C O M M O N W E A L T H   O F   M A S S A C H U S E T T S

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In the Matter of

243 RIVERNECK, LLC,

and

CHELMSFORD ZONING BOARD OF APPEALS

No. 2025-09

SUMMARY DECISION

May 20, 2026

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In the Matter of 243 RIVERNECK, LLC, Appellant and CHELMSFORD ZONING BOARD OF APPEALS, Appellee	)	No. 2025-09

SUMMARY DECISION

I. INTRODUCTION AND PROCEDURAL HISTORY

This is an interlocutory appeal, pursuant to 760 CMR 56.03(8)(c), by 243 Riverneck, LLC (Riverneck or developer) challenging the safe harbor decision issued by the Executive Office of Housing and Livable Communities (EOHLC) relative to its comprehensive permit application for a project located at 243 Riverneck Road in Chelmsford. On May 19, 2025, Riverneck filed an application for a comprehensive permit with the Chelmsford Zoning Board of Appeals (Board) for a project consisting of a 16-unit rental development, known as the Residences at Riverneck, and a 23-unit ownership development, known as Riverneck Estates (together, the project). Initial Pleading, ¶¶ 9, 11.

The hearing on the application opened on June 18, 2025, and the Board voted to assert, pursuant to G.L. c. 40B, § 20, and 760 CMR 56.03(3) and 8(a), that low or moderate income housing exists in more than 10 percent of the Town's housing units and therefore denial of Riverneck's application was consistent with local needs. Board Exh. 2. On June 27, 2025, the Board notified the developer and EOHLC that it considered that the town had achieved the so-called "safe harbor," or statutory minimum, available to a municipality that has met the housing unit minimum by having low or moderate income housing comprise more than ten percent of its total housing stock as defined in G.L. c. 40B, § 20, and 760

CMR 56.03(1) and 56.03(3)(a). Developer Exh. E. On July 10, 2025,[1] Riverneck filed an objection with EOHLC challenging the Board's claim to safe harbor. Developer Exh. F. On August 8, 2025, EOHLC issued its decision agreeing that the Town had achieved the ten percent Housing Unit Minimum as of the date Riverneck's application was filed. Board Exh. 1. On August 27, 2025, the developer appealed EOHLC's decision to this Committee.[2]

Following an initial conference of counsel on September 12, 2025, the Board filed a motion for summary decision with exhibits 1 through 36. Riverneck filed an opposition and cross-motion, with exhibits A through S, and the Board filed a reply and opposition. The Board argues that it has met its burden of proof that it had achieved the ten percent housing unit minimum per 760 CMR 56.03(3)(a) and thus was entitled to safe harbor status. Riverneck first claims that the safe harbor protections do not apply to its application where the application should be considered a request to modify a previously granted modified comprehensive permit. Second, it disputes inclusion of certain units for inclusion on the Town's Subsidized Housing Inventory. For the reasons set out below, the developer is entitled to summary decision.

II. STANDARD OF REVIEW

In an interlocutory appeal of a decision of EOHLC to the Committee, whether it is an appeal by the Board denying its claim of safe harbor, or, as here, an appeal by the developer upholding a Board's claim of safe harbor, the Board carries the burden of proving satisfaction of the grounds for asserting that a denial of a comprehensive permit is consistent with local needs. In this case, the Board's burden is to prove that the Town achieved the ten percent Housing Unit Minimum per 760 CMR 56.03(3)(a) and thus is entitled to safe harbor status. *See* 760 CMR 56.03(3). Like all appeals to the Committee, an interlocutory appeal is

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[1] It appears that the letter is incorrectly dated July 10, 2024; there is no dispute that the correct date is July 10, 2025.

[2] Before EOHLC's August 8, 2025, decision was issued and the current appeal was filed, on July 16, 2025, Riverneck filed an appeal of the Board's denial of its application. *See 243 Riverneck, LLC v. Chelmsford*, No. 2025-05. By order dated October 22, 2025, that matter was stayed pending the outcome of the current appeal. Thereafter, on September 17, 2025, Riverneck refiled its comprehensive permit application with the Board and, by agreement of the parties, on November 6, 2025, the Board opened the public hearing on the reapplication. The Board once again asserted its claim to safe harbor, which was again challenged by the developer. On December 23, 2025, EOHLC issued a determination that the Town had not satisfied the ten percent statutory minimum and the Board filed an appeal to the Committee. *See Matter of Chelmsford and 243 Riverneck, LLC*, No. 2026-01. That appeal remains pending.

de novo. G. L. c. 40B, § 22; *Board of Appeals of Hanover v. Housing Appeals Comm*., 363 Mass. 339, 369-371 (1973); *Matter of Pembroke and River Marsh LLC*, No. 2019-04, slip op. at 2 (Mass. Housing Appeals Comm. Summary Decision July 20, 2020) and cases cited. The appeal is not restricted to evidence submitted to EOHLC and EOHLC's decision carries no evidentiary weight. *River Marsh, LLC*, *supra,* No. 2019-04, slip op. at 2, citing *Kirkwood v. Board of Appeals of Rockport*, 17 Mass. App. Ct. 423, 426-427 (1984).

