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

722 MAIN STREET, LLC

v.

OXFORD ZONING BOARD OF APPEALS

No. 2021-11

DECISION

March 20, 2025

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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

722 MAIN STREET, LLC, Appellant,	)	
v.	)	No. 2021-11
OXFORD ZONING BOARD OF APPEALS, Appellee.	)	

DECISION

I. INTRODUCTION AND PROCEDURAL HISTORY

This is an appeal to the Housing Appeals Committee pursuant to G.L. c. 40B, § 22, of a decision by the Oxford Zoning Board of Appeals (Board) denying a comprehensive permit to 722 Main Street, LLC (722 Main or developer).

On or about September 14, 2021, 722 Main applied to the Board for a comprehensive permit to build a 144-unit rental development on property located at 722 Main Street in Oxford (Project). The Board opened the public hearing on the developer's application on October 7, 2021, and notified the developer and the Department of Housing and Community Development (DHCD)[1] in writing by letter dated October 20, 2021, that it invoked the 1.5 percent general land area minimum safe harbor pursuant to 760 CMR 56.03(8)(a). The developer challenged the Board's safe harbor assertion on October 27, 2021, and filed an objection with DHCD challenging the Board's claim. On November 19, 2021, DHCD issued a determination that the Board had not met its burden of proving sufficient grounds for asserting the general land area minimum safe harbor, as defined under 760 CMR 56.03(3)(b). The Board filed an interlocutory

[1]As of May 30, 2023, the Department of Housing and Community Development became the Executive Office of Housing and Livable Communities (EOHLC), pursuant to St. 2023, c. 7. Since the proceedings on this project were initiated before and overlapped the change in agency status, we refer to the agency as DHCD throughout this decision.

appeal with the Committee on December 6, 2021. The Committee issued a summary decision determining that Oxford had not achieved the general land area minimum safe harbor at the time of 722 Main's application to the Board for a comprehensive permit and remanded the matter to the Board for further proceedings. *Matter of Oxford and 722 Main Street, LLC,* No. 2021-11 (Mass. Housing Appeals. Comm. Interlocutory Decision Nov. 16, 2022). *See* 760 CMR 56.03(8)(c); 760 CMR 56.05. After resuming the public hearing on the application on February 16, 2023, and conducting four additional days of hearing, the Board voted to deny the application by decision filed with the Town clerk on July 24, 2023, citing the following reasons: inadequate sewer capacity, invasion of neighbors' privacy due to building heights, and impacts of shadow casting.

The developer appealed the Board's decision to the Committee on August 8, 2023. The hearing commenced with the initial conference of counsel on August 25, 2023.[2] Pursuant to 760 CMR 56.06(7)(d)3, the parties negotiated a pre-hearing order, which the presiding officer issued on May 2, 2024. The parties submitted pre-filed direct and rebuttal testimony of four witnesses. Following a final pre-hearing conference held on July 31, 2024, the parties reported that cross-examination of witnesses was not needed, and the presiding officer set a briefing schedule, with the final reply briefs due on October 2, 2024. The parties submitted their final exhibit list and 25 exhibits on October 18, 2024, at which time the presiding officer deemed the evidentiary record complete, and the hearing terminated, pursuant to 760 CMR 56.07(e)9.

II. FACTUAL BACKGROUND

The Project as originally proposed was a 144-unit rental development in Oxford, consisting of three four-story buildings. *See* Pre-Hearing Order, § II, ¶ 1; Initial Pleading, Exh. 1; Exh. 2, Sheet C-1. During the public hearing, the developer agreed to reduce the Project to 108 rental units, with one building containing four stories, one containing three stories, and one containing two stories. Exhs. 21, ¶ 8; 22, ¶ 17. The Project site includes approximately 9.35 acres

[2] On October 13, 2023, the Board filed a complaint for declaratory relief in Worcester Superior Court and also moved for a preliminary injunction, seeking to enjoin the Committee from issuing a ruling in this matter until the Superior Court ruled on the request for declaratory relief. On the same day, the Board filed a motion with the Committee to stay this proceeding, which the developer opposed. The presiding officer denied the motion to stay by order dated December 1, 2023. On February 8, 2024, the Superior Court case was dismissed without prejudice.

with access on Main Street and is located in the Town's North Oxford Sewer Area.[3] Pre-Hearing Order, § II, ¶ 2; Initial Pleading, Exh. 1, p. 3; Exh. 23, ¶ 5.

The Project will connect to an existing six-inch diameter sewage force main located under Main Street. Exhs. 2, Sheet C-5; 3, p. 3; 22, ¶ 12. Oxford does not own or operate a municipal wastewater treatment facility. Oxford has an Intermunicipal Agreement (IMA) with the Town of Auburn for the transfer of wastewater that allows Oxford to connect with Auburn's wastewater collection system, and transport wastewater through Auburn to the Upper Blackstone Water Pollution Abatement District wastewater treatment facility, also known as the Upper Blackstone Clean Water Treatment Facility (UBCW) in the Town of Millbury. Pre-Hearing Order, § II, ¶¶ 17, 18; Exh. 16, p. 1. Pursuant to the IMA, wastewater flows from the North Oxford Sewer Area, where the Project is located, and is discharged to Auburn's sewer system, which carries the wastewater to the UBCW in Millbury. Pre-Hearing Order, § II, ¶ 17. The IMA prohibits Oxford from discharging more than 100,000 gallons per day (gpd) of wastewater for more than three consecutive days into Auburn's system. Pre-Hearing Order, § II, ¶ 18; Exh. 16, p. 5. The transfer of wastewater from the North Oxford Sewer Area into Auburn and on to Millbury involves a transfer of water from the French River Basin into the Blackstone River Basin. Because of this, the transfer of wastewater from Oxford is also subject to the Interbasin Transfer Act (ITA), G.L. c. 21, §§ 8B-8D, which limits the allowed flow from the French River Basin to the Blackstone River Basin to 84,000 gpd. Pre-Hearing Order, § II, ¶ 20; Exhs. 22, ¶ 20; 23, ¶ 9; Initial Pleading, Exh. 1, p. 4.

The parties agree that the revised Project will generate the following sewer flow totals in gpd, as calculated by the parties:

	Title 5 Daily Flow Estimate (gpd)[4]	Projected Average Daily Flow (gpd)
Revised Project	21,890	10,945[5]

[3] In the Pre-Hearing Order, the parties referred to this sewer area as the "North Oxford Sewer Area." Although the Board's expert witnesses refer to it as the "North Sewer Service Area," we refer to it as the North Oxford Sewer Area in this decision. *See* Pre-Hearing Order, § II, ¶ 17; Exhs. 23, 24.

[4] This refers to the calculation pursuant to 310 CMR 15 and Title 5 of the State Environmental Code (Title 5), using a wastewater flow estimate of 110 gpd per bedroom. Pre-Hearing Order, § II, ¶ 14; Initial Pleading, Exh. 1, p. 3. The revised project has 199 bedrooms across 108 units. Exh. 22, ¶ 17.

[5] Exhs. 22, ¶ 18; 23, ¶ 6; Pre-Hearing Order, § II, ¶ 16.

Pre-Hearing Order, § II, ¶¶ 14, 16. Average daily flows in the sewer system currently range from 50,000 to 60,000 gpd. Pre-Hearing Order, § II, ¶ 19. Although the Project does not implicate a Title 5 on-site wastewater system, the Board noted that it used Title 5 to calculate the estimated wastewater flows for the proposed development. Initial Pleading, Exh. 1, p. 3. This method of calculation was also used by peer reviewers during the local hearing. *See* Exh. 9.

The Town has begun a corridor improvement project along a portion of Route 20 in Oxford (Route 20 Project) in the same North Oxford Service Area where the proposed Project is to be located. Exhs. 22, ¶ 14; 23, ¶ 17; 24, ¶ 12. The Route 20 Project is a mixed-use residential and commercial/retail development, to be completed in phases, with plans for installation of sewer main extensions along Route 20 from Oxbow Road to Turner Road, which are to be connected to the force main. Exhs. 9; 20; Exh. 24, Exh B. As part of the Route 20 Project, the Town planning board issued a site plan approval and stormwater management and land disturbance permits to a developer, Eastland Partners, Inc. (Eastland) on May 16, 2019.[6] Exhs. 18; 24, ¶ 19; Board brief, p. 10. As part of one phase of the Route 20 Project, Eastland proposes to develop a 150,000 square foot (s.f.) commercial site as well as a 320-unit residential site, including the construction of a sewer along its frontage to accommodate both its wastewater as well as flow from the Town (Eastland Project). Exh. 24, Exh B, p. 3. According to the Board witnesses, the Route 20 Project will generate the following estimated sewer flows, in gpd:

	Projected Flow (gpd)
Route 20 Project—Phase I	11,400[7]
Route 20 Project—Full Buildout	27,330[8]

Additional facts are discussed throughout the decision below.

[6] The Town's MassWorks Infrastructure Program application titles the project the "Route 20 Sewer Extension and Improvement Project." Exh. 24, Exh. B. Its stated goal is to support economic activity and growth along the corridor by improving and constructing sewers to accommodate existing and future commercial and residential development, including the development proposed by Eastland. *Id*.

[7] Exhs. 22, ¶¶ 24-25; 24, ¶ 21.

[8] The Board's expert, Meredith Zona of Stantec Consulting Services, estimated 27,330 gpd. Exh. 23, ¶ 18. Tony Sousa, Oxford's Assistant Town Manager, testified the projected total flow would be 26,000 gpd, Exh. 24, ¶ 18; *see* Developer brief, p. 10. The testimony of the developer's engineering expert, Christopher P. McClure, shows a total of 28,000 gpd. *See* Exh. 22, ¶¶ 24, 27. These differences are immaterial for the purposes of our discussion, and we accept the Stantec estimate.

III. STANDARD OF REVIEW AND PARTIES' BURDENS OF PROOF

When the Board denies a comprehensive permit, the ultimate question before the Committee is whether the Board's decision is reasonable and consistent with local needs. G.L. c. 40B, §§ 20, 22. The comprehensive permit regulations have set out the different requirements and burdens assigned to the developer and the board. 760 CMR 56.07(2) and (3). Under the comprehensive permit regulations, the developer:

> may establish a *prima facie* case by proving, with respect to only those aspects of the Project which are in dispute (which shall be limited), in the case of a Pre-Hearing Order, to contested issues identified in the pre-hearing order, that its proposal complies with federal or state statutes or regulations, or with generally recognized standards as to matters of health, safety, the environment, design, open space, or other matters of Local Concern.

