

## **STATE HOUSING APPEALS BOARD**

**44 Washington Street**

**Providence, Rhode Island 02903**

**Phone - (401) 457-1285**

**Fax – (401) 457-1140**

**e-mail: [jjones@rihousing.com](mailto:jjones@rihousing.com)**

### **Minutes of the June 29, 2004 Board Meeting**

**The June 29, 2004 meeting of the State Housing Appeals Board (SHAB) was called to order at 2:15 PM in the Council Chambers at Pawtucket City Hall, 137 Roosevelt Avenue, Pawtucket, Rhode Island by Judge Stephen Erickson, Chair. Board members in attendance were Judge Stephen Erickson, Richard Godfrey, Donald Goodrich, Charles Maynard, John O'Brien, Steve Ostiguy, and Dr. Isadore Ramos. Board members Mr. Frank Giorgio III and Thomas Hodge were not present. Also present were Steven Richard, Esq. and William Dolan, Esq., legal counsel to the Board, and Judy Jones and Christine DaRocha, administrative staff to the Board. With seven members present, Judge Erickson declared a quorum.**

**Mr. Godfrey moved and Mr. Goodrich seconded the motion to approve the minutes of the April 20, 2004 Board meeting. The motion was approved unanimously with Judge Stephen Erickson, Richard Godfrey, Donald Goodrich, Charles Maynard, John O'Brien, Steve**

**Ostiguy, and Dr. Isadore Ramos voting in the affirmative.**

## **Report on housing legislation**

**Board members reviewed and discussed a timeline chart and a summary of the provisions of 2004-H8574A and 2004-S3148A, An Act Relating to Housing, and the impact of the legislation on the work of the State Housing Appeals Board. The Board must determine on December 1, 2004 the substantial completeness of comprehensive permit applications appealed to the Board because of the moratorium; process appeals for which the Board took jurisdiction on or before May 1, 2004; and process any nonprofit appeals that come before the Board between now and December 31, 2004. At some point, the Board may have to evaluate its capacity to bring appeals to full closure by December 31, 2004.**

## **Supreme Court Order/Highland Hills**

**The Supreme Court was asked to consolidate two sets of appeals before it on the Highland Hills, LLC vs. the Town of Cumberland decision. The Town and abutters appealed the decision of the zoning board; the developer appealed the decision of the State Housing Appeals Board. The Supreme Court denied the request to consolidate the appeals, but will hear the appeals on the same day. Mr. Richard will monitor the Supreme Court proceedings and report back to the Board.**

## **Discussion of pending appeals under the new statute (Appeals Nos. 2004-03 through 2004-17)**

**Judge Erickson explained that the Board voted not to take jurisdiction of these appeals and deferred any action on them until the Board's first meeting in June or the enactment of a new housing act, whichever came first. These appeals are now before the Board. The legislation charges the Board with ruling on December 1, 2004 on the substantial completeness of the comprehensive permit application associated with each of these appeals.**

**Mr. Richard said that the process would be streamlined if counsel could confer and identify areas of agreement on substantial completeness and identify all unresolved issues for the Board to resolve. If the parties contest the determination of substantial completeness at this meeting, counsel for the zoning board can waive notice to the town. Counsel also may request that the town receive notice regarding the determination of substantial completeness. Judge Erickson said that any attorney from a municipality should be representing the zoning board.**

**Appeal No. 2004-03 E.G. Land Company, LLC vs. the Town of East Greenwich ZBR**

**William Landry, Esq. represents the appellant, and Peter Clarkin, Esq. represents the Zoning Board of Review. Counsel acknowledged that**

**they differ on the determination of substantial completeness of the comprehensive permit application, and the zoning board waives notice.**

**Appeal No. 2004-04 Clarks Falls Realty, LLC vs. the Town of Hopkinton ZBR**

**William Landry, Esq. represents the appellant, and Michelle Buck, Esq. represents the Zoning Board of Review. Counsel acknowledged that they differ on the determination of substantial completeness of the comprehensive permit application, and the zoning board waives notice.**

**Note: Mr. Richard recused himself from the next appeal (2004-05), and Mr. Dolan took his place as legal counsel to the SHAB.**

**Appeal No. 2004-05 New Harbor Village, LLC vs. the Town of New Shoreham ZBR**

**Joshua Berlinsky, Esq. represents the appellant, and Donald Packer, Esq. represents the Zoning Board of Review. Mr. Packer requested notice to the zoning board.**

**Appeal No. 2004-06 EFC Construction Company vs. the Town of Charlestown ZBR**

**William Landry, Esq. represents the appellant. Christopher Zangari, Esq., legal counsel for the Zoning Board of Review, was not present. The zoning board will receive notice.**

**Mr. Richard asked Mr. Landry if this appeal is part of the pending federal litigation. Mr. Landry said that it is; however, the new state law seems to have taken care of the issues raised in federal court.**