Summary decision is appropriate on one or more issues that are the subject of an appeal before the Committee if "the record before the Committee, together with the affidavits (if any) shows that there is no genuine issue as to any material fact and that the moving party is entitled to a decision in its favor as a matter of law." 760 CMR 56.06(5)(d); *see Catlin v. Board of Registration of Architects*, 414 Mass. 1, 7 (1992); *Warren Place, LLC v. Quincy,* No. 2017-10, slip op. at 4 (Mass. Housing Appeals Comm. Aug. 17, 2018), *aff'd sub nom. Haugh v. Housing Appeals Comm*., Norfolk Super. Ct. No. 1882CV01167, Aug. 7, 2019; *Delphic Assocs., LLC v. Duxbury,* No. 2003-08, slip op. at 6 (Mass. Housing Appeals Comm. Sept. 14, 2010); *Grandview Realty, Inc. v. Lexington,* No. 2005-11, slip op. at 4 (Mass. Housing Appeals Comm. July 10, 2006). For a determination on summary decision, the Committee must "examine whether the undisputed evidence, when considered in the light most favorable to the nonmoving party … is legally sufficient to support a decision in favor of the movant." *Matter of Oxford and 722 Main Street,* No. 2021-11, slip op. at 3 (Mass. Housing Appeals Comm. Nov. 16, 2022), citing *Warren Place, supra*, No. 2017-10, slip op. at 12; *Litchfield Heights, LLC v. Peabody*, No. 2004-20, slip op. at 4 (Mass. Housing Appeals Committee Jan. 23, 2006). *See Commercial Wharf East Condominium Assoc. v. Department of Environmental Protection*, 93 Mass. App. Ct. 425, 427 n2 (2018), citing *Zoning Bd. of Appeals of Amesbury v. Housing Appeals Comm.*, 457 Mass. 748, 763 (2010) (a motion for summary decision "is the administrative equivalent of a motion for summary judgment"). "Summary decision may be made against the moving party, if appropriate." 760 CMR 56.06(5)(d); *Delphic Assocs., LLC v. Duxbury*, No. 2003-08, slip op. at 11 n.7 (Mass. Housing Appeals Comm. Ruling and Order Extending Comprehensive Permit Jan. 12, 2010); *Taylor Cove Dev., LLC v. Andover*, No. 2009-01, slip op. at 1 n.1 (Mass. Housing Appeals Comm. Ruling on Motion for Summary Decision July 7, 2009).

The presumptive evidence of whether a town has achieved the housing unit minimum is the EOHLC Subsidized Housing Inventory (SHI), which is "the list compiled by [EOHLC] containing the count of low or moderate income housing units by city or town." 760 CMR 56.02: *Subsidized Housing Inventory (SHI)*; *see* 760 CMR 56.03(2). "For purposes of calculating whether the city or town's SHI Eligible Housing units exceed 10%..., there shall be a presumption that the latest SHI contains an accurate count of SHI Eligible Housing and total housing units. …[But] a party may introduce evidence to rebut this presumption…." 760 CMR 56.03(3)(a). *See Matter of Waltham and Alliance Realty Partners*, No. 2016-01, slip op. at 28 (Mass. Housing Appeals Comm. Feb. 13, 2018). The developer may introduce evidence to challenge the sufficiency of the Board's case and rebut the presumption. *Matter of Braintree and 383 Washington Street,* No. 2017-05, slip op. at 28 (Mass. Housing Appeals Comm. June 27, 2019), *aff'd* No. 23-P-1213, Mass. App. Ct. June 18, 2025, citing *Standerwick v. Zoning Bd. of Appeals of Andover*, 447 Mass. 20, 34 (2006) (presumption destroyed upon offer of evidence warranting finding contrary to presumed fact); *River Marsh, LLC*, *supra,* No. 2019-04, slip op. at 3. The Board carries the ultimate "burden of proving satisfaction of the grounds for asserting that a denial or approval with conditions would be consistent with local needs…." 760 CMR 56.03(8)(a). It must affirmatively prove that it has satisfied the statutory minimum based on reliable supporting evidence. *Alliance Realty Partners*, *supra*, No. 2016-01, slip op. at 5; *Brewster Commons, LLC v. Duxbury*, No. 2010-08, slip op. at 6 (Mass. Housing Appeals Comm. Ruling and Order Extending Comprehensive Permit Dec. 12, 2011).

A review of the papers and evidence submitted by the parties in support of their respective motion and cross-motion for summary decision demonstrates that no genuine issue exists regarding the facts that are material to the issues raised. No affidavits or documents attesting to a factual dispute were filed. Thus, the material facts presented for summary decision are undisputed.

III. UNDISPUTED FACTS

A. The Prior Comprehensive Permit

In 2003, the Board granted a comprehensive permit to Princeton Development, Inc./Princeton Rivermeadow, LLC (Princeton). After a period of litigation, on August 29, 2008, the Board granted an amended comprehensive permit (the Princeton Permit) to Princeton for the construction of 48 units. Developer Exh. B; Board Exhs. 21, 21A. On January 3, 2013, Princeton requested a three-year extension of the Princeton Permit, claiming that because the prior abutter appeal was resolved in 2010, the Princeton Permit would lapse in 2013, and thus sought an extension until 2016. Board Exh. 32. The Board granted several extensions of the permit through March 7, 2024.[3] Board Exhs. 33-36; Developer Exh. C. Construction never commenced under the Princeton Permit. Board Exh. 21. Princeton no longer controls the project site. Board Exh. 18; Developer opposition, p. 2. Princeton deeded the project site to David Crandall as trustee of Riverneck Road Realty Trust on March 5, 2020 (the 2020 Deed). Board Exh. 21B. The 2020 Deed states:

> During its ownership of the Land, the Grantor obtained various permits for the development of the Land and prepared various forms for engineering relative to said permits. The Grantor has not altered said permit beyond that in the public record. The Grantor shall be under no obligation to extend the permits. By this Deed, the Grantor is conveying only title to the Land subject to the rights and restrictions of record.

