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

ESSEX PASTURES, LLC, Appellant, v. IPSWICH ZONING BOARD OF APPEALS, Appellee.	)	No. 2021-03

RULING ON MOTION TO INTERVENE

I. Introduction

Essex Pastures, LLC (Essex Pastures or the developer) appeals a May 25, 2021 decision of the Ipswich Zoning Board of Appeals (the Board) on a request for a comprehensive permit to construct a development of 194 units of rental housing. In its decision, the Board listed numerous conditions, including reduction in the number of units and elimination of proposed commercial space, and denied various requested waivers of local requirements.

A motion to intervene on several grounds, was filed with an affidavit in support by Keri MacRae, an abutter to the proposed project. In opposition, the developer submitted two affidavits, the Affidavit of Joseph Peznola, the developer's engineer, and the Affidavit of John Bruni, the developer's manager and principal. The Board did not oppose intervention and moved to strike portions of Mr. Peznola's Affidavit on the basis that he provided no support for his assertions and, even if such support were provided, his assertions were irrelevant or inappropriately offered legal conclusions. Although some of Mr. Peznola's affidavit could be construed as legal conclusions or unsupported opinion, it also contains statements of fact. The Board did not suggest that Mr. Peznola's testimony was prejudicial. Both in general, and with regard to legal opinion in particular, the Committee, as an administrative body, has discretion to

admit testimony that would not be appropriate in a court, *see* G.L. c. 30A, § 11(2), and we may assign such credibility and weight to the testimony as is appropriate. Unless the inclusion of testimony such as that challenged here is prejudicial, I am reluctant to strike it. The Board's motion to strike is denied; however, legal conclusions offered in the affidavit are accorded no weight.

II. Intervention in Appeals to the Committee

Ms. MacRae argues that the Committee's regulations incorporate two standards for intervention, one permissive and the other by-right: Under the permissive standard, the proposed intervener must show she "may be substantially and specifically affected by the proceedings." The Committee has discretion under 760 CMR 56.06(2)(b) to grant or deny intervention. *See Taylor v. Board of Appeals of Lexington*, 451 Mass. 270, 275 (2008) (abutter or other aggrieved party may intervene in appeal before the Committee with permission of presiding officer); *see also* G.L. c. 30A, § 10 (authorizing hearing officer in adjudicatory hearing to allow interveners to participate upon showing that intervener "may be substantially and specifically affected by … proceeding"); *Tofias v. Energy Facilities Siting Bd.*, 435 Mass. 340, 346-347 (2001) (intervention and scope of intervention by an aggrieved party in adjudicatory proceeding is at discretion of hearing officer). The Committee may deny intervention to petitioners who have not demonstrated a sufficient interest in the proceedings. *Taylor*, 451 Mass. 270, 275.

The second provision that Ms. MacRae relies upon states that "[n]otwithstanding the foregoing, any person shall be allowed to intervene to the extent that he or she would have standing as a person aggrieved to appeal the grant of a special permit in accordance with M.G.L. c. 40A, § 17." 760 CMR 56.06(2)(b).[1] This sentence does not allow proposed interveners to participate as of right in an appeal based solely on their status as parties in interest under G.L. c. 40A § 11, meaning without demonstrating aggrievement. And this language does not override existing statutory and case law.[2] *Sudbury Station, LLC v. Sudbury,* No. 2016-06, slip op. at 2

[1] Under either this sentence or the permissive standard, a proposed intervener must show any potential injury is to a specific interest the applicable zoning statute, ordinance or bylaw is intended to protect. *Standerwick v. Zoning Bd. of Appeals of Andover*, 447 Mass. 20, 30 (2006).

[2] Nor has the Committee adopted the presumption applicable to judicial appeals under G.L. c. 40A, § 17 apply in proceedings before the Committee. *Sudbury, supra,* at 2 n.3; *Milton*, *supra* at 4. The reference to

*(*Mass. Housing Appeals Comm. Ruling on Motion to Intervene, Apr. 24, 2018); *HD/MW Randolph Avenue, LLC v. Milton,* No. 2015-03, slip op. at 3 (Mass. Housing Appeals Comm. Ruling on Motion to Intervene, Dec. 9, 2015) (appeal pending).