760 CMR 56.07(2)(a)2.[9]

The Board's burden is to prove first, that there is a valid health, safety, environmental, or other local concern that supports the denial, and second, that the concern outweighs the regional need for housing. 760 CMR 56.07(2)(b)2. "The board's power to disapprove a comprehensive permit … is limited to the scope of the concern of the various local boards in whose stead the local zoning board acts." *Holliston v. Housing Appeals Comm.*, 80 Mass. App. Ct. 406, 417-418 (2011), *F.A.R den.,* 460 Mass. 1116 (2011). It is therefore incumbent on the Board to identify a local interest protected by a local requirement or regulation and demonstrate that this local concern outweighs the regional need for affordable housings. If federal and state requirements apply, the burden is to show there is a local requirement or regulation that is more restrictive than state and federal requirements, and to demonstrate that safeguards provided by the local requirement with respect to that local interest afford greater protect against the asserted harms of the project than those afforded by state or federal regulation. *See 104 Stony Brook, LLC v. Weston*, No. 2017-14, slip op. at 38 (Mass. Housing Appeals Comm. June 22, 2023), citing *Holliston,* 80 Mass. App. Ct. 406, 420; *Herring Brook Meadow, LLC v. Scituate*, No. 2007-15, slip op. at 25 (Mass. Housing Appeals Comm. May 26, 2010), *aff'd* No. 2012-P-1681, Mass. App. Ct. Jan. 31, 2014. Even if a more restrictive local requirement or regulation exists, the

[9] Alternatively, a developer may prove that local requirements and regulations have not been applied as equally as possible to subsidized and unsubsidized housing. 760 CMR 56.07(2)(a)4; G.L. c. 40B, § 20. General Laws Chapter 40B, § 20, provides that local rules and regulations cannot be deemed "consistent with local needs" unless they are "applied as equally as possible to both subsidized and unsubsidized housing." *See* 760 CMR 56.07(2)(a)4.

Board must show that the stricter requirement is necessary to protect against specified harms that could not be protected by the state and federal schemes. *See Weston, supra*, No. 2017-14, slip op. at 17, citing *Holliston*, 80 Mass. App. Ct., 405, 417, 420; 760 CMR 56.02: *Local Requirements and Regulations*. More is required than simply noting a particular local bylaw or regulation. *See Weston*, *supra*, slip op. at 38-39, citing *Holliston*, 80 Mass. App. Ct. 406, 419 ("where the DEP is charged with providing for the protection of health, safety, public welfare, and the environment … the board must be able to demonstrate that its local concerns will not be met by the State standards enforced by the DEP"). Moreover, this burden of proof remains on the Board despite language in local bylaws or regulations imposing a burden of proof upon a developer. *See Scituate, supra,* No. 2007-15, slip op. at 24-26 and discussion *infra* in §§ V.B.2 and 3.

IV. DEVELOPER'S PRIMA FACIE CASE

A. Application of Prima Facie Case

We have discussed in depth how we apply the rule concerning the developer's establishment of a prima facie case under 760 CMR 56.07(2)(a)2. *Weston*, *supra*, No. 2017-14, slip op. at 12-16. In *Weston,* we reviewed our past decisions and discussed our consistent rulings that developers need make only a minimal showing for the prima facie case in the hearing before the Committee under the comprehensive permit regulations. *See id.,* slip op. at 12: "[A] *prima facie* case may be established with a minimum of evidence." *100 Burrill Street, LLC v. Swampscott*, No. 2005-21, slip op. at 7 (Mass. Housing Appeals Comm. June 9, 2008) (prima facie case established where expert testified regarding design to fit diverse character of neighborhood), quoting *Canton Housing Auth. v. Canton*, No. 1991-12, slip op. at 8 (Mass. Housing Appeals Comm. July 28, 1993). "For example, 'it may suffice for the developer to simply introduce professionally drawn plans and specifications.'" *Sugarbush Meadow, LLC v. Sunderland,* No. 2008-02, slip op. at 5 n.4 (Mass. Housing Appeals Comm. June 21, 2010), *aff'd Zoning Bd. of Appeals of Sunderland v. Sugarbush Meadow, LLC*, 464 Mass. 166 (2013), quoting *Tetiquet River Village, Inc. v. Raynham*, No. 1988-31, slip. op. 9 (Mass. Housing Appeals Comm. Mar. 20, 1991). *See Eisai, Inc. v. Housing Appeals Comm.,* 89 Mass. App. Ct. 604, 610 (2016) (regulatory scheme governing applications for comprehensive permits requires only preliminary plans showing that proposal conforms to generally recognized standards) (internal citation omitted). "[E]xpert testimony directly addressing the matter in issue is more

than sufficient to establish the developer's *prima facie* case." *Sunderland, supra,* No. 2008-02, slip op. at 9; *Canton Property Holding, LLC v. Canton*, No. 2003-17, slip op. at 22 (Mass Housing Appeals Comm. Sept. 20, 2005) (expert testimony that design will comply with state stormwater management standards is sufficient to establish prima facie case). *See also Oxford Housing Auth. v. Oxford*, No. 1990-12, slip op. at 5 (Mass. Housing Appeals Comm. Nov. 18, 1991) (plans must be sufficient to permit Committee to evaluate proposal with regard to aspects that are in dispute and to permit full cross-examination); *Watertown Housing Auth. v. Watertown*, No. 1983-08, slip op. at 5, 10-12 (Mass. Housing Appeals Comm. June 5, 1984) ("requirements are to be applied in a common sense, rather than an overly technical manner in context of establishing prima facie case"). And the Appeals Court has confirmed that "[i]t has long been held that it is unreasonable for a board to withhold approval of an application for a comprehensive permit when it could condition approval on the tendering of a suitable plan that would comply with State standards." *Holliston,* 80 Mass. App. Ct. 406, 416, citing *Board of Appeals of Hanover v. Housing Appeals Comm.,* 363 Mass. 339, 381 (1973).

This prima facie rule is in place not as a "technical requirement to be fulfilled by the developer. [Rather,] [t]he prima facie requirement exists both so that this Committee will have a clear idea of the proposal before it, and so that the Board has a fair opportunity to challenge [the proposal]." *Weston, supra,* No. 2017-14, slip op. at 13; *Tetiquet River, supra,* No. 1988-31, slip op. at 11. *See also Transformations, Inc. v. Townsend*, No. 2002-12, slip op. at 10-11 (Mass. Housing Appeals Comm. Jan. 26, 2004) ("it is not necessary for an applicant to obtain permits or acquire final state or federal approval in order for an applicant to be granted a comprehensive permit or to establish its prima facie case in the case of a denial"); *Oxford Housing Auth. v. Oxford*, *supra,* No. 1990-12, slip op. at 4-5 ("since design work involves substantial costs for the developer, it is unreasonable to require completed plans before the comprehensive permit is issued"). In *Tetiquet,* the only case in which the Committee ruled that a developer had failed to meet the requirement, the Committee noted that the developer had failed to meet a very low bar, stating "it may suffice for the developer to simply introduce professionally drawn plans and specifications." *Id.* at 9.

This minimum standard is important, because in proceedings before the Committee and under 760 CMR 56.07(2)(a)2, a "prima facie case" is a special term of art—it is not intended to require a developer to provide sufficient evidence in detail regarding each aspect of every

potentially applicable state and federal requirement to demonstrate it could meet a burden of ultimate persuasion of compliance with all state and federal requirements, as would occur if it bore the ultimate burden of proof of the issue in this appeal. Here, the matters on which § 56.07(2)(a)2 states the developer may make the preliminary prima facie showing, general compliance with state or federal requirements or generally accepted standards, are not ones on which it has the ultimate burden of proof before the Committee, since the Committee has neither the responsibility nor the authority to finally determine such compliance. *Weston, supra,* No. 2017-14, slip op. at 13. *See also Hanover,* 363 Mass. 339, 379;[10] *Board of Appeals of North Andover v. Housing Appeals Comm.,* 4 Mass. App. Ct. 676, 680 (1976) (stating "…nothing in [G.L. c. 40B, §§ 20-23] or in [*Hanover,* 363 Mass. 339] … suggests that the Housing Appeals Committee has been empowered with authority to override or ignore laws passed by the Legislature or regulations validly promulgated by the Commonwealth's various boards, departments, agencies or commissions"). The prima facie case is a burden of production: to introduce "evidence sufficient to form a reasonable basis for a [decision] in that party's favor." *Tiffany Hill, Inc. v. Norwell*, No. 2004-15, slip op. at 6 (Mass. Housing Appeals Comm. Sept. 18, 2007) (internal citations omitted). Thus, "[p]rima facie evidence, in the absence of contradictory evidence, requires a finding that the evidence is true… [and] even in the presence of contradictory evidence, however, the prima facie evidence is sufficient to sustain the proposition to which it is applicable." *Id*.

This burden of production must be consistent with the language of the 760 CMR 56.07(2)(a)2, which describes the developer's case as proving compliance with federal *or* state standards *or* generally accepted standards. The regulation's use of the disjunctive "or," makes it clear this is not a requirement to prove compliance with every state and federal requirement that may be applicable, particularly when viewed in the context of this entire provision.[11] *See*

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[10] In *Hanover,* 363 Mass. 339, the Supreme Judicial Court stated, "[t]he legal issues properly before the committee are circumscribed by c. 774 [G.L. c. 40B, §§ 20-23]. When the board has denied an application for a comprehensive permit, the committee is required to determine whether the board's decision was 'reasonable and consistent with local needs.'" *Id.* at 370, citing G.L. c. 40B, § 23. In that case, the court noted that compliance with state requirements could be assured by including a condition in the comprehensive permit. *Id.* at 373-375, 381.