The 2020 Deed referenced an agreement between Princeton and Mr. Crandall in which the parties "anticipated any use of the Land as conventionally zoned for residential house lots to be limited to 2 house lots," but if Crandall or a successor purchaser was able to build a third house, an additional amount would be paid to Princeton. Board *Id*. Despite the language in the 2020 Deed, "conveying only title to the Land" and that Princeton had "no obligation to extend the permits," Riverneck Road Realty Trust sought to extend the Princeton Permit in February 2022.

In a February 24, 2022, e-mail exchange between Princeton's counsel and the Town's Community Development Director, Princeton's counsel informed the Town that Princeton had not been aware of Riverneck Road Realty Trust's February 2022 extension request and that Princeton had not given its consent or permission to anyone to take action on the Princeton Permit. Board Exh. 22. Later in 2022, additional correspondence between Princeton's counsel and agents, the General Counsel of the Department of Housing and Community Development (now EOHLC) and MassHousing, the subsidizing agency for the project, indicated that MassHousing declined to transfer the Princeton Permit to 242 Riverneck, LLC[4] on the grounds that the 2020 Deed "limits the conveyance of the Property

[3] The developer argues that St. 2024, c. 238, § 280, an "Act Relative to Strengthening Massachusetts' Economic Leadership," automatically and by operation of law extended the Princeton Permit through March 7, 2026. Developer opposition, p. 2.

[4] The correspondence indicates that Riverneck Road Realty Trust intended to convey the property to 242 Riverneck LLC. Board Exh. 26.

to the land only" and it cannot determine 242 Riverneck, LLC's eligibility for transfer of the permit "without the authorization of the current permit holder." Board Exh. 26.

B. The SHI and the Disputed Units

As of March 26, 2025, Chelmsford's SHI was 9.94 percent, or 1,461 units, of the Town's total year-round housing units, which at all relevant times totaled 14,696. Board Exh. 4; Developer Exhs. E, G. The Town's SHI on May 6, 2025, remained at 9.94 percent and on May 22, 2025, was increased to 10.02 percent.[5] Board Exh. 5; Developer Exhs. E, H, I. At all relevant times, 92 group home units were included in Chelmsford's SHI. *Id.* The developer challenges inclusion of the six Local Action Units (LAUs) units at 255 Princeton Street, 28 of the 42 units at the Courtyard, and all 92 group home units.

1. 255 Princeton Street

The project at 255 Princeton Street was developed over several years, pursuant to a February 8, 2022, development agreement between the Town and Maple Multi-Family Land SE, LP and 255 Princeton Realty Holdings, which was subsequently assigned to CH MH BTH III/Boston Chelmsford LLC and UMW Residences Limited Partnership. Board Exhs. 7, 14. The development agreement included a commitment by the Town to pursue the adoption of the UMASS West Multi-Family Overlay District (UMWMFOD) and a requirement that the developer provide six affordable units as LAUs with an option to make a payment in lieu of creating affordable units. Board Exh. 7, pp. 1 and 4. The UMWMFOD was adopted and the project was developed pursuant to the UMWMFOD bylaw, rather than a comprehensive permit. A site plan approval decision was issued by the Planning Board and filed with the Town Clerk on October 4, 2022, approving 340 rental units, with a condition providing that affordable units would be addressed in a separate decision, which was issued on October 9, 2023, and filed with the Town Clerk on January 23, 2024. Board Exhs. 8, p. 14; 9. On February 8, 2024, five building permits were issued to 255 Princeton Realty Holdings for all 340 rental units. Board Exh. 10. On April 8, 2025, the Regulatory Agreement and Restrictive Covenants for 255 Princeton Street, signed by the Town and the developer, as

[5] After May 6, 2025, but before the present application was filed on May 19, 2025, two additional projects, Marose Avenue/Cobblestone Place and 255 Princeton Street, representing a combined total of 11 SHI-eligible units, were requested to be added to Chelmsford's SHI, which would bring the total number of SHI-eligible units to 1,472. The five units at Marose/Cobblestone Place are not in dispute here.

well as the executed Consent and Subordination of Development Agreement to Regulatory Agreement, were submitted to EOHLC for signature by the EOHLC Undersecretary. Board Exhs. 11, 12. On April 16, 2025, the Board submitted the site plan for 255 Princeton Street, showing the proposed location of the affordable housing units throughout the project to EOHLC. Board Exh. 13.

In a letter dated May 1, 2025, the Town received notice from EOHLC that the Town's application for the six LAUs at 255 Princeton Street had been approved and EOHLC executed the regulatory agreement. Board Exh. 15. The May 1, 2025, letter also enclosed instructions describing the documentation that the Town must submit to EOHLC for the six units to be added to its SHI (i.e., LAU approval letter, zoning approval decision, and building and occupancy permits). *Id*. The regulatory agreement was recorded at the Registry of Deeds on May 19, 2025. Board Exh. 16. On May 22, 2025, the Town's SHI was updated to include the six LAUs as well as the five units at Cobblestone Place on Marose Avenue. Board Exh. 5; Developer Exh. I.

