menino Administration presented a home rule petition to the City Council that would codify the IDP, which has not yet been acted on by the Council.

Prior to 2014, the IDP program had been administered by the Boston Redevelopment Authority (BRA). That responsibility recently has been transferred to the Department of Neighborhood Development, which is already responsible for the management of the Linkage program. The transfer of accountability for IDP payments to DND was intended to centralize the administration of both housing programs in one department. Despite this

transfer, the BRA continues to be central to the negotiation of IDP mitigation measures, because such negotiation is imbedded in the mitigation negotiations of Article 80 review.

The IDP program applies to residential developments with 10 or more units that require zoning relief, are financed by the City or one of its agencies, or are developed on land owned by the City or one of its agencies. Due to the restrictive nature of zoning laws in the City, the program affects virtually all developments above the size limit.

Development projects that fall under IDP guidelines are required to provide affordable housing units equal to 15% of the market-rate units, or approximately 13% of the total units of the project. Affordable units are required to be comparable in size and quality to the average of all market-rate units in a development.

At least half of the affordable ownership units built under the IDP program must be affordable to households earning at or below 80% of the Area Median Income (AMI) of the Boston Metropolitan Statistical Area, which is \$75,500 for a family of four. The remainder of households must be affordable to households earning at or below 100% of AMI (\$94,400 for a family of four). In addition, the average of the prices must be affordable to house holds at or below 90% of AMI (\$84,950 for a family of four). All affordable rental units must be affordable to households earning 70% of AMI (\$66,100 for a family of four). The 2013 AMI figures used by the BRA are presented in Appendix F.

The IDP gives developers some flexibility in alternatives to compliance. When a developer can clearly demonstrate that building the affordable housing units on-site would make a project financially infeasible, the program allows for a payment of fees-in-lieu. The fees-in-lieu of affordable units are calculated in one of two ways. Developers must pay either

Benefits of Chapter 121A Projects

Chapter 121A entities receive:

- Exemption from M.G.L. c. 59 for local real estate taxes
- Predictable and consistent §10 and §6A payments
- Zoning deviations
- Federal and state financing
- Limited eminent domain powers

City of Boston receives:

- Development of substandard areas
- Predictable and consistent §10 and §6A payments
- Control over Project—Any project change, sale or transfer must be approved by BRA and Mayor
- Increased control over affordability requirements
- Transparency—Project proponent must disclose all beneficial interests

\$200,000 per unit, or the difference between the market price and the affordable price of the units, whichever is greater. The \$200,000 fee is based on the average subsidy that the DND must provide to create an affordable unit in the City. These funds are used to subsidize other affordable housing projects and programs in Boston.

Since 2006, the program has also allowed construction of off-site affordable housing units as a means of compliance. This change was instituted in order to prevent development of affordable units in luxury projects having costly amenities and located downtown away from neighborhood services. The DND exercises discretion over when a developer may provide off-site units, pay fees-in-lieu or a combination of the both.

Buying/Renting Affordable Units To be eligible for inclusionary units, buyers must earn less than the permitted household income for that unit, and have assets of less than \$100,000. Eligible buyers must enter into a lottery to

purchase affordable units. Within the lottery selection process, the BRA gives preference to individuals displaced by urban renewal, city residents and first-time homebuyers.

Affordable units developed and sold under the IDP are subject to affordability controls for up to 50 years. During this time, the units may be resold only to eligible households or to the DND. Affordable units may be resold at the initial sales price plus an increase of 5% per year, plus capital improvement and realtor fees.

These restrictions are enforced through title and mortgage covenants. Developers and buyers must use a standard legal agreement drafted by the DND. Registering the agreement on the mortgage helps the DND exercise its right of first refusal in anticipation of a default foreclosure, as well as protect owners from predatory lending and refinancing.

Urban Renewal Powers

The BRA is vested with urban renewal powers under M.G.L. Chapters 121A and 121B. Under Chapter 121A, the BRA may approve a specifically authorized Urban Redevelopment Entity to which the BRA may grant tax abatements, financing or eminent domain powers. 121A entities are created for the purpose of redeveloping specific projects in substandard areas. Under Chapter 121B, the BRA has power to create and administer urban renewal plans throughout the City. The BRA may utilize urban renewal powers—tax abatements, eminent domain and land disposition—to drive development within these planned areas. More recently, Section 46(f) of Chapter 121B has been utilized to allow the BRA to exercise 121B authority outside of urban renewal plans on a project-by-project basis. These so-called “demonstration projects” operate in much the same way as 121A projects, but without some of the regulatory complexities.

Examples of 121A Projects in Boston

- State Street Bank & Trust is redeveloping a vacant parking lot in the innovation district into a 500,000 square foot office building and parking garage. The deal will provide State Street with a projected \$11.5 million in tax relief, but is projected to generate \$43.3 million in new property tax revenue for the City in the first 15 years.
- In December 2013, the BRA Board approved a projected \$7.8 million dollars in tax relief over 15 years for a \$950 million complex at the TD Garden that will contain a 306-room hotel, 668,000 square feet of offices, nearly 500 residences, an underground grocery store, and 800 parking spaces. The project is projected to produce \$32.2 million in new tax revenue for the City

Chapter 121A Chapter 121A of the General Laws authorizes designation of special Urban Redevelopment Entities, or Chapter 121A entities, for redevelopment of projects in areas that are deemed by the BRA to be substandard. Chapter 121A entities are private, limited-dividend business entities that are formed to develop specific properties (M.G.L. c. 121A, § 3). These entities, because they serve public purposes, may be provided tax concessions (M.G.L. c. 121A, § 10). Projects that are subject to 121A contracts are not included in the tax base for assessment purposes by the City and are therefore not subject to local real estate taxes under Chapter 59.

The BRA has authority to approve 121A projects subject to further approval by the Mayor. The BRA reviews and approves the developer's application by adopting a Report and Decision, which is submitted to the Mayor. If approved by the Mayor, the Report and Decision is filed with the City Clerk for

recording. After recording, aggrieved parties have 30 days in which to appeal the adoption.