[11] The requirement of 760 CMR 56.07(2)(a)2 is distinguished in three ways from the burdens of persuasion imposed upon the parties in other subsections of 760 CMR 56.07(2): 1) by using the term

Moronta v. Nationstar Mortg., LLC, 476 Mass. 1013, 1014 (2016) (use of word "or" to separate prongs of statute indicates prongs are alternatives and either one would be sufficient on its own and it is not necessary to establish both), citing *Eastern Massachusetts St. Ry. Co. v. Massachusetts Bay Transp. Auth.,* 350 Mass. 340, 343 (1966) (word "or" is given disjunctive meaning "unless the context and the main purpose of all the words demand otherwise").

Our longstanding interpretation that the regulation requires a minimum showing serves the purpose of having the developer provide sufficient information to allow the Board to make its local concerns case. *Tetiquet River, supra,* No. 1988-31, slip op. at 11. "[E]ven where plans were incomplete, a developer that proposed to modify its plans to comply with State and Federal statutes or regulations had established a prima facie case." *Zoning Bd. of Appeals of Woburn v. Housing Appeals Comm.,* 92 Mass. App. Ct. 1115 (2017) (Rule 1:28 decision), citing *Holliston,* 80 Mass. App. Ct. 406, 416. In *Woburn,* the Appeals Court ruled that "where the developer here plans to comply with all applicable noise regulations, [the Appeals Court] similarly conclude[s] the HAC did not err in finding that the developer had established a prima facie case." *Woburn,* 92 Mass. App. Ct. 1115. *See Holliston,* 80 Mass. App. Ct., 406, 415-416 (to extent preliminary plans submitted are lacking or in fact admittedly do not comply with current State regulations or standards, developer's proposal does not end with plans when the developer proposes to make all modifications necessary to achieve compliance with state regulations).

Moreover, in cases in which a developer may not have correctly addressed every aspect of compliance with state or federal requirements, we have emphasized that "the requirement … is for a preliminary presentation [and] where it is possible to improve the presentation and satisfy the Board's objections by a condition in the comprehensive permit, we will include it." *Billerica Development Co. v. Billerica,* No. 1987-23, slip op. at 34-35 (Mass. Housing Appeals Comm. Jan. 23, 1992) (where board attacked drainage report that was "the cornerstone of the presentation, on the ground that it contains errors and faulty assumptions" Committee resolved question with condition in its decision). *See also Tetiquet River, supra,* No. 1988-31*,* slip. op. at 3, 5-6 (if there is question about sufficiency of developer's submission, Committee may address

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prima facie case, it establishes a requirement of production, not persuasion; 2) by use of the disjunctive to separate the potential subjects on which to present a prima facie case, it precludes a requirement to present evidence on all alternatives; and 3) unlike the other burdens which use the mandatory "shall have the burden of proving," this provision begins by stating, "[i]n the case of a denial, the Applicant *may* establish a *prima facie case*…." (emphasis added).

issue by attaching condition to address it). Such a condition may include a requirement that approval of a comprehensive permit is subject to compliance with applicable federal and state requirements.

In light of these precedents, we examine the testimony and exhibits submitted by the developer for our review of the prima facie case. *See Tiffany Hill, supra,* No. 2004-15, slip op. at 3, 6 (presiding officer denied motion for directed decision submitted on developer's pre-filed testimony; Committee ruled that evidence at hearing did not affect that ruling). We consider the developer's prima facie case based solely on evidence supplied by the developer. As we stated above, the Committee has no authority to determine whether a project will comply with state or federal requirements; nor may we waive any requirement of state or federal law. Any project we approve must still comply with all applicable federal and state requirements. *See, e.g., Tiffany Hill, supra,* No. 2004-15, slip op. at 11.

In accordance with 760 CMR 56.07(2)(a)2, the developer was required to prove "with respect to only those aspects of the Project that are specifically identified in the Pre-Hearing Order as being in dispute, that its proposal complies with federal or state statutes or regulations or with generally recognized standards as to matters of health, safety, the environment, design, open space, or other matters of Local Concern." Pre-Hearing Order, § IV. The Pre-Hearing Order set out the issues in dispute for this appeal for which the developer is required to make a prima facie case. *Id*. [12] As discussed below, our review of the developer's evidence demonstrates that it has provided evidence sufficient to meet the requirements for the prima facie case as established by the comprehensive permit regulation and Committee decisions.

B. Discussion

1. Sewer Capacity

The developer argues that it has presented sufficient evidence to demonstrate that the Project can connect to the existing sewer system without exceeding the Town's capacity currently allowed under the IMA or the ITA and therefore will violate neither these provisions. It argues this evidence meets the "'minimum showing [which] serves the purpose of having the developer provide sufficient information to allow the Board to make its local concerns case.'"

[12] The Pre-Hearing Order, drafted by the parties and issued by the presiding officer, identified the following as the areas for which the developer was responsible for making a prima facie case: sewer flow capacity, invasion of privacy, and shadow casting. Pre-Hearing Order, § IV (Appellant/Applicant's Case).

Developer reply, p. 2, citing *Wall Street Dev. Corp. v. Walpole*, No. 2021-04, slip op. at 6 (Mass. Housing Appeals Comm. Feb. 28, 2024); Developer brief, pp. 8-9.The developer presented testimony of Christopher P. McClure, P.E., who has over 30 years of experience in civil engineering, including wastewater collection, design, and pumping systems, and has also previously worked as a municipal water and sewer superintendent and on projects involving sewer connections. Exh. 22, ¶¶ 3, 4, Exh. 1. He served as a design consultant for the developer focusing on wastewater and professional plans for the Project were prepared by his firm. Exhs. 22; ¶¶ 3-5, 7; 2. Mr. McClure testified that it is his "professional opinion that sufficient sewer capacity exists, under both the Inter-Municipal Agreement and the Inter-Basin Transfer Act limitations, to allow the Project to connect to the municipal sewer system without violation." Exh. 22, ¶ 29. In support, the developer points to the Utilities Plan presented to the Board showing the proposed connection to the existing sewage force main. Exhs. 22, ¶ 13; 2, Sheet C-5. Mr. McClure testified that the projected actual sewer flow for the Project was 10,945 gpd, and the projected maximum daily flow calculated under Title 5 was 21,890 gpd. Exh. 22, ¶ 18. Using the highest average total daily flow calculation from Oxford to Auburn, he testified that the Town has approximately 25,500 gpd of remaining sewer flow available and could accommodate the Project's estimated additional flow of 10,945 gpd. Exh. 22, ¶¶ 23; 26.

The Board argues the developer failed to establish its prima facie case relating to sewer capacity because the sewer connection proposed for the Project will cause the Town to exceed the daily sewer flow cap imposed under both the IMA and the ITA. Board brief, p. 4. In so arguing, the Board relies on testimony of its expert witness, Meredith Zona, P.E., not on the evidence proffered by the developer. As we stated, however, in *Weston, supra,* No. 2017-14, slip op. at 12-15, and cases cited, we evaluate the sufficiency of the developer's prima facie case solely on the evidence it submits, not that of another party. Accordingly, the evidence submitted by the developer is sufficient to establish its prima facie case with respect to sewer capacity.[13] *Id*.

2. Privacy and Shadows

Where there are no specific state or federal standards addressing municipal planning concerns, the developer may establish a prima facie case by showing that its proposal conforms

[13] The developer clearly met the relatively low standard required for a prima facie case. The Board's arguments regarding capacity are substantive arguments that we address further below in the context of whether it has proven a local concern that outweighs the regional need for affordable housing.

to relevant generally recognized standards. *See, e.g., 383 Washington Street, LLC v. Braintree*, No. 2020-03, slip op. at 7-8 (Mass. Housing Appeals Comm. Mar. 15, 2022); *Sunderland, supra*, slip op. at 9; *Swampscott, supra*, No. 2005-21, slip op. at 7; *Stuborn Ltd. P'ship v. Barnstable*, No. 1998-01, slip op. at 4 (Mass Housing Appeals Comm. Sept. 18, 2002). The Board raised no argument or evidence on these issues and therefore has waived them. In any event, as discussed below, the developer has satisfied its prima facie case on these issues.[14] *See* Exh. 2 (site plans); 11 (architectural renderings); *see also Sunderland, supra,* No. 2008-02, slip op. at 5 n.4, quoting *Tetiquet River, supra*, No. 1988-31, slip. op. at 9 ("'[I]t may suffice for the developer to simply introduce professionally drawn plans and specifications.'"); *Eisai,* 89 Mass. App. Ct. 604, 610.

Privacy. In support of its prima facie case on privacy, the developer argues it has met its prima facie case through the prefiled testimony from Jerome R. Dixon, the Project's architectural design consultant. Developer brief, p. 8; Exh 21. Mr. Dixon testified he completed schematic design drawings for the Project, originally depicting three separate buildings, each four stories in height. Exh. 21, ¶ 7. He also prepared three-dimensional renderings of the Project. Exhs. 11; 21, ¶ 12. The distance of the closest building to an abutting residential property line is 25 feet, and the closest distance to a neighboring structure is 160 feet. Exh. 21, ¶ 15. The developer also submitted professionally prepared construction plans for the Project. *See* Exhs. 2; 4; 11. Mr. Dixon testified his plans showed that the "extensive existing tree canopy" on the Project site prevents the Project from "having a measurable impact on the privacy of the neighboring properties." Exh. 21, ¶ 16. He further testified that in "[his] professional opinion, the Project as modified will not have a significant impact on abutting residential properties relating to ... privacy." Exh. 21, ¶ 17. Accordingly, the evidence submitted by the developer is sufficient to establish its prima facie case with respect to privacy impacts.

Shadows. With regard to shadows, the developer again relies on the testimony of Mr. Dixon. Developer brief, p. 8. Mr. Dixon testified that the plans and models prepared for the Project depicting the distance of the Project's closest building to the abutting residential property

[14] The Board submitted no argument on the developer's prima facie case on privacy. Accordingly, the Board has waived any dispute of the developer's prima facie case on this issue since issues not briefed are waived. *See Sunderland, supra*, No. 2008-02, slip op. at 3; *Hilltop Preserve Ltd. P'ship v. Walpole*, No. 2000-11, slip op. at 2 n.1 (Mass. Housing Appeals Comm. Apr. 10, 2002); *An-Co, Inc. v. Haverhill*, No. 1990-11, slip op. at 19 (Mass. Housing Appeals Comm. June 28, 1994)*; see also Cameron v. Carelli*, 39 Mass. App. Ct. 81, 85-86 (1995), quoting *Lolos v. Berlin*, 338 Mass. 10, 13-14 (1958).

line and to the closest neighboring structure show that it will not have a substantial shadow impact on abutting residential properties, which are located to the south of the site.[15] Exhs. 2, p. C-4; 4, p. L-1; 21, ¶¶ 15, 17. Accordingly, we find the evidence submitted by the developer is sufficient to establish its prima facie case with respect to shadow impacts.

