

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

DELPHIC ASSOCIATES, LLC,)	
Appellant,)	
)	
v.)	No. 2003-08
)	
DUXBURY ZONING BOARD)	
OF APPEALS,)	
Appellee.)	
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DELPHIC ASSOCIATES, LLC,)	
Appellant,)	
)	
v.)	No. 2003-09
)	
MARSHFIELD ZONING BOARD)	
OF APPEALS,)	
Appellee.)	
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**RULING ON MOTION TO DISMISS OF
DUXBURY ZONING BOARD OF APPEALS**

I. BACKGROUND AND PROCEDURAL HISTORY

This matter has been before the Housing Appeals Committee (Committee) several times since the two above-captioned appeals were initially filed with the Committee in 2003. The appeals relate to one affordable housing development to be built in two towns, Duxbury and Marshfield. Separate comprehensive permit proceedings were held in each town, and decisions granting the applications with conditions were issued by the Duxbury Zoning Board of Appeals (Duxbury Board) and the Marshfield Zoning Board of Appeals (Marshfield Board), respectively. The Appellant, Delphic Associates, LLC (Delphic), appealed both towns' decisions to the Committee in 2003. Those appeals were resolved by agreement of the parties and resulted in amended comprehensive permits with conditions issued by the respective zoning boards of each

town in 2006. Court appeals filed pursuant to G.L. c. 40B, § 21¹ followed the issuance of the amended comprehensive permit decisions and subsequent appeals to the Committee by the developer ensued in both cases. *See Delphic Associates, LLC v. Duxbury*, No. 2003-08, slip op. at 2 (Mass. Housing Appeals Comm. Sept. 14, 2010) (summary decision and order extending comprehensive permit).

On August 25, 2015, Webster Point Village, LLC (WPV), the successor-in-interest to Delphic, and now the developer for the proposed development, filed with the Committee further appeals from the August 6, 2015, decisions of the Marshfield Board and Duxbury Board which amended the comprehensive permits (2015 Appeals). The Marshfield 2015 Appeal was resolved after negotiations between WPV and the Marshfield Board. Both 2015 Appeals were withdrawn with prejudice on August 28, 2015.

The current proceedings, filed with the Committee on October 29, 2019, are appeals of the Duxbury Board's and the Marshfield Board's denials of extensions of the comprehensive permits. In its initial pleadings, WPV alleged that its difficulty in complying with the conditions in each of the comprehensive permits that required a conservation restriction was the reason it required extensions of the permits. After the initial conference of counsel, WPV and the Marshfield Duxbury Neighborhood Association (MDNA), a potential holder of the required conservation restriction, which had sought to intervene in the appeals, engaged in mediation to attempt to address the conservation restriction. Mediation did not result in an agreement, and on November 3, 2020, WPV filed an Update on Status of Mediation and Notice of Requested Changes Pursuant to 760 CMR 56.07(4), seeking to eliminate conditions in the comprehensive permits pertaining to the conservation restriction and the recording of the restriction as a condition precedent to activities on the site. WPV argued it was unable to comply with that condition because MDNA was ineligible to hold the conservation restriction, and it was unable to

¹ The two appeals were (1) *Town of Duxbury, et al. v. Massachusetts Housing Finance Agency and Delphic Assoc., LLC*, C.A. No. PLCV2002-00298, challenging MassHousing's project eligibility determinations (filed on March 12, 2002; voluntarily dismissed on August 18, 2006); and (2) *Anne Poulet, et al. v. James Lampert, et al. v. Members of Board of Appeals of Duxbury and Delphic Assoc., LLC*, No. PLCV2003-00465, abutters and neighbors alleging Duxbury failed to enforce compliance with the requirements of the preliminary project eligibility letter (filed on April 18, 2003; voluntarily dismissed on August 18, 2006).

find another grantee to hold the restriction. WPV's appeals from the denials of its permit extension requests have not yet been adjudicated and their status at this point remains unclear.