Chapter 121A entities are limited-dividend corporations or other business entities that legally may not earn more than an 8% return on the amount invested in the project. Any excess income may be applied to project expenses for reduction of indebtedness, renovating and improving the property, installing additional facilities for tenants or the acquisition or development of additional property which could be subject to 121A restrictions. However, non-chapter 121A entities that are part of a project structure are not subject to this cap. Further, the return for housing projects financed by the Federal Department of Housing and Urban Development and the Massachusetts Housing Financing Agency may be greater than 8% if approved by the BRA.

The City receives two forms of revenue from Chapter 121A projects: PILOT payments under Section 10 and contract payments under Section 6A. Section 10 establishes a statutory excise tax of 1% of the "fair market value" of the property plus 5% of the gross income of the project, with limited exceptions. This tax is paid to the state, but reimbursed to the City of Boston.

Section 6A grants the BRA and the City's Assessing Department the power to negotiate contract payments related to city services available to the development. Unlike Section 10 payments, Section 6A payments are not set by statute and in almost all cases exceed the Section 10 statutory amount. Section 6A contract negotiations occur between the Developer and the Assessing Department, with the BRA serving as an intermediary. Negotiating a 6A Contract involves balancing the financial viability of a proposed development with the best interests of the City.

Comparing Chapter 121A with Chapter 121B §46(f)

The BRA can exercise its urban renewal powers to enter into tax agreements with developers under either Chapter 121A or 121B §46(f). Chapter 121A is most useful when a project requires zoning relief alongside tax relief in order to go forward. Chapter 121A entities may apply for expedited zoning relief. Chapter 121A has a number of regulatory burdens that are not present in 121B. Chapter 121A has a mandatory minimum excise tax defined in section 10. The only payments made under 121B are negotiated PILOT payments under section 16. This gives the BRA and developer more flexibility in structuring payments. Further limiting flexibility, Chapter 121A agreements have a minimum duration of 15 years while Chapter 121B agreements have no minimum duration. Finally, due to resale restrictions in Chapter 121A regulatory agreements, Chapter 121A cannot be utilized on development projects that include condominium units. Chapter 121B projects, which may contain condominiums, are thus better equipped to address changing market conditions in the condominium and rental markets.

Section 6A Contracts may include several important clauses to ensure the City's interests are protected. The City may wish to include an escalation clause, which increases the tax payment over the length of the agreement. This provides tax help for projects early in their existence, when they likely produce less rental income, and provides less tax help later on, when they produce more rental income. Further, 121A entities are required to execute a regulatory agreement with the BRA providing that any material project change or sale or transfer of the project must be approved by the BRA and the Mayor. 121A entities must also disclose all beneficial interests derived from the project, including the identities of all project proponents.

Chapter 121A agreements provide benefits to both the City and the developer. The City derives a direct financial benefits in receiving 121A payments. The City is also able to drive economic development in substandard areas, which creates jobs and increases the housing supply. Further, the development of substandard areas may lead to a reduction in crime and an increase in surrounding property values. Finally, the City also retains a level of control over the project through regulatory agreements.

In return, a Chapter 121A agreement provides a developer with certainty in the amount of municipal payments the project will accrue,

expediency in permitting and the public power of eminent domain, if appropriate and necessary. The in-lieu-of-tax and contractual payments are stable and easier to predict than Chapter 59 local real estate taxes, which may fluctuate with changing real estate values or tax rates. Chapter 121A also provides developers with more flexibility in the zoning process. If a project is approved under Chapter 121A, the BRA has authority to grant deviations to the City's zoning code for those projects.

The Chapter 121A option has some features that have led the BRA and developers to utilize other project structures depending on the specific needs of the project. There are currently 15 fewer Chapter 121A agreements than there were in 1993 when Mayor Thomas Menino took office. Chapter 121B, Section 46 (f), demonstration projects, while similar to 121A projects in structure, present less of a regulatory burden and greater flexibility for the City and developers. However, Chapter 121B demonstration projects are not appropriate in all situations, and Chapter 121A is still a very important tool for the City to use in driving economic development.

Chapter 121B Chapters 121A and 121B have similar goals, but the methods by which the goals are achieved differ. Chapter 121B provides for the approval and administration of, and the development within, urban renewal areas in Boston (M.G.L. c. 121B, §46-48).

Tremont on the Common Condominium Trust v. BRA

In 2002, a Massachusetts Superior Court determined in *Tremont on the Common Condominium Trust v. Boston Redevelopment Authority* that the powers under section 46(f) exist independent of the existence of an Urban Renewal Plan. The *Tremont* decision points out that Section 46 sets out in eight separate subsections, a set of powers that the section deems additional to those granted in other parts of Chapter 121B. Included among these are the power to prepare urban renewal plans (M.G.L. c. 121B §46(c)), and to engage in urban renewal projects (M.G.L. c. 121B §46(d)). Section 46(f), which gives the power "to carry out demonstrations for the prevention and elimination of slums and urban blight," contains no language that ties such demonstrations to urban renewal plans or projects. According to the *Tremont* decision, if the Legislature had intended to tie "demonstration projects" to urban renewal plans, it would have made that clear. Thus, the Legislature must have intended for demonstration projects to be permissible outside of urban renewal plans.

Unlike 121A projects, urban renewal projects under Chapter 121B require a public ownership interest in the property.

Until 2002, 121B was only applicable within urban renewal areas. However, since a favorable court ruling in 2002 in *Tremont on the Common Condominium Trust v. Boston Redevelopment Authority*, the BRA has been applying Chapter 121B, specifically section 46 (f), to projects outside of such plans as so-called "demonstration projects". The BRA is thus moving away from exclusively using Chapter 121A for project-specific development and moving toward the use of Chapter 121B §46(f) in certain situations, because it provides greater flexibility and less restraints on elements of the agreement.

