

STATE HOUSING APPEALS BOARD

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Minutes of the November 22, 2004 Board Meeting

The November 22, 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 Erickson, Chair. Board members in attendance were Judge Stephen Erickson, Donald Goodrich, Thomas Hodge, Charles Maynard, Richard Godfrey, John O’Brien, Steve Ostiguy, and Dr. Isadore Ramos. Board member Frank Giorgio III was not present. Also present were Steven Richard, Esq., legal counsel to the Board, and Judy Jones, Katherine Maxwell, and Christine DaRocha, administrative staff to the Board. With eight members present, Judge Erickson declared a quorum.

Approval of Minutes

Mr. Goodrich moved and Mr. Hodge seconded the motion to approve the minutes of the October 25, 2004 Board meeting. The motion was

approved unanimously.

Status of Board Written Decisions

The written decision for Appeal No. 2003-07, Agostinelli vs. the Town of Narragansett Zoning Board of Review was adopted and promulgated at this meeting. The written decision for Appeal No. 2004-18 Spectrum Properties vs. the Town of Coventry Zoning Board of Review will be adopted and promulgated at the December 8, 2004 meeting of the Board.

Substantial Completeness Rulings

The Board will meet on Wednesday, December 8, 2004 from 9:00 am to approximately 3:00 PM to rule on the substantial completeness of the nineteen comprehensive permit application appeals before the Board. The meeting will be held in the second floor Board Room at Rhode Island Housing, 44 Washington Street, Providence, RI. The Board will not take any further argument from legal counsel at the December 8 meeting.

Legal counsel and the Board's administrative staff will prepare an analysis of the substantial completeness of each application including a description of the local hearing process to help determine if the Zoning Board acted as if the application was complete. Mr. Richard said that at the beginning of the meeting on December 8th, the Board will review its standards for making a substantial

completeness determination.

Mr. Goodrich asked legal counsel to look at the Caswell case, which is mentioned in some of the arguments and research any others that might guide the Board in its decisionmaking.

Appeals from SHAB decisions to the Rhode Island Supreme Court

Appeal No. 2004-01 Deer Brook Development Corporation vs. the Town of Exeter Zoning Board of Review was appealed to the Supreme Court by the Town.

Substantial Completeness Reviews

The Board began its review of the substantial completeness of the applications on its agenda. The transcript of the hearing is the record of the proceedings and available for public review upon request.

Appeal No. 2004-03 E. G. Land Company vs. the Town of East Greenwich Zoning Board of Review

Representing the parties were William Landry, Esq. for E. G. Land Company and Peter Clarkin, Esq., for the Town of East Greenwich Zoning Board of Review. The Town argued that the application is not substantially complete; counsel for the developer argued that the application is complete.

Mr. Goodrich asked Mr. Clarkin if the Town acted in a manner that could be interpreted by the developer as having a complete application. Mr. Clarkin said that the Town was concerned about processing the application in a timely way and therefore, would have addressed the issue of completeness during the hearing process.

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

Representing the parties were William Landry, Esq., for Clarks Falls Realty, LLC and Michelle Buck, Esq. for the Town of Hopkinton Zoning Board of Review. The Town did not render a decision on the substantial completeness of the application; counsel for the developer argued that the application is complete.

Ms. Buck said that the Board never received the application as a sitting Board. The comprehensive permit application was received on January 26, 2004; a letter dated January 29, 2004 noting deficiencies in the application was sent to the developer; the application was placed on the Zoning Board's February 19, 2004 agenda; however, the moratorium went into effect on February 13, 2004.

Ms. Buck said that the usual procedure is for the Zoning Board to put the application on the agenda without abutters' notice. The completeness of the application would be discussed then and a

hearing scheduled.