**Appeal No. 2004-07 The Dolben Company vs. the Town of Johnston  
ZBR**

**David Igliozzi, Esq. represents the appellant. James Howe, Esq., legal counsel for the Zoning Board of Review, was not present. The zoning board will receive notice.**

**Appeal No. 2004-08 Block Island Housing, Inc. vs. the Town of New Shoreham ZBR**

**David Igliozzi, Esq. represents the appellant, and Donald Packer, Esq. represents the Zoning Board of Review. Mr. Packer requested notice to the zoning board.**

**Appeal No. 2004-09 Essex Affordable Housing Associates, LLC vs. the Town of**

**Westerly ZBR**

**William Landry, Esq. represents the appellant, and John Payne, Esq. represents the Zoning Board of Review and the Planning Board. Mr. Payne requested notice to the zoning board.**

**Appeal No. 2004-10 Smithfield Hills, LLC vs. the Town of Smithfield  
ZBR**

**Gregory Benik, Esq. represents the appellant, and Edmund Alves, Esq. represents the Zoning Board of Review. Mr. Alves requested notice to the zoning board. (This appeal is part of the pending federal litigation.)**

**Note: Mr. Richard recused himself from the next appeal (2004-11), and Mr. Dolan took his place as legal counsel to the SHAB.**

**Appeal No. 2004-11 Churchill & Banks, LLC vs. the Town of Smithfield  
ZBR**

**Joshua Berlinsky, Esq. represents the appellant, and Edmund Alves, Esq. represents the Zoning Board of Review. Mr. Alves requested notice to the zoning board.**

**Appeal No. 2004-12 Pascoag Apartment Associates, LLC and  
Yorkshire Properties vs. the Town of Burrillville ZBR**

**William Landry, Esq. represents the appellant, and Patrick Dougherty, Esq. represents the Zoning Board of Review. Mr. Dougherty requested notice to the zoning board.**

**Appeal No. 2004-13 Crystal Lake Builders, LLC vs. the Town of  
Burrillville ZBR**

**William Landry, Esq. represents the appellant, and Patrick Dougherty, Esq. represents the Zoning Board of Review. Mr. Dougherty requested notice to the zoning board.**

**Appeal No. 2004-14 East Avenue Development Realty, LLC vs. the  
Town of  
Burrillville ZBR**

**William Landry, Esq. represents the appellant, and Patrick Dougherty,  
Esq. represents the Zoning Board of Review. Mr. Dougherty  
requested notice to the zoning board.**

**Appeal No. 2004-15 Armand Cortelleso dba Patriot Homes vs. the  
Town of  
Smithfield ZBR**

**David Igliozzi, Esq. represents the appellant, and Edmund Alves, Esq.  
represents the Zoning Board of Review. Mr. Alves requested notice  
to the zoning board.**

**Appeal No. 2004-16 Crown Properties, LLC vs. the Town of Smithfield  
ZBR**

**David Igliozzi, Esq. represents the appellant, and Edmund Alves, Esq.  
represents the Zoning Board of Review. Mr. Alves requested notice  
to the zoning board.**

**Appeal No. 2004-17 West Reservoir, LLC vs. the Town of Smithfield  
ZBR**

**Gregory Benik, Esq. represents the appellant, and Edmund Alves,  
Esq. represents the Zoning Board of Review. Mr. Alves requested  
notice to the zoning board. (This appeal is part of the pending federal  
litigation.)**

**Judge Erickson noted that the SHAB will rule on all of these applications on December 1, 2004.**

**Note: Mr. Maynard left the meeting at 3:00 PM.**

**Appeal No. 2003-07 Agostinelli vs. the Town of Narragansett ZBR  
David Iglizzi, Esq. represents the appellant, and Mark McSally, Esq. represents the Town of Narragansett Zoning Board of Review.**

**Mr. Goodrich reminded the Board that he has recused himself from participation in this appeal, leaving five members sitting on this appeal at this meeting.**

**There was a pre-hearing conference, acceptance of jurisdiction, and a deferral of further action until this meeting. Mr. Iglizzi said that he may submit a preliminary motion to add additional evidence. Counsel agreed to a briefing schedule of 25 days/30days/10 days.**

**Appeal No. 2003-08 JCM, LLC vs. the Town of Cumberland ZBR  
Anthony DeSisto, Esq. represents the appellant, and Richard Kirby, Esq. represents the zoning board. (Mr. Kirby was at this meeting initially, but could not stay to appear before the Board. He consulted with Judge Erickson and other counsel regarding the timing in the**

**appeal.) J. William Harsch, Esq. also appeared before the Board in anticipation of moving to intervene on behalf of abutters.**

**There was a pre-hearing conference, acceptance of jurisdiction, and a deferral of further action until this meeting. Counsel agreed to a briefing schedule of 20days/20days/5 days.**