Urban Renewal Plans The BRA's urban renewal powers under 121B were originally limited to specific areas defined in Boston's urban renewal plans. Urban renewal plans are initiated by the BRA and must be approved by the BRA Board, City Council, Mayor, and state Department of Housing and Community Development (DHCD). After securing approval, the BRA may then undertake projects by acquiring, clearing, and redeveloping parcels and by initiating other urban renewal activity. The BRA has adopted 23 urban renewal plans in its near 50 year history, 18 of which are active as of the writing of this report. In 2005,

the time of their last renewal, there were 20 active plans. Since then, the BRA has allowed two of the plans to expire by their own terms.

Expiration of Urban Renewal Plans Of the 18 active urban renewal plans, sixteen will expire on April 30, 2015. The North Station Plan expires July 16, 2020, and the West End Plan is self-extending pursuant to its terms. The BRA is currently researching allowing three plans—North Harvard, CBD Boylston-Essex, and CBD Bedford-West—to expire. This decision would be driven by a determination that the goals of

Recent Examples of 121B §46(f) Projects in Boston

- Lovejoy Wharf, a 230,000 square foot revitalization project that will transform an abandoned industrial building on the waterfront into the World Headquarters of the Converse-Nike shoe company.
- Millennium Tower and Burnham Building, a mixed use high rise in Downtown Crossing, is subject to a 121B agreement on its office and retail only. The agreement will provide a projected \$13.8 million in 121B PILOT payments and \$45.8 million in taxes on the residential portion of the tower, and is projected to raise \$59.6 million in new revenue.

the specific urban renewal plans have been satisfied.

The BRA is expected to seek the extension of the 13 remaining urban renewal plans set to expire in 2015, plus the North Station Plan set to expire in 2020, for a total of 14 plans to be extended. These, plus the West End Plan will result in a total of 15 active plans should the BRA follow this plan of extension.

There are two ways in which urban renewal plans can be extended. The BRA could petition the state Legislature to extend the plans legislatively, or more likely, the BRA could follow the process outlined in Chapter 121. The latter option would require the BRA Board to adopt a resolution modifying and extending the plans. This action would require approval by the City Council, Mayor and DHCD. If the BRA is unable to formally extend the plans by their expiration, the Board could also ask DHCH to temporarily extend them to give the BRA more time.

The Mayor's role in supporting or opposing the extension of Boston's urban renewal plans will be a crucial factor in the role the BRA plays in urban renewal areas going forward.

Extending the plans would allow the BRA to continue to control ongoing and future development projects in urban renewal areas. Significant economic development projects could still be built in many of the urban renewal areas, as a combination of the loss of federal funding and varying economic cycles have delayed the accomplishment of the goals and objectives set out in certain urban renewal plans.

Further, because many 121B projects are subject to regulatory agreements that expire when the controlling urban renewal plans expire, keeping these plans active would enable the BRA to continue to exercise regulatory control over former 121B projects. One such control is the ability of the BRA to exact

payments whenever former 121B projects apply for changes in use.

Section 46(f) Powers Outside of Urban Renewal Areas Section 46(f) of Chapter 121B confers upon urban renewal agencies the power “to develop, test and report methods and techniques and carry out demonstrations” for the prevention or substandard areas. Pursuant to Section 46(f) and precedent established in *Tremont on the Common Condominium Trust v. Boston Redevelopment Authority* in 2002, the BRA can form partnerships with private developers and serve as an intermediary title holder to facilitate demonstration projects outside of urban renewal areas. These arrangements provide flexible tax structures for developers and enable the BRA to eliminate substandard areas on a project-specific basis without the regulatory complexity of Chapter 121A projects.

To effectuate a Section 46(f) development deal, the BRA will adopt a demonstration project plan for a development project that would improve substandard areas. The demonstration project plan grants authorization for the BRA to acquire the project site by eminent domain. In most cases, the BRA acquires the land from the developer in an uncontested taking. Once the taking is complete, the BRA will return a partial property interest in the project site to the developer, who then proceeds with the project. Because the City retains a property interest in the land as an “intermediary title holder”, the developer is exempt from paying Chapter 59 local real estate taxes on the property. If the project is later sold for a profit, the City may retroactively recover the tax concession granted to the project.

In return for this structure, the developer will pay the City payments-in-lieu-of-taxes (PILOT payments). When structured in this manner, Chapter 121B demonstration projects function in much the same way as Chapter 121A projects, whereby an entity would not be subject to Chapter 59 taxes but would make

contract payments. Demonstration projects are often preferred by developers and the City because they provide more flexibility and require less regulatory complexity.

Takings by Eminent Domain Chapters 121A and 121B grant the BRA authority to delegate or exercise the power of eminent domain. Eminent domain allows the taking of land, demolition of existing buildings and displacement of persons and businesses for a public purpose and for just compensation. The BRA may delegate or exercise eminent domain for the prevention or elimination of substandard, decadent, or blighted open areas in urban settings, and to promote sound community growth. (*Boston Redevelopment Authority v. Charles River Park Co.*, 21 Mass. App. Ct. 777, 783 (1986)). The BRA's power of eminent domain is utilized for four main purposes:

- 1) **Site Assembly** The BRA is empowered to take private property to assemble sites for development projects. Although this was common assemble the vast urban renewal projects in the late 20th Century, this is rarely done in modern times without the agreement of the property owner.
- 2) **Title Clearance** The BRA may conduct confirmatory takings to clear title on a parcel and create a new record of clear ownership so that a development may proceed without concern over title clarity.
- 3) **Vertical Discontinuances** The BRA may make vertical discontinuances, or takings of City of Boston air rights over public ways, in order to allow buildings to extend over the lot line with elements such as eaves, door and window sills and balconies. These takings do not diminish the use of the ground space.
- 4) **121B 46(f) Tax Agreements** Finally, as discussed above, 121B projects take place

on property in which the City has an ownership interest. This ownership interest is crucial to 121B project's ability to pay PILOT payments in lieu of Chapter 59 taxes. In order to achieve this, the BRA must issue a taking on a project site, and then return the property to the developer while maintaining an ownership interest.