V. LOCAL CONCERNS

A. Application of Local Concerns Case

The comprehensive permit regulations specify that "Consistency with Local Needs is the central issue in all cases before the Committee." 760 CMR 56.07(1)(a). As discussed in § III, *supra*, the Board must prove first, that there is a valid local concern that supports its denial of the comprehensive permit, and then, that the local concern outweighs the regional need for affordable housing. 760 CMR 56.07(1)(c), 56.07(2)(b)3; Pre-Hearing Order, § IV.

If one of the local concerns put forth by the Board to justify its denial is based on the inadequacy of existing municipal services or infrastructure, it not only has the burden of proving that inadequacy of services of infrastructure is a valid local concern that outweighs the regional need for housing, but also has the additional burden of proving that installation of adequate services to meet local needs is not technically or financially feasible. *See* 760 CMR 56.07(2)(b)4; *Oceanside Village, LLC v. Scituate*, No. 2005-03, slip op. at 6 (Mass. Housing Appeals Comm. July 17, 2007). "Financial feasibility may be considered only where there is evidence of unusual topographical, environmental, or other physical circumstances which make the installation of the needed service prohibitively costly." 760 CMR 56.07(2)(b)4.

If the Board has not articulated a local concern, shown its relationship to a specific applicable local requirement, and demonstrated the relevant harm from the proposed development, the Board has failed to demonstrate a valid local concern applicable to the Project, much less that such a concern outweighs the need for affordable housing. *Holliston,* 80 Mass. App. Ct. 406, 417, 420; *Scituate, supra,* No. 2007-15, slip op. at 23-26. The burden on the Board is significant: the fact that Oxford does not meet the statutory minima regarding affordable housing establishes a rebuttable presumption that a substantial regional housing need outweighs the local concerns. 760 CMR 56.07(3)(a); Pre-Hearing Order, § II, ¶¶ 9, 11; G.L. c. 40B, §§ 20,

[15] The Board did not dispute that the developer had made a prima facie case on shadows. Accordingly, the Board has waived any dispute of the developer's prima facie case on this issue. *See* n.14, *supra,* and cases cited.

23. *See Zoning Bd. of Appeals of Lunenburg v. Housing Appeals Comm*., 464 Mass. 38, 42 (2013) (there is "a rebuttable presumption that there is a substantial Housing Need which outweighs Local Concerns" if statutory minima are not met), quoting *Boothroyd v. Zoning Bd. of Appeals of Amherst*, 449 Mass. 333, 340 (2007), quoting *Board of Appeals of Hanover v. Housing Appeals Comm*., 363 Mass. 339, 367 (1973) ("municipality's failure to meet its minimum [affordable] housing obligations, as defined in § 20 will provide compelling evidence that the regional need for housing does in fact outweigh the objections to the proposal"). As discussed below, the Board has not demonstrated that local concerns outweigh the regional need for affordable housing.

B. Board's Local Concerns Presentation

The Board argues that it has demonstrated valid local concerns regarding sewer capacity that support its denial of the Project.[16] Pre-Hearing Order, § IV, p. 6; Board brief, p. 3. It first argues that allowing the Project to proceed with the proposed sewer connection will cause Oxford to breach the IMA, an existing contract with the Town of Auburn, and also violate state law. Board brief, pp. 1-2. It argues the additional sewer flow generated by the Project will cause the Town to exceed the three consecutive day limit allowed under the IMA with Auburn and exceed the Town's daily limit imposed by the state's ITA. Board brief, pp. 4-9. The Board asserts the Town therefore lacks adequate sewer capacity to accommodate the Project's connection and, moreover, increasing sewer capacity is not technically or financially feasible. Board brief, p. 9; Board reply, pp. 1-2.

Second, the Board argues the Route 20 Project underway must be prioritized above the Project when allocating the Town's limited remaining sewer capacity. Board brief, p. 8-9. If the Town cannot accommodate the additional sewer flows of both the Route 20 Project and the Project without exceeding the limits of the IMA and the ITA, the Board argues the Route 20 Project is entitled to priority because its planning, design, funding, and permitting began before the developer filed its comprehensive permit application. Board brief, pp. 9-11; Board reply, pp. 2-4.

[16] The Board submitted no evidence regarding privacy or shadows; nor did it include argument on these issues in in its post-hearing briefing. Accordingly, the Board has waived any claim of local concerns regarding privacy and shadows. *See* nn.12, 14, *supra.*

1. Capacity of Sewer System under the IMA to Accommodate the Project's Sewer Flow

Oxford does not own or operate its own municipal wastewater treatment facility. Pre-Hearing Order § II, ¶ 17. Oxford and the neighboring Town of Auburn negotiated the IMA, dated January 17, 2023, allowing Oxford to connect to Auburn's wastewater collection system, whereby wastewater from the North Oxford Sewer Area, where the Project is located, is discharged to Auburn's sewer system. Exh. 16; Pre-Hearing Order § II, ¶ 17. The IMA restricts the cumulative discharge volume of wastewater from Oxford into Auburn to no more than 100,000 gpd for more than three consecutive days. Exhs. 16, § 6.0; 22, ¶ 19; 23, ¶ 10. If flows exceed 100,000 gpd for more than three consecutive days, Auburn may establish a new rate with Oxford for services under the IMA. Exh. 16, §§ 6.0, 6.1; Board brief, p. 8. If the parties cannot agree on the new rate, Auburn has the right to terminate the IMA with six months' notice. Exh. 16, § 6.1. In the event of a material breach of the IMA, either party can give notice of a termination of the IMA. *Id*., § 5.0.

The Board relies on prefiled testimony of Ms. Zona, a professional engineer employed by Stantec Consulting Services, who conducted a sewer peer review for the Board. Ms. Zona specializes in planning, design, and construction of wastewater and stormwater management facilities, with a focus on wastewater collection, pumping, and treatment, and has approximately 48 years of experience in these fields. Exh. 23, ¶ 3, Exh. A. Based on state Department of Environmental Protection Title 5 per-bedroom estimates, she calculated that the Project, as revised with 108 units and 199 bedrooms, would generate an average of 10,945 gpd of wastewater flow, and a maximum of 21,890 gpd. Exh. 23, ¶ 6. The developer's expert, Mr. McClure, calculated that the revised Project would generate the same estimated average and maximum daily flows.[17] Exh. 22, ¶ 18. Therefore, there is no factual dispute between the parties as to the Project's estimated wastewater flows.

[17] It appears that Mr. McClure's figures are slightly rounded down, and there is no significant disagreement between the two on the average daily flow calculations for each year.

To determine Oxford's available sewer capacity for the Project, both experts calculated the average daily wastewater flows for the North Oxford Sewer Area for the past several years.[18] Ms. Zona calculated the following daily averages: [19]

Year	2021	2022	2023
Average Daily Flow (gpd)	51,019	54,046	56,680

Mr. McClure calculated the average daily flows as follows:[20]

Year	2021	2022	2023 (as of 9/15/2023)
Average Daily Flow (gpd)	51,000	54,000	58,500

The developer points out that Mr. McClure's calculation for 2023 measured from January through September 2023, as that was the information available to him at the time. Developer brief, p. 4, n.1; Exh. 22, ¶ 22. Ms. Zona used data for the complete year, and the developer accepts 56,680 gpd as the average daily flow calculation for 2023. *Id*.

Ms. Zona also calculated the average daily wastewater flow for the most recent 12-month period available, from May 1, 2023, through April 30, 2024, to be 57,202 gpd. Exh. 23, ¶ 8. She attached the flow meter data for the relevant years and time periods to her prefiled testimony, and the developer does not challenge her calculations; therefore, we accept her calculations as the average daily flows from 2021 through 2023, and accept the calculation for May 1, 2023, through April 30, 2024. *See* Exh. 23, Exhs. B-E.

The Board argues that the addition of the Project's sewer flow will result in violations of the IMA's 100,000 gpd discharge cap. Board brief, p. 8. It relies on Ms. Zona's testimony that in the last three years, the North Oxford Sewer Area has already exceeded the 84,000 gpd cap established under the state ITA and exceeded 100,000 gpd on two days (but not for three consecutive days) without the additional flows of either the Project or the Route 20 Project.[21] Exhs. 23, ¶¶ 10, 12; 23-E. She also noted there were several days when flows had measured

[18] The parties provided annual calculations of the Town's average daily flow, calculated from the daily flow readings, which have also been provided. *See* Exhs. 23-B—23-F.

[19] Exh. 23, ¶ 8.

[20] Exh. 22, ¶ 22.

[21] July 17, 2023, and January 10, 2024. Exh. 23, ¶¶ 10, 12.

higher than average, for example, on July 16, 2023, and July 18, 2023 (78,727 gpd and 88,732 gpd, respectively). Exh. 23-D. Focusing more on potential violation of the state ITA cap of 84,000 gpd, Ms. Zona stated that "[b]ased on the wastewater flow data, it is my professional opinion that the Town cannot maintain compliance with the limitation set forth under the [ITA] if the Project is allowed to proceed [] and may also be unable to comply with the IMA limitation."[22]

Noting that at full buildout, the Route 20 Project is projected to add approximately 27,330 gpd of wastewater flow to the North Oxford Sewer Area, Ms. Zona suggested that in light of the additional required capacity for the Route 20 Project, the proposed Project should not be allowed to proceed as it will "create numerous additional violations of the current limitations set forth in the IMA and the [ITA]." *See* Exh. 23, ¶¶ 18-21.

