

**COMMONWEALTH OF MASSACHUSETTS
HOUSING APPEALS COMMITTEE**

EDGARTOWN GARDENS, LLC

v.

EDGARTOWN ZONING BOARD OF APPEALS

No. 2025-06

**SUMMARY DECISION ON
CONSTRUCTIVE GRANT**

April 21, 2026

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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

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EDGARTOWN GARDENS, LLC,)	
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Appellant,)	
)	
v.)	No. 2025-06
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EDGARTOWN ZONING)	
BOARD OF APPEALS,)	
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Appellee.)	
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SUMMARY DECISION ON CONSTRUCTIVE GRANT

I. INTRODUCTION AND PROCEDURAL HISTORY

We are presented with two important issues in this appeal. The first involves, for the first time before the Housing Appeals Committee, facts that warrant a constructive grant of a comprehensive permit in whole, rather than a constructive grant of a modification of a permit already issued. The second involves the question of whether the Martha’s Vineyard Commission (MVC) is a “local board” within the meaning of G.L. c. 40B. We answer that question in the affirmative.

On July 16, 2025, Edgartown Gardens, LLC (EGL or developer) filed this appeal pursuant to G.L. c. 40B, § 22, against the Edgartown Zoning Board of Appeals (Board), seeking a determination that its comprehensive permit application has been constructively granted. In its initial pleading, EGL alleges that the Board did not convene a public hearing on its application for a comprehensive permit within the time set forth in G. L. c. 40B, § 21. The Board, although not required to do so, filed an answer on July 28, 2025.

An initial conference of counsel was held on July 31, 2025, when the parties discussed the developer filing a motion for constructive grant and also the possibility of remanding the matter to the Board. On August 7, 2025, the MVC filed a motion to intervene pursuant to 760

CMR 56.06(2)(b). On August 11, 2025, Susan Pratt submitted a request to participate in the appeal as an interested person pursuant to 760 CMR 56.06(2)(c). By ruling dated April 16, 2026, the presiding officer allowed the MVC's motion to intervene for the limited purpose of responding to the claims made relating to the MVC's authority and jurisdiction under the MVC Act and allowed Ms. Pratt's request to participate as an interested person.

On August 18, 2025, the parties filed a joint motion for remand, outlining an agreed-upon schedule and terms and conditions for the remand of the matter to the Board, which was allowed by order dated August 19, 2025 (remand order).¹ As agreed by the parties, the remand order provided, in part, that:

If, at any point during the public hearing before the Board, EGL objects, for any reason and in its unfettered discretion, to the Board's conduct of the hearing, EGL may, by written notice to the Board, with a copy to the Committee, terminate the remand and the Committee shall resume jurisdiction. Upon such notice, EGL shall have thirty (30) days to file any motion for a summary decision seeking a determination on its contention that the Comprehensive Permit has been constructively approved in the manner alleged in its original petition, with responses and rebuttal to be filed in accordance with the Committee's regulations.

On November 19, 2025, EGL filed a notice that it is exercising its authority under the provision quoted above to terminate the remand and return to the Committee to pursue the underlying claim for constructive approval. On December 19, 2025, EGL filed its motion for summary decision (Developer motion), seeking a determination of constructive grant based upon the Board's alleged failure to: (a) commence a hearing within the time allotted under G.L. c. 40B, §§ 20-23; and (b) issue a decision within the timeframe prescribed within the remand order.² To the extent that the MVC's jurisdiction may impact the constructive approval, EGL also seeks a determination that the MVC is a local board within the meaning of Chapter 40B. In support of its motion, EGL relies upon its initial pleading, with Exhibits A through F (including Exhibit D, Affidavit of Jason R. Talerman, Esq.), and additional Exhibits G through

¹ Ms. Pratt's request for interested person status and the MVC's motion to intervene were stayed pending remand.

² By orders dated December 30, 2025, the presiding officer denied the Board's motion to stay these proceedings pending a decision in a related Land Court action on the issue of the MVC's jurisdiction under G.L. c. 40B, and its motion to extend the time for its briefing for this summary decision motion pending that stay.

I (including Exhibit H, Second Affidavit of Jason R. Talerma, Esq.) (Developer Exhibits A through I). On January 23, 2026, the Board submitted an opposition and declarations of Martin V. Tomassian, Jr., Chair of the Board (Tomassian declaration), and Lily M. Pigott, Paralegal for Counsel for the Board (Pigott declaration), attaching Exhibits A through J in support of the Board's opposition (Board Exhibits A through J). MVC submitted a memorandum in opposition, with the affidavit of Adam Turner, Executive Director of the MVC (Turner Affidavit) with attached Exhibits A through E. EGL submitted a reply on February 4, 2026, with an affidavit of William Cumming, Manager of EGL (Cumming Affidavit), with attached Exhibits A through D.

Once EGL terminated the remand proceedings and resumed the proceedings before the Committee, the motion to intervene was revived and the MVC was allowed to participate in the developer's motion for summary decision while a ruling on the motion to intervene was pending. On April 16, 2026, the presiding officer granted Ms. Pratt's request to participate as an interested person and granted MVC's motion to intervene for the limited purpose of participating in the developer's motion for summary decision.

II. UNDISPUTED FACTS

On September 9, 2024, EGL filed its application for a comprehensive permit project to construct 60 for-sale, age-restricted units, with 12 affordable units to be sold to households earning no more than 50% of area median income (the project). Initial Pleading, ¶¶ 1, 3; Developer Exh. C. On October 11, 2024, the Edgartown Building Commissioner referred the application to the MVC. Developer Exhs. E-F. The Board did not open the public hearing on the application or vote to refer the matter to the MVC within 30 days of receipt of EGL's September 9, 2024, application. Initial Pleading, ¶ 4; Second Affidavit of Jason R. Talerma (Second Talerma Affidavit), ¶ 3. On October 25, 2024, EGL wrote to the Board, advising it that the comprehensive permit had been constructively approved and that the MVC referral was improper. Developer Exh. F. Additional undisputed facts are presented within our discussion below.

After this matter was remanded to the Board, pursuant to the remand order, the Board opened a hearing by September 17, 2025. Second Talerma Affidavit, ¶ 4. After the opening of the public hearing, the Board continued the hearing to October 15, 2025, when it took additional testimony and evidence and voted to continue the public hearing until November 19,

2025. *Id.*, ¶ 5. The November 19, 2025 continued hearing was never scheduled, and counsel for the developer confirmed with the Board’s assistant, Lisa Morrison, that the Board would not hold a hearing on that date. *Id.*, ¶ 6, Exh 1. Pursuant to the remand order, the Board was to issue and file a decision within 30 days from the date that the remand hearing closed. The remand order further stated that:

Nothing herein shall preclude the Board from conditioning an approval of EGL’s application on approval by the Martha’s Vineyard Commission provided that EGL reserves the right to object to and appeal such condition in the manner set forth herein.

On October 30, 2025, the MVC voted to deny EGL’s application as a Development of Regional Impact (DRI); its decision, dated December 18, 2025, was filed in the Dukes County Registry of Deeds on December 19, 2025. Board Exh. A. Its decision states that the MVC “hereby denies the project, which may not proceed under any condition.... The permit-granting authorities of the Town of Edgartown shall not grant the request for approval of the Applicant's proposal.” *Id.* To date, the Board has not issued a decision on EGL’s application.

III. LOCAL BOARD DISCUSSION

The term “Local Board” was not specifically defined by Chapter 40B comprehensive permit regulations until 1991. Before 1991, the definition of Local Board was based solely on G.L. c. 40B, §§ 20 and 21. Section 20 defines “Local Board” as “any town or city board of survey, board of health, board of subdivision control appeals, planning board, building inspector or the officer or board having supervision of the construction of buildings or the power of enforcing municipal building laws, or city council or board of selectmen.” Section 21 provides that “[t]he board of appeals ... shall have the same power to issue permits or approvals as any local board or official who would otherwise act with respect to such application, including but not limited to the power to attach to said permit or approval conditions and requirements with respect to height, site plan, size or shape, or building materials as are consistent with the terms of this section.” The term “Local Board” is currently defined in 760 CMR 56.02 as:

any local board or official including, but not limited to, any board of survey; board of health; planning board; conservation commission; historical commission; water, sewer, or other commission or district; fire, police, traffic, or other department; building inspector or similar official or board; city council or board of selectmen. All boards, regardless of their geographical jurisdiction or

their source of authority (that is, including boards created by special acts of the legislature or by other legislative action) shall be deemed Local Boards if they perform functions usually performed by locally created boards.

In addition, 760 CMR 56.05(10)(a) states that local zoning boards “shall have the same power to issue permits or approvals as any Local Board which would otherwise act with respect to an application, including but not limited to waivers, consents, and affirmative actions such as plan endorsements and requests for waivers from regional entities.” 760 CMR 56.05(10)(a). 760 CMR 56.05(10)(b) and (c) obligate all Local Boards to “take all actions necessary, including but not limited to issuing all necessary permits, approvals, waivers, consents, and affirmative actions such as plan endorsements and requests for waivers from regional entities” and grant local zoning boards the power to direct such actions.