In limited cases, a 121A entity may be granted the public powers of eminent domain to assemble parcels for projects. (*Boston Edison Co. v. Boston Redevelopment Authority*, 374 Mass. 37, 52-53 (1977)). In carrying out a land acquisition, a Chapter 121A entity must use reasonable efforts to acquire property by negotiated sale, and may only take property by eminent domain when all other reasonable methods of obtaining the property have failed.

Chapter 121A, Section 11, permits the BRA to authorize an urban redevelopment entity to take title under either M.G.L. Chapter 79 or Chapter 80A. Chapter 79 takings are more efficient, but require more caution by the BRA to prevent abuse. Prior to a Chapter 79 taking, the 121A entity must send a written offer to acquire the land from the owner. The owner then has 30 days to accept or reject the offer. Upon the owner's written rejection or failure to accept the offer, the 121A entity must notify the BRA and the owner of the property in writing that it has determined that acquisition by eminent domain under Chapter 79 is necessary. The BRA may then give the corporation written authorization to proceed to take such property by eminent domain in accordance with Chapter 79, provided the corporation has guaranteed, by placing in escrow, a sufficient amount available for payment of damages.

Chapter 80A authorizes taking by judicial proceeding. Under Chapter 80A, the 121A entity must adopt an Order of Intention to Take, describing the property, the interest to be taken, and the use for which the property is to

be taken. The order must be recorded within ten days of its adoption. Within ten days of a recording, the 121A entity must file a petition to establish its right to take the property, and to determine the amount to be paid for damages or assessed. Title to property changes upon the entry of a Judgment of Condemnation, although damages for the taking are established later.

Chapter 121B also permits taking by eminent domain. However, unlike Chapter 121A takings where the eminent domain power may be delegated by the BRA, takings under Chapter 121B are done by the BRA itself. Section 11 of Chapter 121B confers on the BRA the right to acquire lands by eminent domain in pursuant by an order of taking under Chapter 79, or by initiating judicial proceedings under Chapter 80A. Eminent domain may only be exercised if there is an affirmative two-thirds vote by the City Council, with the approval of the Mayor. A public hearing must be held before the City Council vote and the official opinion of the Massachusetts Office of Business Development and the Director of the Department of Housing and Community Development must be obtained before proceeding with any eminent domain taking.

Land Disposition The BRA also engages in land disposition to promote economic development. The BRA's land disposition powers were originally used to implement the large-scale urban renewal projects in the late 20th Century. More recently, however, the BRA has utilized land disposition for specific development projects involving housing production or other public purposes.

The BRA's land disposition powers allow the BRA to sell or rent land to a developer. The BRA may exercise this power on BRA-owned land, or as a service to land owned by the City and various city agencies. Depending on which city agency owns the land and how the agency acquired the land, there are a number of different legal requirements involved in land disposition.

What is MassDevelopment?

Created in 1998 when the Massachusetts State Legislature enacted M.G.L. Chapter 23G and merged the Massachusetts Government Land Bank with the Massachusetts Industrial Finance Agency, MassDevelopment is the state's finance and development authority. Both a lender and developer, the Agency works with private- and public-sector clients to stimulate economic growth by eliminating blight, preparing key sites for development, creating jobs, and increasing the state's housing supply.

In general, the BRA will initiate a land disposition by issuing a Request for Proposals (RFP) for a parcel. An RFP describes the parcel and describes the BRA's hopes for the development of the parcel. In developing the RFP, the BRA will work with the community to determine the appropriate uses for a particular parcel.

Developers are encouraged to submit RFP responses proposing plans for the parcel in conformity with the RFP. BRA staff members then review the proposals and recommend the designation of the land to the strongest applicant. The staff will factor in the financial stability of the applicant, how much the applicant is offering to purchase or rent the land for, the mix of uses, how well the design meets with RFP specification, the expected impact of the design on the surrounding community and other public policy considerations.

Based off of this determination, BRA staff members will recommend that the BRA Board issue a tentative designation to the strongest applicant, subject to certain performance milestones such as securing funding for the project.

When the applicant satisfies the performance milestones and the BRA makes the final

designation, the BRA and applicant execute one of two documents. If the BRA is selling the parcel, the sides execute a Land Disposition Agreement (LDA). If the BRA is leasing the parcel, the sides execute a Ground Lease.

The LDA or Ground Lease establishes the conditions of the land disposition, including the use of the land. Often, an LDA and associated deed will also contain a transfer fee agreement. These agreements grant the BRA a specified percentage of gross sales proceeds on future transfers of market-rate units on the property.

Public Financing and Tax Incentives

The City of Boston, the Commonwealth and the Federal Government provide public financing and tax incentives to drive development in the City of Boston.

The Boston Industrial Development Financing Authority (BIDFA), which is housed within the BRA, issues bonds that finance the capital needs of Boston's businesses and institutions. BIDFA provides tax-exempt bonds for non-profits, industrial development bonds and enterprise zone facility bonds. BIDFA also guides developers through applications to several state financing programs available through MassDevelopment, the state's finance and development authority. Also housed within the BRA, the Boston Local Development Corporation (BLDC) is a non-profit entity that provides loans for businesses for capital improvements.

The City is further authorized by state law to issue District Improvement Financing (DIF) bonds or tax abatements through Tax Increment Financing (TIF) agreements. With DIFs and TIFs, the City provides new businesses with public financing in return for infrastructure development.

Public financing is also available on the state-level. The Massachusetts Development

Financing Authority, a resource housed within MassDevelopment, provides funding through various state programs. These programs include the Infrastructure Investment Incentive Program (I-Cubed) and the Local Infrastructure Development Program.