**Mr. Harsch moved to intervene on behalf of nine abutters. Neither the appellant nor the Town had an objection to the intervention. Mr. Godfrey moved and Mr. Goodrich seconded the motion to allow intervention as proposed in the motion submitted by Mr. Harsch. The motion was approved unanimously with Judge Stephen Erickson, Richard Godfrey, Donald Goodrich, John O'Brien, Steve Ostiguy, and Dr. Isadore Ramos voting in the affirmative.**

**Appeal No. 2004-01 Deer Brook Development Corporation vs. the Town of Exeter ZBR**

**Scott Spear, Esq. represents the appellant, and Stephen Brouillard, Esq. represents the zoning board.**

**There was a pre-hearing conference, acceptance of jurisdiction, and a deferral of further action until this meeting. Counsel agreed to a briefing schedule of 25days/30days/5 days.**

**There was litigation in Superior Court involving this appeal, which the new housing law now resolves.**

**Appeal No. 2004-02 Boyd Brook Partners, LLC vs. the Town of Coventry ZBR**

**G. John Gazerro, Esq. and John Pagliarini, Esq. represent the appellant, and Frederick Tobin, Esq. represents the zoning board. J. William Harsch also appeared before the Board in anticipation of moving to intervene on behalf of abutters.**

**There was a pre-hearing conference, acceptance of jurisdiction, and a deferral of further action until this meeting.**

**The Town has submitted a motion to dismiss the appeal; the appellant has filed a motion objecting to the motion to dismiss. Mr. Harsch has submitted a motion to intervene on behalf of abutters; the appellant has filed a motion objecting to the intervention. Judge Erickson said that these motions would be deferred to the Board's next meeting.**

**A briefing schedule of 20 days/10 days on the motion to dismiss was agreed to by counsel, with the Town and Mr. Harsch submitting the initial briefs. Mr. Tobin said that he had no objection to the motion to intervene.**

**The Board recessed at 3:30 PM and resumed the meeting at 3:40 PM.**

**Appeal No. 2004-18 Spectrum Properties vs. the Town of Coventry**

**ZBR**

**William Landry, Esq. represents the appellant, and Patrick Sullivan, Esq. represents the zoning board.**

**The appeal was filed with the State Housing Appeals Board on April 23, 2004, and a pre-hearing conference was held on May 19, 2004. The comprehensive permit application had a full hearing at the zoning board level. The zoning board denied the application.**

**Judge Erickson cited the issue of jurisdiction: can the Board take jurisdiction of this appeal under the provisions of the new housing act? 2004-H8574A and 2004-S3148A authorize the State Housing Appeals Board to “[h]ear and decide appeals, other than those covered by subsection (1) above, for which it took jurisdiction on or before**

**May 1, 2004.” Because the Board had not taken jurisdiction of this appeal by May 1, 2004 and the General Assembly specifically established the May 1 deadline, this appeal may not fall within the new law’s timelines.**

**Mr. Landry said, that by filing the appeal of the denial on April 23, 2004, the appeal was perfected before May 1, 2004, and therefore, the Board has jurisdiction. He questioned the Board’s need to formally accept jurisdiction of any appeal. He argued that the law does not require the SHAB to have to vote to accept jurisdiction. He noted that there was a pre-hearing conference and that the appeal was assigned**

**a number.**

**Mr. Richard pointed out that it is a well-settled practice of the Board to formally vote to accept jurisdiction of an appeal. Mr. Landry said that the Board has jurisdiction over denials. Mr. Sullivan said that every tribunal takes jurisdiction over matters brought before them.**

**Counsel agreed to submit briefs on the jurisdictional issue on a schedule of 20days/10days with the Town submitting the initial brief.**

**Appeal No. 2004-19 East Bay Community Development Corporation vs. the Town of Barrington ZBR**

**Anthony DeSisto, Esq. represents the appellant, S. Paul Ryan represents the zoning board, and Dennis Grieco, Esq. was present for the Town.**

**Mr. Ryan asked if he could reserve the right to raise additional issues dealing with jurisdiction by referring to the prior statute vs. the new statute. He said that he would agree to a general briefing schedule now and alert the Board to any jurisdictional issues that he also may want to address.**

**Mr. DeSisto asked if additional evidence would be permitted. Judge Erickson said that could be addressed at the Board's next meeting.**

**Mr. Grieco said that he will meet soon with the Barrington Town**

**Council to determine what his role might be. The Town may want to intervene as an abutter.**

**Counsel agreed to a briefing schedule of 30days/25days/10 days. Mr. Ryan said that there is an extensive record and asked for additional time to make the copies requested by the Board.**

### **Next Board Meeting**

**The Board will meet on Wednesday, August 11, 2004 at 2:00 PM at a location to be determined.**

**The meeting adjourned at 4:15 PM.**

**Respectfully submitted,**

**Judge Stephen P. Erickson, Chair**