

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
H O U S I N G A P P E A L S C O M M I T T E E

In the Matter of

CHELMSFORD
ZONING BOARD OF APPEALS

and

CROSBY VILLAGE, LLC

No. 2025-07

SUMMARY DECISION

May 20, 2026

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In the Matter of)
CHELMSFORD ZONING BOARD)
OF APPEALS,)
Appellant)
v.) No. 2025-07
CROSBY VILLAGE, LLC,)
Appellee)

I. INTRODUCTION AND PROCEDURAL HISTORY

The Board appealed EOHLA's determination to the Housing Appeals Committee on July 23, 2025. Following an initial conference of counsel on August 8, 2025, the developer and Board filed cross motions for summary decision on September 19, 2025, and September 30, 2025, respectively. Both parties filed oppositions on November 3, 2025. The Board did not submit a reply, while the developer filed a reply on November 13, 2025. For the reasons discussed below, the developer's motion is denied, and the Board's motion is granted.

II. UNDISPUTED FACTS

On April 17, 2025, the developer filed a comprehensive permit application with the Board for development of a 16-unit rental project on approximately 0.92 acres of land at 29 North Road and 3 Crosby Lane in Chelmsford. The Board opened the public hearing on May 8, 2025. At that hearing, the Board voted to invoke safe harbor status pursuant to 760 CMR 56.03(3)(a) on the ground that the Town had achieved the 10 percent Housing Unit Minimum. Exhs. 2; 25.

Pursuant to 760 CMR 56.03(8), the Board provided notice of its safe harbor assertion to the developer in multiple ways. First, the Board, through town counsel, provided notice via electronic mail. Town counsel sent the email to Matthew Hanson and Kenneth Hanson, the co-owners of Crosby Village, LLC, and to their attorney on May 19, 2025. On May 20, 2025, town counsel received a notification that the email to the developer's attorney had not been delivered because the address listed on the comprehensive permit application was incorrect. After contacting the developer's attorney, town counsel sent a second email with the notice of safe harbor to the attorney's corrected address on May 21, 2025. Second, the Board, through town counsel, provided notice by mail through Federal Express (FedEx) on May 19, 2025. Delivery to the developer, in the care of Matthew and Kenneth Hanson, was confirmed on May 20, 2025, at 3:13 PM via FedEx's electronic tracking. Delivery via FedEx to the developer's attorney was confirmed on the same date at 3:45 PM. Exhs. 19-23.

On May 19, 2025, the Board separately provided notice to EOHLC via FedEx. Two copies were mailed, one to EOHLC's Secretary and one to EOHLC's Undersecretary of Housing Development. Delivery of both copies was confirmed via FedEx's electronic tracking on May 20, 2025. Exh. 24.

On June 5, 2025, the developer filed with EOHLC a challenge to the Board's assertion of safe harbor electronically and via FedEx overnight mail. EOHLC issued a determination dated July 3, 2025, denying the Board's safe harbor claim.¹ In its determination EOHLC stated it received the Board's "undated" safe harbor assertion on May 23, 2025, and that it received the

¹ EOHLC found that the Board had not satisfied the requirements for asserting safe harbor under 760 CMR 56.03(8) because six units that the Board relied on for its assertion had not yet been approved by an eligible subsidy program as of the date of the developer's comprehensive permit application and therefore did not qualify for inclusion on the SHI. *See* Exh. 1.

developer's challenge by email on June 5, 2025 and by mail on June 6, 2025. The Board then filed this appeal of EOHLC's determination to the Committee on July 23, 2025. Exhs. 1; 3.

While the developer's comprehensive permit application and safe harbor challenge was proceeding, an unrelated 340-unit rental development was also being developed at 255 Princeton Street in Chelmsford (255 Princeton) through EOHLC's Local Action Unit (LAU) program, with six units being designated as local action units eligible for inclusion on the Subsidized Housing Inventory (SHI). EOHLC's Undersecretary of Housing Development signed the Regulatory Agreement and Declaration of Restrictive Covenants (Use Restriction) for 255 Princeton on May 1, 2025 and provided a formal letter to the Town Select Board on the same date stating "...the Town's Local Action Unit application has been approved for 6 affordable housing units out of 340 total units at 255 Princeton Street in Chelmsford." The letter also included instructions "describing the documentation that must be submitted by [the] community to EOHLC for [these units] to be added to the [SHI]." The Town submitted a request to have the six 255 Princeton local action units added to the SHI on May 6, 2025. Exhs. 16; 17; 18.