The MVC is the regional planning agency for Martha’s Vineyard and was established by the Legislature pursuant to Chapter 831 of the Acts of 1977, as amended (the MVC Act). The Legislature established the MVC as a regional planning commission in 1974 “to protect the health, safety and general welfare of Island residents and visitors by preserving and conserving ... the unique natural, historical, ecological, scientific, and cultural values” of the island. Developer Exh. I, MVC Act, § 1. The MVC Act grants the MVC the authority to review “all applications for development permits for developments of regional impact” (DRI). *Id.*, § 14. When reviewing DRIs, the MVC administers Standards and Criteria adopted pursuant to § 12 of the MVC Act. *Id.*, § 12. The MVC Act also tasks the MVC with considering the regional need for affordable housing on Martha’s Vineyard. *Id.*, § 15(d). Section 16 of the MVC Act provides that “[n]o referring [town board] shall grant a development permit for a [DRI] except with the permission of the [MVC].” *Id.*, § 16.

A. Developer’s Argument

While EGL’s primary argument in this matter is that its application has been constructively granted by the inaction of the Board and that “there is no need for the Committee to delve into the impact, if any, of any parallel jurisdiction of the MVC,” it goes on to preemptively address what it anticipates will be the Board and the MVC’s argument—“that the MVC has independent jurisdiction over the comprehensive permit application at issue [which] somehow excuses the Board’s failure to act in a manner that defeats this motion.” Developer motion, p. 7. To the extent that the Committee is to consider the impact of the MVC’s

jurisdiction, EGL argues that the Committee should conclude that the MVC is a “local board.” *Id.*, p. 10.

1. Review of Case Law

EGL argues that the applicable standard for whether a regional entity should be considered a local board, for the purposes of Chapter 40B, is set forth in *Dennis Housing Corp. v. Zoning Bd. of Appeals of Dennis*, 439 Mass. 71 (2003). *See* Developer motion, p. 12. In *Dennis*, the Supreme Judicial Court (SJC) addressed the action of the Legislature (St.1973, c. 470, as amended) in establishing a regional historic district commission comprised of several Cape Cod towns, as well as a historic district comprised of portions of those towns and establishing a “town historic district committee” for each of those member towns. *Dennis*, 439 Mass. 71, 72. Within the historic district, no building or structure can be erected without a certificate of appropriateness issued by the town historic district committee, and the building inspector may not issue a building permit unless the applicant submits the requisite certificate of appropriateness. *Id.* at 74. The Legislature also established the Old King’s Highway regional historic district commission (historic commission), which is comprised of the chairpersons of each of the town’s historic committees. *Id.* at 75. Persons aggrieved by a town historic committee’s grant or denial of a certificate of appropriateness may appeal to the historic commission, and the historic commission may reverse the town historic committee’s decision if the committee “exceeded its authority....” *Id.* The SJC determined that “[w]ithin the operational structure of the historic district, the functions of the town historic committee are directly linked to those of the building inspector,” who is “the local official that operates to uphold and enforce the town historic committee’s power....” *Id.* at 79-80. As such, the Court found that the town historic district committee is a local board, despite its origins in the special act creating it. The Court concluded that a contrary conclusion would undercut the benefits and prescriptions of Chapter 40B in the development of affordable housing. *See id.* at 82.

EGL argues that the MVC should be treated similarly, for several reasons: The MVC does not issue permits. Developer motion, p. 12. Rather, it obtains its jurisdiction only upon a referral from a local municipal permit-granting entity after that entity makes a determination that a project constitutes a DRI. *See id.* What constitutes a DRI is defined by certain standards and criteria under the MVC’s enabling legislation and a determination the MVC is required to make when a project is referred to it. Developer Exh. I, MVC Act, § 14. Then, upon its review,

the matter is returned to the local entity for a decision, with any attached conditions or other directives included in the local permit ultimately issued by the municipal permit-granting entity. EGL argues that, “in so doing, the MVC does not interpret or enforce any State-level regulations or standards, addressing only matters of local concern.” Developer motion, p. 12. Second, it states, the MVC is also “disconnected from State regulators and is entirely dependent on municipal funding” and its “membership consists of municipal representatives appointed and elected from each island town.” *Id.*, pp. 12-13. EGL also points to 760 CMR 56.05(10), which, it argues, was amended after the *Dennis* decision to include references to “regional entities,” thus “solidify[ing] the premise that a local presiding zoning board of appeals will assume the jurisdiction of local regional agencies.” Developer motion, p. 13. EGL contends that, to “conclude that the MVC is not a local board would be to foster the premise that the MVC is in a position to uniquely block or frustrate affordable housing developments....” *Id.*

In its reply, EGL addresses the Board’s and the MVC’s reliance on *Mavro v. CKA, LLC*, 11 LCR 46, 48 (May 29, 2002), a Land Court decision involving a claim of constructive grant of a comprehensive permit in Oak Bluffs, in which the Land Court judge, interpreting the Chapter 40B Regulations, held that the “regulatory definition of ‘local board’ does not include the MVC. *Id.* at 52. EGL contends that the Land Court decision is a non-binding trial court decision, it is in any event superseded by *Dennis*, and the HAC should not accord this decision any force or effect. Developer reply, pp. 5-6.

EGL also relies on *Woods Hole, Martha's Vineyard & Nantucket S.S. Auth'y. MVC*, 380 Mass. 785 (1980). See Developer reply, p. 11. In *Woods Hole*, the Nantucket Steamship Authority (Authority) challenged the scope of MVC’s authority in the context of a development permit to construct a ferry slip. 380 Mass. 785, 786. The local conservation commission determined the project to be a DRI and referred it to the MVC. After approving the project, the MVC thereafter “reconsidered” its approval and voted to disallow construction of a second slip and allow repair of the existing slip. *Id.* at 794. The Authority disputed the MVC’s authority over its land, arguing that the Authority is a “constituent agency” of the Commonwealth and exempt from the MVC Act’s reach. *Id.* at 798. The Court held that the Authority “is subject to some regulation by the Commission” and analyzed the nature and extent of regulation which is permitted. *Id.* at 801. While it found some of the regulations applied by the MVC to be within its authority under the MVC Act, it left open a determination on the validity of the MVC’s

decision pending remand to the trial court. *Id.* EGL argues that *Woods Hole* stands for the proposition that “while state authorities may be required to approve certain standards and districts, such actions are temporal and cannot be equated with ongoing oversight. Rather they are more akin to approval of local zoning bylaws....” Developer reply, p. 11, citing *Woods Hole*, 308 Mass. 785, 804 (reasoning MVC regulations³ are “more analogous to local zoning ordinances and bylaws, except they are promulgated on regional basis then incorporated into town ordinances and bylaws”).

Finally, EGL points to a Massachusetts State Ethics Commission decision that concluded that the MVC is a municipal entity for purposes of ethical compliance. Developer motion, p. 14; Developer Exh. J. Acknowledging that the statutory scheme involving ethics is different than Chapter 40B, EGL nevertheless argues that the Ethics Commission decision “has notable parallels,” including its finding that “we continue to conclude that it is a municipal agency. Its member municipalities, rather than state or county officials, control the MVC.... As we observed in EC-COI-91-3, we continue to conclude that municipal control and service to municipal issues dominate the MVC.” *Id.*

2. Statutory Interpretation

EGL further supports its argument that the MVC should be considered a local board based upon legislative intent and agency interpretation of the governing statutes and regulations. *See* Developer motion, p. 10. It argues that the Committee is charged with implementing, administering and applying the provisions of Chapter 40B and 760 CMR 56.00, *et seq.*, and that:

Where statutory lacunae exist, the details of legislative policy are to be spelled out “in the first instance by [the] agency charged with administration of the statute.” *Town of Middleborough v. Housing Appeals Comm.*, 449 Mass. 514, 523 (2007) (quoting *Zoning Bd. of Appeals of Wellesley v. Housing Appeals Comm.*, 385 Mass. 651, 654 (1982)). “Where the statutory language is not without ambiguity, *see Board of Appeals of Hanover v. Housing Appeals Comm.*, *supra* at 354, 294 N.E.2d 393, our deference to the agency’s interpretation of the governing statute is highest.” *Id.*

³ The MVC’s DRI Regulations were replaced by the DRI Procedures for Developments of Regional Impact in 2022. *See* Turner Affidavit, Exh. C.

Developer motion, pp. 10-11. EGL argues that the Committee is both “equipped and empowered” to interpret the term “local board” and “its interpretations in this regard are entitled to deference.” *Id.*, p. 11.

In its reply brief, EGL disputes the distinction drawn by the MVC between the Cape Cod Commission (CCC), another regional planning agency created by statute, and the MVC. Developer reply, p. 16. The MVC argues that the CCC’s enabling statute specifically designates it as a local board for purposes of Chapter 40B, while the MVC Act does not. *Id.* It points out that the MVC Act has been revised several times since its enactment and none of those revisions have added the local board language present in the CCC statute. “This history,” the MVC contends, “compels the conclusion that omitting such language from the MVC Act was an intentional choice that the MVC should not be considered a ‘local board’ for purposes of Chapter 40B.” MVC opposition, p. 23.