2. The Courtyard

On November 2, 1988, the Board issued a comprehensive permit to The Commons Realty Trust for development of 168 units at 360 Littleton Road in Chelmsford, Massachusetts (the Courtyard Permit). Board Exh. 27. Under Condition H of the Courtyard Permit, 42 affordable units (25 percent of the development) were permitted in perpetuity through the Homeownership Opportunity Program (HOP). *Id*.; Board Exh. 28. By subsequent decision in 1991, the permit was modified to reduce the number of units in the project from 168 to 158, but to include "[t]he same percentage of 'Affordable Units.'" Board Exh. 29. The modification decision, filed by the Board on June 4, 1991, states the number of affordable units as being "40%" of the total units in the development,[6] rather than the 42 units approved under the Courtyard Permit.[7] *Id*.

[6] 40 percent of the total units would equal 67.2. Based upon the reduction in number of units from 165 to 158, 25 percent of the total units would equal 39.5, rounded up to 40.

[7] The Board contends that this is a typographical error and that it should be disregarded, as all other documentation for the Courtyard Permit states that there will be 42 affordable units in the development. Board Exhs. 27, 28. We will address this discrepancy in our discussion.

IV. DISCUSSION

A. The Prior Comprehensive Permit

Riverneck states that it "has not argued and is not now arguing that its Application is an application to modify the comprehensive permit issued in 2008." Developer opposition, p. 12. Rather, it is arguing instead "that the Project is 'effectively' a modification of the earlier proposal and, thus, that the Application was 'in-effect' a request to amend and reissue a comprehensive permit." *Id*. Therefore, it argues that, as a matter of policy, the regulations' safe harbor provisions ought not apply. *Id*. Its argument is based on a recitation of the Legislature's intent in enacting Chapter 40B—to provide relief from exclusionary zoning practices. Based upon that intent, the developer argues that a site once approved for Chapter 40B development, with a comprehensive permit still in effect, should be "deemed eligible for redevelopment under the Act, whether by change(s) to the existing permit or issuance of a new permit altogether, without Safe Harbor protection(s) operating to preclude the same." *Id.*

The Board disputes Riverneck's characterization of its application, arguing that the May 19, 2025, application must be considered on its own merits, not in relation to a "hypothetical but nonexistent request" for modification of a different, and lapsed, permit. Board reply, p. 2. Reiterating the language from the 2020 Deed, the Board contends that the plain language of that deed did not transfer the Princeton Permit to the developer and furthermore, the transfer was not approved by MassHousing.[8] Therefore, the Board argues, Riverneck's application cannot be considered "effectively" a modification of the Princeton Permit and the 2024 extension of that permit was of no effect. *Id*., p. 3.

We agree with the Board that the plain language of the 2020 Deed, together with the unequivocal statements of Princeton's representations and MassHousing's rejection of the transfer of the permit, lead to the conclusion that the Princeton Permit was not transferred to the developer. In addition, we do not find persuasive Riverneck's arguments that its application was "effectively" a modification of that permit, or that, because of the existence of that permit, the project site is entitled to special protection from a Town's safe harbor

[8] Pursuant to the regulations, prior to substantial completion, a comprehensive permit may only be transferred "upon written confirmation from the Subsidizing Agency that the transferee meets the requirements of 760 CMR 56.04(1)(a) and (b), and upon written notice to the Board and the Committee (in the case of a Project granted a Comprehensive Permit under 760 CMR 56.07)." 760 CMR 56.05(12)(b).

claim. Riverneck points to no basis either in Chapter 40B or its regulations or caselaw for such a finding.

B. The Disputed Units

1. 255 Princeton Street

The Board argues that the six LAUs at 255 Princeton Street were approved as SHI-eligible units before Riverneck filed its application on May 19, 2025. Board motion, p. 10. It alleges that those units meet all the requirements of 760 CMR 56.03(2)(a), which states:

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

The Board contends that the disputed LAUs were developed pursuant to the UMWMFOD zoning bylaw adopted under Chapter 40A and the LIP, have the appropriate use restriction and Affirmative Fair Marketing Plan, and satisfy all other requirements of guidelines issued by EOHLC. Board motion, p. 11; Board Exhs. 12, 16, 17. Further, under 760 CMR 56.03(2)(b):

> Units shall be eligible to be counted on the SHI at the earliest of the following:
>
> 1. For units that require a Comprehensive Permit under M.G.L. c. 40B, § 20 through 23, or a zoning approval under M.G.L. c. 40A or completion of plan review under M.G.L. c. 40R, the date when:
>
> > a. the permit or approval is filed with the municipal clerk, notwithstanding any appeal by a party other than the Board, but subject to the time limit for counting such units set forth at 760 CMR 56.03(2)(c); or
> >
> > b. on the date when the last appeal by the Board is fully resolved;
>
> 2. When the building permit for the unit is issued;
>
> 3. When the occupancy permit for the unit is issued; or
>
> 4. When the unit is occupied by an Income Eligible Household and all the conditions of 760 CMR 56.03(2)(b) have been met (if no Comprehensive Permit, zoning approval, building permit, or occupancy permit is required.)”

The Board argues that, pursuant to 760 CMR 56.03(2)(c), the units were ineligible for the SHI until the date that the building permit is issued, which was February 8, 2024. Board motion, p. 11; Board Exh. 10. Pursuant to 760 CMR 56.03(2)(c), if more than 18 months elapse between issuance of the building permits and issuance of the certificate of occupancy, the units will become ineligible for the SHI until the date that the certificate of occupancy is issued. If no occupancy permit (or comprehensive permit, zoning approval, or building permit) is required, the earliest that an otherwise SHI-eligible unit may count on the SHI is when the unit is occupied by an income eligible household. 760 CMR 56.03(2)(b)4.