Additionally, the Board voted to grant a comprehensive permit for a second unrelated 5-unit project on Marose Avenue in Chelmsford called Cobblestone Place, and the decision was filed with the Town Clerk on April 9, 2025. As of May 22, 2025, the Town's SHI, as maintained by EOHLC, included the units from both 255 Princeton and Cobblestone Place and was calculated as 10.02 percent. Exhs. 7; 27.

III. STANDARD OF REVIEW

When the Board files an interlocutory appeal of an adverse decision of EOHLC to the Committee, it carries the burden of proving satisfaction of the grounds for asserting that a denial of a comprehensive permit is consistent with local needs. Like all appeals to the Committee, an interlocutory appeal is *de novo*. G. L. c. 40B, § 22; *Board of Appeals of Hanover v. Housing Appeals Comm.*, 363 Mass. 339, 369-371 (1973); *Matter of Wakefield and 32 Nahant Street, LLC*, No. 2024-02, slip op. at 4 (Mass. Housing Appeals Comm. Summary Decision May 28, 2024); *Matter of Pembroke and River Marsh LLC*, No. 2019-04, slip op. at 2 (Mass. Housing Appeals Comm. Summary Decision July 20, 2020), *appeal docketed sub nom. Crossley, et al. v. Housing Appeals Committee*, No. 2483-CV-00365 (Plymouth Super. Ct. March 26, 2025) and cases cited. The appeal is not restricted to evidence submitted to EOHLC and EOHLC's decision

carries no evidentiary weight. *River Marsh, supra*, No. 2019-04, slip op. at 2, citing *Kirkwood v. Board of Appeals of Rockport*, 17 Mass. App. Ct. 423, 426-427 (1984).²

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 n.2 (2018), citing *Zoning Bd. of Appeals of Amesbury v. Housing Appeals Comm.*, 457 Mass. 748, 763 (2010) (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.

² The developer argues that the Board’s argument rests on facts that were not considered by EOHLC when reviewing the developer’s challenge to the Board’s safe harbor assertion, and that there is a genuine dispute of material fact as to EOHLC’s findings as to when it received the Board’s notice. Developer opposition, p. 7-8. However, while we can take official notice of EOHLC’s safe harbor determination pursuant to 760 CMR 56.08(b) and accept it as a joint exhibit, the Committee does not rely on any substantive findings and conclusions reached by EOHLC in its determination. *Matter of Weston Zoning Board of Appeals and 518 South Avenue, LLC*, No. 2019-12, slip op. at 3 n.1 (Mass. Housing Appeals Comm. Mar. 15, 2021), *appeal docketed* No. 2581-CV-00434 Middlesex Super. Ct Feb. 20, 2025). The Committee is not bound by any findings made by EOHLC in its determination and is not restricted to EOHLC’s findings or evidence. See *Rockport*, 17 Mass. App. Ct. at 426-427 (1984).

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).

A review of the papers submitted by the parties in support of their respective motion and cross motion for summary decision demonstrates that no genuine issues exist regarding the facts that are material to the issues raised. The parties submitted 27 agreed exhibits. No affidavits or documents attesting to a factual dispute were filed. Thus, the material facts presented for summary decision are undisputed.

IV. DISCUSSION

The primary issue before the Committee is one of timely and proper notice. After the filing of the developer's comprehensive permit application, on May 8, 2025, the Board opened a public hearing and voted to assert the Housing Unit Minimum safe harbor. Pursuant to 760 CMR 56.03(8), the Board must provide written notice to the developer, with a copy to EOHLC, of its safe harbor assertion within 15 days of opening the public hearing. The Board states it provided such notice to the developer by email on May 19, 2025, as well as by FedEx delivery on May 20, 2025. Board motion, p. 6. In order to challenge the Board's safe harbor assertion, the developer must then provide written notice to EOHLC, with a copy to the Board, within 15 days of the developer's receipt of the Board's notice. *See* 760 CMR 56.03(8)(a). Because the developer did not file its challenge to the Board's safe harbor assertion with EOHLC until June 5, 2025 – one day after the 15-day deadline if calculated from May 20, 2025, or two days after if calculated from May 19, 2025 – the Board argues its challenge to EOHLC was untimely. Board motion, p. 6.