EGL disputes that there is any “demonstrable legislative history” that supports MVC’s argument. Developer reply, p. 16. Pointing to “an analogous decision,” EGL argues that the SJC has stated that “silence on this issue could warrant an ‘opposite inference’— i.e., that the express failure to exempt the MVC from c. 40B requires a conclusion that the MVC is *not* exempt.” *Id.*, p. 17, citing *Alliance to Protect Nantucket Sound, Inc. v. Energy Facilities Siting Bd.*, 457 Mass. 663, 674, n. 22 (2010). In *Alliance*, Cape Wind Associates, LLC (Cape Wind) sought and received permission from the State Energy Facilities Siting Board (EFSB) pursuant to G.L. c. 164, § 69J, to construct transmission lines for its wind farm. 457 Mass. at 665. Thereafter, the CCC denied Cape Wind's proposed DRI, which was one of the required “approvals” for the transmission project. Cape Wind did not appeal from the DRI decision but thereafter filed an initial petition with the EFSB to obtain a G.L. c. 164, § 69K, certificate, which, if issued, serves as “a ‘composite’ of all the ‘individual permits, approvals or authorizations which would otherwise be necessary for the construction and operation’ of the facility.” *Id.* at 666. The EFSB granted the § 69K certificate, and its decision was appealed by interveners, who argued that the EFSB “had no jurisdiction under § 69K to grant the equivalent of an approval of Cape Wind's DRI, and thereby to override the commission's denial.” *Id.* at 672.

In deciding that the two statutory schemes can “operate harmoniously together,” the Court held that the CCC, a regional agency, is “clearly a local (as opposed to State) agency, and

therefore it qualifies as a ‘local agency or body’ within the meaning of § 69K....” *Id.* at 676. Furthermore, CCC’s “construction of the two statutes would have § 69K, and the [EFSB] statute generally, apply everywhere in the Commonwealth except Barnstable County, a reading inconsistent with EFSB’s responsibility ‘to provide a reliable energy supply *for the commonwealth.*’” *Id.* at 674. The Court held that:

We read the quoted provision in § 69K as an express legislative directive to the siting board to stand in the shoes of any and all State and local agencies with permitting authority over a proposed “facility”—that is, a directive to assume all the powers and obligations of such an agency with respect to the decision whether to grant the authorization that is within the agency’s jurisdiction, with regulatory enforcement thereafter returned to that agency.

Id. at 678. EGL argues that Chapter 40B, like the energy siting facility legislation at issue in *Alliance*, applies statewide, and all communities across the Commonwealth are subject to it and the communities subject to the MVC Act should not be exempt. Developer reply, p. 17.

B. The MVC’s Argument

The Board’s opposition does not address the local board issue, instead focusing on disputing the developer’s constructive grant argument, which is addressed in § IV, *infra*. The MVC’s opposition addresses the local board issue, arguing that “the MVC was created by the Legislature as a *regional* authority with a *regional and statewide* mandate to ensure the protection of the unique resources of Martha’s Vineyard. It is plainly outside both the statutory and regulatory definitions of a ‘local board’ under the 40B scheme.” MVC opposition, p. 12. The regional nature of the MVC, it argues, has been recognized by the SJC in *Island Props., Inc. v. Martha’s Vineyard Comm’n*, 372 Mass. 216, 229 (1977), in which the Court stated: “the reason of its being is to import regional—*island-wide* and *Statewide*—considerations into the protection of the land and water of Martha’s Vineyard....” MVC opposition, p. 13, *citing also Crocker v. Martha’s Vineyard Comm’n*, 407 Mass. 77, 79 (1990). The MVC argues that it serves these regional objectives “through the designation of districts of critical planning concern (DCPCs) and [DRIs].” MVC opposition, p. 13. It contends that “the Legislature vested in the Commission the express authority to trump local land use laws in service of its regional mandate.” *Id.*, p. 14. The MVC argues:

The “regional nature of the MVC is also apparent in the makeup of the Commission itself,” pointing out that that “[m]ore than two thirds of the members represent regional or state-wide constituencies. MVC Act, § 2. Only

six members are appointed from towns on the Island. *Id.* The other 15 members include nine members elected at-large from across the Island, five gubernatorial appointments, and a Dukes County commissioner or their designee. *Id.* Among the Governor’s appointments, the Act requires that four have their principal residence away from Martha’s Vineyard. *Id.*

MVC opposition, p. 14. In furtherance of its argument that the MVC is a regional entity and not a local board, the MVC states, citing *Island Proprs.*, that the Court “repeatedly emphasized the difference between the MVC Act and local zoning regulations” and held that “the zoning freeze provisions of what was then section 7A of G.L. c. 40A did not apply to the Commission’s authority to review proposed DRIs.” MVC opposition, p. 14, citing *Island Proprs.*, 372 Mass. 216, 232. Second, it cites *Crocker*, 407 Mass. 77, for additional support for its contention that the MVC’s obligation is to regional and statewide considerations, and that zoning provisions of Chapter 40A do not apply to the MVC’s authority to review proposed DRIs. MVC opposition, p. 15. For further discussion of *Crocker*, see § IV, *infra*. Finally, the MVC relies upon the *Mavro* Land Court decision, arguing that “the court rejected the developer’s claim that Chapter 40B’s interest in fostering affordable housing should trump the provisions of the MVC Act recognized by the Legislature and by the SJC in the case law cited above.” MVC opposition, p. 16, citing *Mavro*, 11 LCR 46, 52-53. In *Mavro*, the Land Court ruled that there could be no constructive grant attached for the ZBA’s failure to act in accordance with the deadlines imposed by Chapter 40B. *Id.* at 53. The MVC contends that the Land Court’s conclusions are “highly relevant” and confirm that the Board has “no power to approve—either constructively or expressly—a Chapter 40B project qualifying as a DRI prior to completion of the MVC’s review.” MVC opposition, p. 9.

C. Committee Analysis

In construing the provisions of G.L. c. 40B, §§ 20-23, *Board of Appeals of Hanover v. Housing Appeals Comm.*, 363 Mass. 339, 347 (1973), made clear that the statute must be broadly construed to apply to all local requirements and regulations that hinder or prevent the construction of low or moderate income housing. The same analysis in *Hanover* has been applied as well to water districts, sewer districts, historic commissions and public utilities. Both the SJC and this Committee have long held that a local board or commission not listed by name in § 20 could still qualify as a “local board” for purposes of comprehensive permit proceedings. See *Dennis*, 439 Mass. 71, 79 (“we are to undertake a functional analysis—not a name matching exercise—with respect to the definition of ‘local board’”); *Pond View*

Commons, LLC v. Lunenburg, No. 2023-01, slip op. at 9 (Mass. Housing Appeals Comm. Nov. 22, 2023) (legislatively created water district and sewer commission are local boards for purposes of Chapter 40B); *Wilmington Arboretum Apts. Assocs. Ltd. P'ship v. Wilmington*, No. 1987-17, slip op. at 25-28 (Mass. Housing Appeals Comm. June 20, 1990) (town sewer department constitutes local board for purposes of Chapter 40B); *Peppercorn Village Realty Trust v. Hopkinton*, No. 2002-02, slip op. at 10 (Mass. Housing Appeals Comm. Jan. 26, 2004) (concluding Committee can override water department rules), citing *Board of Appeals of Maynard v. Housing Appeals Comm.*, 370 Mass. 64, 68-69 (1976); *Washington Green Dev., LLC v. Groton*, No. 2004-09, slip op. at 16 (Mass. Housing Appeals Comm. Sept. 20, 2005) (concluding provision of public utilities “is clearly the sort of government function that the Comprehensive Permit Law is intended to regulate” because it “relates to both the health and safety of residents and to municipal services and infrastructure”); see also *Mahoney v. Board of Appeals of Winchester*, 366 Mass. 228, 232-233 (1974) (“this analysis [from *Hanover*] is equally applicable to the requirements of the subdivision control law”). The analysis in those cases has been whether the entity in question “performs traditionally local functions,” *Wilmington Arboretum, supra*, No. 1987-17, slip op. at 27, whether the restrictions are the type of “local restrictions” that Chapter 40B was enacted to address, *Peppercorn Village, supra*, No. 2002-02, slip op. at 10, and whether the function to be performed is the sort of government function Chapter 40B intended to regulate. *Washington Green, supra*, No. 2004-09, slip op. at 16.

The reasoning in *Dennis* applies to the MVC. There, the SJC determined that “[w]ithin the operational structure of the historic district, the functions of the town historic committee are directly linked to those of the building inspector,” who is the local official that operates to uphold and enforce the town historic committee’s power. *Dennis*, 439 Mass. 71, 79-80. As such, the town historic district committee is a local board, despite its origins in the special act creating it.