In addition to these programs, the U.S. Department of Housing and Urban Development provides resources for community, business and housing development in Boston.

1) The **Boston Industrial Development Financing Authority (BIDFA)** was created in 1971 to promote economic growth and increased employment in the City of Boston (M.G.L. Chapter 40D). BIDFA works as a conduit issuer, issuing bonds in the City's name that finance the capital needs of the City's businesses and institutions. Bonds may be used to finance construction and capital expenses resulting from expansion. Due to the cost of issuance, these bonds are usually over three million dollars. Depending on the type of bond, the amount may be capped by federal or state law.

Through BIDFA, the City of Boston can make its tax-exempt status, and low interest rates available to qualified borrowers. All bonds issued by BIDFA must be approved by MassDevelopment. The credit of the borrower, and not that of the City of Boston, BIDFA, or the Commonwealth of Massachusetts, is pledged to repay the bonds. Thus, a recipient of BIDFA funding must show the financial strength to support the bond.

BIDFA typically issues one of three types of tax-exempt bonds: bonds for nonprofits, industrial development bonds, or enterprise zone facility bonds. When a recipient does not entirely qualify for tax exempt bonds, BIDFA may also issue taxable "trailer bonds" to accompany tax-exempt bonds.

Recent Examples of a TIF Agreement

- In 2011, the City granted a 7-year, \$12 million TIF for the development of Vertex Pharmaceuticals' Headquarters at Fan Pier. The project expected to create 2,000 new construction jobs, 500 new long-term positions, as well as raise \$5 million in affordable housing mitigations and \$990,000 in jobs housing mitigation. The project will also create \$55 million in new real estate tax revenues during the term of the agreement.
- In 2010, Liberty Mutual was awarded a TIF Agreement for a project located at Columbus Avenue and Berkeley Street in Boston. The 20-year TIF agreement included \$24 million in property tax relief from the City and \$22.5 million in state subsidies. In exchange, the company committed to creating at least 600 new jobs over the life of the agreement, in addition to the approximately 500 construction jobs the new development generated during the construction period. The project is also expected to create a revenue boost to the City of \$50 million over the 20-year agreement.

Tax-exempt bonds for non-profit institutions are available to educational, healthcare or cultural institutions that have federal 501(c)(3) tax-exempt status. Bond proceeds may be applied to construction and renovation projects for institutional uses. Such projects include: research and development facilities, medical diagnostic imaging facilities, museums, continuing care facilities, nursing or convalescent homes and academic facilities. These projects are not subject to the state volume cap on tax-exempt financing.

Tax-exempt industrial development bonds (IDB's) are issued to acquire land and construct new facilities, expand or renovate existing manufacturing facilities or purchase new equipment. These bonds are granted for projects that have a strong job creation and retention component. These bonds are subject to the state volume cap and are limited by federal statute to \$10 million per recipient.

Tax-exempt enterprise zone facility bonds (EZ Bonds) are a type of tax-exempt private activity bond that can be used by a qualified business to finance the cost of commercial, retail or similar facility. The borrower must be an "Enterprise Zone" business, and 95% of the proceeds from the bond issue must be used to finance "qualified zone property." The federal

legislation allowing for these bonds expired on December 31, 2013.

Taxable Bonds are rarely used, but when used often "trail" tax-exempt financing because a borrower organization's needs exceeds its eligibility to receive tax-exempt bonds for a particular project. The interest on these bonds is not exempt from federal taxes, there is no size limit and the volume cap restriction does not apply.

2) The **Boston Local Development Corporation (BLDC)** is a private non-profit 501(c)(3) Corporation administered by the Boston Redevelopment Authority. The BLDC provides loans for businesses in or relocating to Boston. These funds may be applied to buying a new business property or providing capital to grow businesses. The BLDC also facilitates participations with local banks by providing subordinated debt for small business loans. Over half of the businesses assisted are woman or minority owned.

In the past ten years, the BLDC has approved 63 loans for a total amount of \$7.4 million. These loans have been leveraged by recipients to raise over \$66 million in funds. The BRA reports that these financing activities have created and retained 1,210 jobs.

Recent Examples of I-Cubed Agreements

- In 2011, the first I-Cubed was executed with Fan Pier Development for the development of the headquarters of Vertex Pharmaceuticals Inc. The 1.1 million square foot development was granted \$50 million in I-Cubed funding. The headquarters is expected to create 2,000 new construction jobs, 500 new long-term positions, as well as raise \$5 million in affordable housing mitigations and \$1 million in jobs housing mitigation. If the employment tax revenue from new jobs for this project fails to cover the debt service costs, the developer has agreed to assume the obligation.
- Two I-Cubed applications are currently being processed in the City: Boylston West in the Fenway and Boston Landing, the future site of the New Balance World Headquarters, in Brighton.

3) Boston may also use **District Improvement Financing (DIF)**, which applies future incremental property tax revenues collected from a predefined district to fund debt service on bonds issued for public works and infrastructure components of development projects (established in 2003 under M.G.L. c. 40Q). DIF financing has not been utilized in Boston as of the writing of this report, but exists as an option for public financing.

Under a DIF agreement, the City of Boston establishes an improvement district and issues a bond for the initial funding of a project within that district. This initial municipal investment is geared toward stimulating private investment that will increase the taxable value of property and generate incremental taxes. Then, a percentage of the incremental tax revenues in excess of the original taxable value of the

district are allocated toward paying back the bonds.

The Assessing Department, BIDFA and the developer negotiate the percentage of incremental revenue that is used to repay the bonds. DIF agreements are limited to a maximum of 30 years.

To institute a DIF, the BRA would designate an area as a development district and develop a corresponding development program, which must be approved by the City Council. This program details necessary infrastructure improvements and how the project will encourage residential, commercial and/or industrial activity.

The public financing mechanism known as District Improvement Financing, or DIF, in Massachusetts is more commonly known as Tax Increment Financing, or TIF, throughout the rest of the country. However, in Massachusetts, TIF is already used to describe Tax Incentive Financing. To prevent confusion, Massachusetts uses DIF.