The developer, however, claims the Board's notices of its safe harbor assertion to both the developer and EOHLC did not timely comply with either 760 CMR 56.03(8) or EOHLC's guidance, citing "*Electronic Submission of Safe Harbor Assertions and Challenges Pursuant to 760 CMR 56.03(8)*," dated August 6, 2020 (Submission Guidance),³ and therefore the deadline to file its challenge with EOHLC extended beyond May 20, 2025. Developer motion, pp. 2; 11-12;

³ The Submission Guidance was published by the Department of Housing and Community Development (DHCD), EOHLC's predecessor agency. As of May 30, 2023, DHCD became the Executive Office of Housing and Livable Communities (EOHLC), pursuant to St. 2023, c. 7.

Developer opposition, p. 8.⁴ The developer argues that the operative date from which to calculate the timeliness of its safe harbor challenge should be either May 21, 2025 (the date on which its counsel received the Board’s notice via email) or May 23, 2025 (the date on which EOHLC stated in its decision it received the Board’s notice). The developer argues the 15-day time period to file a challenge with EOHLC began when developer’s counsel received the Board’s safe harbor assertion, which it asserts was by email on May 21, 2025, and thus its challenge to EOHLC was due no later than June 5, 2025. Developer motion, pp. 2, 11-12. The developer also argues the Board did not properly provide a copy of its safe harbor assertion to EOHLC in accordance with its Submission Guidance. *Id.*, 12-13. Because the Board mailed its submission to EOHLC by FedEx delivery, but did not also provide an electronic copy, the developer claims the operative date on which the 15-day time period begins actually extends two more days later than May 21, 2025, to May 23, 2025, the date on which EOHLC states in its determination it received the Board’s safe harbor notification. Exh. 1, p. 3 (referencing “[t]he Board’s safe harbor notification, sent via certified mail, and received by EOHLC on May 23, 2025....”).

A. The Board Provided Timely and Proper Notice to the Developer in Accordance with 760 CMR 56.03(8)(c).

760 CMR 56.03(8)(a) provides the steps a municipality must follow in order to invoke safe harbor:

If a Board considers that, in connection with an Application, a denial of the permit or the imposition of conditions or requirements would be consistent with local needs on ... [safe harbor] grounds ... it must do so according to the following procedures. Within 15 days of the opening of the local hearing for the Comprehensive Permit, *the Board shall provide written notice to the Applicant, with a copy to [EOHLC],* that it considers that a denial of the permit ... would be consistent with local needs, the grounds that it believes have been met, and the factual basis for that position, including any necessary supportive documentation. If the Applicant wishes to challenge the Board’s assertion, it must do so by providing written notice to [EOHLC], with a copy of the Board, *within 15 days of its receipt of the Board’s notice,* including any documentation to support its position. *All written notices, including*

⁴ On April 17, 2026, the presiding officer notified the parties of her intention to take official notice of the EOHLC guidance referenced in the developer’s briefs, the “*Electronic Submission of Safe Harbor Assertions and Challenges Pursuant to 760 CMR 56.03(8)*” dated August 6, 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).

copies and supporting documentation, must be submitted electronically pursuant to guidance issued by [EOHLC] during the COVID-19 State of Emergency to ensure timely receipt by the deadlines herein....

760 CMR 56.03(8)(a) (italics added).

As outlined above, the Board opened the public hearing on the developer's comprehensive permit application and invoked the Housing Unit Minimum safe harbor on May 8, 2025. The Board, through town counsel, mailed a copy of its notice of safe harbor to the developer and the developer's counsel via FedEx and also emailed the notice to both parties on May 19, 2025. While FedEx's delivery confirmation service confirmed the hard copy mailings were delivered to the developer and its counsel on May 20, 2025, town counsel received a notification that same day that the email to developer's counsel could not be delivered because an incorrect email had been listed in the comprehensive permit application. Town counsel sent the notice to the corrected email address on May 21, 2025.