By ruling and order dated August 20, 2021, the Committee ordered WPV to apply for its requested changes to each respective Board in the first instance. WPV filed its requests with each Board on August 26, 2021. On September 23, 2021, the Duxbury Board determined the proposed change would be substantial but did not go on to hold a hearing on whether to approve the change. On September 30, 2021, WPV filed with the Committee a motion to amend the Initial Pleading in the Duxbury matter to include an appeal of the Duxbury Board's substantiality determination pursuant to 760 CMR 56.05(11)(d). On September 20, 2021, the Marshfield Board opened the public hearing on the proposed change it had found to be substantial, and, by written decision dated November 23, 2021, it voted to deny the change. On September 21, 2021, WPV moved to amend its Initial Pleading to include an appeal of Marshfield's substantiality determination pursuant to 760 CMR 56.05(11)(d); it did not appeal Marshfield's denial of the modification request. Meanwhile in Duxbury, after a hearing on September 23, 2021, the Duxbury Board similarly determined the proposed change would be substantial but did not hold a hearing on whether to approve the change. WPV then filed with the Committee a similar motion to amend in the Duxbury matter on September 30, 2021. Unlike the Marshfield Board, the Duxbury Board has not ruled on whether to approve or deny WPV's request.

The presiding officer in this matter issued a ruling addressing several matters on December 20, 2022: 1) allowing WPV's motion to amend to include appeals of substantiality determinations made by the Marshfield and Duxbury Boards; 2) denying motions by both boards for summary decision;² and 3) denying the Duxbury Board's motion to stay the Committee's proceedings pending resolution of Plymouth Superior Court litigation involving the parties in Duxbury (December 2022 Ruling).³ Both Boards filed a joint motion for reconsideration of the December 2022 Ruling, which was denied. Thereafter, MDNA's motion to intervene was denied and the motion to intervene filed by a Ten Persons Group (the Group or Intervenors) pursuant to G.L. c. 30A, § 10A was granted. The Group was granted intervention solely regarding evidence and argument relating to alleged potential environmental damage related to the protection of the

² These motions for summary decision asserted that WPV's claims were barred by issue preclusion.

³ In addition, by separate ruling, the two matters were consolidated for the purpose of addressing common issues of fact and law.

habitat of the Eastern Box Turtle and protection of vernal pools within a certain area of land within the development.

On February 14, 2024, WPV moved for summary decision seeking a ruling that the requested modifications to the comprehensive permits to eliminate the requirement of a conservation restriction are not substantial changes pursuant to 760 CMR 56.07(4)(a)-(d). Thereafter, the Duxbury Board, Marshfield Board and Intervenors filed oppositions, and both Boards filed separate cross-motions for summary decision. A ruling on the motions is pending.

Subsequently, on July 29, 2025, the Duxbury Board and Intervenors moved to dismiss on the ground that the Superior Court had determined that the 2012 Settlement Agreement precludes WPV from seeking modification. Board and Intervenors' Motion to Dismiss (Board/Intervenors motion), p. 1. In support, the Duxbury Board and Intervenors submitted a memorandum of law and documents from the Superior Court action.⁴ WPV filed an opposition to the motion to dismiss (WPV opposition), and the Duxbury Board and Intervenors replied on August 25, 2025 (Board/Intervenors reply). The Marshfield Board has not filed any response in relation to this motion to dismiss.

II. UNDISPUTED FACTS

The following undisputed facts are taken from the December 2022 Ruling and the attachments to the motion to dismiss. The Duxbury Board issued an amended comprehensive permit for WPV's project on June 21, 2006 (2006 Permit). The 2006 Permit included Condition No. 12, which contained a provision that, before construction begins, WPV must grant and record a conservation restriction to protect a certain portion of the property (Restricted Area) in perpetuity. Condition No. 12 states:

