

STATE HOUSING APPEALS BOARD

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Minutes of the October 25, 2004 Board Meeting

The October 25, 2004 meeting of the State Housing Appeals Board (“SHAB” or “Board”) 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 P. Erickson, Chair. Board members in attendance Judge Stephen Erickson, Donald Goodrich, Thomas Hodge, Charles Maynard, Michael Milito (designee for Richard Godfrey), Steve Ostiguy, and Dr. Isadore Ramos. Board members Frank Giorgio III and John O’Brien were not present. Also present were Steven Richard, Esq., legal counsel to the Board, and Judy Jones and Christine DeRocha, administrative staff to the Board. With seven members present, Judge Erickson declared a quorum.

Mr. Milito moved and Mr. Ostiguy seconded the motion to approve the minutes of the September 20, 2004 Board meeting. The motion was approved unanimously with Judge Stephen Erickson, Donald Goodrich, Thomas Hodge, Charles Maynard, Michael Milito, Steve

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

Pending Decisions of the Board

Mr. Richard reported that the decisions for Appeal Nos. 2004-01, Deer Brook Development Corporation vs. the Town of Exeter Zoning Board of Review, and 2004-19, East Bay Development Corporation vs. the Town of Barrington Zoning Board of Review, will be adopted at the November 8 meeting of the Board.

Appeal No. 2003-07 Agostinelli vs. the Town of Narragansett Zoning Board of Review

Board member, Donald Goodrich reminded the Board that he previously recused himself from sitting on this appeal because he is the Chairman of the Narragansett Zoning Board of Review.

Mr. Agostinelli appeared pro se, and Mark McSally, Esq., represented the Town of Narragansett Zoning Board of Review.

SHAB heard oral arguments on the appeal of Joseph Agostinelli challenging the decision of the Town of Narragansett Zoning Board of Review, which denied Mr. Agostinelli's Application for a Comprehensive Permit pursuant to R.I.G.L. 45-53-1, et. seq. The full transcript of the oral arguments is maintained by SHAB and is a public record available upon request.

After completion of the oral arguments, Board members and Board legal counsel questioned the parties.

This appeal focused on two legal issues: whether the developer had proper evidence of a subsidy and whether the project is consistent with the Town's Comprehensive Plan and local needs. In its decision, the Zoning Board made no findings of fact.

Regarding the two legal issues, the SHAB found that the developer properly presented evidence of a letter of eligibility for a subsidy and that the application of the merger ordinance was not reasonable in light of the state and local need for low and moderate income housing.

Mr. Ostiguy moved and Mr. Hodge seconded the motion to vacate the decision of the Narragansett Zoning Board of Review and remand the Application back to the Zoning Board for the issuance of a comprehensive permit. The motion was approved unanimously with Judge Stephen Erickson, Thomas Hodge, Charles Maynard, Michael Milito, Steve Ostiguy, and Dr. Isadore Ramos voting in the affirmative.

The Board recessed from 3:20 to 3:30 PM.

When the Board re-convened, Judge Erickson noted for the record that Dr. Ramos was no longer in attendance and that Mr. Goodrich was now sitting as a member of the Board.

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

Zoning Board of Review

Legal counsel for the parties were William Landry, Esq., for Spectrum Properties and Patrick Sullivan, Esq. for the Town of Coventry Zoning Board of Review.

SHAB heard oral arguments on the appeal of Spectrum Properties challenging the decision of the Town of Coventry Zoning Board of Review, which denied an Application for a Comprehensive Permit pursuant to R.I.G.L. 45-53-1, et. seq. The full transcript of the oral arguments is maintained by SHAB and is a public record available upon request.

After completion of the oral arguments, Board members and Board legal counsel questioned the parties. The appeal focused on three issues: density, tapering of a roadway from thirty feet to twenty-four feet, and the Town's requirement for a cash bond.

Judge Erickson noted for the record that the Town of Coventry is making an effort to respond to the need for low and moderate income housing. The Town is currently working on the development of its affordable housing plan and has added several affordable housing developments over the past several years.