The developer argues that May 21, the date on which its counsel received the Board's notice by email, should be deemed the earliest date on which it received notice. Developer motion, p. 11. In that case, the developer's 15-day window to submit its challenge of the Board's safe harbor assertion to EOHLC would run through June 5, 2025, and its submission on that date would be timely. *Id.* The developer asserts that, because it was represented by counsel, Board counsel was prohibited by Rule 4.2 of the Massachusetts Rules of Professional Conduct from communicating with it directly. *Id.*, pp. 11-12; Developer opposition, p. 9.⁵ The developer argues as a represented party it is "justified in expecting that, after commencement of a proceeding and the appearance of counsel, copies of all notices will be sent to [its] attorney" under the Administrative Procedures Act (APA). *Id.*, citing *Kalu v. Boston Ret. Bd.*, 90 Mass. App. Ct. 501, 504 (2016). In the developer's view, providing notice directly to counsel instead of directly to the represented party is more than a "mere 'courtesy,'" it is an ethical obligation. Developer motion, p. 11; *Id.*

⁵ The Massachusetts Rules of Professional Conduct were adopted by the Supreme Judicial Court as Supreme Judicial Court Rule 3:07. For ease of reference and to avoid citing to rules with a rule, references to a rule in this decision means the Rules of Professional Conduct. Rule 4.2 governs *ex parte* communications with a party represented by counsel.

We need not reach the question whether town counsel’s submission of a notice directly to the developer but not its counsel complied with the Rules of Professional Conduct or otherwise violated 760 CMR 56.03(8)(a), because notice was not provided *solely* to the developer.⁶ The uncontradicted record shows that Board counsel provided notice to developer’s counsel via FedEx delivery, and FedEx electronic tracking confirmed it was delivered at 3:45 PM on May 20, 2025. Exh. 21. The developer does not address the fact that its counsel received a copy of the notice via FedEx on the same date as the developer.⁷ Developer motion, p. 13. As we discuss below, because both the developer and its counsel received sufficient actual written notice on May 20, it serves as the operative date from which to calculate the deadline to challenge the safe harbor assertion to EOHLC. The fact that developer’s counsel did not receive a notice via email until May 21 does not affect this deadline or extend it beyond May 20.⁸

B. The Board’s Purported Failure to Comply with EOHLC Submission Guidance Did Not Extend Developer’s Filing Deadline

The developer argues that even if the Board’s notice of its safe harbor assertion to the developer (and its counsel) was compliant with the Rules of Professional Conduct, the Board’s

⁶ Although the fact that the Board’s counsel mailed hard copy notices of its decision to both developer and its counsel obviates the need for extensive discussion on the arguments raised by the developer, we briefly address them here. We are not persuaded by the developer’s reference to *Kalu*, 90 Mass. App. Ct. 501 (2016). The developer relies on *Kalu* in support of its assertion that “...after commencement of a proceeding and the appearance of counsel,” copies of all notices must be sent to a represented party’s attorney under the Administrative Procedures Act (APA). Developer opposition, p. 9, citing *Kalu*, 90 Mass. App. Ct. 501, 504 (2016). However, in *Kalu*, the record demonstrated that notice had been provided only to the plaintiff and not to plaintiff’s counsel, whereas here the record shows Board counsel provided notice to both developer and its counsel via FedEx delivery and by email one day later.

⁷ Instead, the developer’s motion primarily focuses on the date on which its counsel received notice by email on May 21, 2025. Developer motion, pp. 11-13; Developer opposition, p. 9.

⁸ Rule 4.2 of the Rules of Professional Conduct provides “[i]n representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.” Comment 4 to Rule 4.2 addresses examples where communication with a represented party does not run afoul of the rule. It states “...a lawyer having independent justification or legal authorization for communicating with a represented person is permitted to do so. For example, counsel could prepare and send written default notices and written demands required by such laws as Chapter 93A of the General Laws.” Mass. R. Prof. Conduct 4.2, Comment 4. 760 CMR 56.03(8)(a) requires the Board to “provide written notice to the Applicant” of its safe harbor assertion. 760 CMR 56.03(8)(a). It is arguable whether this notice, required by regulation, falls within the legal notices contemplated under Comment 4 that a lawyer may send directly to a represented party. The developer did not address this Comment in its briefing, and the Board did not respond to the developer’s argument on this point.

notices to EOHLC failed to comply with EOHLC's Submission Guidance. The developer argues that the Board did not provide an electronic submission to EOHLC, and that its FedEx filing was not received by EOHLC until May 23; therefore, the developer's deadline to file its challenge with EOHLC should be calculated from May 23, 2025. Developer motion, p. 12; developer opposition, p. 8.