Unlike statewide permitting schemes such as the Wetlands Protection Act, Title 5 and the Massachusetts Environmental Policy Act, both the historic district commission in *Dennis* and the MVC Act leave it to the voters within the applicable district to decide whether even to

become or remain a member,⁴ the regional entity's members are appointed and elected locally, and the entity itself is funded by the municipal tax levy. *Dennis*, 439 Mass. 71, 80-81; *see also* MVC Act, §§ 2, 4. In *Dennis*, the stated goals of the historic district commission were “to promote the general welfare of the inhabitants of the applicable regional member towns.” *Id.* at 73. Similarly, the goals of the MVC, as stated in the MVC Act, are “to further protect the health, safety and general welfare of island residents and visitors by preserving and conserving for the enjoyment of present and future generations the unique natural, historical, ecological, scientific, and cultural values of Martha's Vineyard....” Developer Exh. I, MVC Act, § 1.

The MVC's DRI Procedures for Developments of Regional Impact (DRI Procedures) also evidence both a lack of state oversight of its reviews as well as a procedural manner of operating that is effectively identical to the function of a local zoning board in its capacity as a permit granting authority. *See Dennis*, 439 Mass. 71, 81 (historic commission and town historic committees function independent of any State supervision, answerable only to town voters and town selectmen). Under § 4.3 of the DRI Procedures, the items required to be submitted for review for all DRI applications, such as site plans, floor plans, exterior elevations, renderings/sketches, storm water plan, and landscaping plan, are no different from materials submitted for review by a local board. *See Turner Affidavit*, Exh. C. Reviewing the MVC's December 18, 2025, decision in this matter, the MVC rejected the project based on issues such as traffic, scale and massing, scenic values and impacts on abutters. *See id.*, Exh. D. While the MVC, as part of its review, considers whether a DRI will have regional impacts on other municipalities within Dukes County, Chapter 40B also considers the regional need for affordable housing and whether those regional needs outweigh valid planning objectives. *See Hanover*, 363 Mass. 339, 367.

The Court's finding in *Woods Hole* that the DRI regulations⁵ are “more analogous to local zoning ordinances and by-laws, except that they are promulgated on a regional basis and

⁴ Under § 10 of the MVC Act, after designation of a district of critical planning concern, a municipality whose boundaries include all or part of the district may adopt regulations in conformance to the guidelines for the development of the district as set forth in the designation. Developer Exh. I. To rescind those regulations, there is a formal process involving a written request submitted to various town boards followed by public hearings and, ultimately, the town votes on a ballot question to rescind its regulations. *Id.*; *see McCarthy v. Planning Bd. of Edgartown*, 381 Mass. 86, 89 (1980).

⁵ Now the DRI Procedures, *see note 2, supra*.

then incorporated into the town ordinances and by-laws” is instructive. *Woods Hole*, 380 Mass. 785, 804. Under § 10 of the MVC Act, towns may promulgate and adopt regulations concerning Districts of Critical Planning Concern (DCPC). Developer Exh. I. If towns with designated DCPC areas fail to develop such regulations within six months of such designation, the MVC may develop regulations for the municipalities which shall be incorporated into the town’s land use regulations, and the town can subsequently amend or substitute those regulations through the usual zoning procedures. *Id.* The effect of this process is to make DRI Procedures governing DCPC development closely akin to the type of regulations Chapter 40B was designed to address, since the DCPC regulations become part of a municipality’s local bylaws and regulations. *See* Developer Exh. I; MVC Act, § 10. Although MVC is not specifically mentioned under G.L. c. 40B, § 21, the regulations MVC promulgates are of the type Chapter 40B was meant to address. Furthermore, the local zoning board—not the MVC—is the permit granting authority for purposes of Chapter 40B. *Id.*, MVC Act, §§ 6, 16, (“Municipal land regulatory agency” defined as “any municipal agency, board, commission, department, office, or official that has statutory authority to approve or grant a development permit”).

As we stated in *Pond View Commons*, *supra*, No. 2023-01, slip op. at 9, where “[t]here is no state agency that has oversight of the workings of either the Sewer Commission or the Water District and both entities were created for the benefit of their respective districts, not for the state at large,” they should be considered local boards. Further, while the entities in question in *Pond View* were deemed to be local boards, the actions sought to be overridden were deemed legislative in nature and could not be characterized as a permitting function for purposes of Chapter 40B. *Id.*, slip op. at 14. *See also Dennis*, 439 Mass. 71, 81-82. Similarly, here, the MVC does not engage in oversight of the workings of the Board and the MVC was created for the benefit of the island’s member communities, and not for the state at large. And, as recognized in *Dennis*, the mere fact that the MVC Act “was created by act of the Legislature does not operate to negate the overwhelmingly ‘local’ nature of its implementation and operation.” *Id.* at 80. Here, the actions of the MVC are clearly not legislative and must, in fact, be characterized as permitting functions.

Much emphasis has been placed by the Board and the MVC on the importance and relevance of the *Mavro* decision, as they argue that it “confirms that the ZBA had no power to

approve—either constructively or expressly—a Chapter 40B project qualifying as a DRI prior to completion of the MVC’s review” and that the Land Court definitively determined that the MVC is not a local board for purposes of Chapter 40B. MVC opposition, p. 9; *see* Board opposition, p. 2. While *Mavro* is certainly factually similar and could be considered for its persuasive value, a Land Court decision is not binding precedent. *See Langton v. Comm’r of Correction*, 34 Mass. App. Ct. 564, 575 (1993); *see also* 41 Mass. Prac., Appellate Procedure § 3:36 (4th ed.) (Trial Court decisions are not to be cited for precedential value). We note as well that *Mavro* was decided before the decision in *Dennis* and, in the time since *Mavro*, the SJC and the Committee have consistently interpreted the term “local board” broadly in order to adhere to the policy objectives of Chapter 40B. Nor have the parties cited any Committee decision or any trial or appellate decision citing *Mavro*. It is rather an anomaly, and we do not find its discussion persuasive.

MVC urges us to reconcile Chapter 40B and the MVC Act as was done in *Mavro*: by tolling the time for action by the zoning board pending resolution of the MVC’s review of the DRI application. “Tolling the time for the board to act does not eliminate the time limit imposed by Chapter 40B. It is merely suspended while the MVC completes its assessment of the impacts of the project on the Island as a whole.” MVC opposition, p. 27. By doing so, “the essential purposes of both Chapter 40B and the MVC Act can both be fulfilled.” *Id.* The MVC argues that designating the MVC as a local board would not only “transfer the MVC’s power to a local zoning board—expressly against the intent of the Legislature in creating the MVC—but it would also adjudge any conditions the MVC might suggest according to local needs, not the regional needs of Martha’s Vineyard.” *Id.*, p. 28.

EGL counters this argument by contending that the conclusion that the MVC is a local board does not deprive it of a meaningful opportunity for it to lend its purported expertise in regional impacts during the Chapter 40B process. Developer reply, pp. 17-18. EGL points out that G.L. c. 40B, § 21, requires a zoning board to give local boards the opportunity to “have notice and an opportunity to be heard on the merits of the comprehensive permit application before the zoning board.” *Id.*, p. 18

As we stated in *Matter of Oak Bluffs and MV Green Villa, LLC*, No. 2024-08, slip op. at 9 (Mass. Housing Appeals Comm. June 18, 2025), the importance of having the Chapter 40B regulations applied consistently, reliably and uniformly to all 351 cities and towns of the

Commonwealth is well established. *See Zoning Bd. of Appeals of Greenfield v. Housing Appeals Comm.*, 15 Mass. App. Ct. 553, 557 (1983). By enacting Chapter 40B, the Legislature intended its reach to be a broad one that would promote affordable housing whatever changes occurred in federal and state regulatory schemes. “The object of a statute may be so general and its language so broad as to reach conditions fairly coming within its intent and sweep although such conditions did not come into existence until years after its enactment.” *Cohen v. Board of Water Commissioners*, 411 Mass. 744, 749 (1992), quoting *Commonwealth v. Tilley*, 306 Mass. 412, 415 (1940). The comprehensive permit law is such a statute. *See Hanover*, 363 Mass. 339, 368. To exempt the MVC from the definition of “local board” would retain a form of local impediment to the development of affordable housing that the comprehensive permit act sought to eliminate, leaving the MVC with “effective veto power over proposed affordable housing” which is “wholly incompatible with the purposes of the comprehensive permit act.” *Dennis*, 439 Mass. 71, 82-83. Furthermore, such veto power would exist only in those municipalities subject to the MVC Act, creating an inequity between the island and the rest of the Commonwealth.