The Board then contends that the six LAUs were subject to a regulatory agreement and affirmative fair marketing plan, which was executed by EOHLC on May 1, 2025, without any requirement for further revisions or submissions. Board Exhs. 12, 13, 16. Accordingly, the Board argues, such approval was not conditional and was effective as of EOHLC's May 1, 2025, approval letter, and not at a later date when evidence of inclusion of those units on the SHI is first reflected on EOHLC's website. Board motion, p. 12. Therefore, it argues that, since 18 months from the issuance of the building permit had not yet lapsed as of EOHLC's approval on May 1, 2025, the units are not ineligible for the SHI based on lack of occupancy permit issuance or occupancy. Board motion, p. 12. The Board disputes Riverneck's contention that Town lost its safe harbor status due to the lapsing of the building permits 18 months later, on August 8, 2025. It argues that the regulations provide and this Committee has consistently held that safe harbor is measured as of the date the comprehensive permit application is filed, regardless of whether it fell out of safe harbor at a later date. Board reply, p. 4. Accepting the developer's argument, the Board contends, would create a "moving target" for a Town's safe harbor compliance. Board reply, p. 5.

The developer contends that the six LAUs at 255 Princeton Street did not qualify for inclusion on the SHI as of the date of the application. Developer opposition, p. 13. Riverneck disputes that the May 1, 2025, EOHLC letter constituted an unconditional approval of the units for the following reasons. *Id.*, p. 14. First, it required, for "an existing property or unit," "submit[tal] of documentation that an income eligible household resides in the unit ... " Developer Exh. L. Second, it argues that requirement was one among several prerequisites to adding the six LAUs to the SHI, where the letter further stated: "Please refer to the enclosed instructions describing the documentation that must be submitted by your community to EOHLC for th[ese] unit[s] to be added to the Subsidized Housing Inventory

(SHI)." *Id*. Riverneck argues that such documentation was not submitted by the Town to EOHLC until after the May 19, 2025, application date, resulting in the May 22, 2025, SHI update. Developer opposition, p. 15. Third, Riverneck argues that the May 1, 2025, letter stated that, to qualify for the SHI, the LAUs would need to be subject to "income and occupancy restrictions as outlined in the ... Regulatory Agreement," yet the regulatory agreement was not recorded at the Registry of Deeds prior to the application date of May 19, 2025. Developer Exh. L; *see* Board Exh. 16. Therefore, the developer argues, it is wrong to conclude that the May 1, 2025, letter was not unconditional.[9] Developer opposition, p. 15.

We have consistently held that the relevant date for determining whether a municipality is eligible for a safe harbor is the date of the project's application. 760 CMR 56.03(1); *see Matter of Hingham and AvalonBay Communities, Inc.*, No. 2012-03, slip op. at 6 n.8 (Mass. Housing Appeals Comm. Interlocutory Decision Regarding Safe Harbor Jan. 14, 2013); *see also Matter of Hingham and River Stone, LLC*, No. 2016-05, slip op. at 6 n.7 (Mass. Housing Appeals Comm. Oct. 31, 2017) (SHI is fixed as of date of application not date of Committee hearing); *Eisai, Inc. v. Hous. Appeals Comm*., 89 Mass. App. Ct. 604, 609 (2016) (town's stock of affordable housing determined at time of comprehensive permit application); *Zoning Bd. of Appeals of Hanover v. Hous. Appeals Comm.*, 90 Mass. App. Ct 111, 116 (2016) (date of application fixes date for determining whether town had met statutory minimum). It is well established that the importance of having an operative date established by regulation is necessary to provide consistency, reliability and notice to parties involved in the comprehensive permit process. Therefore, the question before the Committee in this appeal is whether the Town had achieved safe harbor as of the date of the application, May 19, 2025.

We find that EOHLC's approval of the six LAUs at 255 Princeton Street was not conditional and was effective as of EOHLC's May 1, 2025, approval letter and execution of

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[9] Riverneck argues that, even if the six LAUs at Princeton qualified for inclusion on the SHI as of the date of its application, they subsequently became ineligible because the building permits issued on February 8, 2024, lapsed 18 months thereafter on August 8, 2025. Developer opposition, pp. 15-16. Further, Riverneck argues that the subsequent issuance of temporary certificates of occupancy did not "stop the clock" so-to-speak, on the 18-month deadline following the issuance of the building permits, preventing the lapse in eligibility of the six LAUs. Because we find that the six LAUs at 255 Princeton Street were eligible to be counted on the SHI on May 1, 2025, which is within the 18-month period from the issuance of the building permits, we need not reach the question of whether the units later became ineligible for the SHI based on these arguments. *Id*.

the regulatory agreement, and not at a later date, i.e., when evidence of inclusion of those units on the SHI is first reflected on EOHLC's website. Pursuant to 56.03(2)(a), those units were eligible to be counted on the SHI as of May 1, 2025, before Riverneck's application was filed with the Board. There is nothing in the regulations that conditions eligibility of units on documentation or publication by EOHLC of the SHI listing or the recording of an executed regulatory agreement. Therefore, we find that the six LAUs at 255 Princeton Street were eligible to be counted on the SHI on May 1, 2025.