The developer asserts EOHLC has no record of receiving the Board's safe harbor notice on May 20, 2025 (but does not address agreed Exhibit 24, which shows confirmation of FedEx delivery to EOHLC's office on May 20, 2025). Developer motion, p. 12. It argues, despite the Board's assertion that it mailed notice to EOHLC's Secretary and Undersecretary, EOHLC stated in its July 3, 2025, safe harbor decision that the Board's notice was submitted on May 23, 2025. Developer opposition, p. 7. The developer claims the Board's timeliness argument is based on facts "not properly before [the Committee]," seemingly referring to the Board's FedEx delivery confirmation of its delivery to EOHLC on May 20, 2025, and EOHLC's statement in its July 3, 2025, decision that notice was received on May 23, 2025. *Id.* In other words, the developer claims the Board's argument involves disputed facts regarding EOHLC's receipt of the Board's notice that are not properly resolved by summary decision. *Id.*, p. 8.⁹

The developer further argues that even if the Board's submission was properly delivered to EOHLC on May 20, 2025, it did not comply with EOHLC's Submission Guidance. Developer motion, pp. 12-13; developer opposition, p.8; developer reply, pp. 4-5. The Submission Guidance states that safe harbor assertions and responsive challenges "must be submitted electronically to ensure timely receipt by the regulatory deadlines set forth in 760 CMR 56.03(8)(1)" and that such submissions are to be emailed to a specific EOHLC staff person identified in the guidance. There is no evidence in the record that the Board emailed its notice to this staff person or any other EOHLC employee. Because of this oversight, the developer argues that May 23, 2025, the date EOHLC indicates in its safe harbor decision that it received notice, should be the date from which its 15-day window to file its challenge with EOHLC is calculated. Developer motion, pp. 12-13; Developer opposition, p. 9.

⁹ As stated in note 13, *infra*, despite the developer's assertion that this matter involves disputed facts, and to the extent the record contains any disputed facts, we determine they are not material facts that would preclude resolution by summary decision.

The Board argues that the Submission Guidance is not controlling in this case. First, it states that the Submission Guidance, by its own language was intended to serve as guidance only during the COVID-19 State of Emergency and is no longer applicable now that it has concluded. Board opposition, pp. 4-5. It claims that the comprehensive permit regulations have not been amended to continue the Submission Guidance requirements, nor has EOHLC issued any public policy notices or changes. *Id.*

Alternatively, the Board argues that, assuming the Submission Guidance remains in effect, its application does not affect the operative date from which to calculate the developer's 15-day deadline. *Id.*, p 5. 760 CMR 56.03(8)(a) states the date is calculated from when the applicant receives the Board's notice. In this case, Board counsel provided written notice to the developer and its counsel on May 20, 2025, via FedEx delivery. The Submission Guidelines do not purport to change or amend the plain text of the comprehensive permit regulations that "provide the rules for how safe harbor notice is to be made and how a timely challenge is to be presented." *Id.*, p. 6. Thus, the Board asserts that May 20, 2025, remains the date the developer is deemed to have received notice, and its challenge to EOHLC could be filed no later than June 4, 2025. *Id.*

Although the Board asserts the comprehensive permit regulations have not been amended to incorporate the Submission Guidance, they were amended in 2020.¹⁰ 760 CMR 56.03(8) (a) currently states that "[a]ll written notices, including copies and supporting documentation, must be submitted electronically pursuant to guidance issued by [EOHLC] during the COVID-19 State of Emergency to ensure timely receipt by the deadlines herein." The Submission Guidance is still posted publicly online by EOHLC, publishing the expectation that parties comply with its requirements for the electronic submission of safe harbor assertions and challenges.