An intervener does not have the right to raise issues in proceedings before the Committee that are outside the scope of an appeal under G.L. c. 40B, § 23. "[A]ssertions of harm that confer standing as a 'person aggrieved' under G.L. c. 40A are not necessarily cognizable as a basis for 'aggrievement' under G.L. c. 40B." *Standerwick,* 447 Mass. 20, 26 (denying standing under c. 40B for claim of diminution of property value); *Taylor,* 451 Mass. 270, 277 n.10 (requirements for standing in Chapter 40B case are significantly stricter than in ordinary zoning appeal). An abutter's alleged injury must relate to a legitimate issue before the Committee. Under G.L. c. 30A, § 10, and 760 CMR 56.06(2)(b), a presiding officer has the discretion to limit an abutter's intervention if it is inconsistent with the limited scope of the Committee's review under G.L. c. 40B, § 23.

Under the Zoning Act, G.L. c. 40A, § 17, a judicial challenge of a decision of a board of appeals is limited to an "aggrieved person." *See Marashlian v. Zoning Bd. of Appeals of Newburyport*, 421 Mass. 719, 721 (1996). A plaintiff is an "aggrieved person" if that person suffers some infringement of his legal rights, *and* their "injury must be more than speculative." *Id*. Thus, they must "plausibly demonstrate that a proposed project will injure their own personal legal interests *and* that the injury is to a specific interest that the applicable zoning statute, ordinance, or bylaw at issue is intended to protect." *Standerwick,* 447 Mass. 20, 30. In this appeal the applicable interests are the "statutorily authorized interests in the protection of the safety and health of the town's residents, development of improved site and building design, and preservation of open space" (in addition to the expansion of affordable housing). *Id*. Even if "aggrievement" under c. 40A, § 17 is broader than the requirement to show one may be substantially and specifically affected by the proceedings under 760 CMR 56.06(2)(b), it remains subject to the limits of the Committee's jurisdiction under Chapter 40B. *See Standerwick,* 447 Mass. 20, 30; *Taylor,* 451 Mass. 270, 277 n.10.

G.L. c. 40A, § 17 solely refers to the meaning of the term "aggrieved" subject to the limitations of G.L. c. 40B. *See* note 4, *infra.*

Also, the nature of appeals to the Committee under G.L. c. 40B, §§ 22-23 "does not necessarily fully protect the interests of all persons who may be aggrieved by the issuance of a comprehensive permit." *Taylor,* 451 Mass. 270, 275. Procedurally, only a developer who has been denied a comprehensive permit or has been issued a permit with conditions that make "the building or operation of such housing uneconomic" may appeal a decision of a board of appeals to the Committee. G.L. c. 40B, § 22. An abutter does not have that right to commence an appeal to the Committee or to raise before the Committee any issue they may have that was not raised by the appellant. *Taylor,* 451 Mass. 270, 275.[3] Allowing an abutter to intervene without demonstrating their potential harm and its connection to issues raised by the appeal may open the proceeding to issues not necessarily within the Committee's jurisdiction. "Even if an abutter is allowed to intervene or otherwise to participate in an applicant's appeal pursuant to the regulations governing the [Committee], '[t]he legal issues properly before the [Committee] are circumscribed….'" *Id.,* quoting *Board of Appeals of Hanover v. Housing Appeals Committee*, 363 Mass. 339, 370 (1973). Thus, requiring a proposed intervener's demonstration of aggrievement and its relationship to an issue raised in the appeal is consistent with the limited nature of the appeal.[4]

While *Marashlian* cautions against reading the term "person aggrieved" narrowly, "it also requires that "[t]he injury must be more than speculative." *Marashlian,* 421 Mass. 719, 721.

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[3] The Legislature has provided that "aggrieved persons," including abutters, may participate in judicial review of a permit issued pursuant to the Committee's decision, provided that the abutter suffers harm to an interest protected by Chapter 40B. G.L. c. 40B, § 21. "From an abutter's point of view, the applicant's appeal to the [Committee] is no substitute for the full judicial review provided in the last sentence of G.L. c. 40B, § 21, and G.L. c. 40A, § 17." *Taylor,* 451 Mass. 270, 276.