“Where the statutory language is not without ambiguity, *see [Hanover at 354]*, our deference to the agency's interpretation of the governing statute is highest.” *Town of Middleborough v. Housing Appeals Comm.*, 449 Mass. 514, 523 (2007). “[I]f the Legislature has not addressed directly the pertinent issue [in the statute], [courts] determine whether the agency’s resolution of that issue may ‘be reconciled with the governing legislation.’” *Zoning Bd. of Appeals of Amesbury v. Housing Appeals Comm.*, 457 Mass. 748, 759-760 (2010); *see also Alliance*, 457 Mass. 663, 681 (“We accord substantial discretion to an agency to interpret the statute it is charged with enforcing, especially where ... the Legislature has authorized the agency to promulgate regulations”). Among the regulatory obstacles the Act was meant to circumvent, for the purpose of encouraging development of affordable housing, was the then-prevailing “need to obtain permits and approvals from multiple local agencies,” which was a process that could be “so protracted as to discourage all but the most determined and well-financed builders.” *Dennis*, 439 Mass. 71, 76, quoting *Hanover*, 363 Mass. 339, 351. The purpose of Chapter 40B is to eliminate both substantive and procedural barriers to building affordable housing. *See Hanover*, 363 Mass. 339, 347, 351. If the MVC is not a local board subject to the Committee’s jurisdiction, then the result is that the MVC may wield its own

procedures and veto power to thwart statewide affordable housing goals, which is exactly the type of procedural barrier the Legislature sought to avoid in enacting Chapter 40B.⁶

Accordingly, we determine that the MVC is a local board for purposes of Chapter 40B. Our determination is in harmony with and directly advances the Legislature's purpose in passing Chapter 40B, as reflected in decisions of the appellate courts and the Committee. Having so found, we turn to the matter of EGL's claim of constructive grant.

IV. CONSTRUCTIVE GRANT

A. Criteria for a Constructive Grant

The comprehensive permit regulations identify three specific circumstances in which the Committee may determine, upon motion and after hearing,⁷ that a comprehensive permit has been constructively granted. The two instances that are relevant here are when the Board fails:

⁶ We note also that the MVC Act only permits the MVC to approve a DRI if it can make five specified findings: "(a) the probable benefit from the proposed development will exceed the probable detriment as evaluated pursuant to section fifteen; (b) the proposed development will not substantially or unreasonably interfere with the achievement of the objectives of the general plan of any municipality or the general plan of the county of Dukes County; (c) the proposed development is consistent with municipal development ordinances and by-laws, or, if it is inconsistent, the inconsistency is necessary to enable a substantial segment of the population of a larger community of which the municipality is a part to secure adequate opportunities for housing, education or recreation; and (d) if the proposed development is located in whole or in part within a designated district of critical planning concern, it is consistent with the regulations approved or adopted by the commission pursuant to section ten; and (e) a proposed development which does not qualify as a development of regional impact under the standards and criteria approved pursuant to section seven may nevertheless be referred to the commission as a development of regional impact by a municipal agency in the town where the development is located, by the board of selectmen in any other municipality in the county of Dukes county or by the county commissioners." MVC Act, § 14. These findings are not consistent with the legislative purposes of Chapter 40B.

⁷ The requirement of a hearing may be met by review on the record under the summary decision standard. 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 Reg. of Architects*, 414 Mass. 1, 7 (1992); *West Street Group, LLC v. Stoughton*, No. 2009-14, slip op. at 2 (Mass. Housing Appeals Comm. Ruling Mar. 19, 2012); *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). Since the parties have submitted documents, including affidavits, in support of the motion and opposition, it is appropriate to review the motion under the standard for summary decision. See 760 CMR 56.06(5)(b)4 and 56.06(5)(d).

1. to open a public hearing within 30 days of application filing. G.L. c. 40B, § 21; 760 CMR 56.05(3).
2. to render a decision within 40 days of termination of the public hearing. G.L. c. 40B, § 21; 760 CMR 56.05(8)(a).

G.L. c. 40B, § 21, also cited in § 56.07(5)(d), mandates that a comprehensive permit application shall be deemed to have been allowed for failure to meet the statutory deadline to convene a hearing or render a decision. Section 21 is nondiscretionary in requiring the permit to be deemed allowed if a board has failed to comply with either of these two time limits. Although 760 CMR 56.07(5)(d) uses the permissive “may,” it does not supersede the mandatory provision of the statute.

B. Discussion

EGL alleges that the Board did not meet either of the Chapter 40B requirements by failing to: 1) open a public hearing within 30 days of the filing of its comprehensive permit application on September 9, 2024, and 2) issue a decision within 40 days of the close of its public hearing. Developer motion, p. 7. EGL argues that, “[w]hether that deadline is measured from the last actual hearing date of October 15th or the nominal date of November 19th, the time period to issue and file a decision has passed.” *Id.* Relying on the decisions in *Way Finders, Inc. v. Ludlow*, No. 2017-13, slip op. at 3 (Mass. Housing Appeals Comm. Ruling Dec. 21, 2018) and *Bell v Zoning Bd. of Appeals of Gloucester*, 429 Mass. 551, 552 (1999), EGL argues that, under G.L. c. 40B, § 21, a finding of constructive grant is nondiscretionary if the Board has failed to meet the statutory and regulatory deadlines. Developer motion, pp. 6-7.

The relevant dates as presented by EGL are not in dispute. EGL argues that the Committee’s decision in *MV Green Villa, supra*, No. 2024-08, slip op. at 9, determined that the timelines for commencing a public hearing on a Chapter 40B application on Martha’s Vineyard are unaffected by any purported jurisdiction of the MVC. It asserts that “the MVC’s jurisdiction, if any, cannot relate to any matter or interest it might have possessed *had* the Board commenced a timely hearing.”⁸ Developer motion, p. 8. Furthermore, EGL argues,

⁸ In *Oak Bluffs*, we determined that the applicable or operative date for determining the Oak Bluffs’ safe harbor status was the date on which the developer’s comprehensive permit application was filed with the Oak Bluffs town clerk, not the date on which the MVC’s review of the application is complete. *Oak Bluffs, supra*, No. 2024-08, slip op. at 5-6. There, we did not reach the issue of whether the MVC was a “local board” within the meaning of Chapter 40B.

“under its own enabling legislation, the MVC is a creature of limited jurisdiction, which is predicated upon appropriate action by a local body to refer building projects to it.” It cites to St. 1977, c. 831, § 13, as amended, which provides:

The governmental agency within each municipality which has responsibility for issuing a development permit shall in accordance with the standards and criteria approved pursuant to section seven determine whether or not a proposed development, for which application for a development permit has been made, is one of regional impact; if so, it shall refer the application for the development permit to the commission.

Developer motion, p. 8. Therefore, the developer argues, “comprehensive permit applications are made to a Zoning Board of Appeals, which, under the MVC Act, is the governmental agency responsible for issuing the comprehensive permit as a development permit under that Act.” *Id.*, p. 9. The developer argues that, because the referral of its application was made to the MVC by the Edgartown Building Commissioner without the Board ever opening a public hearing, the Board could not have made the necessary determinations to determine whether a DRI exists and, therefore, EGL’s permit has been constructively granted. *Id.*, pp. 9-10.

The Board argues, in five points, why the developer is not entitled to constructive approval. Where the MVC has provided argument on these points, it is included below, as are EGL’s responses to the Board and the MVC’s arguments.

1. Whether the MVC Act Prohibits Constructive Approval of the Comprehensive Permit

The Board’s primary argument is that the MVC Act, § 16, prohibits the Board from approving the comprehensive permit application, constructively or otherwise, absent prior approval of the DRI from the MVC. Board opposition, p. 2, citing *Crocker*, 407 Mass. 77; *Mavro*, 11 LCR 46. The Board argues that G.L. c. 40B, § 21 is a procedural remedy for inaction and “cannot confer substantive authority that the permitting board does not possess.” Board opposition, p. 8. MVC expands on this argument and argues that “the referral did, in fact, occur and, as a result, while the Project was pending before the MVC, the ZBA was powerless to issue a comprehensive permit, whether affirmatively or constructively.”⁹ MVC opposition, p. 7. MVC further contends that a constructive grant here would “directly contravene Supreme Judicial Court precedent.” *Id.*, citing *Crocker*, 407 Mass. 77. *Crocker*

⁹ The Board adopts the MVC’s argument. See Board opposition, p. 3.

involved a claim of constructive grant of a definitive subdivision plan by a planning board acting under G.L. c. 41, § 81U. In *Crocker*, the Court held that the time periods for a planning board to act under G.L. c. 41, § 81U are tolled pending commission review of DRI applications pursuant the MVC Act. 407 Mass. 77, 81.¹⁰ In reviewing the relevant statutes, the Court recognized that G.L. c. 41, § 81U, “was intended ‘to set up an orderly procedure for definitive action within stated times,’ thereby preventing undue delay in the review of development plans by local authorities.” *Id.* at 80, *citing Selectmen of Pembroke v. R. & P. Realty Corp.*, 348 Mass. 120, 125 (1964). The Court, in analyzing the conflict between the two statutory schemes, reasoned that § 81U was not “so repugnant to and inconsistent with [c. 831] that both cannot stand.” *Id.*, at 80, n.6, *citing Gregoire, petitioner*, 355 Mass. 399, 400 (1969), *quoting Doherty v. Comm’r of Admin.*, 349 Mass. 687, 690 (1965).

Since we determine, in § III *supra*, that the MVC is a local board, the constructive grant analysis proceeds on the basis that the Board is empowered to act on behalf of the MVC as part of its authority under Chapter 40B.¹¹ *See Hanover*, 363 Mass 339, 407.

