

COMMONWEALTH OF MASSACHUSETTS
HOUSING APPEALS COMMITTEE

ROGER LEBLANC,)	
)	
)	
Appellant)	
)	
v.)	No. 06-08
)	
AMESBURY ZONING BOARD OF)	
APPEALS,)	
)	
Appellee)	

RULING AND ORDER ON COMPREHENSIVE PERMIT EXTENSION

I. INTRODUCTION

The Appellant Roger LeBlanc has proposed a low and moderate income housing project in the Town of Amesbury. In 2006, the Amesbury Zoning Board of Appeals granted a comprehensive permit for the project, with numerous conditions. The developer appealed the Board's decision, and this Committee decided that the Board's conditions rendered the project uneconomic. The Committee's decision was appealed by the Board, and upheld by the Superior Court in a decision entered on the court docket on June 2, 2009. The Board took no further action, and the Committee's decision became the comprehensive permit for the project. Nearly three years later, on May 29, 2012, the developer requested an extension of the permit. The Board never responded to that request. Instead, a city official responded to the request for extension by stating that the extension request was not timely, and that the permit had expired.

The developer now is seeking a ruling from this Committee that the permit did not expire, as well as a ruling that the requested extension was constructively granted as a result of the Board's failure to timely act on it. The developer also seeks "clarification" of the permit conditions applicable to the project. The Board has opposed all of these requests, asking for a summary ruling that the comprehensive permit has expired, and dismissal of the appeal.

For the reasons set forth below, this Committee finds that the comprehensive permit has not lapsed. The developer's request for a finding that the extension has been constructively granted is allowed. The Committee further finds that the permit conditions speak for themselves and require no substantive clarification from this Committee.

II. FACTS

The relevant facts in this case are established by the documents attached as exhibits to the Appellant's appeal, and are not disputed by the parties:

1. On April 1, 2005, the developer applied to the Board for a comprehensive permit to construct 56 mixed-income, rental housing units on a 10-acre site off Clark's Road in Amesbury. The project subsidy is being provided by the Massachusetts Housing Partnership (MHP) Permanent Rental Financial Program.

2. On August 22, 2006, the Board granted a comprehensive permit subject to a condition reducing the number of units from 56 units to 44 units, together with approximately 100 additional conditions. The developer appealed that decision to this Committee, claiming that the conditions were not consistent with local needs and rendered the project uneconomic.

3. On May 12, 2008, the Committee affirmed the Board's decision to grant a comprehensive permit, but determined that certain of the conditions imposed in the Board's decision rendered the project uneconomic and were not consistent with local needs. The Committee directed the Board to issue an amended comprehensive permit for 56 units, such permit to be consistent with the Committee's decision, including certain specific conditions set forth therein. The Committee's decision stated that if the Board failed to carry out that order within 30 days, the Committee's decision would be deemed the action of the Board.

4. The Board did not issue an amended permit within the 30 days provided by the Committee's decision. Instead, the Board appealed the Committee's decision to the Superior Court.

5. The Superior Court issued a Memorandum of Decision and Order dated June 1, 2009 dismissing the Board's complaint. The Superior Court's Judgment of Dismissal was entered on the court's docket on June 2, 2009.

6. The 60-day period during which the Board could have appealed the Superior Court decision expired on August 1, 2009. No appeal was taken.

7. Upon the conclusion of Superior Court case, the Board took no further action with respect to the Committee's decision. Accordingly, by its terms, the Committee's decision became the comprehensive permit for the project.

8. The Committee's decision does not set forth any deadline for the start of construction or otherwise state a date on which the permit would lapse.

9. The developer did not immediately begin construction of the project. By a letter to the Board dated May 25, 2012 the developer's representative requested an extension of the comprehensive permit. The letter is stamped as received by the Board on May 29, 2012.

10. The City of Amesbury's Director of Community and Economic Development replied to the extension request in a letter dated June 6, 2012. That letter stated that the comprehensive permit expired on June 2, 2012.

11. The Board voted to deny the extension request at a meeting on June 28, 2012. The Board has not taken any further action with respect to the project.