The developer argues that the addition of the Project's average daily flow will not result in a breach of the IMA. Developer brief, p. 12. It asserts that the addition of 10,945 gpd from the proposed Project to the highest annual calculation of 57,202 gpd (from the most recent 12-month period), without including flows from the Route 20 Project, would total 68,147 gpd, well below the 100,00 gpd threshold, and that even using the Project's maximum daily flow estimate of 21,890 gpd, the total daily flow calculation for the Town would be 79,092 gpd (57,202 gpd plus 21,890 gpd). Additionally, the developer notes that the IMA prohibits the Town from exceeding 100,000 gpd for more than three *consecutive* days, noting Ms. Zona had only shown flows exceeding 100,000 gpd on two separate dates. Developer brief, p. 12; Exh. 16, § 6.0. The developer argues the cap would not have been breached if the Project had been in place then because the two days preceding and succeeding both of those dates did not also exceed 100,000 gpd.[23] Developer brief, 12.

Overall, we agree with the developer that the Board has not shown that the addition of the Project's estimated daily or maximum flows to the Town's existing flows would likely result in flows exceeding 100,000 gpd for the three consecutive days needed to constitute a violation of

[22] We discuss the state ITA in § V.B.2, *infra*.

[23] As noted above, however, the days immediately preceding and succeeding July 17, 2023, measured flows of 78,727 gpd and 88,732 gpd. Exh. 23, Exh. D. Although the addition of the Project's average flow of 10,945 gpd would not have resulted in a violation of the IMA, if the Project's maximum flow capacity was reached on those days, the three day consecutive limit would have been breached.

the IMA. Therefore, the Board has not shown a valid local concern that outweighs the need for affordable housing.[24]

2. Effect of Addition of Project Sewer Flow Under the Interbasin Transfer Act

Oxford's transfer of wastewater from its North Oxford Sewer Area into Auburn under the IMA involves a transfer of water from the French River Basin to the Blackstone River Basin. Pre-Hearing Order, § II, ¶ 20. The parties agree that this subjects the transfer to the Interbasin Transfer Act (ITA), G.L. c. 21, §§ 8B-8D and its regulations, 313 CMR 4.00, administered by the Massachusetts Water Resources Commission (MWRA). They have stipulated that ITA and regulations limit Oxford's transfer of wastewater to a maximum discharge of 84,000 gpd. Pre-Hearing Order, § II, ¶ 20; Exhs. 22, ¶ 20; 23, ¶ 9.

Similar to its argument above regarding the IMA, the Board's contention here is the Project's added flow will also cause the Town to exceed the 84,000 gpd cap imposed by the ITA. Board brief, pp. 4-5. We need not reach this issue. The Committee does not adjudicate questions of state law and leaves enforcement to the appropriate state agency or court.[25] *See Weston, supra*, No. 2017-14, slip op. at 41-42 and n.38. Although we do not rule on whether the Town would violate the ITA if it allowed the Project to connect to the sewer system or determine its obligations under that statute, we note that the evidence shows instances in which the Town has already exceeded the agreed-upon 84,000 gpd cap.

Ms. Zona testified that Oxford can experience significant spikes in daily wastewater flow from infiltration and inflow, causing it to approach, or at times exceed, 84,000 gpd. Exh. 23, ¶ 9. For example, her testimony indicated that over the most recent 12-month period from May 1, 2023, to April 30, 2024, the daily flow for the North Oxford Sewer Area had exceeded 84,000 gpd on five different days and had exceeded 73,055 gpd[26] on 28 different days. Exhs. 23, ¶¶ 11,

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[24] Notably, the Board has not shown why the limits imposed under the IMA and the ITA are not also concerns for the Route 20 Project, since Ms. Zona testified that the Route 20 Project's additional flow will cause flows to eventually exceed the ITA limit and to exceed the IMA on higher-than-average flow days. As we discuss in § V.B.4, *infra*, the critical issue is the priority for sewer connection between this Project and the Route 20 Project or any portion of it, whenever the Town is allowed to add sewer flow.

[25] *See Cohasset*, *supra,* No. 2005-09, where the Committee noted it had no authority to adjudicate compliance with state law, but engaged in a brief discussion of the issue. *Id.* at 7-9.

[26] 73,055 gpd represents the remaining total available capacity for the Town if the project's proposed average daily flow of 10,945 gpd is subtracted from the 84,000 gpd total allowed under the ITA.

15, 23-E. She testified that, had the Project been in operation during this period, the additional estimated 10,945 gpd average flow from the Project would have resulted in Oxford exceeding 84,000 gpd on these 28 days. Exh. 23, ¶ 15. In her opinion, given the trajectory of flow rates over the past few years, it is "very likely that the Project will cause the Town to exceed the 84 [gpd] limit on a regular basis." Exh. 23, ¶ 14. She asserts that the Town therefore cannot approve the Project and also maintain compliance with its statutory obligations. Exh. 23, ¶¶ 15-16.

The developer disputes the Board's assertion that addition of the Project's estimated flow will trigger violations of the ITA. It argues that, based on current average daily flow, agreed upon by both parties, the Project's additional 10,945 gpd can be accommodated without exceeding 84,000 gpd. It states that subtracting the highest average daily flow calculation of 57,202 gpd, found for the most recent 12-month period, from 84,000 gpd would leave 26,798 gpd in available capacity for additional connections. Developer brief, p. 9; *see* Exh. 22, ¶ 23. The developer points out that the additional capacity the Board claims the Town has already allocated for the Route 20 Project will present the same concern. Developer brief, p. 10. *See* Exhs. 23, ¶ 19; 24, ¶ 18. If added to the highest average daily flow calculation of 57,202 gpd, the Route 20 Project's additional flow at full buildout alone will cause the Town to exceed 84,000 gpd, which Ms. Zona admits. She acknowledged, "[t]he wastewater flow added from the Route 20 Project will eventually bring the town over the current 84,000 [gpd] threshold…. [I]f the projected wastewater flow of 27,330 [gpd] for the Route 20 Project is added to the current average daily flow of 57,202 [gpd], the total average daily flow for the North [Oxford] Sewer Area will be 84,532 [gpd], exceeding the cap of 84,000 [gpd]…." Exh. 23, ¶ 19.

The Board argues, citing G.L. c. 21, § 8C, that any time the Town exceeds 84,000 gpd due to the Project's additional flow, it would trigger the need to request approval from the MWRA for an increase in interbasin transfers. Board brief, p. 5.

We agree with the developer that, although the Town appears to have exceeded the 84,000 cap already, the Board has provided no evidence the Town has requested an increase in capacity from the MWRA or experienced any penalty or order to request an increase following the multiple days the Town claims it has already exceeded 84,000 gpd, nor any other consequence resulting from the days on which the Town already exceeded 84,000 gpd. Developer brief, p. 10. Nor did the Board explain why the proposed Project must be denied, but

the Route 20 Project should be allowed to connect if, as it argues, the Route 20 Project would also cause the Town to violate the ITA by exceeding the 84,000 gpd cap.

The concerns the Board raises are not valid local concerns. Statewide concerns expressed in statutes and regulations are not subject to our review. To the extent the Town's sewer flow is limited under the ITA, such a restriction controls and the Committee has no power to overturn it. In the ordinary course, we require all permits we order zoning boards to issue to contain conditions requiring compliance with all applicable state and federal requirements. *See* § VI.4.f-g, *infra*; *Weston, supra*, No. 2017-14, slip op. at 41-42 and n.38.

3. Even if the Town Has Insufficient Capacity Under the IMA or the ITA, the Board Did Not Carry its Burden Regarding Technical or Financial Infeasibility

Even assuming that the Board had established there was inadequate sewer capacity for the additional flow generated by the Project, in such case the Board must also prove "that the installation of services adequate to meet local needs is not technically or financially feasible." 760 CMR 56.07(2)(b)4. "Financial feasibility may be considered only where there is evidence of unusual topographical, environmental, or other physical circumstances which make the installation of the needed service prohibitively costly." *Id.*

The Board argues that the ITA requires MWRA approval for any increase over the allowed present rate of interbasin transfer. Board brief, p. 5, citing G.L. c. 21, § 8C. It argues the addition of the Project's sewer flow would cause the Town to exceed 84,000 gpd, and therefore it would need to request an increase in the allowed rate of interbasin transfer through an "exceedingly expensive and time consuming" procedure requiring "extensive scientific analysis and the submission of a Massachusetts Environmental Policy Act (MEPA) Environmental Notification Form." Board brief, p. 6, citing 313 CMR 4.09(1)(e).

The Board claims that communications with employees in the Office of Water Resources (OWR) in the Department of Conservation and Recreation regarding the Town's available sewer capacity prove that seeking an increase of the 84,000 gpd cap is not technically or financially feasible.[27] Board reply, pp. 1-2; Exh. 25 It relies on email communications of non-witness state

[27] The Board does not explain why correspondence with the OWR employee is determinative, or the OWR's relationship to the MWRA. A memorandum from Oxford's Department of Public Works states the ITA is "administered" by the OWR but does not elaborate further. Exh. 6.

employees to argue that initial conversations between the Town and the OWR indicated that the scientific analysis required for an application to increase the present rate of interbasin transfer would "take years to develop and hundreds of thousands of dollars of cost," with no guarantee that the cap would be increased. Board brief, p. 7. The email of an OWR employee, whose authority to speak on behalf of that agency was not evidenced, stated that "currently…there is no available capacity for new wastewater flows from the Town of Oxford to the Upper Blackstone. The Town of Oxford is restricted to transferring a maximum day volume of 84,000 gpd of wastewater…and is already using this full volume on peak days."[28] Exh. 25. The email further included a statement that to increase capacity, the Town must propose "a comprehensive plan that will detail the areas of Oxford that will require out-of-basin sewering, and the associated volumes," and that it may take some time for the Town to finalize this plan. *Id*. In response to a recommendation stated in the OWR employee's email that towns are encouraged to evaluate the feasibility of any in-town or in-basin wastewater disposal options and to identify all reasonable alternatives before requesting an interbasin transfer, the Town's director of public works stated the Town was continuing its planning efforts on completing a long-range comprehensive plan, but it would take several years. *Id*. The Board further argues that the decision to grant an increase is at the discretion of the MWRA, and therefore there is no guarantee that the 84,000 gpd cap would be increased even after the time and expense of preparing an application. Board brief, p. 7.