The Submission Guidance, however, does not mandate that EOHLC will accept only electronic submissions. Instead, it states that, in addition to electronic submissions, "hard copies should continue to be mailed to [EOHLC] at 100 Cambridge Street, Suite 300, Boston, MA, 02114," and that "[h]ard copies of all submissions should also continue to be sent by mail between the parties in addition to being sent electronically." While the Submission Guidance identifies a specific EOHLC employee by name and email address for electronic submissions, it

¹⁰ EOHLC promulgated emergency amendments to 760 CMR 56.00 in 2020, which took effect as permanent regulations on October 30, 2020.

instructs parties to continue to mail hard copies “to [EOHLC] at 100 Cambridge Street, Suite 300, Boston, MA 02114” with no corresponding employee name. The record shows that the Board provided a hard copy to EOHLC delivered on May 20, 2025, and that the hard copies were addressed to 100 Cambridge Street as instructed in the Submission Guidance (but were also specifically addressed to the EOHLC Secretary and Undersecretary of Housing Development).

Although the continued references in the Submission Guidance to the COVID-19 State of Emergency may inadvertently confuse parties as to whether the guidance was intended to extend beyond March 15, 2023, when the State of Emergency concluded, the Submission Guidance remains publicly posted on EOHLC’s webpage and is referenced in the comprehensive permit regulations. *See* 760 CMR 56.03(8)(a); Board opposition, p. 4; *see also* Submission Guidance (repeated references to requirements in place “during the State of Emergency”).

We acknowledge that the reference to the Submission Guidance in 760 CMR 56.03(8) is ambiguous, specifically the sentence that “[a]ll written notices, including copies and supporting documentation, must be submitted electronically pursuant to guidance issued by [EOHLC] during the COVID-19 State of Emergency to ensure timely receipt by the deadlines herein.” It is unclear whether the phrase “during the COVID-19 State of Emergency” applies to those written notices issued during the State of Emergency, which is now over, or whether it describes the time period in which the Submission Guidance was released.¹¹ While the provision states that all written notices must be submitted electronically pursuant to EOHLC guidance, the Submission Guidance itself states that, while all notices must be submitted electronically, hard copies should also continue to be mailed in addition to the electronic submissions to EOHLC and all parties. *See* Submission Guidance. The Submission Guidance, and 760 CMR 56.03(8)(a), do not address the scenario where the electronic and hard copy submissions are received on different days, and the effect on purported deadlines in such cases.¹²

¹¹ The Submission Guidance refers to the electronic submission of safe harbor assertions “during the State of Emergency” several times, arguably resulting in the same confusion reflected in the regulations regarding its applicability following the end of the State of Emergency.

¹² The Submission Guidance states that “[d]uring the State of Emergency, [EOHLC] will deem such notice submitted electronically by the regulatory deadlines under 760 CMR 56.03(8)(a) to have been provided in accordance with these regulatory deadlines,” but it remains unclear whether this was intended to apply only during the State of Emergency.

The developer mischaracterizes the sequence of notices contemplated under 760 CMR 56.03(8)(a) as the Board providing notice of its safe harbor assertion first to EOHLC, followed by the notice to the developer. Developer motion, p. 13. Instead, 760 CMR 56.03(8)(a) provides for the reverse, requiring the Board to provide written notice to the developer “with a copy to [EOHLC]....” The developer, as the applicant to the Board for a comprehensive permit, is the only party that may challenge the Board’s safe harbor assertion to EOHLC. Therefore, the date *the applicant* receives the Board’s notice is the critical date from which to calculate the 15-day deadline, and the sequence required under 760 CMR 56.03(8)(a) reflects this intention.

The requirement under 760 CMR 56.03(8) that a copy of the Board’s notice be sent to EOHLC serves a separate function that is unrelated to the developer’s notice.¹³ Under 760 CMR 56.03(8)(a), EOHLC has only 30 days after receipt of all materials from the parties to render a decision. The provision of a copy of the Board’s notice to EOHLC alerts the agency of a possible incoming safe harbor challenge. Such notice is consistent with the regulatory intent to provide for an expedited review and allows the agency to prepare in advance, if needed. *See* Submission Guidance. We note that there are statutory schemes in which notice to a third party establishes a deadline for appeals. For example, G.L. c. 40A, § 17 requires anyone appealing a decision of a local board of appeals to provide notice to the town or city clerk within twenty days of the board’s decision. If no notice is received, the clerk can accurately certify the absence of any appeal, which allows the permit holder and any other interested parties to rely on the permit, thus fulfilling the statute’s intent. *See Konover Mgmt. Corp. v. Planning Bd. of Auburn*, 32 Mass. App. Ct. 319, 324-325 (1992) (stating notice to town clerk serves statutory purpose by forewarning third parties that property’s zoning status may still be in question). As noted above, however, in a comprehensive permit proceeding, the only party who may challenge a Board’s assertion of safe harbor is the developer. The provision of a copy of the Board’s safe harbor assertion to EOHLC does not serve to put any other interested parties on notice of their own rights of appeal. 760 CMR 56.03(8)(a) is clear that the 15-day deadline to file a challenge with EOHLC is calculated from when the developer receives it and is not otherwise affected by the copy to EOHLC. Accordingly, we determine that the Board’s failure to electronically submit its