2. Whether EGL Agreed to Extend the Time to Open the Board’s Hearing Until After the MVC Decision

The Board contends that “there was no constructive approval because [EGL] agreed to follow the [Board’s] usual practice of extending the time to convene a hearing until after the MVC rules on an application.¹² Board opposition, p. 3. The Board argues that there was an agreement by EGL to extend the time to convene a hearing until after the MVC ruled on the DRI, as evidenced by emails sent by Mr. Cumming. *See id.*; Pigott Declaration, Exh. B. In this email exchange, Mr. Cumming sent an email to Lisa Morrison, the Board’s assistant, following up on EGL’s application and inquiring if anything further was required. Pigott Declaration, Exh. B. Ms. Morrison responded that she “will sit back and wait for Reade [the building commissioner] to refer your project to the [MVC].” *Id.* Mr. Cumming responded, “Thank you

¹⁰ The distinction that can be made in *Crocker* is that, unlike Chapter 40B, there is no provision in the Subdivision Control Law enabling a local planning board to stand in the shoes of other local boards (such as the MVC). *Crocker* only supports the Board’s position if the MVC is not a local board.

¹¹ The obligation of the Board to timely open a hearing and vote to refer the project to the MVC raises a constructive grant issue even if the MVC is not considered a local board.

¹² The MVC did not provide any argument on this point.

sounds good :).” *Id.* The Board argues that G. L. c. 40B, § 21, authorizes the parties to extend the relevant deadlines and, as was done here, EGL consented to follow the Board’s procedure of waiting for MVC approval before convening a hearing. Board opposition, p. 9.

In his affidavit, Mr. Cumming stated that “at no point did I ever agree with the Board itself that they should not abide by the statutory requirements to open the hearing within thirty (30) days, such requirement having been clearly communicated by Attorney Talerman. Rather, I viewed my informal communications with Ms. Morrison as an indication that the Board would open the hearing in a timely fashion and then reserve a discussion on the merits for a time after the MVC completed its review....” Cumming Affidavit, ¶ 5. He further stated that “[a]t no point did the Board itself never [sic] make any effort to obtain a formal agreement, as required under c. 40B, to formally postpone the opening of the hearing.” Cumming Affidavit, ¶ 7.

3. Whether EGL is Estopped From Claiming Constructive Approval

The Board contends that EGL’s actions equitably estop it from claiming constructive approval, even if it is found that there was no agreement to extend the date to convene a hearing. Board opposition, p. 9. The Board points to Mr. Cumming’s email exchange with Ms. Morrison and states that this exchange constituted a “lack of protest” and “affirmative words as assenting to wait for the MVC....” *Id.*, p. 10. These messages, the Board contends, equitably estop EGL from claiming constructive grant based on its characterization that the Board “was lulled by Cumming’s emails into believing that it could await a ruling from the MVC before convening a hearing.”¹³ *Id.*

In response to Points 2 and 3, EGL contends there are “multiple flaws” with the Board’s arguments. Developer reply, p. 19. First, it argues § 21 requires that any delays in the opening of the hearing must be “by mutual agreement between the board and the applicant.” *Id.* Here, EGL contends, there is no evidence of a mutual agreement between EGL and the Board to delay the opening of the hearing. *Id.*, pp. 19-20. EGL argues that, “[a]t best, there is a causal

¹³ In a footnote, the Board posits that it does not know whether the circumstances in which it alleges EGL “agreed” to the delay in the Board’s hearing “arose from miscommunication” within EGL’s team, “a misunderstanding about the facts, or intentional misconduct.” “At a minimum,” it argues, “the record permits more than one reasonable inference and therefore presents a genuine issue of material fact that precludes summary decision. *See Boston & A. R. R. v. Reardon*, 226 Mass. 286, 291 (1917) (‘Whether equitable or legal estoppel has been established is a question of fact where it is possible to draw more than one inference from the evidence.’).” Board opposition, p. 11, n.3.

exchange of emails by and between a representative of EGL (and not its counsel) and an administrative assistant of the Board (and not the Board itself).” *Id.*, p. 21. Second, EGL argues that this email exchange between Mr. Cumming and Ms. Morrison is insufficient to constitute equitable estoppel, where estoppel requires a representation, an act or omission made in reasonable reliance upon that representation and resulting detriment. *Id.*, pp. 20-21, *citing One Ledgemont, LLC v. Zoning Bd. of Appeals of Lexington*, 90 Mass. App. Ct. 1120 at *3 (2016) (Rule 1:28 decision), *citing Bongaards v. Millen*, 440 Mass. 10, 15 (2003). In further support of its argument, EGL states that, before the email exchange in question, counsel for EGL “wrote to the Board on September 9, 2024 and advised it of its obligation to open a hearing within thirty (30) days....” Developer reply, p. 22, citing Cumming Affidavit, Exh. A. These facts, EGL contends, “make clear that EGL never waived the Board’s requirement to open a hearing” within 30 days. Developer reply, p. 22. Finally, pointing to the affidavit of the Board’s Chair, Martin Tomassian, EGL states that his affidavit “makes clear that the Board had no intention of opening a hearing within thirty days, and additionally only intended to convene a hearing after the MVC had acted.” *Id.*

Mr. Cummins’ affidavit stated that it was never his intent to agree that the Board should not comply with the statutory requirements or enter into any formal agreement with the Board, through Ms. Morrison, to formally postpone the Board’s hearing. *See* Cumming Affidavit, ¶¶ 5-7. Likewise, Ms. Morrison’s email messages are administrative in nature, containing no more than one or two sentences about procedures and providing information on where to find filing instructions. Pigott Declaration, Exhs. B, C. The Board attempts to characterize the email exchange between Mr. Cumming and Ms. Morrison as a lack of protest and assent to postpone the Board’s hearing by Mr. Cumming, in an attempt to lull the Board into believing that EGL agreed to the Board’s timeline. Board opposition, p. 10. To make a finding of estoppel, there must be:

- (1.) A representation or conduct amounting to a representation intended to induce a course of conduct on the part of the person to whom the representation is made. (2.) An act or omission resulting from the representation, whether actual or by conduct, by the person to whom the representation is made. (3.) Detriment to such person as a consequence of the act or omission.

Weston Forest Trail Ass’n, Inc. v. Fishman, 66 Mass. App. Ct. 654, 659 (2006), *citing Turnpike Motors, Inc. v. Newbury Group, Inc.*, 413 Mass. 119, 123 (1992). *See also Medfield North*

Meadows, LLC v. Medfield, No. 2012-01, slip op. at 6 (Mass. Housing Appeals Comm. Sept. 10, 2012) (developer response of “Okay” to board’s assistant’s statement regarding hearing date does not constitute waiver of 20-day notice requirement). We do not find the Board and the MVC’s argument that EGL is equitably estopped from claiming constructive grant persuasive. We decline to adopt that characterization as it is unsupported by the undisputed evidence. To infer the intent required for a finding of estoppel here would frustrate the policies of Chapter 40B by assigning intent to what are effectively transmittal emails, administrative in nature, sent by and to individuals who do not have the authority to make such representations or mutual agreements. *See Fishman*, 66 Mass. App. Ct. 654, 660 (“[e]stoppel is not applied to government acts where to do so would frustrate a policy intended to protect the public interest”); *see also Litchfield Heights, LLC v. Peabody*, No. 2004-20, slip op. at 10 (Mass. Housing Appeals Comm. Jan. 23, 2006), *citing Alholm v. Wareham*, 371 Mass. 621, 627, (1976) (evidence must contain facts from which reasonable inferences based on probabilities rather than possibilities may be drawn). Accordingly, the developer is not estopped from claiming a constructive grant occurred.

4. Whether the Time to Open a Public Hearing was Tolloed by MVC Review

The Board argues, again in the alternative, that even if EGL did not agree to extend the time for the Board to convene a hearing and is not estopped from raising a constructive approval claim, that there was no constructive approval because the time for the Board to open a public hearing did not expire; it was tolled by § 5.1 of the DRI Procedures, which states that “[a]ny statutory or regulatory time limits ... are tolled by the referral of the Development Application to the MVC.”¹⁴ Board opposition, p. 3; Turner Affidavit, Exh. C. The Board points to the *MV Green* decision, arguing that decision “confirmed” the “applicability of the MVC tolling rule to 40B applications.” Board opposition, p. 11. The Board argues that *MV Green* “holds that § 5.1 tolls process deadlines but not threshold filing determinations.” Board

¹⁴ Section 5.1 of the DRI Procedures does not contain the language quoted by the Board but rather sets out the procedure for pre-hearing meetings of the Land Use Planning Committee. Section 10.1 of the DRI Procedures states: “Statutory or regulatory time limits and those established by regulation or bylaw applicable to Municipal Authority review of an application for a Development Permit (e.g., building permits, subdivision approvals, variances, decisions, etc.) are tolled by the referral of the proposed project to the Commission.” Turner Affidavit, Exh. C.

opposition, p. 12. Here, the Board contends, § 3.1 of the DRI Procedures¹⁵ tolled the Board’s process “for two independent reasons: the self-referral by [EGL] on September 9, 2024,¹⁶ and the subsequent referral by the Edgartown building inspector on October 11, 2024.” *Id.*; *see* Turner Affidavit, Exh. C.