The developer argues that even if the Town does not have sufficient sewer capacity, the Board has still failed to prove the cost of providing adequate capacity is not technically or financially feasible. Developer brief, p. 13; Developer reply, p. 5. It argues the Board's reliance on the email exchange with a staffer at the OWR is misplaced because the email exchange contains no information as to technical or financial feasibility. Instead, assuming the email outlined the process by which the Town can seek an increase in the amount of flow allowed under the ITA, the developer asserts that possible alternatives are available for the Town to address any potential capacity issues. Developer reply, pp. 4-6; *see* Exh. 25. The correspondence with the OWR in which Town officials acknowledge the process "could take a couple of years"

[28] The Board has not shown that this hearsay statement represents a determination by the state agency with authority to prohibit new sewer connections or to advise towns that they may not add new connections.

shows, the developer argues, that there is a clear path available to provide additional capacity, and not that such process is unfeasible. Developer reply, pp. 5-6.

Even were we to accept these emails as credible and authoritative evidence of the circumstances and requirements pertaining to compliance with the ITA, which we do not,[29] the Board's argument that it has met its burden of proving that the installation of services—here, obtaining an increase in the present rate of interbasin transfer—is not technically or financially feasible is without merit. Board brief, p. 7, citing 760 CMR 56.07(2)(b)4.; *Scituate, supra*, No. 2005-03, slip op. at 24-25. As the developer notes, the Town is continuing development despite the alleged stress on the municipal sewer system, notably the Eastland Project along Route 20and the Route 20 Project in its entirety. *See* Developer brief, p. 13; Developer reply, p. 4. The developer correctly questions why, if allowing the Project's additional average daily flow of 10,945 gpd would result in a violation of the 84,000 gpd limit under the ITA, the Town could authorize the commencement of site work for the Eastland Project of the Route 20 Project with an average daily flow of 11,400 gpd without similar concerns. Developer brief, p. 13; Developer reply, p. 4.

Issues relating to the adequacy of water and sewer services, have become increasingly common over the years. *See, e.g., Pond View Commons, LLC v. Lunenburg*, No. 2023-01 (Mass. Housing Appeals Comm. Nov. 22, 2023); *Hollis Hills, LLC v. Lunenburg,* No. 2007-13, slip op. at 19-31 (Mass. Housing Appeals Comm. Dec. 4, 2009)*; Scituate, supra,* No. 2005-03, slip op. at 12-13; *Peppercorn Village Realty Trust v. Hopkinton*, No. 2002-02, slip op. at 1 (Mass. Housing Appeals Comm. Jan. 26, 2004); *Bay Watch Realty Trust v. Marion*, No. 2002-28 (Mass. Housing Appeals Comm. Dec. 5, 2004); *Hilltop Preserve Ltd. P'ship v. Walpole*, No. 2000-11 (Mass. Housing Appeals Comm. Apr. 10, 2002); *Dexter Street, LLC. v. North Attleborough*, No. 2000-01 (Mass. Housing Appeals Comm. July 12, 2000). Ongoing development is stretching municipal services to the point where any additional burden, whether from affordable housing or other forms of development, can present hardship. *Walpole, supra*, No. 2000-11, slip op. at 3. We appreciate the difficulties faced by the Town of Oxford in allocating its remaining available sewer capacity. However, the frequently raised argument that a denial of a comprehensive permit should be upheld because of difficulties a municipality faces in expanding such services

[29] The email exchange is relevant to show what information the Town received from the OWR employee, but not as evidence of the truth of the ITA requirements.

generally has been unsuccessful since the enactment of the comprehensive permit law. *Walpole, supra*, No. 2000-11, slip op. at 5; *Milhaus Trust of Upton v. Upton*, No. 1974-08 (Mass. Housing Appeals Comm. July 8, 1975). As an indication of its complexity, we have extensively addressed the background and history of water and sewer services in the context of the comprehensive permit statute in multiple cases. *See, e.g., Scituate, supra,* No. 2005-03; *Walpole*, *supra*, No. 2000-11, slip op. at 4-15, *Hopkinton*, *supra*, No. 2002-02, slip op. at 1; *Cohasset*, *supra*, No. 2005-09, slip op. at 13-18.

The comprehensive permit regulations and Committee precedent make clear that difficulties in providing municipal services should not stand in the way of the development of affordable housing. *Walpole, supra*, No. 2000-11, slip op. at 4-15. A denial of a comprehensive permit may be upheld based on the inadequacy of municipal services or infrastructure only if the Board proves that installation of adequate services is not technically or financially feasible. 760 CMR 56.07(2)(b)4; *Walpole, supra*, No. 2000-11, slip op. at 3. The argument that a proposed development overburdens a town's sewer system as whole is not sufficient. *Walpole, supra*, No. 2000-11, slip op. at 29 (noting possible lack of sewer capacity is not specific to affordable housing development, but existing infrastructure shortcoming town is obligated to remedy); *Upton, supra*, No. 1974-08, slip op. at 8, 21 (possible inadequacies of sewer system do not justify comprehensive permit denial where town as whole would benefit from various needed improvements, in regard to which town had been derelict).

We are aware of only one Committee case in which a board successfully carried its burden of proving the provision of municipal services was not financially or technically feasible. *See Berkshire East Assoc. v. Huntington*, No. 1980-14, slip op. at 20 (Mass. Housing Appeals Comm. June 1, 1982) (analyzing whether town's fire protection systems could provide sufficient water volume and pressure to handle fire dangers). The Committee ultimately found that the attendant cost of the developer's proposed solutions was too high, and the physical and geographical circumstances were unusual, and therefore the proposal was not financially feasible. *Id*. at 21-22 (emphasizing geographic distance, difference in elevation and seasonal weather effects all contributed to infeasibility of proposed solution). Additionally, in *Huntington* the Committee specifically stated in its decision that while no specific figures were submitted, the evidence was still sufficient to show the cost would be heavy. *Id*. at 19, 22.

Here, rather than introducing testimony of the financial cost of pursuing an application under the ITA, the Board relies on the emailed hearsay statement of an OWR staffer to support its argument on feasibility. This email exchange appears to be an informal exchange and, as we noted above, provides no context or detail on OWR's role or that of the staff member responding. Even if the Committee afforded full weight and credibility to these emails, the Board failed to explain how the Town would not face an identical capacity issue as the Route 20 Project it supports moves to completion of the sewer extension, and sewer connection applications are received for projects such as the Eastland Project.

The Board also asserts that because the need for an increase in flow under the ITA was instigated by the Project, the costs should not be forced onto the Town.[30] Board brief, p. 7, n.4. Neither the Board's expert, Ms. Zona, nor Tony Sousa, Oxford's Assistant Town Manager, who previously served as the Director of Planning and Economic Development for the Town, testified as to the costs of requesting an increase to the 84,000 gpd limit. By contrast, the developer's witness, Mr. McClure, testified that the Town could request an increase in the flows allowed under the ITA but "is unwilling to undertake that process." Exh. 22, ¶ 21.

We have consistently held that "when municipal services are involved, a town may not block the development of affordable housing by refusing to fulfill its normal obligations." *North Attleborough, supra*, No. 2000-01, slip op. at 16, citing *Mapleleaf Dev. Assocs. v. Haverhill*, No.

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[30] The developer and Board agree that the project has the current infrastructure to connect to the existing sewer main, and no additional infrastructure or extension is required. Thus, our past cases where we held that a developer can be required to bear costs for building necessary sewer extensions or other infrastructure, are not applicable. *See Cohasset*, No. 2005-09 *Scituate, supra,* No. 2005-03. To the extent the Board suggests that the developer should shoulder costs for requesting increases in flow under the ITA, we note that in a memorandum submitted to the Board during the local hearing, the Town's then-director of public works stated that "[t]ypically, individual project proponents must submit a full permit application under the ITA [to OWR] for an increase to the maximum daily discharge threshold." Exh. 6. The Board has not pointed to a local requirement or regulation in the record that sets out such a requirement. The blank sewer connection permit application form does not include this requirement. Exh. 20. Nor is there sufficient credible evidence on the specific process required under the ITA and its regulations. However, based on the arguments, testimony, and exhibits submitted, it is clear that to some degree the Town must also be involved in such requests. *See* Exh. 25 (stating "Town of Oxford will need to come to [OWR] as the project proponent with a comprehensive plan…"); Board brief, pp. 6-7 (referring to application process for increase as "exceedingly expensive and time consuming" for the Town). If a submission by a developer is mandated by the ITA as the DPW suggests, the developer would be required to comply. The record is insufficient for us to address allocation of costs for a request to increase the limit under the IMA, but the developer will be required to comply with all non-waived local requirements and regulations. *See* § VI.2.c.

1988-14, slip op. at 22 (Mass. Housing Appeals Comm. Jan. 27, 1993) (stating municipality cannot use lack of capacity for which it has duty to remedy as grounds to deny permit, and argue it cannot afford to fix issue); *see also Lever Dev. LLC v. West Boylston*, No. 2004-10, slip op. at 21-25 (Mass. Housing Appeals Comm. Dec. 10, 2007); *Franklin Commons v. Franklin*, No. 2000-09, slip op. at 11 (Mass. Housing Appeals Comm. Sept. 27, 2001); *Walpole, supra*, No. 2000-11, slip op. at 25-26, 29 (if inadequacy results from townwide problem or existing infrastructure problem, town must find remedy instead of denying permit); *Hopkinton, supra*, No. 2002-02, slip op. at 1, 12 (despite shortage, town must provide municipal service to affordable housing development on same terms as other users).

We do not doubt that diminishing remaining sewer capacity is an issue for the Town of Oxford. However, we find that the Board has not demonstrated that the installation of adequate municipal services is not technically or financially feasible.

4. The Board May Not Prioritize Available Sewer Capacity for Future Projects Over Earlier Affordable Housing Developments

The developer submitted its comprehensive permit application to the Board on September 14, 2021. Pre-Hearing Order, § II, ¶ 5. The Board acknowledges that a town "may not reserve capacity for other potential future users at the expense of affordable housing." Board brief, p. 9, quoting *West Boylston, supra*, No. 2004-10, slip op. at 24 and *Scituate, supra*, No. 2005-03, slip op. at 12-13. However, it argues that planning and permitting for the Route 20 Project, which includes the Eastland Project, had already begun and that substantial state funding had already been applied for and received before the developer applied for the comprehensive permit. Board brief, p. 9. The Board argues it is entitled to prioritize the Route 20 Project over the proposed affordable housing Project in the same area when allocating the Town's remaining sewer capacity because components of the Route 20 Project have already secured some permitting and state funding. *Id*.; *see* Exh. 22, ¶ 27.