¹³ Therefore, if there are purported disputed facts, such as the date on which EOHLC received the Board’s assertion of safe harbor, or additional facts not in the record, they are immaterial to the timing of notice to the developer.

safe harbor assertion to EOHLIC did not extend or otherwise affect the deadline by which the developer was required to file its challenge with EOHLIC.

C. Developer Did Not File Its Safe Harbor Challenge with EOHLIC by the Required Deadline

The Committee has not previously considered the issue of timeliness of a developer's safe harbor challenge to EOHLIC. But the Committee in other contexts outside of an interlocutory appeal has made clear that a deadline missed by even one day is too late. *See Medfield North Meadows, LLC v. Medfield*, No. 2012-01, slip op. at 6 (Mass. Housing Appeals Comm. Summary Decision on Constructive Grant of Request for Extension of Comprehensive Permit Sept. 10, 2012), citing *Triangle Land Development Corp., Inc. v. Northbridge*, No. 2007-11, slip op. at 4 (Mass. Housing Appeals Committee May 12, 2008 Ruling on Motion to Dismiss) (dismissing appeal); *see also Natick v. Natick Hunter's Hill*, No. 2007-10, slip op. at 6 n.2 (Mass. Housing Appeals Committee Apr. 14, 2008 Ruling on Motion to Dismiss) (reaffirming developer appeal not proper or timely where filed one day late).

In *Medfield North*, the board failed to act on a proposed change to a comprehensive permit within the 20-day period pursuant to 760 CMR 56.05(11)(a) and instead held a hearing on the twenty-first day after the filing of the proposed change request.¹⁴ *Medfield North, supra*, No. 2012-01, slip op. at 5-6. The Committee ruled this resulted in a constructive grant and noted that, although it was a "harsh result," it was nondiscretionary when the town failed to meet its regulatory deadline. *Id.*, at 6. In *Triangle Land Dev.*, a developer did not appeal the board's comprehensive permit decision to the Committee within the 20-day deadline provided by G.L. c. 40B, § 22 and 760 CMR 56.06(4)(g), arguing that it had not received proper notice of the decision. *See Triangle Land Dev., supra*, No. 2007-11, slip op. at 4.¹⁵ The Committee determined

¹⁴ Within 20 days after an applicant notifies the board of a proposed change, "the Board shall determine and notify the [a]pplicant whether it deems the change substantial or insubstantial, with reference to the factors set forth at 760 CMR 56.07(4)," and if the board fails to notify the applicant by such time, the comprehensive permit "shall be deemed modified to incorporate the change." 760 CMR 56.05(11)(a)-(b).

¹⁵ G.L. c. 40B, § 22 states that "[w]henever an application filed under the provisions of section twenty-one is denied..., the applicant shall have the right to appeal to the [Committee] for a review of the same. Such appeals shall be taken within twenty days after the date of the notice of the decision by the board of appeals...." A board's notice of its decision regarding the application for a comprehensive permit can be given by filing a decision with its Town Clerk, thereby giving notice to the public, or by not filing a decision at all, thereby allowing a constructive grant. *Triangle Land, supra*, No. 2007-11, slip op. at 5, citing *Milton Commons Assocs. v. Board of Appeals of Milton*, 14 Mass. App. Ct. 111 (1982). 760 CMR