The Project shall comply with all rules, regulations, filing and permit requirements and certifications required by the regulations governing the Massachusetts Endangered Species Act, G.L. c. 131, § 23, 321 CMR 10.00. The Applicant shall provide the Board copies of all correspondence with, and determinations of, NHESP, the Massachusetts DEP, and the Massachusetts Executive Office of Environmental Affairs with respect thereto. To the extent required by such rules, regulations, requirements and certifications, the Applicant shall provide Conservation and Management Plan throughout the locus. Protection of vernal pools from changes in stormwater runoff quality or quantity shall be

⁴ Also included with their motion are the Superior Court Judgment dated September 27, 2024, the Superior Court Memorandum of Decision and Order on Defendant WPV's Motion for Summary Judgment and Plaintiff Town of Duxbury's Cross-Motion for Summary Judgment dated September 24, 2024, and a copy of the Appeals Court Docket.

assured, either through the MESA process (321 CMR 10) or through the Order of Conditions from the Conservation Commission (310 CMR 10) and a Water Quality Certificate from MDEP (314 CMR 4). The Plans shall be revised as required to NHESP to minimize a disturbance, destruction or other taking of any habitat areas. Substantive revisions to the Plans shall be provided to the Board for approval. Prior to any grading, land disturbance, issuance of any building permit and construction of any structure or infrastructure, the Applicant shall execute and cause to be recorded at the Plymouth County Registry of Deeds, a Conservation Restriction pursuant to G.L. c. 184, s. 31, clearly identifying the land areas noted on the approved plans as “Restricted Area” to be left in their natural vegetative state with no provisions for site alteration, including but not limited to, a prohibition on tree removal, land clearing or site grading of these areas. The Conservation Restriction required by this paragraph shall be deemed an independent condition and requirement from that or those required by the Commonwealth’s Natural Heritage and Endangered Species Act.

2006 Permit, Condition No. 12.

Additional litigation ensued after the issuance of the 2006 Permit that involved Delphic and the Duxbury Board. This litigation was subsequently resolved in 2012 when the Town of Duxbury, the Duxbury Board and Delphic negotiated a settlement agreement (2012 Settlement Agreement). The parties agreed to withdraw the court appeal within 10 days and WPV promised not to seek modifications of various conditions of the 2006 Permit, including Condition No. 12, as follows:

The Parties agree that Delphic and/or WPV and/or their successors or assigns shall not request modification from the Board or from the HAC of the following conditions in Section IV of the [2006] Amended Comprehensive Permit: Conditions: 3, 9, 10, 12, 14-15...103”

2012 Settlement Agreement, p. 3.

In 2015, WPV requested from both the Duxbury and Marshfield Boards various modifications to the 2006 Permit, including modifications that WPV agreed not to request as part of the 2012 Settlement Agreement. The Marshfield Board issued a decision dated August 6, 2015, that amended the comprehensive permit (2015 Marshfield Permit) to include conditions regarding the conservation restriction (Compliance with State and Federal Requirements, Condition 8 and Conditions Precedent to the Commencement of Project, Conditions 2 and 11). Similarly, Duxbury issued an amended comprehensive permit (2015 Duxbury Permit) on August

6, 2015, that removed Condition No. 12 of the 2006 Permit⁵ and included Condition D.2. and states:

The Project shall comply with that “MA Endangered Species Act (G.L. c. 131A) Conservation and Management Permit” dated September 29, 2008, Conservation Permit No. 008-078-DFW, NHESP File No. 02-10239, issued to Webster Point Village, LLC and recorded at the Plymouth County Registry of Deeds on October 7, 2008 in Book 36426, Page 248. Prior to any grading, land disturbance, issuance of any building permit or construction of any structure or infrastructure, WPV shall execute and cause to be recorded with the Plymouth County Registry of Deeds, a second Conservation Restriction pursuant to G.L. c. 184, § 31, in the form approved by Town Counsel, clearly identifying the land areas noted on the approved plans as "Restricted Area" to be left in their natural vegetative state with no provisions for site alteration, including but not limited to, a prohibition on tree removal, land clearing or site grading of these areas. The second Conservation Restriction required by this paragraph shall be deemed an independent condition and requirement from Conservation Permit No. 008-078-DFW.