III. JURISDICTION

As a preliminary matter, we briefly address the Committee's jurisdiction to hear appeals arising after the issuance of a comprehensive permit. The Comprehensive Permit Law itself provides little guidance with regard to the handling of disputes that arise after a comprehensive permit has been issued. The Act grants the Committee express authority to review the decision of the board of appeals to determine if it was "consistent with local needs" or, in the case of an approval, whether permit conditions make the project "uneconomic." G.L. c. 40B, § 23 (paragraph one). The Act goes on to provide that the Committee may "vacate" the local decision, "direct" the local board to issue a permit, and "order [the] board modify or remove" conditions, provided it does not "issue any order" that would permit unsafe housing. The Comprehensive Permit Law also states that the "orders of the committee" may be enforced in the Superior Court. G.L. c. 40B, § 23 (paragraph two).

Although the Act does not expressly empower the Committee to hear or resolve disputes arising after, and relating to, the issuance of a comprehensive permit, it is axiomatic that “[a]n agency’s powers are shaped by its organic statute taken as a whole and need not necessarily be traced to specific words.” *Commonwealth v. Cerveny*, 373 Mass. 345, 354 (1977). “Powers granted include those necessarily or reasonably implied.” *Grocery Mfrs. of America, Inc. v. Department of Pub. Health*, 379 Mass. 70, 75 (1979). Where there is “a gap in the statute, the details of legislative policy are to be spelled out ‘in the first instance by [the] agency charged with administration of the statute.’” *Zoning Bd. of Appeals of Amesbury v. Housing Appeals Committee*, 457 Mass. 748, 759 (2010). “The discretion granted to an administrative agency is ‘particularly broad when [the] agency is concerned with fashioning remedies and setting enforcement policy.’” See *Boston Preservation Alliance, Inc. v. Secretary of Environmental Affairs & others*, 396 Mass. 489, 498 (1986) (quoting *Greater Boston Television Corp. v. FCC*, 444 F.2d 841, 857 (D.C. Cir. 1970), cert. denied, 403 U.S. 923 (1971)). A primary purpose of the Act is to remedy inappropriate local barriers to the construction of affordable housing. The Committee’s power to address matters of dispute arising after the issuance of a comprehensive permit is necessary to achieve the intent of the Act.

The Act’s implementing regulations expressly confirm that the Committee’s jurisdiction extends to post-permit matters, and includes the authority to “extend any [expiration] date.” 760 CMR 56.05(12)(c). The regulations further state that “[a]fter the issuance of a comprehensive permit, the Committee may issue such orders as may aid in the enforcement of its decision” 760 CMR 56.07(6).

For these reasons, the Committee has jurisdiction to act on this appeal. We turn now to the substance of Appellant’s claim.

IV. STANDARD FOR SUMMARY DECISION

In this case, the parties have made cross motions for summary decision based on the pleadings and affidavits filed with their respective cross motions for summary decision. According to our regulations, a motion for summary decision “shall be made if the record before the Committee, together with the affidavits (if any), shows that there is no genuine issue as to any material fact and that the moving party is entitled to a decision in its favor as

a matter of law.” 760 CMR 56.06(5)(d). Appellant has affirmed that there are no material facts in dispute. *See* Appellant’s Motion for Summary Decision at p. 1. The Board filed a Cross-Motion for Summary Decision and/or Dismissal, indicating that it agrees that no material facts are in dispute. Upon a review of the record, we agree that the resolution of the issues in dispute hinges solely on the interpretation and application of the Comprehensive Permit Law and its implementing regulations. Therefore, it is appropriate to resolve this matter by summary decision.

V. DECISION ON PERMIT EXTENSION

A. The Standard for Comprehensive Permit Extensions

The Comprehensive Permit Law’s implementing regulations expressly address the finality, duration, lapse and extension of comprehensive permits. The regulations provide a developer will have at least three years to start construction authorized by a comprehensive permit. 760 CMR 56.05(12)(c) (“[i]f construction authorized by a Comprehensive Permit has not begun within three years of the date on which the permit becomes final except for good cause, the permit shall lapse”). The three year period begins to run on the date when the comprehensive permit decision is filed with the municipal clerk; or if the permit is appealed, “on the date the last appeal is decided or otherwise disposed of” 760 CMR 56.05(12)(a). The Board or Committee may set a later date for lapse of the permit, and the Board or Committee may extend any such date. 760 CMR 56.05(12)(c).