The Board points out that planning for the Route 20 Project began in 2017, well before the developer's comprehensive permit application was filed on September 14, 2021. Board brief, p. 9; Exh.24, ¶ 14.[31] Mr. Sousa testified that on August 9, 2019, the Town applied for a MassWorks Infrastructure Program grant to cover costs relating to the bidding and construction of the sewer extension component of the Route 20 Project. Exh. 24, ¶¶ 13-15. The Town was

[31] The Board did not describe what this planning entailed.

awarded the MassWorks grant in the amount of $2,800,000 on December 27, 2021. Exhs. 17; 24, ¶ 16. The sewer infrastructure component of the Route 20 Project is currently underway, and the Town has spent approximately $660,000 of the grant funds, with construction work expected to last two full construction seasons. Exh. 24, ¶ 17.

Related to the Route 20 Project, Eastland has proposed a 150,000 s.f. commercial and residential development for 320 units along Route 20 also in the North Oxford Sewer Area. Exh. 24-B, § 5.1. That developer applied to the Town Planning Board for site plan review and approval, as well as a stormwater management permit and a land disturbance permit, sometime in 2018. Exhs. 18; 24, ¶ 19. Eastland planned to conduct "pad ready" site development, such as bulk earth excavation and stormwater management construction, to support pad-ready site conditions and permanent stabilization of the ground surfaces until construction can begin for the end-uses of the site. Exh. 18. The site preparation and earth removal activities authorized under these permits are underway. Exh. 24, ¶ 20.

The Town's Planning Board granted Eastland a site plan approval, stormwater management permit, and a land disturbance permit on May 16, 2019. Exhs. 18; 24, ¶ 19; Board brief, p. 10. In the decision, the Planning Board noted Eastland "is proposing to install sewer on its property to connect to the Auburn pump station," and imposed the following condition: "[t]he applicant will commit to install new gravity sewer pipe along the applicant's frontage on Southbridge Road to the pumping station at Blaker Street in Auburn within twenty-four (24) months of approval of the pad ready site plan, subject to the approval of the Town of Auburn, the Oxford DPW, and MassDOT." Exh. 18, pp. 2-3. The approval is otherwise silent as to sewer needs. The Eastland Project has its own planned phases: its initial phase would add an average 11,400 gpd of flow to the North Oxford Service Area. This first phase involves the commercial development of a 150,000 s.f. mixed-use retail and office plaza directly off Route 20. Exhs. 22, ¶ 24; 24-B, p. 11. The second phase will construct a 320 unit residential development. Exh. 24-B, p. 11. We have accepted that, at full buildout, the Route 20 Project would add approximately 27,330 gpd of sewer flow.[32] Exh. 23, ¶ 18; *see* Exhs. 22, ¶¶ 24, 27; 24, ¶ 18.

The Board has not submitted any evidence that sewer connection permits were requested or obtained for the Route 20 Project and its related components before the developer submitted its comprehensive permit application. As the developer notes, the comprehensive permit

[32] *See* n. 8, *supra.*

application subsumes all other local permits. 760 CMR 56.05(10)(b);[33] 760 CMR 56.07(6)(c);[34] *Lunenburg*, *supra*, 464 Mass. at 38, 40, citing *Board of Appeals of Woburn v. Housing Appeals Comm*., 451 Mass. 581, 583 (2008). Although the comprehensive permit application is not in the record, the developer argues that it noted the proposed sewer connection in its application.[35] Developer reply, p. 4, n.1. The proposed sewer connection is shown on the project plans that were submitted to the Board as part of the comprehensive permit application. Exh. 22, ¶ 13. The plans specifically note the proposed sewer connection to the existing force main, and state the developer is "to coordinate connection to sewer force main with the Town of Oxford DPW, Sewer Division." Exh. 2, Sheet C-5. Based on this record, the developer's comprehensive permit application predates any related sewer connection request by Eastland or other Route 20 project development.

When the Committee orders a zoning board to issue a comprehensive permit, this decision does not require the Board or the Town to violate state law. We can require connections for affordable housing development to be approved. *See Hopkinton, supra*, No. 2002-02, *supra*, slip op. at 13. Our granting the developer a permit to connect to the Town sewer system remains subject to state law, including any filing requirements under the ITA. In the event the Town takes steps to suspend connections, limit sewer access for all residential and commercial connections, or otherwise address the asserted lack of sewer capacity; or appropriate enforcement action is

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[33] "A Comprehensive Permit issued by a Board, including by order of the Committee pursuant to 760 CMR 56.07(5), shall be a master permit which shall subsume all local permits and approvals normally issued by Local Boards. Upon presentation of the Comprehensive Permit, subsequent more detailed plans (to the extent reasonably required relative to the local permit in question), and final approval from the Subsidizing Agency pursuant to 760 CMR 56.04(7), all Local Boards shall 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, after reviewing such plans only to insure that they are consistent with the Comprehensive Permit (including any Waivers), the final approval of the Subsidizing Agency, and applicable state and federal codes."

[34] "[A] Comprehensive Permit issued by order of the Committee shall be a master permit which shall subsume all local permits and approvals normally issued by Local Boards…."

[35] The Board also argues that a sewer connection permit was never formally requested from the Board as part of the developer's underlying comprehensive permit application or during the hearing, and therefore the developer's application does not predate approvals for the Route 20 project. Board reply, pp. 2-3, n.1. However, the Board has provided no evidence that sewer connection permits were formally requested by any developer relating to the Route 20 project. *See* Exh. 20 (a blank sewer connection request form submitted as an agreed exhibit).

taken demonstrating that further connections violate the ITA, then this Project should be allowed to connect in accordance applicable local requirements regarding sewer connection and with its place on the list of all affected projects awaiting connection. *See id.*

Under traditional land use law, Chapter 40B, and Committee precedent, a town is generally obligated to provide services on an equal basis to all residents. *See Cohasset, supra*, slip op. at 14, citing *Rounds v. Board of Water & Sewer Comm'rs of Wilmington*, 347 Mass. 40, 44 (1964). If reasonable sewer capacity has been shown to be available, an applicant for a comprehensive permit has a right to the sewer connection, and a town cannot postpone "presently sought" connections to prioritize connections "contemplated for the future." *Clark v. Bd. of Water & Sewer Comm'rs of Norwood*, 353 Mass. 708, 710 (1968).[36] The developer states it has shown there is sufficient capacity for the Project to connect to the Town's sewer system, and a "town may not deny a sewer connection 'upon a showing of reasonable sewer capacity to serve the buildings in question.'" Developer brief, p. 11, quoting *Fluharty v. Bd. of Selectmen of Hardwick*, 382 Mass. 14, 16 (1980) and citing *Clark*, 343 Mass. 708, 710-711.

The Board argues its past planning and approval activity, and use of grant funds, demonstrates that the Route 20 Project was a known and planned-for project ahead of the comprehensive permit project application date. Board brief, p. 10; Board reply, p. 3. It argues that granting the comprehensive permit would allow this proposed Project to "jump in line" and consume sewer capacity the Town originally intended for the Route 20 Project, resulting in a waste of taxpayer grant funds and undercutting the Town's plans for the future use of Route 20. Board brief, p. 10.

The Board acknowledges that a town's generalized concerns about preserving future capacity for hypothetical developments may not be sufficient to deny a sewer connection for an

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[36] The developer stated in the Pre-Hearing Order that it may prove that local requirements and regulations have not been applied as equally as possible to subsidized housing and unsubsidized housing. Pre-Hearing Order § IV, Appellant's Case. The developer argues the Board seeks to improperly reserve sewer capacity for the Eastland Project, which includes development of 320 unrestricted condominium units, at the expense of its Project. On this record, it has not raised this argument sufficiently to warrant our making a finding on this issue. Developer brief, pp. 13-14, citing Exh. 17; Developer reply, p. 7. *See* n. 14, *supra.* The 320-unit development is referenced in the MassWorks application as part of Phase II of the Eastland Project. Exh. 24-B, p. 11. The record does not show that any permits have been requested for any phase of the Eastland Project. Although comparison of this Project with the commercial phase of the Eastland Project does not raise concerns of unequal treatment under G.L. c. 40B, § 20, reserving capacity specifically for the future unsubsidized 320-unit residential project would be improper pursuant to § 20.

affordable housing project. It cites *West Boylston, supra,* No. 2004-10, slip op at 17, to argue that as long as a plan is in existence, and not general or hypothetical, it can be used to support the denial of a comprehensive permit. Board brief, p. 9. In *West Boylston*, the board's argument of insufficient sewer capacity to accommodate a comprehensive permit project, relied on its plan to connect the entire town in the future and need to preserve capacity. *West Boylston, supra,* No. 2004-10, slip op. at 25 The Committee determined the town's plan was insufficient to support withholding sewer capacity from the project at issue because the plan had not been in existence at the time of the comprehensive permit application. *Id.*

The Board argues that Committee precedent does not support designating the date of the sewer connection application as the operative date when allocating limited municipal services between competing projects. Board reply, p. 3. It argues that the key point in time is the date on which planning for that project "reaches a point where the amount of sewer capacity required can be estimated with reasonable accuracy." *Id*. The Board notes that Route 20 Project plans were in place for the filing of the MassWorks grant application[37] before the comprehensive permit application was filed on September 14, 2021, the Town already had calculated the Route 20 Project's sewer capacity needs at full buildout at 27,330 gpd, and Eastland had already commenced construction on the site pursuant to planning board approval and stormwater and land disturbance permits issued in May 2019 as proof the Town's plans for its remaining sewer capacity were solidly in place. *See* Board reply, pp. 3-4; Exh. 24, ¶ 19. Therefore, the Board argues the Town should be entitled to prioritize the Route 20 Project and its sewer needs because it commenced these plans years before the filing of the comprehensive permit application. Board reply, p. 4.

In response, the developer argues that there is no claim that a sewer connection permit application has been submitted for any phase of the Route 20 Project or by Eastland, and the Board has failed to provide any factual support for its assertion that the Route 20 Project's sewer capacity requirements were planned and known at the time of the MassWorks application. Developer brief, p. 11; Developer reply, p. 3; Exhs. 20; 24-B.