[4] Furthermore, allowing abutters to intervene must also be viewed in consideration of the intent of the Legislature in enacting Chapter 40B. *Goldberg v. Board of Health of Granby*, 444 Mass. 627, 632-33 (2005) (regulations are to be interpreted in harmony with legislative intent and mandate). Allowing an abutter to intervene on any issue would conflict with the purpose of Chapter 40B "to streamline and accelerate the permitting process for developers of low or moderate income housing in order to meet the pressing need for affordable housing…." *Town of Middleborough v. Housing Appeals Comm.*, 449 Mass. 514, 521 (2007). Not scrutinizing the potential intervener's basis for aggrievement would open the proceeding to persons with insufficient and specific interest, to issues potentially beyond the Committee's jurisdiction, and to repetitive or redundant evidentiary submissions. *See Standerwick,* 447 Mass. 20, 36-37; *Newton v. Department of Public Utilities*, 339 Mass. 535, 543 n.6 (1959) (discretion to limit intervention intended to protect interference with complicated regulatory processes). For this reason, it is important that proposed interveners demonstrate their aggrievement at the time of filing of their motion, rather than relying on a presumption to be rebutted. *See* note 2, *supra.*

This requires more than a general allegation of possible harm; it requires that the proposed intervener "put forth credible evidence to substantiate [their] allegations." *Id.* Thus, the incorporation of G.L. c. 40A, § 17 requirement of "aggrievement" into 760 CMR 56.06(2)(b) includes the mandate to provide credible evidence of the specific harm asserted to result from the proposed appeal. A proposed intervener must "establish—by direct facts and not by speculative personal opinion—that [their] injury is special and different from the concerns of the rest of the community." *Standerwick,* 447 Mass. 20, 33, quoting *Barvenik v. Aldermen of Newton,* 33 Mass. App. Ct. 129, 132 (1992).[5] This standard, in the judicial context requires proof such:

> that there can be no question that the plaintiff should be afforded the opportunity to seek a remedy. To conclude otherwise would choke the courts with litigation over myriad zoning board decisions where individual plaintiffs have not been, objectively speaking, truly and measurably harmed. Put slightly differently, the analysis is whether the plaintiffs have put forth credible evidence to show that they will be injured or harmed by proposed changes to an abutting property, not whether they simply will be 'impacted' by such changes.

Kenner v. Zoning Bd. of Appeals of Chatham, 459 Mass. 115, 122 (2011), and cases cited.[6] For these reasons, the proposed interveners cannot intervene "as of right" based solely on their status as parties in interest under G.L. c. 40A, § 11. Rather they must show that their aggrievement is substantial, specific to them, and related to an issue before the Committee, specifically conditions and determinations on waivers of local requirements or regulations challenged in the appeal.

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[5] The Committee's grant of intervener status does not constitute a finding that the intervener has proved aggrievement; rather it simply allows the intervener to participate and demonstrate in proceedings before the Committee, their substantial and specific aggrievement by the relief requested by the developer.

[6] *See Picard v. Zoning Bd. of Appeals of Westminster*, 474 Mass. 570, 573 (2016). "Aggrievement requires a showing of more than minimal or slightly appreciable harm. *See, e.g., Martin v. Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter–Day Saints*, 434 Mass. 141, 147 (2001) (plaintiff had standing under zoning bylaw where "towering" church steeple would be visible from most, if not all, of her property, both during day and when lit at night); *Denneny v. Zoning Bd. of Appeals of Seekonk*, 59 Mass. App. Ct. 208, 211 (2003) (plaintiff must be able to demonstrate factually that there has been "some" infringement of legal rights); *Rogel v. Collinson*, 54 Mass. App. Ct. 304, 315 (2002) (standing to appeal from denial of request for enforcement of zoning bylaw with respect to commercial trail rides conferred where "palpable" harms caused by odors and dust produced by horses); *Rinaldi v. Board of Appeal of Boston*, 50 Mass. App. Ct. 657, 660 (2001) (burden of establishing standing not satisfied where proposed changes to buildings' use unlikely to cause "significant" increase in traffic and loss of parking spaces); *Butts v. Zoning Bd. of Appeals of Falmouth*, 18 Mass. App. Ct. 249, 253 (1984) (intervener had standing as person aggrieved where claim that ocean view would be "completely blocked" by new structure on abutting property not challenged)." *Kenner,* 459 Mass. 115, 121-122.