When a developer requests an extension to a comprehensive permit, the standard for approval is liberal: the permit should not lapse when a developer has “good cause” for delaying the start of construction; moreover, a timely request for extension cannot be “unreasonably denied” by a local board. 760 CMR 56.05(12)(c). This Committee has interpreted and applied that standard in a number of different cases where the local board denied an extension. *See, e.g., Brewster Commons, LLC v. Duxbury Zoning Bd. of Appeals*, No. 10-08 (Mass. Housing Appeals Committee Dec. 12, 2011) (reversing local board’s denial of permit extension); *Delphic Assoc., LLC v. Duxbury Zoning Bd. of Appeals*, No. 03-08 (Mass. Housing Appeals Committee Sept. 14, 2010 (holding that comprehensive permit did not lapse and reversing local board’s extension denial);

Forestview Estates Assoc., Inc. v. Douglas, No. 05-13, (Mass. Housing Appeals Committee Mar. 25, 2007) (where developer requests extension after the comprehensive permit's expiration date, the extension cannot be granted); *Commons at Westwood, Inc. v. Westwood*, No. 89-47 (Mass. Housing Appeals Committee Jun. 20, 1990) (extension of construction deadline held to be an insubstantial change); *Red Gate Road Realty Tr. v. Tyngsborough*, No. 93-01 (Mass. Housing Appeals Committee Dec. 8, 1993) (local board's denial of permit extension was not consistent with local needs); *Albro/Southborough Limited Partnership v. Southborough*, No. 92-06 (Mass. Housing Appeals Committee Dec. 8, 1993) (denial of permit extension was not consistent with local needs).

There are at least two circumstances in which a requested extension may be properly denied. First, and most relevant here, a request for a permit extension must be denied if the request for an extension is made after the permit has lapsed. At that point the permit is no longer valid, and cannot be revived by the local board or the Committee. See *Forestview Estates Assoc., Inc. v. Douglas*, No. 05-13 (Mass. Housing Appeals Committee Mar. 25, 2007) (comprehensive permit expired when the developer was late filing a request for extension). In addition, a local board properly may refuse to extend a comprehensive permit when it can demonstrate both that a valid local concern justifies the denial of the extension, and that local concern outweighs the need for housing. This rationale for denying an extension typically requires the local board to present evidence showing "changed circumstances" that present a "heighten[ed] ... need for closure." *Brewster Commons, LLC v. Duxbury Zoning Bd. of Appeals*, No. 10-08, slip op. at 8 (Mass. Housing Appeals Committee Dec. 12, 2011) (local board failed to meet that burden).

In this case, it appears that the Board never considered the merits of the extension request—it simply claimed that the request came too late, and that the permit expired. The developer argues that the permit has not expired, and that the Board's failure to act on its request for extension amounts to a constructive approval of the extension. Resolving this dispute requires us to interpret and apply the Comprehensive Permit Law's implementing regulations to determine: (1) the permit's expiration date, (2) whether the developer's

extension request prevented the permit from lapsing, and (3) whether the request for extension was constructively approved due to the Board's failure to act on it. We take up each of these issues in turn.

B. The Comprehensive Permit's Expiration Date

As noted above, the Committee's decision stands in lieu of a comprehensive permit issued by the Board. The Committee's decision does not set forth any deadline for the start of construction or otherwise state a date on which the comprehensive permit would lapse. Where the decision itself is silent, the regulations dictate that construction must start within three years after the permit becomes "final," unless the permit is extended for good cause. 760 CMR 56.05(12)(c). As noted previously, the regulations state that a permit becomes "final" on the date that the "last appeal [was] decided or otherwise disposed of" 760 CMR 56.05(12)(a).

In this case, the Committee's decision was appealed to the Superior Court. The Superior Court issued a Memorandum of Decision upholding the Committee decision on June 1, 2009, and entered a Judgment of Dismissal on its docket on June 2, 2009. No further appeal was taken. Based on these undisputed facts, the parties reach different conclusions about when the comprehensive permit became final. The Board contends that the Committee decision was "final" on June 1, 2009 because the only appeal "[was] *decided* or otherwise disposed of" on that date. The developer contends that the appeal was not "*decided* or *otherwise disposed of*" until 60 days later (August 1, 2009), when the Board's right of further appeal expired.