4) **Tax Increment Financing (TIF)** is a means of awarding tax benefits to stimulate local development. Authorized under state law (M.G.L. c. 40 §59), the TIF program allows Boston to enter into agreements with landowners granting tax abatements to encourage development. TIFs are only available in Economic Opportunity Areas (EOAs), which are areas approved by the BRA, City Council and the State Economic Assistance Coordinating Council (EACC).

TIF agreements are discretionary incentive tools to encourage development in areas that are deemed to be substandard. In a TIF agreement, the City grants an exemption on the incremental property tax created by the new development. In exchange for tax exemption, the property owner assumes the risk of developing in substandard areas. This provides the City with at least some tax revenue on

property that would otherwise have been undeveloped or underutilized.

The TIF exemption may range from 5% to 100% of the taxes on the increase in property value. The company still pays the full tax rate on the “base value”. TIFs range from 5 to 20 years in duration. Businesses may also be entitled to an additional 10% Economic Opportunity Area Credit (EOAC) and 10% Abandoned Building Tax Deduction on their Massachusetts state tax returns.

State law also authorizes two specific TIF Programs that support housing and economic development. The Urban Center Housing-Tax Increment Financing Program (UCH-TIF) under M.G.L. c. 40 Section 60 authorizes Boston to use TIF to promote multi-unit housing and commercial development, including affordable housing, in commercial centers. UCH-TIF was enabled by the State Legislature in 2011, and has not been used in Boston as of the writing of this report. The Economic Development Incentive Program (EDIP) under M.G.L. c. 23A authorizes Boston to use TIF to stimulate business growth and foster job creation in locally targeted development areas.

5) The **Infrastructure Investment Incentive (I-Cubed) Program** is a financing option available through MassDevelopment to stimulate job growth and economic development through investment in new public infrastructure improvement (M.G.L. c. 129). The program ties the payment of debt service for bonds used to improve public infrastructure to increased tax revenue, especially income tax generated by the creation of new jobs in Massachusetts from a project.

Under the program, development of public infrastructure is paid for by proceeds from bonds issued by MassDevelopment, which are then paid back in the form of new state tax revenues. In return, once construction on infrastructure is completed, the developer turns

ownership of the infrastructure over to a public authority. Under this mechanism, the Commonwealth, Boston, and private developers share the cost and risk of investment in infrastructure needed to support a project.

To receive I-Cubed financing, a project must be certified as an economic development project. Certification requires approval by the Massachusetts Secretary of Administration and Finance, MassDevelopment, City Council and the Mayor. The Secretary of Administration and Finance must make a determination that a project would not be developed without I-Cubed financing. The total cost of public improvements must be between \$5 and \$50 million, and the anticipated state tax revenue must be at least 1.5 times the projected annual debt service on the bonds. A strict feasibility study is required to ensure that the project will generate sufficient revenue to support the debt. Project approval requires a rigorous review of revenues by an independent consultant and the State Department of Revenue.

Payments of debt service on I-Cubed bonds is through a General Obligation pledge by the Commonwealth. During construction, the City will levy municipal assessments on the project and in turn uses the revenue to reimburse the Commonwealth. Once a commercial component of a project is occupied and generating new state tax revenue, the debt service on the bonds relative to the commercial component are paid directly to the Commonwealth as state tax revenues such as income, sales, meals, hotel, business or construction wage tax assessments.

If the new state tax revenues are insufficient to cover the debt service of the bonds, the City is required to cover the amount of the shortfall. Developers may agree to cover this shortfall through municipal assessments, a letter of credit or other security interest, but is not legally required to do so. If the developer does not cover the shortfall, Boston taxpayers would absorb the costs of debt service payments.

There is a statutory cap of three I-Cubed issues per municipality. Boston currently has one I-Cubed approved, and two other projects have submitted applications to the state. If both applications are granted, Boston will be at its cap.

6) Local Infrastructure Development Program

New legislation was signed in August of 2013 that allows property owners to finance public infrastructure through the tax-exempt bond market under the Local Infrastructure Development Program (M.G.L. c. 23L). The Local Infrastructure Development Program has not been utilized in Boston as of the writing of this report, but exists as an option for public infrastructure financing.

Under the Local Infrastructure Development Program, MassDevelopment issues tax-exempt bonds to fund public infrastructure in a defined Local Infrastructure Development Zone. Debt service on the bonds is paid through a special infrastructure assessment or tax on all properties within the development zone. This differs from a DIF in that the debt service comes from an assessment levied in addition to the regular property tax, so ultimately payment for infrastructure improvements comes from the property owners, and not the City.

To receive financing, a developer files a petition with the municipality to establish a development zone. Included in the petition is an Improvement Plan outlining the infrastructure improvements to be made, estimated cost for financing improvements, and structure of infrastructure assessments.

In order to establish a development zone, 100 percent of the property owners within the proposed development zone must provide written consent to participate. Due to this, it is most likely that development zones will comprise individual project sites owned by a single developer.

Once a development zone has been established, the municipality will partner with MassDevelopment to issue bonds paid from the revenues generated by infrastructure assessments. The infrastructure assessments may be equal among property owners or may be calculated in any way that reasonably allocates the cost of the improvement among property owners.

7) Federal Funding for Housing and Community Development

In addition to the funding options above, the U.S. Department of Housing and Urban Development provide funds to housing and community development projects. The Department of Neighborhood Development (DND) is responsible for managing these resources. Housing and community development grants are either granted annually based off of a formula or are awarded through a competitive application process by state and local governments.