2. The Courtyard

The Board contends that the 42 HOP units at The Courtyard are properly counted on the Town's SHI. Board motion, pp. 12-14. It argues that the 40B Guidelines on this issue are clear: the resale controls on HOP units are "intended to be in effect in perpetuity. If an eligible purchaser cannot be located for a HOP affordable unit and the resale controls lapse in accordance with the program, the unit shall continue to be counted." 40B Guidelines at section II.A.5(c);[10] *see* Board Exh. 1 at 6 ("the HOP units remain eligible for the SHI pursuant to the 40B Guidelines, Section II.A.5, which allows for continued SHI inclusion if the resale controls lapse in accordance with the HOP program"). Further, the Board relies on its understanding that the June 4, 1991, permit modification to reduce the number of units in the project from 168 to 158, on June 4, 1991, contains a typographical error that the number of affordable units is "40%" of the total units in the development, rather than the 42 units approved under the original Courtyard Permit. Board Exh. 29. The Board argues that there is no evidentiary support for a reduction in the number of SHI units from 42 to 40, since 42 units were ultimately developed, submitted for inclusion on the SHI, and have consistently appeared on the SHI since their development. Board motion, p. 14; Board Exhs. 4, 5.

The developer disputes the Board's characterization of the modification as a typographical error and argues that the modification decision "says what it says" and the Board's statements that "42 units were ultimately developed" and "have consistently appeared on the SHI" are conclusory and should not be given any evidentiary weight.

[10] On April 28, 2026, the presiding officer notified the parties of her intention to take official notice of EOHLC's Guidelines, G.L. c. 40B Comprehensive Permit Projects, Subsidized Housing Inventory, updated December 2014 (40B Guidelines) and "Guidelines for Calculating General Land Area Minimum" (GLAM Guidelines) dated January 17, 2018, revised January 31, 2020, and offered them the opportunity to contest the taking of official notice pursuant to 760 CMR 56.06(8)(b)1. Neither party contested, therefore, this guidance document is included in the record for summary decision. See 760 CMR 56.06(8)(b).

Developer opposition, p. 19. Furthermore, the developer contends that registry of deeds records indicate that the use restrictions on as many as 28 of the SHI units within the 360 Littleton Road project may have been released. *Id*.; Developer Exh. M. The developer submitted recorded documents titled "Certificates of Compliance," "Termination of Restrictions," and "Release of Deed Rider," for 28 of the 42 HOP units, arguing that, while "it may be possible" that the Certificates of Compliance reflect a failure to locate an eligible purchaser, causing resale controls to lapse, the Terminations of Restrictions and Releases of Deed Riders expressly "terminate" any affordability restriction on these units and any interest of the subsidizing agency, i.e. EOHLC. Developer opposition, p. 20. The developer argues that the 40B Guidelines, § II.A.5(c), only evidences an "intent" that the HOP units be restricted in perpetuity and that the recorded documents, by their explicit language, "do far more than reference a lapse of resale controls." The terminations of these affordability restrictions, Riverneck argues, end the HOP units' SHI eligibility. *Id*., pp. 20-21.

First, we determine that the evidence submitted by the Board is sufficient to find that the 1991 modification contained a typographical error and the developer has not provided evidence to sufficiently rebut the presumption that the number of units included on the SHI is inaccurate. The 1991 modification did not change the original number of SHI units of 42, since 42 units were ultimately developed, submitted for inclusion on the SHI, and have consistently appeared on the SHI since their development. In addition, a letter from counsel for The Courtyard, dated May 13, 1991, accompanying the 1991 modification application, states that: "There will be no change in the number of HOP units (42) approved." Board Exh. 28.

The second issue raised by Riverneck is whether units developed pursuant to HOP remain eligible on the SHI upon termination of the use restrictions that kept them affordable. After a review of the comprehensive permit regulations and guidelines, we conclude they do not.

The HOP initiative is regulated by 760 CMR 20.00 (HOP regulations). HOP is defined in 760 CMR 20.02 as "the homeownership program established pursuant to St. 1985, c. 405, § 35 to assist Low or Moderate Income Households to acquire affordable homes." The HOP regulations state:

> In order to ensure the long term affordability of HOP units, their re-sale shall be governed by Re-sale Controls which shall usually be contained in the deed or a rider to the deed of the HOP Unit. All HOP Units shall be counted as

> subsidized for the purpose of demonstrating compliance with the requirements of M.G.L. c. 40B.

760 CMR 20.05. Re-sale Controls are defined as:

> the restrictions imposed on each HOP Unit within a HOP Development to ensure the continued affordability of the unit to eligible homebuyers by limiting their re-sale in accordance with the standards of HOP. These restrictions shall last for a period of at least 40 years from the initial sale of the HOP Unit.

760 CMR 20.02. Pursuant to 760 CMR 56.02 SHI Eligible Housing includes "such other housing units in a Project as may be so defined under the Department's guidelines." EOHLC maintains the SHI "to measure a municipality's stock of SHI Eligible Housing." 760 CMR 56.03(2)(a). The SHI is not limited to housing units developed through issuance of a comprehensive permit; it may also include SHI Eligible Housing Units developed under other programs, "*so long as such units are subject to a Use Restriction…." Id*. (emphasis added). "Units shall no longer be eligible for inclusion on the SHI upon expiration or termination of the initial Use Restriction, unless a subsequent Use Restriction has been imposed…." 760 CMR 56.03(2)(d). The 40B Guidelines state that:

> Homeownership Opportunity Program (HOP) resale controls are intended to be in effect in perpetuity. If an eligible purchaser cannot be located for a HOP affordable unit and the resale controls lapse in accordance with the program, the unit shall continue to be counted.

40B Guidelines, § II.A.5(c). A "use restriction" is "a deed restriction or other legally binding instrument" that "runs with the land and is recorded with the relevant registry of deeds … and which effectively restricts the occupancy of a Low or Moderate Income Housing unit to Income Eligible Households during the term of affordability." *See* 760 CMR 56.02: Use Restriction.