Duxbury 2015 Permit, § VI, D.2. The 2015 Duxbury Permit states further that:

The 2012 Settlement Agreement shall remain in full force and effect except as specifically superseded by this Modified Comprehensive Permit. Nothing in this Modified Comprehensive Permit waives the Board's argument that other conditions that WPV agreed not to modify in that Agreement remain non-modifiable.

Duxbury 2015 Permit, § IV.

III. SUPERIOR COURT ACTION

The Town of Duxbury brought a breach of contract action against WPV in Plymouth Superior Court on September 24, 2021, seeking to enforce the terms of the 2012 Settlement Agreement. The Town alleged that WPV’s modification request to the Committee violated the 2012 Settlement Agreement. Memorandum of Decision and Order on Defendant WPV’s Motion for Summary Judgment and Plaintiff Town of Duxbury Cross-Motion for Summary Judgment, Sept. 26, 2024 (Superior Court Summary Judgment Mem.), pp. 5-6. The Town of Duxbury’s complaint included the following counts: (1) seeking a declaratory judgment that the settlement agreement barred WPV from requesting a modification of the CR condition; (2) alleging that WPV breached the settlement agreement; (3) alleging that WPV breached the covenant of good faith and fair dealing; (4) seeking enforcement of WPV’s promise not to modify conditions

⁵ Condition 8 of the 2015 Marshfield Permit and Condition D.2 of the 2015 Duxbury Permit are substantially identical, except the 2015 Marshfield permit references “the Applicant” instead of “WPV” and does not include the provision “in the form approved by Town Counsel.” Marshfield 2015 Permit, p. 3 (Condition 8).

under the promissory estoppel doctrine; (5) seeking recovery in quantum meruit; and (6) seeking injunctive relief. *Id.*

The parties filed cross-motions for summary judgment in the Superior Court matter. The Town of Duxbury sought to enforce the 2012 Settlement Agreement. WPV argued that no violation of the 2012 Settlement Agreement had occurred because “Condition No. 12 and Condition D2 were sufficiently distinct such that its requested modification of Condition D2 was not a breach of the Settlement Agreement.” Superior Court Summary Judgment Mem., p. 7. The Superior Court disagreed with WPV and on September 26, 2024, the Plymouth Superior Court ruled in favor of the Town of Duxbury that WPV’s requested modification of Condition D2 was a breach of the 2012 Settlement Agreement. *Id.* The Summary Judgment stated that “... [The Town of Duxbury] is entitled to a judgment as a matter of law.... Judgment is hereby entered in favor of the Plaintiff on all counts.” *See* Superior Court Summary Judgment, Sept. 27, 2024. WPV appealed the Superior Court’s decision, but the appeal was subsequently dismissed on July 8, 2025, for lack of prosecution under Massachusetts Appeals Court Rule 19.0, leaving the Superior Court Judgment in place.

IV. STANDARD OF REVIEW

Dismissal of a case before the Committee is appropriate when “it appears certain that the developer can prove no set of facts in support of its position.” *Woodbridge Crossing, Inc. v. Stoughton Board of Appeals*, No. 2006-06, slip op. at 6 (Housing Appeals Comm. Ruling on Motion to Dismiss Nov. 19, 2007). To avoid dismissal, “the factual allegations must plausibly suggest that the plaintiff is entitled to relief.” *Harrington v. Costello*, 467 Mass. 720, 724 (2014), citing *Iannacchino v. Ford Motor Co.*, 451 Mass. 623, 636 (2008). In deciding on the motion to dismiss, factual allegations in the initial pleading are accepted as true, as well as any favorable inferences reasonably drawn from them. *See Iannacchino*, 451 Mass. 623, 625 n.7, citing *Nader v. Citron*, 372 Mass. 96, 98 (1977).