The respective dates for which each party advocates are only sixty days apart, and for reasons that will be apparent in later sections of this decision, the sixty "extra" days urged by the developer are not critical to the outcome of this case. For purposes of this decision, the Committee will assume, without deciding, that the comprehensive permit became "final" on the earliest of these dates: June 1, 2009. From this assumption, it follows that the comprehensive permit would have lapsed on June 1, 2012, if construction was not commenced, if the permit was not extended, or if the developer did not take timely action to prevent the lapse of the permit, before that date.

C. The Effect of the Developer's Request for Extension

The regulations and prior Committee decisions make it clear that a comprehensive permit may be extended if and when a developer has “properly” requested an extension of the permit. *Red Gate Road Realty Trust v. Tyngsborough Zoning Bd. of Appeals*, No. 93-01, slip op. at 5 (Mass. Housing Appeals Committee Dec. 8, 1993). Taking into account the tolling that occurs when a developer is “purs[ing] or await[ing] the determination on appeal of another required permit,” 760 CMR 56.05(12)(c), “an affirmative extension beyond three years [must] be sought in a timely manner” *Forestview Estates Assoc., Inc., v. Douglas*, No. 05-23, slip op. at 8 (Mass. Housing Appeals Committee Mar. 5, 2007).

In this case, the parties disagree about whether the developer requested an extension in a timely manner, but the relevant facts are not disputed. Documents on record establish that the developer made a written request to extend the comprehensive permit in a letter dated May 25, 2012. That letter was delivered by hand and was stamped as received by the Board on May 29, 2012. The developer claims that his request was proper and timely because the request for extension was made before the third anniversary of the final disposition of the Superior Court case. The Board, on the other hand, argues that the developer was required by local rules and procedures to file its request more than 30 days *earlier* than that date.¹

The Act's implementing regulations do not state expressly when a request for extension must be filed in order to be timely. Where the statute and regulations are silent on a procedural matter, this Committee may fill in the gaps. We have heard numerous other cases where the timeliness of a requested extension was in dispute. In one of these prior decisions, we ruled that a request for an extension made after the permit's expiration date was not timely. *See Forestview Estates Assoc., Inc.*, No. 05-23, slip op. at 10. In another, it was simply presumed by the parties that a permit extension request would be untimely if made after the date on which the permit was due to expire. *See Delphic Assoc., LLC*, No. 03-08, slip op. at 6. Those rulings imply that an extension request *is* timely if it

1. According to the Board, the developer should have made his request at least 30 days prior to the last Board meeting before the comprehensive permit's expiration date. The last such meeting date was May 24, 2012, making the deadline, according to the Board, April 27, 2012.

is made on or before the date on which the permit otherwise would expire. We expressly adopt that rule today.

This rule is consistent with the purpose of the Comprehensive Permit Law, which is to streamline the permitting process for affordable housing. It also is consistent with other, similar permitting schemes, including the extension of variances under Chapter 40A. *See* G.L. c. 40A, § 10 (variances are valid for one year but may be extended provided that “the application for extension is *filed* ... prior to the expiration of such one year period”) (emphasis added).² The alternative approach advocated by the Board would establish a moving deadline tied to the date on which the Board next meets, and the date on which the Board prefers to have written materials submitted in advance of a meeting. Such a rule would render the extension process subject to the scheduling preferences and internal policies of every individual zoning board of appeals, introducing a measure of procedural complexity that is unwarranted given the statute’s mandate to simplify and streamline the permitting process.³

2. In its original brief, the Board misstated the law on this point, claiming incorrectly that “[a]n applicant seeking extension of a variance or a special permit must *obtain* an extension of the variance or special permit prior to its lapse.” Board Opposition at p. 12 (emphasis added). The Board did not cite to any authority to support this statement, other than an affidavit of a local building official, and apparently overlooked the statutory language. The rule applicable to special permits issued under G.L. c. 40A § 9 is likely the same; at least one court has held that a request to extend a special permit is not timely if the request is made after the date on which the permit lapses. *See, e.g., Milton Legion Post No. 114 v. Alves*, 19 Mass Land Ct. Rptr. 311 (Mass. Land Ct. June 6, 2011) (special permit expired, and could not be renewed, where the application for renewal was not made until nine months after the five-year expiration date stated in the permit); *but compare Woods v. City of Newton*, 351 Mass. 98, 103 (1966) (special permit could be renewed after expiration where such extension was expressly authorized by the zoning ordinance, and where court found that delay caused by litigation should not prejudice a party who prevailed in the litigation). These cases imply, without squarely addressing or expressly holding, that a request for extension of a special permit is timely if it is made before the permit expires.