The developer submitted Registry of Deeds records indicating that the use restrictions for 28 of the 42 units developed pursuant to HOP were released. *See* Developer Exh. M. For 25 units, the instruments on record with the Registry are entitled "Certificate[s] of Compliance," and include the following or similar language: "[DHCD] hereby certifies that [the owner] has satisfied all obligations relating to the transfer of the Premises as set forth in [the] Homeownership Opportunity Program Deed Rider….[and] hereby releases the Owner, and the successors and assigns of the Owner, from the obligations set forth in the Deed

Rider." For one unit, an instrument titled "Termination of Restrictions" is recorded and states that "all the terms, conditions, notices, covenants and restrictions on transfer and resale, including the right of first refusal, contained in a Deed Rider … are hereby terminated." For two other units, instruments titled "Release of Deed Rider" are recorded and state that "DHCD [or the Chelmsford Housing Authority] hereby terminates its interest under the Deed Rider and releases the Owner, and his successor and assigns, from any and all obligations and restrictions set forth in the Deed Rider." Developer Exh. M.

The Board makes a cursory argument disputing the developer's challenge to the inclusion of the HOP units, stating that the 40B Guidelines on this issue "are clear: the resale controls on HOP units are 'intended to be in effect in perpetuity….'" Board motion, p. 13; 40B Guidelines at § II.A.5(c). The Board provided no further evidence to dispute that the deed restrictions on the 28 HOP units had been released or terminated or to show that new deed restrictions had been recorded.

The 40B Guidelines provide that HOP resale controls "are intended to be in effect in perpetuity," and that "[i]f an eligible purchaser cannot be located for a HOP affordable unit and the resale controls lapse in accordance with the program, the unit shall continue to be counted." 40B Guidelines, § II.A.5.c. This provision, however, does not govern the circumstances presented here. The 40B Guidelines address a "lapse" in resale controls, not the affirmative termination of the underlying use restriction. The record demonstrates that, for the 28 units at issue, the deed riders were not merely allowed to lapse but were formally extinguished through recorded instruments releasing the owner and all successive owners from all obligations and restrictions.

Moreover, the 40B Guidelines presume the continued existence of an affordability mechanism, such that the unit may revert to an affordable status upon a subsequent sale. Here, by contrast, the HOP deed riders have been terminated or released in full, and no mechanism remains to restrict occupancy or enforce affordability. In any event, to the extent the 40B Guidelines could be read to permit continued SHI inclusion in the absence of a use restriction, it would conflict with 760 CMR 56.03(2)(d), and the regulation must control.[11]

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[11] The HOP regulations, 760 CMR 20.00, govern the administration of the program, including the imposition and release of deed rider restrictions. Those regulations contemplate that affordability restrictions may, under certain circumstances, be satisfied and released following compliance with program requirements. However, the question before us is not whether the releases were permissible under the HOP program, but whether units for which all use restrictions have been terminated remain eligible for inclusion on the SHI. That question is governed by 760 CMR 56.03, which requires an

We find the developer's evidence is sufficient to overcome the SHI's presumption of accuracy for the 28 units in which the use restrictions were terminated. *See* 760 CMR 56.03(3)(a); Developer Exh. M. The burden then shifts to the Board to demonstrate that the units remain eligible for inclusion on the SHI, which the Board has failed to do. *See* 760 CMR 56.03(2)(d). Accordingly, we find that the 28 units at The Courtyard for which the HOP use restrictions have been terminated no longer qualify for inclusion on the Town's SHI.

3. Group Homes

Under the 40B Guidelines, SHI eligible housing includes properties of group homes operated by the Department of Mental Health (DMH) and the Department of Developmental Services (DDS). There are 92 units reported on Chelmsford's SHI as DDS Group Homes. The Board did not provide supportive documentation regarding the location of these group homes because that information is confidential.[12] Pursuant to the 40B Guidelines, § II.A.2.e., all group home units in each community are reported every two years to EOHLC by DMH and DDS and shall be eligible to be included on the SHI. The Board argues it has the "benefit of two presumptions of accuracy: the 760 CMR 56.03(3)(a) 'presumption that the latest SHI contains an accurate count of SHI Eligible Housing' and EOHLC's presumption that DDS has accurately reported the number of group homes." Board motion, p. 15. The Board contends that it is not its "burden to provide additional information to corroborate these presumptions." *Id*. Rather, it is Riverneck's burden to introduce evidence to sufficiently rebut this presumption. *Id*.; 760 CMR 56.03(3)(a).[13] In the absence of such evidence rebutting the inclusion of the group homes on the SHI, the Board argues that the presumption that the number of group homes reported on the SHI is accurate is sustained. *Id*.

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operative use restriction for continued SHI eligibility. Thus, even assuming the releases were consistent with the HOP program, the resulting termination of the use restrictions renders the units ineligible for SHI inclusion under 760 CMR 56.03(2)(d).

[12] The addresses of the DDS and DMH properties are subject to the privacy protections of state and federal law, such as the Massachusetts Fair Information Practices Act, G.L. c. 66A, and the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub. L. 104-191, 110 Stat. 1936, enacted August 21, 1996. *See Dinosaur Rowe, infra,* No. 2015-01, slip op. at 7-8.

[13] "In the course of a review procedure pursuant to 760 CMR 56.03(8), a party may introduce evidence to rebut this presumption." 760 CMR 56.03(3)(a).