The Board and Interveners have submitted additional documents in support of the motion to dismiss. Although consideration of external documents may, but need not, be treated as review of a motion for summary decision, WPV has not presented arguments challenging the standard of review for this motion. *Watros v. Greater Lynn Mental Health & Retardation Ass'n, Inc.*, 421 Mass. 106, 108-109 (1995) (submitting material outside pleadings in support of motion to

dismiss does “not require that the motion be treated as a rule 56 summary judgement motion”). Thus, we review this as a motion to dismiss.

V. MOTION TO DISMISS

The Duxbury Board and the Interveners argue that the Superior Court’s ruling affirmed that the 2012 Settlement Agreement’s contractual prohibition barring WPV from requesting a modification of the CR Condition equally precludes the Committee from granting a modification of that condition. Board/Interveners motion, pp. 3-4. The Board and Interveners point to the language in the 2012 Settlement Agreement that states WPV “shall not request a modification from the Board or from the HAC of the following conditions...of the [2015] Amended Comprehensive Permit,” which includes the conservation restriction condition. *Id.*, p. 3; Superior Court Summary Judgment Mem., p. 3. Thus, they argue, the Superior Court ruling concluded that “[WPV] requesting a modification of the comprehensive permit from the [Committee] is a violation of the agreement between WPV, Duxbury and Interveners.” Board/Interveners reply, p. 1; Board/Interveners motion, pp. 3-4, citing Superior Court Summary Judgment Mem., p. 3. The Duxbury Board and Interveners further argue that this is a final and binding judgment, and allowing WPV to continue before the Committee will conflict with the Superior Court’s “unambiguous ruling.” Board/Interveners reply, pp. 1-2. Therefore, they contend that the Committee must immediately dismiss this action, and WPV may not seek further relief in this matter in violation of the Superior’s Court final judgment. Board/Interveners motion, p. 4.

WPV opposes the Board’s motion to dismiss, arguing that 760 CMR 56.06(5) does not authorize the Committee to dismiss the appeal for the reasons provided by the Board. WPV opposition, p. 1. WPV alleges that the Committee does not have jurisdiction to dismiss this appeal to enforce a contract or provide remedy for breach of contract. It asserts “[i]t is not the role of this Committee to prove a contract remedy after the Town failed to request such remedy in the summary judgment motion that the Superior Court allowed.” *Id.*, p. 6. Moreover, WPV argues that the issues before the Committee directly relate to Duxbury and Marshfield’s zoning board decisions under G.L. c. 40B, which remain within the Committee’s jurisdiction. *Id.*, p. 4. WPV suggests that “the Committee [should] disregard[] arguments about breach of contract and simply proceeds to analyze the issues presented on appeal,” and contends that any ruling in favor of WPV may be appealed by the Duxbury Board to the Superior Court under G.L. c. 30A. *Id.*, p. 5.

WPV contends that the court found only that WPV breached the 2012 Settlement Agreement but did not order WPV to withdraw its appeal before the Committee, nor did it order the Committee to dismiss WPV's appeal. Because the Court did not order WPV to take any action regarding this appeal, it would not be in violation of the Superior Court summary judgment to allow this matter to move forward. WPV opposition, pp. 1-2, 6. WPV argues that the Committee should simply disregard any breach of contract arguments and rule only on the issues presented to the Committee. *Id.*, p. 5. Accordingly, WPV argues that the Committee should consider the following reasons to find in its favor: (i) for 25 years the developer has attempted to develop affordable housing on the project site; (ii) throughout the entirety of the project, Duxbury, Marshfield and abutters have taken action to prevent the project; (iii) WPV reduced the size of project to assist with local concerns; and (iv) WPV made good faith efforts to resolve dispute without further litigation. *Id.*, pp. 2-3, 5.

WPV further claims that the developer entered into several agreements with the Duxbury and Marshfield Boards for the purpose of developing the project. According to WPV, the intent behind each agreement was to allow the project to proceed. The restrictions within the 2012 Settlement Agreement prevent the project from being developed. Thus, WPV argues that the agreements relating to the project are now "worthless." *Id.*, p. 3.