3. Some permit schemes require an application for extension to be filed some designated period of time prior to the permit’s expiration date. But the applicable deadlines typically are established by uniform regulation, apply to all permit holders regardless of their geographic location, and do not vary based the permit issuing authority’s meeting schedule. *See, e.g.,* 310 CMR 10.05(8)(a) (request to extend an order of conditions issued under the Massachusetts Wetlands Protection Act must be made to the issuing authority at least 30 days prior to expiration of the order, regardless of the local conservation commission’s meeting schedule); 40 C.F.R. 122.21(d)(2)-(3) (request to renew a wastewater discharge permit issued under the federal Clean Water Act must be filed not later than 180 days prior to the permit’s expiration, or later approved date, but not later than the permit expiration date). The Board’s reliance on a case dealing with a

The local rules cited by the Board do not compel a different result, for at least two reasons. First, the local rules do not, in our view, say what the Board claims they say. Like the state regulations, the local rules do not clearly and specifically address when a request for extension of a permit must be submitted. The most relevant section of the local rules entitled “Amendments to Approved Permits,” says only that a request for a change in a permit, presumably including an extension, must be made “promptly” and “in writing.” Amesbury Zoning Board of Appeals Comprehensive Permit Rules, § 5.04(1). There is no mention of any specific timeframe, nor is there any reference to the Board’s meeting schedule. The Board’s brief does not cite to this section of the local rules.

Instead, the Board relies on filing deadlines that apply to petitions for variances, applications for special permits, and notices of appeal. While it is true that the local comprehensive permit rules state that “the Board’s general rules for conduct of hearings under G.L. c. 40A apply to comprehensive permit applications,” that reference is not material here: this case involves a request for extension, not a “comprehensive permit application.” The difference is significant: all comprehensive permit applications require a public hearing, whereas a request for extension is almost always a ministerial matter resolved *without* a public hearing.⁴ It is not reasonable to interpret rules governing public hearing procedures to apply to an action that ordinarily will not require a public hearing.

Second, and perhaps more importantly, the Board improperly has stretched to interpret its procedural rules in a manner intended to frustrate, rather than facilitate, the construction of affordable housing. While local boards have the authority to adopt their own procedural rules for local hearings, the local rules must be consistent with the state regulations, and must be consistent with the Act’s purpose to overcome regulatory barriers to the development of needed housing. 760 CMR 56.05(1); *see also* Amesbury Zoning Board of Appeals Comprehensive Permit Rules, § 1 (“the purpose ... of these rules is to

request for an extension of an order of conditions, *Cahaly v. Falmouth Conservation Comm’n*, 2006 WL 4119670 (Mass. Super. Ct. Sept. 26, 2006), is misplaced because that case involved a request for extension that was clearly filed after the regulatory deadline; it did not deal, as this case does, with the issue of how to determine the deadline.

4. Public hearings are required only when a proposed modification is a “substantial change.” 760 CMR 56.05(11)(c). According to the regulations, “[e]xtension of a permit shall not, by itself, constitute a substantial change.” 760 CMR 56.05(12)(c).

facilitate the development of affordable housing”). The Committee has the express authority to determine that a particular local rule is not consistent with the Act and its implementing regulations. 760 CMR 56.05(1). Here, we find that the policy goal of streamlining the permitting process for affordable housing is best served by a consistent and clear rule on extension requests; and that the Board’s interpretation and application of its local rules is not consistent with that goal, nor with the procedures for renewing comprehensive permits as clarified today by the Committee.

For these reasons, the Committee concludes that the developer made a timely request for extension of the permit, and that the permit has not lapsed or expired.

D. The Effect of the Board’s Failure to Act on the Request for Extension

Because the extension request was timely, and prevented the permit from expiring, we turn now to the developer’s argument that the Board’s failure to act on the request for an extension within 20 days should be deemed to be a constructive approval of the extension. The developer relies on the regulation stating that a local board of appeals must respond to a notice of proposed change to comprehensive permit project within 20 days. *See* 760 CMR 56.05(11)(b).