Annual Formula Grants include:

- **HUD Community Development Block Grant (CDBG)**—Established in 1974, the CDBG program a key federal resource supporting the programs and services provided by the Department of Neighborhood Development. CDBG funds are used for housing development, social services and neighborhood business development. CDBG funds also support DND personnel, the Main Streets Program, and programs of the Mayor’s Office of Jobs and Community Services. In fiscal 2014, DND received \$16.8 million through this program. However, over the past five years, from fiscal 2010 through fiscal 2014, CDBG funding has decreased by 15%.
- **Section 108 Loan Guarantee Program** CDBG also has a loan guarantee component. Section 108 allows the City to borrow and re-lend up to five times the value of the CDBG allocation for economic development projects. DND

currently has \$52 million in guarantee authority available until September 30, 2015 to support the City's "Boston Invests in Growth" Program.

- **HUD HOME Investment Partnerships Program** The HOME Investment Partnerships Program implements local housing strategies designed to increase homeownership and affordable housing opportunities for low and very low-income Americans. In fiscal 2014, DND received approximately \$4.4 million through this program. Approximately 88% of these funds will be allocated to developing affordable housing. Over the past five years, from fiscal 2010 through fiscal 2014, HOME funding has decreased by 48%
- **HUD Emergency Solutions Grant** The Emergency Solutions Grant supports essential services related to emergency shelter and street outreach, emergency shelter operation and renovation, short-term and medium-term rental assistance and housing relocation and stabilization. In fiscal 2014, DND received approximately \$1.1 million through this program.

Competitive Grants include:

- **HUD Continuum of Care for the Homeless Grant** The Continuum of Care for the Homeless Grant program provides competitive funding for efforts to re-house homeless individuals and families, to promote access to and effective utilization of mainstream programs, to optimizes self-sufficiency among individuals and families experiencing homelessness. The DND receives approximately \$24 million annually through this program.
- **HUD Lead Hazard Control Grant** The Lead Hazard Control Grant program addresses childhood lead-based paint poisoning and other childhood diseases associated with poor housing conditions.

Board of Appeal or Board of Appeals

In Boston, the correct term is "Board of Appeal". The Board of Appeal is the only appellate zoning board in the State to be named "Board of Appeal" as opposed to "Board of Appeals". The appellate zoning boards in all other Municipalities are statutorily enabled by M.G.L. c. 40A, Section 12, which uses the term "Board of Appeals". Chapter 40A does not apply to Boston, where the Boston Zoning Code and City Ordinances control zoning. See (CBC 9-4). Thus, in Boston, the correct term is "Appeal", not "Appeals".

DND receives approximately \$1-3 million every 2-3 years through this program.

- **HUD Choice Neighborhoods Grant** The Choice Neighborhoods Grant program provides competitive planning grants and implementation grants to transform neighborhoods of extreme poverty functioning, sustainable mixed-income neighborhoods. DND received a one-time grant of \$20.5 million in 2012 for the purposes of redeveloping the Quincy Heights Project and investing in providing economic opportunity to the low-income residents of the surrounding Quincy Corridor Neighborhood in Dorchester.
- **EPA Brownfields Assessment Grants** The Brownfields Assessment Grant program provides competitive financial and technical assistance to prevents, assess, safely clean up, and sustainably reuse brownfields. DND receives approximately \$400,000 every 2-3 years through this program.

Role of City Departments, Boards and Commissions in Development Review

Although the BRA serves as the primary planning, zoning, economic development, and industrial development body in the City, other city departments also play key roles in the development process. These departments include the Assessing Department, Inspectional Services Department, Board of Appeal, Public Improvement Commission, Civic Design Commission, Landmarks Commission, Transportation Department, Air Pollution Control Commission, Groundwater Trust, Conservation Commission, Interagency Green Building Committee and Institutional Expansion Board.

In addition to meeting the requirements of Boston city agencies, development projects may also need to comply with state and federal review procedures.

Assessing Department The Commissioner of Assessing is required to be a signatory to all tax agreements approved by the BRA. The Commissioner of Assessing plays a vital role of representing the City's interests in negotiations of the terms and conditions of contract payments under Chapter 121A, Section 6A with the Boston Redevelopment Authority and private developers.

Inspectional Services Department (ISD) The ISD was established in 1981 to assume responsibilities of housing and building inspections (Chapter 19 of the Acts of 1981). The Commissioner of ISD is the authority tasked with administering and enforcing the Massachusetts State Building Code and the Boston Zoning Code. In accordance with Article 80, the Commissioner enforces these zoning codes by refusing to issue a permit to construct, alter, demolish, or change the occupancy or use of a structure until he or she has received a Certification of Compliance from the BRA ensuring that the project will not

be in violation of Article 80. Similarly, for smaller projects, the Commissioner of ISD is tasked with enforcing Articles 6, 7 and 8 of the Zoning Code. Article 6 covers conditional use permits, Article 7 covers variances, and Article 8 covers by-right zoning and uses. The Commissioner is appointed by the Mayor.

Boston Zoning Commission The Boston Zoning Commission adopts and amends zoning regulations for the City of Boston, often at the recommendation of the BRA. The Zoning Commission comprises 11 members, appointed by the Mayor and nominated by specified organizations representing architects, builders, labor unions and residential neighborhood organizations. The City is currently undergoing a comprehensive rezoning effort. For more on the Zoning Commission and the rezoning effort, see the section above on the Boston Zoning Code.

Board of Appeal The Board of Appeal hears requests for conditional use permits, variances, and other zoning relief. The Board comprises seven members who are appointed by the Mayor to serve staggered three-year terms subject to nominations from a variety of professional groups.

Public Improvement Commission (PIC) The PIC is responsible for the laying out, altering, widening, relocation, discontinuance, construction, or changing the grade of public streets in the City of Boston (CBC Ord. §7-7.1). PIC approval is necessary for temporary and permanent encroachments on the public way including access to streets and sidewalks and structural overhangs. Accordingly, if a development requires performing work within a public way, contains an architectural feature that extends beyond the property into a public way, or includes outdoor seating situated on public property, the developer or owner will need PIC approval of their project.

