

COMMONWEALTH OF MASSACHUSETTS
HOUSING APPEALS COMMITTEE

DELPHIC ASSOCIATES, LLC)
Appellant)

v.)

MIDDLEBOROUGH ZONING BOARD)
OF APPEALS,)
Appellee)

No. 00-13

RULING REGARDING ENFORCEMENT OF DECISION

As noted by the presiding officer in his Enforcement Order of December 20, 2010, the approval process for the affordable housing development that is the subject of this matter has been protracted. And, although the substantive issues were resolved five years ago by the Supreme Judicial Court in *Town of Middleborough v. Housing Appeals Committee*, 449 Mass. 514 (2007), this case raises issues of first impression, under 760 CMR 56.07(6), with regard to the enforcement of the Committee's decision, which ordered issuance of a comprehensive permit. That is, this is the first time in the forty-three-year history of the Comprehensive Permit Law that the developer, after unsuccessful negotiations with local officials and appearances before the local board of appeals, has applied to the Committee asking it to actually endorse plans for recording and issue building permits. The presiding officer, in order to remove any doubt about our view with regard to the scope of a presiding officer's enforcement authority under 760 CMR 56.06(7)(e)(2), has brought that question before the full Committee.

Despite the unusual circumstances of this case, the relief requested and the actions required are largely practical, mechanical matters,¹ rather than questions of law or policy. Thus, they fit squarely within the powers authorized in 760 CMR 56.06(7)(e)(2), which provides, “The presiding officer shall have all those powers conferred upon the Committee for the conduct of a hearing, except that he or she shall not be empowered to make any decisions that would finally determine the proceedings, except... with regard to the enforcement of decisions of the Committee....” Therefore, we hereby rule that in this matter, and similar enforcement matters that may arise in the future, the presiding officer has full authority, without further consultation with the full Committee, to issue such orders, take such actions, and execute such documents on behalf of the Committee and any and all local officials as may be necessary to enforce the decision of the Committee. In doing so, he shall, in his discretion, give deference where possible to local procedures, and, if practical, to such local officials as cooperate in good faith in the permitting process.

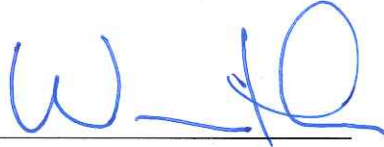
The Board also requested oral argument before the full Committee. As we have done in previous cases, we deny the request, and note that we rely upon the discretion of the presiding officer to bring matters to our attention when consideration by the full Committee is desirable, but not required by law or regulation. See *Sugarbush Meadow, LLC v. Sunderland*, No. 08-02, slip op. at 2, n.1 (Mass. Housing Appeals Committee Jun. 21, 2010), *aff'd* 464 Mass. 166 (2013); *LeBlanc v. Amesbury*, No. 06-08, slip op. at 2, n.4 (Mass. Housing Appeals Committee May 12, 2008); *Tiffany Hill, Inc. v. Norwell*, No. 04-15, slip op. at 4 (Mass. Housing Appeals Committee Sep. 18, 2007). Concerning practical considerations which limit the full Committee’s ability to hear evidence and argument, see *Wilmington Arboretum Apts. Assoc. Ltd. Partnership v. Wilmington*,

1. They are not, however, merely ministerial; rather, they require careful exercise of discretion.

No. 87-17, slip op. at 3, n.2 (Mass. Housing Appeals Committee Order Sep. 28, 1992),
aff'd, 39 Mass. App. Ct. 1106 (1995)(rescript).

February ²⁷~~26~~, 2013

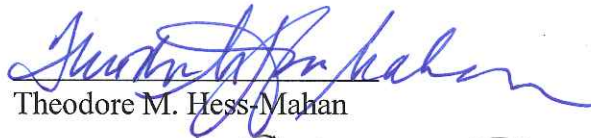
Housing Appeals Committee



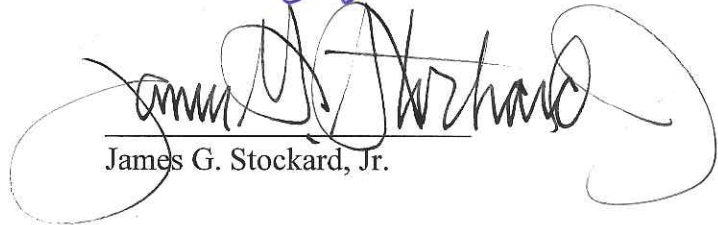
Werner Lohe, Chairman



Carol A. Gloff



Theodore M. Hess-Mahan



James G. Stockard, Jr.