The MassWorks application does not explicitly state the project's anticipated sewer capacity needs. The Town's responses to the application questions indicate that not all permits and approvals had been sought or secured. *See* Exh. 20. §§ 2.11 (answering that not all required

[37] The MassWorks application was signed on August 9, 2019. Exh. 24, Exh. B.

permits and approvals to commence in the upcoming construction season have been approved); 2.13 (listing a sewer extension as a required municipal or other required approval but listing no expected or anticipated dates of filing or approval). Additionally, the developer argues the Board has produced nothing showing the MassWorks program requires the Town to reserve a certain amount of sewer capacity. Developer reply, p. 6.

When determining the order of precedence or priority, the developer's "place in line" for receipt of a permit "should be determined as of the date of its comprehensive permit application to the Board." *See Scituate, supra*, No. 2005-03, slip op. at 30 (finding receipt of developer's water permit determined as of the date of comprehensive permit application); *Hopkinton, supra,* No. 2002-02, slip op. at 13, n.10 (stating developer's position for available sewer connection determined by date of comprehensive permit application). The Board has not provided filed sewer connection permit applications for any development relating to the Route 20 Project that pre-date the comprehensive permit application date of September 14, 2021.[38] The developer, however, has provided evidence that its proposed sewer connection was included in its comprehensive permit application and specifically noted on the project's site plans. Exh. 2, Sheet C-5. The developer is not required to file separate applications with the Town's department of public works. *See* Exh. 20. *See also Cohasset, supra*, No. 2005-09, slip op at 1, n.1 (noting purpose of comprehensive permit law is to allow single project application to be filed and rejecting argument that separate sewer permit application was required); *Falmouth Hospitality,*

[38] We need not address the developer's argument that the Board seeks to assert a municipal planning defense based on its claim it can rely on its planning for the Route 20 Project because the plans were known and in existence before the filing for the comprehensive permit. *See* Developer reply, pp. 6-7. The Board did not list municipal and regional planning as one of its local concerns in the Pre-Hearing Order, and such an argument is therefore waived. *See* nn.12, 14, *supra.* Moreover, regarding the Board's assertion that the actions the Town has taken thus far relating to the Route 20 Project constitute the type of planning sufficient enough to justify the denial of the comprehensive permit and prioritize other development projects, the Board has provided no support or Committee precedent supporting this argument other than *West Boylston*. The isolated actions presented by the Board as evidence of the Town's planning—submission of the MassWorks application (which did not note the future sewer capacity needs of the Route 20 project), the receipt and implementation of grant funds, and the approval of Eastland Project's site plan review and land disturbance and stormwater management permits (which also did not note specific sewer capacity needs)—were not demonstrated to be part of a master or comprehensive plan created and followed by the Town. *See Hanover R.S. Ltd. P'ship v. Andover*, No. 2012-04, slip op. at 6 (Mass. Housing Appeals Comm. Feb. 10, 2014) (if municipal planning asserted as local concern, board must present sufficient evidence plan meets three-part test that it 1) is bona fide, 2) promotes affordable housing, and 3) has been implemented in the area of the project site); *SLV School Street, LLC v. Manchester-by-the-Sea*, No. 2022-14, slip op. at 48, n.39 (Mass. Housing Appeals Comm. Dec. 3, 2024).

LLC v. Falmouth, No. 2017-11, slip op. at 46 (Mass. Housing Appeals Comm. May 15, 2020), citing 760 CMR 56.05(10); 56.07(6)(c) (stating comprehensive permit is a "master permit" which subsumes all local permits and approvals usually issued by local boards. The Board has also not proven that it is entitled to prioritize any other development projects over the comprehensive permit project. Therefore, to the extent there are competing or multiple sewer permit applications, the Board shall ensure that this Project is given consideration in conformity with the same local requirements and regulations as are applied to all other applicants, explicitly providing that this Project has priority for sewer connection over any aspect of the Route 20 Project and over any other applications for sewer connections submitted after the date of the developer's filing its comprehensive permit application. *See Marion, supra*, No. 2002-08, slip op. at 25, n.24 (Mass. Housing Appeals Comm. Dec. 5, 2004) (ordering board to allow project to connect to town sewer, but noting if there is waiting list for such connections, project must be placed on list in same manner as other applicants); *Peppercorn Village Realty Trust v. Hopkinton*, No. 2002-02, slip op. at 13 (Mass. Housing Appeals Comm. Jan. 26, 2004) (if town continues to allow sewer connections or implements waiting list, affordable housing development must be treated equally to all other development proposals in either situation).

VI. CONCLUSION

Based upon review of the entire record and upon the findings of fact and discussion above, the Housing Appeals Committee concludes that the decision of the Board is not consistent with local needs. The decision of the Board is vacated, and the Board is directed to issue a comprehensive permit that conforms to the application of the developer, and as provided in the text of this decision and conditions stated herein, and subject to the following additional conditions.

1. Any references herein to the submission of materials to the Board, the building commissioner, or other municipal officials or offices for their review or approval shall mean submission to Board, to transmit the materials forthwith to the appropriate municipal official with relevant expertise to evaluate whether the submission is consistent with the final comprehensive permit, such determination not to be unreasonably withheld. Such official may consult with other officials or offices with relevant expertise as they deem necessary or appropriate. In addition, such review shall be made in a reasonably expeditious manner,

consistent with the timing for review of comparable submissions for unsubsidized projects. *See* 760 CMR 56.07(6).

2. The comprehensive permit shall conform to the application submitted to the Board, as modified by the following conditions.

a. The development shall be constructed as shown on the Project Plans prepared by McClure Engineering, Inc. titled "#722 Main Street Comprehensive Permit Plan Set Oxford, MA 01450" subject to compliance with all applicable federal and state requirements. Exh. 2.

b. The Board shall not include new, additional conditions.

c. The developer shall comply with all applicable non-waived local requirements and regulations in effect on the date of developer's submission of its comprehensive permit application to the Board, consistent with this decision pursuant to 760 CMR 56.02: *Local Requirements and Regulations*.

d. The developer shall submit final construction plans for all buildings, roadways, stormwater management systems, and other infrastructure to Oxford town entities, staff, or officials for final comprehensive permit review and approval pursuant to 760 CMR 56.05(10)(b).

e. The developer shall promptly submit to the Board copies of all formal and informal submissions by the developer to state and federal authorities with respect to formal or informal review and approval of construction and operation aspects of the Project and proposed development, as well as all actions and decisions of those state and federal authorities made upon those submissions or otherwise in connection with this Project. Issuance of a building permit will be subject to the developer's receipt of all applicable state and federal approvals required for the Project.

f. All Oxford town staff, officials, and boards shall promptly take whatever steps are necessary to permit construction of the proposed housing in conformity with the standard permitting practices applied to unsubsidized housing in Oxford. Submission of plans and materials to the Town for review or approval shall be to the appropriate municipal official with relevant expertise to determine whether the submission is consistent with the final comprehensive permit, such determination shall be made in a reasonably expeditious manner, consistent with the timing for review of comparable submissions for unsubsidized projects, and approval shall not to be unreasonably withheld. *See* 760 CMR 56.07(6).

g. Any specific reference to the submission of materials to Oxford officials or offices for their review or approval shall mean submission to the

appropriate municipal official with relevant expertise to determine whether the submission is consistent with the final comprehensive permit. Such official may consult with other officials or offices with relevant expertise as they deem necessary or appropriate.

3. Should the Board fail to carry out this order within thirty days, then, pursuant to G.L. c. 40B, § 23 and 760 CMR 56.07(6)(a), this decision shall for all purposes be deemed the action of the Board.

4. Because the Housing Appeals Committee has resolved only those issues germane to G.L. c. 40B, §§ 20-23, that were placed before it by the parties, the comprehensive permit shall be further subject to the following conditions:

a. Construction in all particulars shall be in accordance with all applicable local requirements and regulations in effect on the date of developer's submission of its comprehensive permit application to the Board, pursuant to 760 CMR 56.02: *Local Requirements and Regulations,* except those waived by this decision or in prior proceedings in this case.

b. The subsidizing agency may impose additional requirements for site and building design so long as they do not result in less protection of local concerns than provided in the original design or by conditions imposed by the Board or this decision.

c. If anything in this decision should seem to permit the construction or operation of housing in accordance with standards less safe than the applicable building and site plan requirements of the subsidizing agency, the standards of such agency shall control.

d. No construction shall commence until detailed construction plans and specifications have been reviewed and have received final approval from the subsidizing agency, until such agency has granted or approved construction financing, and until subsidy funding for the Project has been committed.

e. The Board and all other Oxford town staff, officials, and boards shall take whatever steps are necessary to ensure that a building permit and other permits are issued to the developer without undue delay, upon presentation of construction plans, pursuant to 760 CMR 56.05(10)(b), that conform to the comprehensive permit and the Massachusetts Uniform Building Code.

f. Design and construction shall be in compliance with the Massachusetts Environmental Protection Act (MEPA), G.L. 30, §§ 61-62H, and 760 CMR 56.07(5)(c), if applicable. Construction shall not commence until the completion of the MEPA review process as evidenced by the issuance of a

final certificate of compliance or other determination of compliance by the Secretary of Energy and Environmental Affairs. If applicable, the Committee retains authority to modify this decision based upon the findings or reports prepared in connection with MEPA.

g. Design and construction in all particulars shall be in compliance with all applicable state and federal requirements.

h. Construction and marketing in all particulars shall be in accordance with all applicable state and federal requirements, including without limitation, fair housing requirements.

This comprehensive permit is subject to the cost certification requirements of 760 CMR 56.00 and guidelines issued pursuant thereto by the Executive Office of Housing and Livable Communities.

This decision may be reviewed in accordance with the provisions of G.L. c. 40B, § 22 and G.L. c. 30A by instituting an action in the Superior Court within 30 days of receipt of the decision.

HOUSING APPEALS COMMITTEE

March 20, 2025

Shelagh A. Ellman-Pearl, Chair

Cobi Frongillo

Lionel G. Romain

James G. Stockard, Jr.

Caitlin E. Loftus, Presiding Officer