Mr. Milito moved and Mr. Goodrich seconded the motion to vacate the decision of the Coventry Zoning Board and remand the Application back to the Zoning Board for the issuance of a comprehensive permit

subject to approval of all the required local, state, and federal permits.

In discussing the motion, Judge Erickson said that the evidence does not support the Zoning Board's findings. He said that the Town's right to create zones and designate them in the Comprehensive Plan is legitimate. If these were 100% market-rate homes, the Superior Court would uphold the denial by the Zoning Board. Therefore, what is it about this project that makes the zoning standards subject to reversal? It is the need to balance the zoning against factors, such as the state and local need for affordable housing. When that is done, there is a different outcome. The findings focused on details, without addressing why the project, on balance, should not be approved.

For example, density is a common issue when developing affordable housing; the need to reduce land costs requires a density bonus. If the structures to be built were large or the density all out of proportion to the surrounding neighborhood, the decision to deny would be obvious. But those conditions do not apply in this situation, and there are no other neighborhood issues.

Mr. Goodrich suggested that the developer post a cash bond, and the Town allow the developer to draw down on the bonded funds as the contractor finishes the work.

Since the amended Low and Moderate Income Housing Act now

allows the SHAB to approve an application with “various conditions consistent with local needs” (R.I.G.L. 45-54-6 (d)), Mr. Goodrich moved and Mr. Milito seconded the motion to provide for a cash bond with drawdown provisions to be negotiated between the parties with respect to specific drawdowns. The motion was approved unanimously with Judge Stephen Erickson, Donald Goodrich, Thomas Hodge, Charles Maynard, Michael Milito, and Steve Ostiguy voting in the affirmative.

Mr. Hodge moved and Mr. Milito seconded the motion to approve the Application subject to the establishment of a second means of access to the development in the southerly direction. The motion was approved unanimously with Judge Stephen Erickson, Donald Goodrich, Thomas Hodge, Charles Maynard, Michael Milito, and Steve Ostiguy voting in the affirmative.

Mr. Hodge said he was concerned that the granting of a higher density to accommodate the 95 units of housing produced only 19 units of affordable housing. He questioned whether developing only 20% of a project as affordable housing was really meeting the goal of increasing the affordable housing stock. He asked if the Board could, as a condition of approval, increase the percentage of affordable housing. Mr. Maynard said that he shared the concerns of Mr. Hodge.

In response to Mr. Hodge’s suggestion, Mr. Richard said that the

SHAB should only impose conditions based on record evidence, not policy issues. The discussion of a higher percentage of affordable housing in the context of this appeal is a philosophical one. Judge Erickson said that the required percentage of affordable housing in a development is a significant issue that the Board has not addressed. In light of the requirements placed on the towns by the comprehensive permit application process, the percentage of affordable housing that results is a valid concern. Mr. Ostiguy noted that a Town could negotiate with a developer for a higher percentage of affordable housing in a proposal.

The amended motion to vacate the decision of the Town of Coventry Zoning Board of Review was passed on a vote of 5-1 with Judge Stephen Erickson, Donald Goodrich, Charles Maynard, Michael Milito, and Steve Ostiguy voting in the affirmative and Thomas Hodge voting in the negative.

Mr. Goodrich moved and Mr. Maynard seconded the motion that SHAB retain jurisdiction over the appeal. The motion was passed on a vote of 5-1 with Judge Stephen Erickson, Donald Goodrich, Thomas Hodge, Charles Maynard, Michael Milito, and voting in the affirmative, and Steve Ostiguy voting in the negative.

Next Board Meeting

The Board will meet on Monday, November 8, 2004 at 2:00 PM in the Council Chambers at Pawtucket City Hall to begin the review to

determine the substantial completeness of seventeen comprehensive applications appealed to the Board.

The Board adjourned at 5:45 PM.

Respectfully submitted,

Judge Stephen P. Erickson, Chair