VI. DISCUSSION

As both parties noted, the Committee does not have authority to resolve contract disputes that are more properly addressed by the courts. *See VIF II/JMC Riverview Commons Investment Partners v. Andover*, No. 2012-02, slip op. at 12-13 (Mass. Housing Appeals Comm. Feb. 27, 2013); *Warner Ins. Co. v. Commissioner of Ins.*, 406 Mass. 354, 361 (1990) (stating that "Superior Court...has authority to make binding declarations of legal relations under contracts, including the determination of any question of construction or validity of a contract or to order specific performance"). *See also* G.L. c. 231A, §§ 1, 2; *School Comm. of Cambridge v. Superintendent of Schools of Cambridge*, 320 Mass. 516, 520 (1946); *Sanford v. Boston Edison Co.*, 316 Mass. 631, 634 (1944). Here, the 2012 Settlement Agreement appears to be a mutually consented-to modification of a previously issued comprehensive permit that was executed by the parties to settle litigation in the Appeals Court. Superior Court Summary Judgment, p. 3. Duxbury properly sought enforcement of the 2012 Settlement Agreement as a contract in Superior Court, while simultaneously proceeding with this matter before the Committee to avoid

further delays. *See Riverside Realty Trust v. Chelmsford*, No. 1972-01, slip op. at 4 (Mass. Housing Appeals Comm. May 10, 1974) (denying stay of Committee proceedings pending Superior Court’s determination as to whether town lawfully acquired project site by eminent domain to avoid delay if taking were unlawful). Accordingly, we did not decide the issue of the validity of the contract claim and left questions relating to the enforcement of the 2012 Settlement Agreement to the Superior Court. *Andover, supra*, No. 2012-02, slip op. at 22 (noting that “enforcement of the settlement agreement as a contract separate and apart from the comprehensive permit, it would have [to be resolved] in a court of competent jurisdiction”).

Previously, any motions to stay this proceeding pending litigation in Superior Court were denied on the grounds there was no evidence demonstrating “that adjudication of the issues before the Committee will interfere with its Superior Court action,” and that the ongoing Superior Court proceeding was not conclusive of the Committee’s substantiality determination. December 2022 Ruling, p. 13. However, given that the adverse ruling against WPV is not subject to appeal, we must consider whether the finality of the Superior Court decision is determinative in this comprehensive permit appeal.

WPV argues that Superior Court ruled only that the Town of Duxbury was allowed Summary Judgment as a matter of law on the issue that WPV breached the 2012 Settlement Agreement, and the judgment does not provide Duxbury with the relief sought in its initial Superior Court complaint. WPV opposition, p. 2. We disagree. The Superior Court issued summary judgment in favor of Duxbury concluding that “[The Town of Duxbury] is entitled to a judgment as a matter of law... Judgment is hereby entered in favor of the [The Town of Duxbury] on all counts.” *See* Superior Court Summary Judgment. The Committee does not accept WPV’s contention that Superior Court did not grant relief to the Town of Duxbury because summary judgment was entered in its favor on all counts. *Id.* We read the holding to mean that the Superior Court granted Duxbury’s request for a declaratory judgment that “the [2012] Settlement Agreement precludes WPV from requesting modification of the conservation restriction condition” (Count I); found that the settlement agreement barred WPV from requesting, from the Board or the Committee, a modification of the CR condition (Count II); and granted Duxbury’s request for injunctive relief (Count VI). *See* Superior Court Summary Judgment Mem., pp. 5-6.