The scope of "aggrievement" in G.L. c. 40A, § 17 is consistent with the examination of whether a proposed intervener "may be substantially and specifically affected by the Committee proceedings" and allowed to intervene in the presiding officer's discretion. 760 CMR 56.06(2)(b). The presiding officer "shall consider only those interests and concerns of that person [seeking intervention] which are germane to the issues of whether the Local Requirement and Regulations make the Project Uneconomic or whether the Project is Consistent with Local Needs." 760 CMR 56.06(2)(b). Cf. *Standerwick,* 447 Mass. 20, 30. The proposed intervener must provide more than general nonspecific allegations and must show the concerns are serious enough to be more than mere speculation. *See Tofias*, 435 Mass. 340, 348-49 (upholding denial of intervention by party in administrative proceeding whose injuries were speculative). Finally, the proposed intervener may be refused intervention "if his or her interests are substantially similar to those of any party and no showing is made that one or more of the parties will not diligently represent those interests." 760 CMR 56.06(2)(b).[7] The Committee may allow people who are not substantially and specifically affected to participate in proceedings for limited purposes, if there are special circumstances to provide justification. *See Boston Edison Co. v. Dept. of Public Utilities*, 375 Mass. 1, 45-46, cert. denied, 439 U.S. 921 (1978); *see also Tofias*, 435 Mass. 340, 347. "[A]ggrievement is 'a matter of degree,' and 'the variety of circumstances which may arise seems to call for the exercise of discretion rather than the imposition of an inflexible rule.'" *Sherrill House, Inc. v. Board of Appeal of Boston*, 19 Mass. App. Ct. 274, 276 (1985), rev. denied 394 Mass. 1103 (1985), quoting *Rafferty v. Sancta Maria Hosp*., 5 Mass. App. Ct. 624, 629 (1977).

III. The Motion to Intervene of Keri MacRae

In her motion, Ms. MacRae claims that the project, if allowed as proposed by the developer without the disputed conditions imposed by the Board, will adversely affect her property by reducing the open space and landscape buffer between her home and the project; will increase the density of the area, adding a three-story building (Building E) near her property; and

[7] In viewing intervention under the permissive standard, the Committee, in the exercise of discretion, has allowed intervention without the submission of affidavits. However, a proposed intervener intending to rely on aggrievement under c.40A, § 17 is well advised to establish through affidavits and other evidence that their injury is substantial, specific, and more than speculative.

will adversely impact the quality and quantity of the municipal water supply for her property and the neighboring properties. In her affidavit in support, she also raised the claim that flooding at the foot of her driveway would be exacerbated by the project.

Ms. MacRae resides at 31 Heartbreak Road in Ipswich. She stated that the home she owns abuts the easterly corner of the project site. The common boundary between Ms. MacRae's property and the project site is where snow storage and the dumpster will be located, 16.3 feet from the property line, according to the site plan. In her affidavit, Ms. MacRae asserts that the house on her property sits on a hill twenty feet above and 370 feet from the road and nearest fire hydrant. The base of her driveway, where it meets Heartbreak Road, floods when it rains in its current condition. MacRae Affidavit, ¶¶ 1-6.

A. **Landscaping Buffering, Tree Protection and Open Space**

Ms. MacRae seeks to intervene based upon her alleged interest in retention of the challenged Conditions 32 (requirement of landscaping and tree protection and preservation of open space); 39 (specification of plans and screening materials); 62 (requirement of performance guarantee) and 71 ((prohibiting invasive plants). Initial Pleading ¶¶ 18(i), (j); MacRae Affidavit, ¶ 11; Board Decision. Ms. MacRae argues these conditions would mitigate the impact of the three-story building on her home. She further argues that the landscape buffer would mitigate the impact of the dumpster and snow storage within the setback. She claims Conditions 32, 39, 62 and 71 have been challenged by the developer and, if they were "diluted" or eliminated and certain additional waivers were granted, as the developer asks the Committee to do, then her "property would be adversely affected by the project" by reducing the open space and landscape buffer between her home and the project. MacRae Motion to Intervene, pp. 2, 6; MacRae Reply, p. 4; MacRae Affidavit, ¶¶ 10-12, 13.

Essex Pastures argues that Ms. MacRae's allegations are speculative and generalized and do not meet the standard for intervention set forth in *Standerwick*. It relies on *Cedars Holdings, Inc. v. Dartmouth*, No. 98-02, slip op. at 3 (Mass. Housing Appeals Comm., May 24, 1999), to argue that the issues raised by Ms. MacRae are "textbook examples of matters in which their interest is no greater than that of the community at large." The developer submitted two

affidavits, by Joseph D. Peznola, P.E., of Hancock Engineering, Inc.,[8] and John J. Bruni, Manager and principal at Essex Properties, LLC, to counter Ms. MacRae's testimony and assertions.[9]

Mr. Peznola stated that the proposed plan, even without the additional buffer and vegetation required by the Board's decision, more than adequately protects Ms. MacRae's property from any alleged harm, especially given the extensive number of existing trees already on her property between the property line and her house. In addition, the proposed setbacks and buffers, he stated, exceed that required in the HB zoning district. Peznola Affidavit, ¶¶ 4B.1, 4.B.2.