The regulations and the Committee treat a request for extension of the permit as a request for a modification to the project. *See Medfield North Meadows LLC v. Medfield Zoning Bd. of Appeals*, No. 12-01, slip op. at 5 (Mass. Housing Appeals Committee Sept 10, 2012) (“an extension request is a [request for] modification under 760 CMR 56.05(11)”; 760 CMR 56.05(12)(c) (an extension “shall not, by itself, constitute a substantial change....”); *see also Commons at Westwood, Inc. v. Westwood Zoning Bd. of Appeals*, No. 89-47, slip op. at 2-3 (Mass. Housing Appeals Committee June 20, 1990). The regulations require that every local board must respond to a request for project modifications within 20 days, with a preliminary determination of whether the change is “substantial” or “insubstantial.” Where the board fails to act in that timeframe, the change is deemed constructively approved. 760 CMR 56.05(11).

We recently decided a case presenting a similar issue. In *Medfield North Meadows*, a developer requested an extension of its comprehensive permit. The local board considered the request and voted to deny the extension. However, due to scheduling

difficulties that board did not take this vote until the twenty-first day after receiving the request—one day too late. In those circumstances, we found that the local board's failure to act on an extension within 20 days meant that the extension was constructively granted. We recognized this was a "harsh" result, but one that was "nondiscretionary if the town has failed to meet the regulatory deadline."⁵ *Medfield North Meadows*, slip op. at 7.

This case is distinguishable from *Medfield North Meadows* in some ways. As the Board correctly points out, the developer in *Medfield North Meadows* requested an extension more than 30 days in advance of the permit expiration date. The Medfield board had no basis to argue, as this Board does, that the developer somehow acted in a dilatory manner. That distinction does not help the Board, given our conclusion that the developer's extension request was timely. Another difference between that case and this one is that in *Medfield North Meadows*, the developer's representative expressly cited to the regulation dealing with substantial change in its written request for an extension. By doing so, that developer put the local board on notice that it expected a decision within 20 days. In this case, the developer's representative simply requested an extension, as well as a meeting with the Board, without describing the extension as a "change" to the project, or referring to any deadline for responding. While we are sympathetic to the possibility that a local board's clerk might receive an extension request without realizing the need for a prompt response, we must hold all local boards responsible for knowing the regulatory requirements, and implementing procedures to comply with them. Accordingly, we do not view these distinctions as causing the equities of the case to lean in favor of the Board.

Our past rulings make it clear that failure to timely respond to a request for extension ordinarily will result in constructive approval. We have yet to acknowledge any exceptions to that rule. All local boards are held to the same twenty day standard, regardless of their meeting schedule. This standard requires prompt action on the part of local boards, but it is procedurally acceptable precisely because a local board is not required to respond with a final decision. The local board only needs to make a preliminary determination about whether the extension, if granted, would be a "substantial"

5. We note, however, that the constructive grant of an *extension* of a permit is considerably less harsh than a constructive grant of a permit, which can occur when a local board fails to open a hearing or close a hearing within the applicable regulatory timeframes. See 760 CMR 56.06(5)(b)4 and 56.07(5)(d).

change to the project. If the local board wants to consider the issue more carefully than it is able to do in 20 days, all it needs to do is inform the applicant the change is substantial, and then schedule a public hearing.

In this case, upon receipt of the extension request, the Board could have proceeded in a number of different ways. It could have called a special meeting to consider the merits of the request, as the Board notes in its brief. We agree that the Board is not required to go to such lengths—but we also think there was no need to. The Board simply could have determined that the extension is an insubstantial change; or, if it felt that there was too little information to make such a determination, it alternatively could have responded with a determination that the extension is a substantial change. That action would have allowed the Board to schedule a public hearing so the merits of an extension could be considered more carefully, and on a schedule set by the Board. While this approach would require the Board to take some action before its next scheduled meeting, it is exactly the same kind of prompt action that the regulations require of all local boards, regardless of their procedural customs or meeting schedules, when presented with a request for any modification.

In this case, the Board chose a third option: do nothing.⁶ The Board presumably knew, or should have known, that failing to respond within 20 days would lead to constructive approval of the requested extension. The Board also is charged with knowing that constructive approval is non-discretionary once the 20 day period has elapsed. *See Medfield North Meadows*, slip op. at 7. Accordingly, the developer's motion for summary decision on this issue is allowed.