The Board contends that the Edgartown building inspector “was authorized to refer the project as a DRI” under the MVC’s DRI Checklist Standards and Criteria (DRI Checklist). *Id.*; *see* MVC motion to intervene, Exh. B. Section 1.2 of the DRI Checklist provides that, “[a] Town official who has the responsibility for issuing a Development Permit” should determine whether a referral is triggered. MVC motion to intervene, Exh. B. The Board points to footnote 2 of the DRI Checklist which states that: “Ordinarily, the local official with authority to grant the relevant Development Permit will make the referral of a project triggering a Checklist item. However, any other local official, including the Board of Selectman, may also make referrals of Checklist items.” Board opposition, pp. 12-13; MVC motion to intervene, Exh. B. The Board claims that the building inspector “plainly falls within that authorization and, therefore, acted within her authority in referring the DRI to the MVC.” Board opposition, p. 12. Further, the Board does not “read the [Committee’s] statement in [*MV Green*]—that ‘the Board must open the hearing on the application’—to mean that only the ZBA may initiate a DRI referral.” *Id.*, p. 13. It claims that a finding that only the Board may initiate a referral to the MVC “would amount to a new rule which should not be applied retroactively here, where the ZBA acted in accordance with its established practice and reasonable understanding of the interaction between G. L. c. 40B and the MVC Act. Retroactive application would upset settled expectations and impose inequitable hardship on the Town and its residents.” *Id.*

The Board further disputes that the developer’s application was properly transmitted to the Board in accordance with the Board’s requirements, and therefore, the statutory deadlines relied upon by EGL for its constructive grant claim do not apply. *See* Board opposition, p. 14.

¹⁵ Section 3.1 of the DRI Procedures provides: “Referrals of applications for Development Permits pursuant to the DRI Checklist should be sent to the MVC by certified mail or email, with a copy to the Applicant. The MVC will follow up on an email referral with an email or call to the referring Municipal Authority confirming receipt. Referrals should identify which DRI Checklist criteria have been met.” Turner Affidavit, Exh. C.

¹⁶ The MVC claims that on September 9, 2024, the project was “self-referred” by the developer. MVC opposition, p. 4, citing Turner Affidavit, ¶ 2 and Exh. A.

It argues that, under Edgartown's procedures, "an application is deemed submitted to the Board only after it is signed by the building inspector and transmitted to the [Board]: The Building/Zoning Official must sign the application prior to submittal to this office." *Id.*, citing Pigott Declaration, Exh. E (Instructions for Petitioners Filing to Apply Before the Town of Edgartown Zoning Board of Appeals). The application dated September 9, 2024 (Exhibit C to the Initial Pleading and Petition, pp. 3-4), is not signed by the building inspector; thus, according to the Board, EGL's application date is a matter of genuine material fact that precludes summary decision. Board opposition, pp. 14-15.

Likewise, the MVC claims that the DRI was properly referred to it in two forms: 1) on September 9, 2024, the project was self-referred by the developer, when Mr. Cumming notified Mr. Turner by email that the filing for the comprehensive permit application was "on record" with the Board and provided a link to EGL's application documents. MVC opposition, p. 4, citing Turner Affidavit, ¶ 2 and Exh. A; and 2) on October 11, 2024, the MVC received a referral from the Edgartown building inspector. *Id.*, citing Turner Affidavit, ¶ 4 and Exh. B. The MVC similarly relies on the DRI Procedures' and the DRI Checklist as authority for the building inspector's referral of the DRI. MVC opposition, p. 4.

Accordingly, both the Board and the MVC argue that the referral was properly made, pursuant to the DRI procedures, § 10.1, and, therefore, all municipal permitting of the comprehensive permit application was tolled, pending review by the Commission, and no constructive grant can occur. *See* Board opposition, pp. 12-13; MVC opposition, pp. 3-4.

EGL counters the Board's and the MVC's arguments by pointing to the "plain language" of the MVC Act, under which "only the Board had the authority to refer EGL's application to the MVC." Developer reply, p. 7. Because the office of the building inspector "is not the governmental agency with responsibility to issue a development permit under a comprehensive permit application," it argues that such a referral to the MVC was improper and a nullity. *See* Developer reply, pp. 6-7. The developer further relies upon *Morey v. Martha's Vineyard Comm'n*, 409 Mass. 813, 818 (1991), in which, it argues, the SJC "emphatically determined that, per the express and specific terms of Section 13 of the MVC Act, only the permit-granting entity may refer an application for such permit to the MVC." *Id.*, p. 7. In *Morey*, the MVC issued a decision restricting construction on a lot the plaintiffs owned in Edgartown. The Court reversed the MVC's decision on the ground that it lacked authority,

based upon a “cross-town referral” of the project.¹⁷ 409 Mass. 813, 813-819. Acknowledging that the that the MVC’s enabling act “does not explicitly exclude other referral procedures,” the Court found that the “cross-town referral” procedure was nevertheless ultra vires because “it is neither expressly nor impliedly granted by statute. The commission had no authority to promulgate a regulation which exceeds the authority conferred upon it by the enabling statute.” *Id.* at 818. “Furthermore, to the extent that the two provisions conflict, under principles of statutory construction the general language of § 20 [of the MVC Act] must yield to the more precise language of § 13, in which the Legislature specifically addressed the referral procedure.”¹⁸ The Court held that the cross-town referral procedure was invalid, as the MVC’s enabling act “permits only the permitting agency in the town where a project is located to refer that project to the commission for review as a DRI. Because the plaintiffs’ application was not referred by Edgartown, the commission lacked jurisdiction to review the application.” *Id.* at 830-831. EGL argues that the conclusion in *Morey* should be applied here to the referral by the building inspector. Developer reply, p. 7.

As to the argument that EGL waived any claim of an improper referral because the DRI was “self-referred,” EGL contends this argument has no support in either the law or the facts governing this matter. Developer reply, p. 8. It contends that the term “self-referral” is “a legal fiction that does not exist in the language of the MVC Act.” *Id.* EGL’s counsel submitted correspondence to the Board on October 25, 2024, copied to the MVC and subsequent correspondence to the MVC on July 17, 2025, in which it “noted the existence of a flawed referral and reserved its rights with respect to the same.” Developer reply, pp. 8-9 and Exhs. B and C.

¹⁷ Under this “cross-town referral” process, the selectboard of Edgartown concluded that the Town could not refer the proposed building to the MVC for review because it did not satisfy the criteria for a DRI as set out in the DRI Procedures and DRI Checklist. *Morey*, 409 Mass. 813, 816. The Edgartown selectmen asked the selectmen of West Tisbury to refer the application to the MVC for review, on the basis that the building “would block scenic vistas” and therefore the project was a “regional issue for obvious reasons.” *Id.*

¹⁸ “Section 20 provides that regulations ‘duly made’ by the MVC under the original enabling act, St. 1974, c. 637, shall continue to be enforced under the amended version of the act. St. 1977, c. 831, § 20.” *Morey*, 409 Mass. 813, 810. The Court held that “[b]ecause the regulation exceeded the commission’s statutory grant of authority under the original enabling act, however, it cannot be considered ‘duly made.’” *Id.*

Finally, addressing the Board’s argument that EGL’s application was not submitted on September 9, 2024, EGL contends there are at least two primary problems with the Board’s argument, stating:

(1) the Board has not actually adopted any c. 40B rules—rather, the Board is relying on generalized c. 40A rules, as plainly indicated at Exhibit E to the affidavit of Lily Pigott; and (2) such rules conflict with the requirements of c. 40B and 760 CMR 56.05(3), which provide that a complete application be submitted to the presiding zoning board in order trigger the requirement to open a public hearing within thirty (30) days.

Developer reply, p. 24. The Board may not alter statutory requirements through “practice or internal regulation,” EGL argues. *Id.*

Regarding whether the Board’s action on the application was tolled by the referral to the MVC, since we have determined that the MVC is a local board for purposes of Chapter 40B, this argument has no merit. The Board’s action on the developer’s application, therefore, should have proceeded according to the timelines set out in Chapter 40B and 760 CMR 56.00, treating the MVC as a local board for which it had the authority to act. Moreover, we agree that the *Morey* decision is relevant here and guides us to the finding that the DRI Procedures and DRI Checklist conflict with the MVC Act. Section 13 of the MVC Act provides:

The governmental agency within each municipality which has responsibility for issuing a development permit shall in accordance with the standards and criteria approved pursuant to section seven determine whether or not a proposed development, for which application for a development permit has been made, is one of regional impact; if so, it shall refer the application for the development permit to the commission.