While Conditions 32 and 39 address landscaping and screening, the other conditions do not particularly relate to her assertions. Mr. Peznola's affidavit contradicts Ms. MacRae's assertions regarding the adequacy of buffering but does not resolve the question in my view. Abutters' concerns regarding buffers and screening are typically specific to them, rather than common to the community. In my discretion, I will allow Ms. MacRae to intervene regarding landscape buffering, screening concerns and tree protection to address the impacts of the dumpster and snow removal area, as well as Building E, as noted below.

B. **Density**

Ms. MacRae argues that Essex Pastures seeks to have the permit modified to allow the inclusion of Building E, which was eliminated from the project through denials of waivers regarding dimensional criteria and setbacks. This building would be situated immediately adjacent to her home. She stated that, "[i]f the Committee adopts the Developer's position on zoning waivers, and allows an increase in density, then [her] property would be adversely affected by the project in the course of these proceedings." MacRae Affidavit, ¶ 15. Although her affidavit provided no specifics, she argues in her reply to the developer's opposition to her motion that the reinstatement of Building E would "affect her privacy, views and overcrowd her property." MacRae Reply, p. 4.

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[8] Mr. Peznola's affidavit stated that he is a principal at Hancock Engineering, Inc. and that Hancock Surveying Associates, Inc., was retained by the developer to prepare the civil engineering plans for the project.

[9] Mr. Bruni's affidavit largely reiterated and relied upon statements contained in Mr. Peznola's affidavit.

Mr. Peznola stated as a land planning expert familiar with zoning, "that the land for the project abutting MacRae's property is zoned Highway Business ("HB"), not single family residential; and even without a Chapter 40B project, the HB district would allow a multi-family residential project at a density of 8 units per acre via a Special Permit." Peznola Affidavit, ¶ 4.A.1. Further, he stated that "substantially more intense commercial/retail uses are allowed as of right" in the district and impacts from such development, whether in terms of paved areas for parking, noise, lighting, and traffic vehicular trips created, would be much greater than the proposed residential project. *Id.* He stated that it is his understanding that a supermarket of approximately 30,000 sq. ft. could be developed on the locus in the HB district, as well as approximately 50,000 sq. ft. of total commercial and/or retail space and that the impacts from such development, whether in terms of paved areas for parking, noise, lighting, and traffic vehicular trips created, would be much greater than the proposed residential project. *Id.*, ¶ 4.A.1.

Ms. MacRae did not provide facts regarding the impact on her property from the density of the project. There was no evidence, for example, that the project would "shut[ ] off a view," *Murchison*, 485 Mass. 209, 215, citing *81 Spooner Rd., LLC v. Zoning Bd. of Appeals of Brookline*, 461 Mass. 692 (2012); materially affect Ms. MacRae's privacy in relation to her home, *Dwyer v. Gallo*, 73 Mass. App. Ct. 292, 296-297 (2008); or significantly reduce light or air, *McGee v. Board of Appeal of Boston*, 62 Mass. App. Ct. 930, 930-931 (2004). Her conclusory argument regarding impacts on privacy, open space, views and crowding does not adequately specify harms that she would suffer from the alleged density of the project in proximity to her home. However, in my discretion, I will allow her to intervene regarding the impacts of the potential inclusion of Building E at its proposed location and the adequacy of landscape buffering and screening in relation thereto.

C. **Water Quality and Water Pressure**

Ms. MacRae argues that she would be adversely impacted by diminished water pressure or quality, if the Board's conditions regarding the municipal water supply, including its requirement for a 12" water main to serve the project, and its refusal to exempt the developer from the Water Use Mitigation Program (WUMP) fees, were overturned. MacRae Motion to Intervene, pp. 2-3. She stated that the lack of municipal water supply was a topic of several public hearings and letters to the Board; however, she did not describe in detail how her property would be affected specifically and substantially. MacRae Affidavit, ¶¶ 16-17. Attached to her

affidavit is a letter written by Joyce Kippin, an alleged abutter who is also a microbiologist and environmental engineer specializing in drinking water issues. MacRae Affidavit, Exh. C. Ms. Kippin cited a 2019 study performed for the Town of Ipswich that stated the current (as of 2019) average daily demand (ADD) for water supply exceeded the then current capacity of all the Town's sources by 50,000 gallons per day. The projected water use for the project is approximately 10-13 million gallons of water per year, the equivalent of 32,876 gallons per day, which would increase the Town's ADD by 66%. *Id.*, Exh. C. Ms. MacRae argues in her motion that because her property is "situated up a hill some distance from the road" she is more susceptible to loss of water pressure and water quality degradation. MacRae Motion, pp. 6-7. *See* MacRae Affidavit, ¶ 2