the Board had complied with its notice requirements and, “to achieve predictability and fairness,” the Committee could not then disregard the developer’s own procedural obligations. *Triangle Land Dev., supra*, No. 2007-11, slip op. at 8. In *Natick Hunter’s*, a developer conceded it had missed the twenty-day deadline to file its appeal of the board’s decision denying the comprehensive permit, but argued the Committee had discretion to waive this deadline pursuant to 760 CMR 56.08(2), which allows the presiding officer to waive certain regulatory requirements “when in the judgment of the [presiding officer] strict compliance ... will result in an undue hardship and will be inconsistent with the purposes of [G.L. c. 40B].” *Natick Hunter’s, supra*, No. 2007-10, slip op. at 3, citing 760 CMR 56.08(2). The Committee determined that it could not disregard its own statutory and procedural requirements, and that allowing a developer to file an appeal after the twenty-day period would be “manifestly unfair to the Board” and “remove the ability of any party to rely on the regulations the [l]egislature has authorized [EOHLC] to promulgate.” *Natick Hunter’s, supra*, No. 2007-10, slip op. at 6. Although these cases do not involve the fifteen-day deadline by which a developer must file a safe harbor challenge with EOHLC under 760 CMR 56.03(8)(a), they are instructive as to the importance of strict compliance with both statutory and regulatory deadlines.

The uncontradicted record in this case shows that the Board provided notice of its assertion of safe harbor to the developer and its attorney via FedEx delivery, delivered on May 20, 2025; an email was sent on May 19 to the developer’s counsel’s incorrect address that was provided to the Board by the developer in its application; and an email was sent to the correct email address for the developer’s counsel on May 21. Exh. 24. It is also clear from the record that the developer did not file its challenge with EOHLC until June 5, 2025. Exh. 3.

Therefore, in this case, the developer and its counsel received notice on May 20. Both the developer and its counsel received hard copy mailings of the Board’s safe harbor assertion via FedEx on that date, as demonstrated by the uncontradicted record. The purpose of the written notice is to provide the developer with the specific safe harbor claim asserted by the Board, as well as any accompanying supporting documents on which it relied. The form of this notice received by FedEx satisfied that requirement and permitted the developer and its counsel to

56.06(4)(g) provides further clarification of what constitutes notice of a board decision: “[a]n appeal shall be taken within 20 days after the written decision of the Board has been filed in the office of the city or town clerk.”

prepare an opposition at that time. The 15-day period when the developer could challenge the Board's safe harbor assertion commenced on that date. Therefore, the developer was required to file its challenge with EOHLC no later than June 4, 2025, or 15 days after it received actual notice on May 20, 2025. *See* 760 CMR 56.03(8). "It is axiomatic to state that filing late – even one day late – is not proper." *Natick Hunter's, supra*, No. 2007-10, slip op. at 6 n.2. The developer filed its challenge electronically on June 5, 2025, one day after the deadline and, therefore, we determine it was not timely and properly filed.

V. CONCLUSION

Pursuant to 760 CMR 56.06(5)(d), we find that there is no genuine issue as to any material fact and that the Board is entitled to summary decision as a matter of law determining that the developer's safe harbor challenge submitted to EOHLC was not timely. The Board's motion for summary decision is granted, and the developer's motion for summary decision is denied.¹⁶

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. *See* Exh. 2, p.1. A comprehensive permit appeal was filed with the Committee on June 11, 2025, *Crosby Village, LLC v. Chelmsford*, No. 2025-03. On July 30, 2025, the presiding officer granted the Board's Assented-to Motion to Stay that case while this interlocutory appeal was pending and ordered a status conference to be scheduled once a decision had been issued in this case. Pursuant to 56.03(8)(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 *Crosby Village, LLC v. Chelmsford*, No. 2025-03, and a scheduling order for a virtual status conference in that matter will issue simultaneously with this decision.

¹⁶ Because we find the developer's challenge of the Board's safe harbor assertion was not timely filed, we do not reach the parties' arguments regarding whether the Town had achieved the 10% Housing Unit Minimum safe harbor as of the date of the comprehensive permit application.

HOUSING APPEALS COMMITTEE

May 20, 2026

/s/ Lisa V. Whelan

Lisa V. Whelan, Chair

/s/ Lionel G. Romain

Lionel G. Romain

/s/ James G. Stockard, Jr.

James G. Stockard, Jr.

/s/ Caitlin E. Loftus

Caitlin E. Loftus, Presiding Officer