The PIC consists of the Commissioner of Public Works, the Commissioner of Property

Management, the Commissioner of Inspectional Services, the Commissioner of Transportation, and the Executive Director of the Boston Water and Sewer Commission. The Public Works Department provides support staff and engineering support. The Commissioner of Public Works acts as Chairperson of the PIC.

Boston Civic Design Commission (BCDC)

The BCDC advises the City in reviewing the design of projects that are greater than 100 thousand square feet or that affect the public realm (Zoning Code Article 28). The Commission votes to approve the schematic design of a project or proposed district design. The BCDC's approval is then transmitted to the BRA and the Mayor. However, the Commission's role is purely advisory. The BRA or the Mayor may override the Commission's suggestion by providing written explanation of the basis for the approval of the project or the design guidelines.

The BCDC comprises 11 members, all appointed by the Mayor. At least six Commissioners must be architects, landscape architects, or urban designers, and at least one member must have expertise in historic preservation or architectural history.

Boston Landmarks Commission (BLC) The BLC was established as Boston's city-wide historic preservation agency in 1975 by state legislation (Chapter 772, of the Acts of 1975). The Boston Landmarks Commission is the primary preservation agency tasked with identifying and preserving historic buildings, places and neighborhoods. The BLC identifies historic properties and takes measures to preserve them. These measures include reviewing development and demolition proposed in the City, providing public information and assistance on preservation practices, and providing staff support to the many local historic district commissions. Local historic commissions have specific powers of

review; the three largest (in covered geographic area) are the Beacon Hill Architectural Commission, the Back Bay Architectural Commission, and the South End Landmark District Commission.

If a property is designated a Boston Landmark, all proposed exterior alterations need to be reviewed and approved by the Boston Landmarks Commission before a building permit is issued. Additionally, Article 85 of the Zoning Code grants the Boston Landmarks Commission the authority to review demolition of significant buildings. If the BLC deems it necessary, it may require a 90-day waiting period to further review alternatives to demolition with the applicant.

Boston Transportation Department (BTD)

The BTD manages traffic and the parking supply in the City of Boston. Under Article 80, proponents of new development are required to sign a Transportation Access Plan Agreement (TAPA). TAPAs bind developers to promises to mitigate transportation related impacts of development by creating traffic impact models, installing traffic signal equipment, promoting and subsidizing public transportation, facilitating ride-sharing and car-supply and improving public transportation facilities. The BTD also promulgates parking space guidelines throughout the City that regulate the number of parking spaces required for new developments. The Commissioner of the Boston Transportation Department is appointed by the Mayor.

Boston Air Pollution Control Commission (APCC)

The APCC administers the City's non-zoning parking freeze areas instituted under the Federal Clean Air Act (42 U.S.C. §7401) and the Massachusetts State Implementation Plan (310 CMR 7.30-7.33). Under the Implementation Plan, the neighborhoods of Downtown Boston, South Boston and East Boston are designated as parking freeze areas. In these areas, new commercial parking must be

accompanied by the elimination of spaces at least equal to the number of new spaces being created. Parking freezes only apply to commercial spaces where cars are parked temporarily by the public for a fee. Most accessory parking spaces are exempt from the freezes. Construction or modification of a commercial parking facility that increases the number of parking spaces within a parking freeze district must purchase the rights to those spaces from a “parking freeze bank” where the rights to spaces are exchanged.

Commercial parking facilities may be granted an exemption from the APCC upon a finding that the primary business of the owner or operator of the facility is not the operation of parking facilities and that the facilities are only used by the lessees, employees, patrons, customers, clients patients or guests of the entity owning or operating the facility and that the public is effectively excluded. The Board consists of the Commissioner of Public Health, the Commissioner of Traffic and Parking, and three members appointed by the Mayor (CBC Ord. §7-2.1).

Boston Groundwater Trust (BGT) The BGT was established in 1986 and revised in 2005 by Ordinance. The role of the BGT is to monitor groundwater levels in Boston and to make recommendations to protect the water table. The BGT works with ISD and the BRA to understand and mitigate any negative impacts of development projects on ground water levels.

The BGT consists of at least 11 members. Nine “Constituent Trustees” are appointed by the Mayor upon recommendation from various neighborhood groups. Three Trustees are appointed by the Mayor from the Executive Branch of the City to serve *ex officio*. Finally, the President of the City Council or his designee from the City Council serves *ex officio*.

Boston Conservation Commission (BCC) The BCC preserves open space, wetlands and other natural areas of the City (CBC Ord. §7-

1.1). The BCC is the primary city agency tasked with administration of the Massachusetts Wetlands Protection Act, the Massachusetts Rivers Protection Act, and the Conservation Commission Act. The Commission comprises the Commissioner of Parks and Recreation, who serves *ex officio*, and six other Commissioners appointed by the Mayor. Two of the six commissioners must be nominated by local environment groups. The Conservation Commission is now in the process of drafting a local wetlands ordinance.

Boston Interagency Green Building Committee (BIGBC) BIGBC is an advisory board that examines a Proposed Project’s compliance with the City’s green building laws. The Committee consists of representatives of various city agencies including the BRA, the Environment Department, the Transportation Department, the Inspectional Services Department and the Mayor’s Office.

Boston Fire Department According to the Massachusetts Building Code, any development in Boston must be in conformity with the Boston Fire Code (Chapter 28 of the Ordinances of 1979). Inspection by the Fire Department is required prior to the issuance of a certificate of occupancy. Further, a permit issued by the Commissioner of the Fire Department is required for the maintenance of fire protection equipment and fire alarm systems prior to the commencement of any construction, repair, alteration, or demolition of buildings.

Boston Public Safety Commission, Committee on Licenses A development may require a License from the Boston Public Safety Commission, Committee on Licenses to keep or store, substances which are flammable, reactive, poisonous, or otherwise produce conditions hazardous to life or property. Any such license granted is subject to **conditions** and restrictions as may be prescribed by the Committee (Chapter 28 of the Ordinances of 1979).