Mr. Peznola stated that the Town's WUMP only establishes fees to be imposed on new projects, and it has no specific impact on Ms. MacRae's property that is any different from the impact on the community as a whole. Further, he stated that the program was not adopted in the Town until after the developer filed its application for the comprehensive permit with the Board.[10] Peznola Affidavit, ¶ 4.C.1. He also noted that the water main serving her property is different than the one that will serve the proposed project; and 3) although the Board requires installation of a new 12" water main for water pressure for fire suppression for the project, in his professional opinion, consistent with conversations he has had with the Town Engineer, "only a shorter 8" main is required for the project." Peznola Affidavit, ¶ 4.C.2. Therefore, he stated, "it is simply factually and technically impossible for the proposed project to adversely impact [Ms.] MacRae's water." *Id*.

Ms. MacRae failed to provide the technical or factual evidence to show that she is aggrieved with respect to the water quality and pressure issues in the appeal, or that she is affected in a way that is different from the community in general. The allegation in the motion that her property is up a hill is inadequate to show specific harm, in light of Mr. Peznola's statement that her home is served by a different water main than the main that will serve the project, and her failure to rebut that assertion in a responsive affidavit.

Additionally, even assuming the applicability of a local fee requirement that took effect after the filing of the comprehensive permit with the Board, any impact of the assessment of fees

[10] 760 CMR 56.05 defines "Local Requirements and Regulations" as "those which are in effect on the date of the Project's application to the Board."

on the project would affect the town generally. Based on the foregoing, I also conclude that Ms. MacRae has not adequately demonstrated aggrievement or that she would be substantially and specifically affected by the project regarding the challenged conditions concerning water fees, water quality and water pressure in a specific way that is different from the community in general. Therefore, her motion to intervene on these issues is denied.

D. **Flooding**

Ms. MacRae's motion to intervene does not address flooding, but in her affidavit she stated that the base of her driveway (connecting to Heartbreak Road) floods when it rains and any increase in impervious coverage of the developer's property will exacerbate that flooding where it meets Heartbreak Road. MacRae Affidavit, ¶ 3. Ms. MacRae's reply to the developer's opposition addressed flooding.

Mr. Peznola stated that the flooding that she alleges will be exacerbated by the project will be addressed by the stormwater management system he has designed, which meets all requirements of the Massachusetts Department of Environmental Protection (DEP) Storm Water Policy and Regulations, but also those of the Town of Ipswich, and the project is designed to result in no increase in stormwater flow. Peznola Affidavit, ¶ 4.D.1. He stated that "the flow of the stormwater from the project site does not even flow towards [Ms.] MacRae's property which is northeast of the site; the site discharges to the northwest to an expansive wetland. Therefore, in my professional opinion the proposed project could never cause additional flooding on MacRae's property." Id.

In reply, Ms. MacRae argues that flooding has been a longstanding concern with the Town, and that there is a hydrological connection between the project and Heartbreak Road as they are in the same watershed. In her proposed draft of the pre-hearing order, she asserts that Condition 45 requires that the storm water system "shall address any effects on abutters; and assure that there will be no detrimental drainage or erosion impact on abutting properties." Although Ms. MacRae's argument does not alleviate concerns that she may face an uphill battle in rebutting Mr. Peznola's evidence during the hearing, in my discretion, I will allow Ms. MacRae to intervene to give her the chance to do so regarding the potential for adverse impacts from flooding on her property.

IV. CONCLUSION

Accordingly, the motion of Keri MacRae to intervene is allowed in part and denied in part: Ms. MacRae may participate solely regarding landscape buffering, tree protection and screening relating to the dumpster, snow storage area and the potential addition of Building E to the development. She may also participate regarding potential flooding impacts on her property from the project. In all other respects her motion is denied.

HOUSING APPEALS COMMITTEE

November 22, 2021

Shelagh A. Ellman-Pearl, Chair
Presiding Officer