VI. DECISION ON PERMIT CONDITIONS

Because the Committee determines that the comprehensive permit is still valid, we turn now to the developer's request for "clarification" of the permit conditions. The Board's original decision imposed on the developer an extraordinary number of conditions—approximately one hundred. This Committee previously found that a number

6. The record is not clear why the City Director of Community and Economic Development responded to the extension request. He had no jurisdiction to act on the request, and his letter does not constitute an action of the Board. The Board did vote to deny the extension at a meeting held on June 28, 2011, well after the 20 days allowed by regulation.

of those conditions were ambiguous, unnecessary or improper. We also found that a number of conditions required subsequent submissions and approvals, undermining the purpose of a single, expeditious comprehensive permit. Our decision ordered that certain conditions be stricken from the Board's decision, and it added some supplementary conditions in their place. Our decision states expressly that the project "shall conform to the application submitted to the Board and the Board's decision except as provided in this decision." Accordingly, the conditions applicable to the project can be found within the four corners of the Board's decision and the Committee's decision.

The developer has not alleged there to be an actual dispute with the Board about how particular conditions should be interpreted and applied to the project. Unless such a dispute arises, there is no need for the Committee "clarify" its past decision. Accordingly, the developer's request for such clarification is denied.

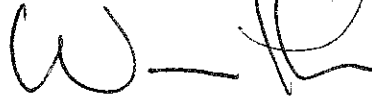
VII. CONCLUSION AND ORDER

For the reasons set forth above, the Committee allows the developer's motion for summary decision in part, and denies it in part; the Board's cross-motion for summary decision similarly is allowed in part and denied in part. We more specifically conclude as follows:

1. The comprehensive permit has not lapsed and remains valid and effective.
2. The Board's failure to act on the request for extension within 20 days constitutes a constructive approval of the extension. Because the developer did not request an extension for a specific period of time, the extension shall be for a period of one year from the date of this decision, unless further extended by the Board or the Committee.
3. The project shall comply with the conditions in the Board's decision, as such conditions have been modified or deleted by the Committee's decision, and with the supplementary conditions stated in the Committee's decision. If there is a conflict or contradiction between the Board's decision and the Committee's decision, the Committee's decision shall govern.

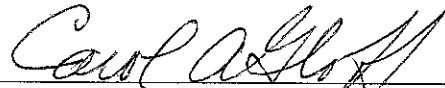
The Committee shall retain jurisdiction to ensure that the comprehensive permit conditions are implemented properly and to resolve any actual dispute about the application of any one or more specific conditions.

HOUSING APPEALS COMMITTEE

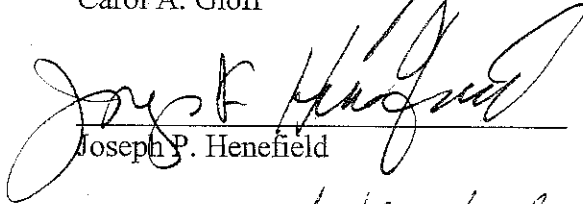


Werner Lohe, Chairman

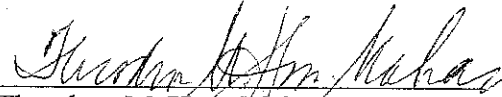
Date: January 14, 2013



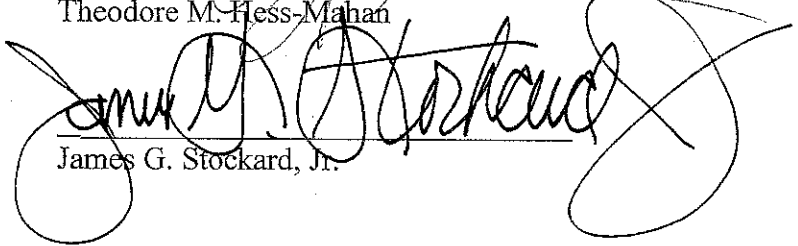
Carol A. Gloff



Joseph P. Henefield



Theodore M. Hess-Mahan



James G. Stockard, Jr.

Jonathan M. Cosco
Counsel and Hearing Officer