The Superior Court’s decision makes clear that the 2012 Settlement Agreement remains in effect and was incorporated into the 2015 Duxbury Permit. Superior Court Summary

Judgment Mem., p. 7. The Superior Court thereby found that WPV's request for modification of Condition D.2 constituted a breach of the 2012 Settlement Agreement. WPV has provided no colorable basis under these circumstances for the Committee to even entertain the requested modification as WPV's continued pursuit of it has been deemed contrary to law. While courts reviewing agency decisions give deference to those administrative agencies, this deference is not extended to an agency that commits an error of law. *Tabroff v. Contributory Retirement Appeal Bd.*, 69 Mass. App. Ct. 131, 134 (2007), citing G.L. c. 30A, § 14(7)(c); *Adam Associates Intern, Inc. v. William A. Berry & Son, Inc.*, 22 Mass. L. Rptr. 389 (2007) (stating that “[a] court cannot reasonably be placed in the position of having to confirm a...decision that mandates conduct in violation of prevailing law”). See also *Dowling v. Registrar of Motor Vehicles*, 425 Mass. 523, 525 (1997); *Flemings v. Contributory Retirement Appeal Bd.*, 431 Mass. 374, 375 (2000); *Lisbon v. Contributory Retirement Appeal Bd.*, 41 Mass. App. Ct. 246, 257 (1996). The separate question before us of whether WPV's proposed permit modification is a substantial change need not be decided because, the Superior Court found WPV may not even seek the modification. It would be a waste of administrative resources to proceed with WPV's modification claim in the Duxbury case in violation of the 2012 Settlement Agreement. See *135 Wells Avenue, LLC v. Newton*, No. 2014-11, slip op. at 10 (Mass. Housing Appeals Comm. Dec. 15, 2015) (rejecting developer's argument that Committee make finding contrary to previous court ruling to which Committee stated that “[w]e cannot second guess the court's finding” relating to court's treatment of deed restriction), *aff'd 135 Wells Avenue, LLC v. Housing Appeals Comm.*, 478 Mass. 346 (2017).

By choosing to enter into the 2012 Settlement Agreement, the developer agreed to foreclose future pursuit of any modification of the disputed condition. Had there been no settlement agreement, or alternatively, WPV not withdrawn its 2015 appeals, the Committee may have reached the issues of the lawfulness of the condition in the Duxbury permit and the substantiality of the proposed modification. However, even if today we were to rule that the proposed modification is insubstantial, which we do not decide, the Superior Court has prohibited WPV from pursuing this modification of the Duxbury permit. WPV may, however, resume its efforts to comply with the existing 2015 Permit in its unmodified state and find a suitable, willing holder of the conservation restriction to satisfy the CR Condition, which, it seems, may be its only option at this point. And it may pursue its original request for a permit extension.

As stated above, to defeat a motion to dismiss the developer is required to set forth factual allegations plausibly suggesting entitlement to relief. Here, the mere request for a modification by WPV to the Committee has been deemed a breach of the 2012 Settlement Agreement. WPV has not plausibly shown how the Committee may grant the requested relief for modification without interfering with the Summary Judgment issued by the Superior Court.

The Marshfield Zoning Board of Appeals was not a party to the Superior Court action and has not separately or jointly filed a motion to dismiss. Thus, WPV's request for modification of the Marshfield Board's comprehensive permit remains open. That said, this proposed project is to be built in two towns, Duxbury and Marshfield, and the project requires compliance with the 2015 Duxbury Permit.

Since the only way forward is to consider the future viability of proceeding under current comprehensive permits, a status conference is appropriate to discuss whether, and in what manner, WPV intends to proceed, including whether it intends to pursue the outstanding issue of its appeals of the denials of its extension requests. Therefore, a status conference shall be held within 30 days of the date of this decision.

VII. CONCLUSION AND ORDER

Accordingly, for the reasons discussed above, the Duxbury Board's and Interveners' motion to dismiss the claim for modification of the permit is granted, but otherwise their motion is denied.

HOUSING APPEALS COMMITTEE

December 23, 2025

Shelagh A. Ellman-Pearl

Shelagh A. Ellman-Pearl, Chair

Lionel G. Romain

Lionel G. Romain

James G. Stockard, Jr.

James G. Stockard, Jr.

Lisa V. Whelan

Lisa V. Whelan, Presiding Officer