Riverneck broadly disputes the inclusion of any of the group homes on Chelmsford's SHI and argues that the Board has offered no supporting data to justify their inclusion on the SHI. Developer opposition, p. 21. Because the data supporting the inclusion of the 92 group home units is not available to either the Board or the developer, Riverneck states that the Committee "must balance" the Board's burden of proof of establishing its safe harbor, as stated in *Matter of Stoneham and Weiss Farm Apartments, LLC*, No. 2014-10, slip op. at 9 (Mass. Housings Appeals Comm June 26, 2015), with the challenger's burden of producing evidence that the SHI properties were not qualified to be on the SHI, as stated in *383 Washington Street, supra,* No. 2017-05, slip op. at 28. Developer opposition, p. 22; *see also Alliance Realty Partners*, *supra*, No. 2016-01, slip op. at 28 (to rebut presumption, developer must produce evidence that SHI properties not qualified to be on SHI for purposes of determining numerator). Riverneck states that, despite making a "comprehensive public records request" to the Town seeking information about the group home units, no responsive records were produced. In its opposition, Riverneck cites to *Matter of Newton Zoning Bd. of Appeals and Marcus Lang Investments, LLC*, No. 2015-02 (Mass. Housing Appeals Comm. June 26, 2015), to apparently infer that, since the town in *Marcus Lang* was able to identify the location of the group home units, Chelmsford should also possess this information. Riverneck also assumes that EOHLC "undoubtedly possesses information" about the 92 group home units in Chelmsford. Developer opposition, p. 22.

Pursuant to the current General Land Area Minimum (GLAM) Guidelines, EOHLC "does not have access to these addresses, [EOHLC] has established a process through which addresses may be furnished by DDS and DMH to MassGIS on a confidential basis…." GLAM Guidelines, § III. Local boards may request a group home area calculation in connection with a GLAM safe harbor claim[14] and that calculation is performed and provided by MassGIS, but neither the local board nor EOHLC is provided with the addresses of those units. *Id*., § IV. Therefore, Riverneck's argument that Chelmsford possesses the group home information but failed to provide documentation to either it or the Committee is not credible.

[14] There is not a similar procedure in the 40B Guidelines for a board to request documentation to support the basis for including group homes in a non-GLAM safe harbor context.

In *383 Washington Street*, the developer challenged inclusion of group homes in Braintree's SHI, arguing that the board has failed to provide evidence that the units are subject to use restrictions and affirmative fair marketing plans required by 56.03(2)(a). The board argued it had the benefit of the evidentiary presumption based on the 40B Guidelines, § IIA.1.e. In that case, the Committee held that "[w]ith the presumption that the challenged properties are SHI eligible properties, [the developer] has the burden of producing evidence that the SHI properties were not qualified to be on the SHI. *See Standerwick v. Zoning Bd. of Appeals of Andover*, 447 Mass. 20, 34 (2006) (presumption destroyed upon offer of evidence warranting finding contrary to presumed fact)." *383 Washington, supra*, No. 2017-05, slip op. at 28. The Committee upheld the board's presumption and the inclusion of the group homes on the town's SHI.

In *Matter of Newton and Dinosaur Rowe, LLC*, No. 2015-01, slip op. at 8 (Mass. Housing Appeals Comm. Interlocutory Decision Regarding Safe Harbor, June 26, 2015),[15] the developer there made a similar argument that none of the group home sites should be included in the General Land Area Minimum numerator because the board did not identify them in sufficient detail. The Committee agreed that, while we generally hold the board to a high burden of proof in establishing sites eligible to be counted on the SHI, it also recognized the difficulty in obtaining and interpreting evidence regarding group homes due to the confidential nature of their locations. In rejecting the developer's general objection to their inclusion, the Committee held that, where such group homes are included on the SHI, "DHCD was satisfied with the documentation when it placed them on the inventory." *Id.*; *see also River Marsh, LLC, supra*, No. 2019-04, slip op. at 5-6 (developer failed to provide evidence to establish that group home units listed on SHI did not qualify).

Here, the developer has done nothing more than make a general objection to the inclusion of the group homes on Chelmsford's SHI. While we recognize the difficulty for either party to obtain the confidential information that formed the basis for the group homes' inclusion on the SHI, our cases have held that something more than a general objection is required to rebut the presumption. Accordingly, we find that the developer's general

[15] *Dinosaur Rowe* and *Marcus Lang Investments* are interlocutory appeals involving the same general land area minimum issues and are essentially identical decisions, with the exception of one disputed property.

objection to the inclusion of group homes on Chelmsford's SHI is not sufficient to rebut the presumption that they qualify.

IV. CONCLUSION AND ORDER

The undisputed facts show that the Town of Chelmsford has not achieved the statutory 10 percent housing unit minimum, and therefore the Board's motion for summary decision is denied and Riverneck's motion for summary decision is granted.

While we would ordinarily remand this matter to the Board for further proceedings consistent with this decision, the Board has issued a denial of the comprehensive permit application, which Riverneck appealed to the Committee on July 16, 2025. On October 22, 2025, the presiding officer granted the Board's Motion to Stay that case while this interlocutory appeal was pending. Pursuant to 56.08(3)(c), no appeal may be taken for an interlocutory appeal decision until after completion of the comprehensive permit appeal. Accordingly, this matter is stayed pending resolution of *Riverneck, LLC v. Chelmsford*, No. 2025-05, and a scheduling order for a virtual status conference in that matter will issue simultaneously with this decision.

HOUSING APPEALS COMMITTEE

May 20, 2026

/s/ Lisa V. Whelan
Lisa V. Whelan, Chair

/s/ Lionel G. Romain
Lionel G. Romain

James G. Stockard, Jr.
James G. Stockard, Jr.