Developer Exh. I, MVC Act, § 13. “Municipal land regulatory agency” is defined in the MVC Act as “any municipal agency, board, commission, department, office, or official *that has statutory authority to approve or grant a development permit.*” *Id.* (emphasis added). The DRI Procedures define “Municipal Authority” as: “A municipal agency, board, commission, department, office, or official *that has statutory authority to approve or grant a Development Permit* (referred to in the Act as a ‘Municipal Land Regulatory Agency’).” Turner Affidavit, Exh. C, DRI Procedures, § 2.1 (emphasis added). A comprehensive permit is a “development permit” issued by a “municipal land regulatory agency” as those terms are defined in the MVC Act. Developer Exh. I, MVC Act, § 6. There is nothing in the MVC Act (or even the DRI Procedures) that specifically authorizes a building inspector to refer a DRI to the MVC. The

only specific mention of “any other local official” having authority to make such a referral is found in the DRI Checklist, in a footnote, and even there, the footnote follows this provision:

A Town official *who has the responsibility for issuing a Development Permit* for a proposed Development should review this Checklist to determine if the proposed Development is covered by this Checklist. If the Checklist is triggered, the Development must be referred to the Commission.

MVC motion to intervene, Exh. B, DRI Checklist, § 1.2, n.2 (emphasis added). Chapter 40B makes clear that a building inspector has no statutory authority to grant a comprehensive permit under Chapter 40B:

Any public agency or limited dividend or nonprofit organization proposing to build low or moderate income housing may submit to the board of appeals, established under section twelve of chapter forty A, a single application to build such housing in lieu of separate applications to the applicable local boards.

Chapter 40B, § 21. It follows that, under the MVC Act, only the Board—the municipal board with statutory authority to approve a comprehensive permit—could make the referral to the MVC. Accordingly, the building inspector’s referral of the project to the MVC was not in compliance with the MVC Act. Furthermore, there is no provision in the MVC Act, DRI Procedures or DRI Checklist authorizing or recognizing “self-referrals” of a DRI. Finally, the Board’s argument that EGL’s application was not properly “transmitted” to the Board on September 9, 2024, is without merit and contrary to the evidence.¹⁹ As a result, the time period for the Board to act on EGL’s application was not tolled.

5. Whether Constructive Approval Occurred During the Remand Period

The Board argues that no constructive approval occurred during the remand period, as it did not violate any of the terms of the remand order and, furthermore, it was EGL, not the Board, that terminated the remand hearing. Board opposition, p. 15. It claims that EGL “cannot import a separate rule, not contained in the remand order, to support a new constructive approval claim. Nor can it claim that either deadline was missed.” *Id.*

¹⁹ The MVC’s decision denying the project states that the application was filed with the Board on September 9, 2024. Pigott Declaration, Exh. A. The Board’s answer to the developer’s initial pleading does not dispute the application filing date. *See* Board Answer. Chapter 40B, § 21, only requires that the application be submitted to the Board, which was done. *See* Cumming Affidavit, Exh. A; Pigott Declaration, Exh. A.

EGL details the various timelines set out in the agreed-upon remand order, which are not in dispute: The remand order allowed the remand hearing to remain open for 120 days and required that a decision be made no later than 30 days following the close of the public hearing. Developer reply, pp. 24-25. The hearing opened on September 17, 2025, and was continued to October 15, at which time the Board received additional testimony and evidence. *Id.*, p. 25. The Board voted to continue the hearing to November 19, 2025, but it never posted or held this hearing session, thereby leaving October 15 as the last date of the public hearing. *Id.* Since more than 30 days²⁰ elapsed after the October 15 hearing date²¹ without issuance of a decision by the Board, EGL argues a constructive approval is warranted. Developer motion, p. 7.

The facts regarding whether constructive approval occurred during the remand period are undisputed. The Board's argument on this issue is cursory; however, it appears to argue that the termination of the hearing by EGL on November 13, 2025, was "well within" the 120 days that the Board was permitted to act, and EGL has not provided any evidence that the Board violated its obligations under the remand order. Board opposition, p. 15. Under the terms of the remand order, EGL was permitted to claim a constructive grant "[i]f the Board fails to abide by the deadlines prescribed herein." Remand Order, ¶ 4. The Board claims that EGL "cannot import a separate rule, not contained in the Remand Order, to support a new constructive approval claim." Board opposition, p. 15.

EGL claims that the Board's October 15 meeting was the last meeting at which additional testimony and evidence was received before it voted to continue the hearing to November 19, 2025. Developer reply, p. 25. However, the Board did not post or hold that hearing session. *Id.* On November 18, 2025, Ms. Morrison wrote in an email to EGL's counsel that the Board would meet in December to discuss the project, but that meeting did not occur. Cumming Affidavit, ¶ 8, Exh. D. Therefore, according to EGL, under the remand order, more than 30 days elapsed from October 15 without the issuance of a decision. EGL sent written

²⁰ The remand order provided for 30 days for the Board to issue a decision, rather than the statutory 40 days.

²¹ EGL also contends that the written notice exercising the option to resume the Committee's proceedings was sent on November 19, 2025, a date which is also more than 30 days beyond the October 15 deadline. Whether that deadline is measured from the last actual hearing date of October 15 or the nominal date of November 19, it argues that the time period to issue and file a decision has passed. Developer motion, p. 7; Developer reply, p. 25.

notice exercising its option to resume the Committee's proceedings on November 19, 2025, a date which is also more than 30 days beyond the October 15 closure of the hearing. Under this scenario, EGL claims it is entitled to a constructive grant because the Board failed to issue a decision within 30 days of either October 15 or November 19. Developer reply, p. 25.

We are left to decide whether the Board's failure to continue the hearing on November 19 entitles EGL to claim a constructive grant. Under the remand order, the Board was allowed 120 days to conclude its remand hearing. Had EGL not terminated the remand proceedings on November 19, the Board had planned, and we assume it would have, held a further hearing in December, within its 120-day deadline. *See Milton Commons Assocs. v. Board of Appeals of Milton*, 14 Mass. App. Ct. 111, 115 (1982) (public hearings end when right of interested parties to present information and argue is cut off). We cannot find that the Board violated its obligations under the remand order and decline to find a constructive grant occurred on that basis.

6. Committee Conclusion

The Board was required to hold a public hearing within 30 days of receipt of EGL's application for a comprehensive permit; otherwise, the application would be deemed to have been allowed. *See* G.L. c. 40B, § 21; *Pheasant Ridge Assocs. Ltd. P'ship v. Burlington*, 399 Mass. 771, 783 (1987). EGL filed its comprehensive permit application with the Board on September 9, 2024. The Board did not open its hearing within 30 days of receipt of EGL's application. It was not until the parties' agreed-upon remand order did the Board open the hearing. Similarly, the MVC did not open the hearing on the application until March 6, 2025, more than five months²² after the referral by the Edgartown building inspector, and did not reach a decision until December 18, 2025, 15 months after EGL filed its application with the Board. If the MVC is not considered a local board within the meaning of Chapter 40B and the Board was required to wait for it to issue its decision before even opening its public hearing on the application—which, as was the case here, can take another year to year and a half to conclude—then a developer could be looking at three years or more to receive a final decision

²² The MVC claims that the delay in opening its hearing was due to EGL's application being incomplete. *See* Turner Affidavit, ¶ 6. However, the MVC does not provide any further evidence or testimony regarding how EGL's application was deficient and the MVC's decision states that it acted upon the application, based upon the record before it. Pigott Declaration, Exh. A.

on its application. Given that “delay is often as effective as denial,” the heavy consequence of constructive grant is warranted to prevent both the Board and the MVC from “sit[ting] indefinitely” on an application until a developer’s resources are exhausted. *See Milton*, 14 Mass. App. Ct. 111, 117, n.2. *See also Rosewood Realty Trust v. Mansfield Bd. of Appeals*, No. 2006-03, slip op. at 5 (Mass. Housing Appeals Comm. Apr. 25, 2007) (finding that constructive approval is non-discretionary where regulatory deadline missed), *aff’d Zoning Bd. of Appeals of Mansfield v. Mass. Housing Appeals Comm.*, 74 Mass. App. Ct. 1117 (2009); *Medfield North Meadows, supra*, slip op. at 7 (although constructive grant is harsh result, it is nondiscretionary if town has failed to meet regulatory deadline).

Pursuant to 760 CMR 56.07(5)(d), when the Committee determines a comprehensive permit has been granted constructively due to the failure of the Board to meet one of the deadlines in Chapter 40B, § 21, as is the case here, “the permit shall be deemed granted for the number of housing units proposed in the application to the Board,” and the Committee shall impose reasonable conditions to address local concerns. Accordingly, a conference will be scheduled within 30 days of the date of this decision to discuss how the parties wish this matter to proceed.

V. CONCLUSION

For the foregoing reasons, we determine that the MVC is a local board within the meaning of Chapter 40B and that a constructive grant of EGL's application for comprehensive permit occurred as a result of the Board's failure to open a hearing on the developer's comprehensive permit application within 30 days of receipt of the application.

HOUSING APPEALS COMMITTEE

April 21, 2026

Shelagh A. Ellman-Pearl

Shelagh A. Ellman-Pearl, Chair

Lionel G. Romain

Lionel G. Romain

James G. Stockard, Jr.

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Lisa V. Whelan

Lisa V. Whelan, Presiding Officer