Appeal No. 2004-12 Pascoag Apartment Associates, LLC and Yorkshire Properties vs. the Town of Burrillville Zoning Board of Review

Representing the parties were William Landry, Esq. for Pascoag Apartment Associates, LLC and Yorkshire Properties and Patrick Dougherty, Esq. for the Town of Burrillville Zoning Board of Review. The Town argued that the application is not substantially complete; counsel for the developer argued that the application is complete.

Mr. Godfrey asked Mr. Landry what rights would be lost to the developer if the SHAB were to deny the application to go forward. Mr. Landry said that by July 1, 2005 all towns will have approved housing plans that probably would not site these applications.

Judge Erickson asked Mr. Dougherty if, through the process of hearing the application, waivers are identified, would the Zoning Board, at the end of the hearing process, determine that the application was incomplete.

Mr. Dougherty said that the SHAB was given criteria for substantial completeness that were not there at the time the comprehensive

permit application was filed with the Town. Therefore, the Towns should be given deference.

Mr. Dougherty also challenged the jurisdiction of the SHAB over these appeals. He said that there are only two conditions under which a developer can appeal a local decision to the SHAB: a denial or approval with conditions that make the project financially infeasible. These appeals were based on the moratorium.

Judge Erickson responded that the 2004 statute gave SHAB a mandate to address the substantial completeness of the applications associated with these appeals, creating a third category of cases. Mr. Dougherty said that R.I.G.L. 45-53 says “upon appeal,” and the effect of the moratorium is not grounds for an appeal.

Mr. Hodge asked Mr. Dougherty if the moratorium didn’t constitute a denial. Mr. Dougherty said the issue is the vesting of rights. Judge Erickson said that the SHAB makes the preliminary cut on which projects have vested rights and which ones do not.

Mr. Richard suggested that the 2004 law supercedes the previous definition of “appeal.” Judge Erickson noted the 2004 law states the SHAB” shall...rule...on the substantial completeness of applications...that were affected by the moratorium...” creating a third option for an appeal.

The Board took a break from 4:00 – 4:10 PM.

Appeal No. 2004-13 Crystal Lake Builders, LLC vs., the Town of Burrillville Zoning Board of Review.

Representing the parties were William Landry, Esq. for Crystal Lake Builders, LLC and Patrick Dougherty, Esq. for the Town of Burrillville Zoning Board of Review. The Town argued that the application is not substantially complete; counsel for the developer argued that the application is complete.

Mr. Landry said that the developer made a good faith effort in submitting the comprehensive permit application. Mr. Dougherty said that there was no chance for “disclosure” between the developer and the Town.

Mr. Hodge said that what we are dealing with in these determinations is substantially completeness, not substantial correctness.

Appeal No. 2004-14 East Avenue Development Realty, LLC vs. the Town of Burrillville Zoning Board of Review

Representing the parties were William Landry, Esq. for East Avenue Development Realty, LLC and Patrick Dougherty, Esq. for the Town of Burrillville Zoning Board of Review. The Town argued that the application is not substantially complete; counsel for the developer argued that the application is complete.

Mr. Dougherty said that there is a unique issue in terms of vested rights. The entity does not have standing because at the time of the application it had a different corporate name.

Judge Erickson asked if the Burrillville Zoning Board would accept an amendment to change the name. This procedure happens all the time in court. Mr. Dougherty said that property rights have to attach to a legally existing entity.

Both parties displayed maps to argue what was or was not provided to the Zoning Board as part of the application.

Mr. Hodge asked how often plans are amended during the review process. Mr. Joseph Raymond, Building Official for the Town of Burrillville, answered through Mr. Dougherty, that the Planning Board would do the review and the Zoning Board would get the final request variances and either approve or deny them.

Mr. Goodrich asked Mr. Landry to research the status of the fees his clients have paid to the Town when applying for comprehensive permit applications.

Mr. Goodrich moved and Mr. Godfrey seconded the motion to adjourn at 5:30 PM. The motion was approved unanimously.

Respectfully submitted,

Judge Stephen P. Erickson, Chair