

STATE HOUSING APPEALS BOARD

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Minutes of the July 18, 2005 Board Meeting

The July 18, 2005 meeting of the State Housing Appeals Board (“SHAB” or “Board”) was called to order at 2:07 PM at Warwick City Hall by Mary Shekarchi, Esq., Chair. Board members in attendance were Mary Shekarchi, Esq., Charles Maynard, Donald Goodrich, Cynthia Fagan, M. Theresa Santos, William White and Dr. Isadore Ramos. Also present was Steven Richard, Esq., legal counsel to the Board, and Katherine Maxwell and Christine DaRocha, administrative staff to the SHAB. Steve Ostiguy was not present. Ms. Shekarchi declared a quorum.

Approval of Board Meeting Minutes

There was a discussion of the minutes of the last meeting held on December 8, 2004. It was determined that the SHAB had previously authorized Judge Erickson to approve them and he had in fact

approved them.

Orientation of New SHAB Members

Since this was the first meeting of a newly constructed SHAB, members introduced themselves.

Amy Rainone, Assistant Director of Policy at Rhode Island Housing, provided background on recent changes to the Low and Moderate Income Housing Act as they related to the SHAB.

Katherine Maxwell described her role and duties as administrative staff to the SHAB.

Discussion of Substantial Completeness Remand Orders from Rhode Island Supreme Court to the SHAB

Mr. Richard, Legal Counsel, summarized the history of the substantial completeness appeals and the legislative changes that affected SHAB's role and responsibilities relative to those appeals, including standards for determining substantial completeness. He then detailed the history of how the appeals were processed relative to the items in the law to determine substantial completeness. The SHAB hearing process of the November 2004 and December 2004 meetings was described as was how the legislatively imposed ruling deadline impacted the work of the SHAB. Due to the passing of "Separation of

Powers” legislation, the SHAB was dissolved December 31, 2004.

Mr. Richard laid out the legal issues involved in dealing with the seven remand orders from the Supreme Court. He indicated that his own research and that of the Chair into relevant case law suggested, according to legal precedent, the SHAB should consider undertaking a “de novo” review of the appeals relying on the record as submitted to the SHAB prior to the substantial completeness orders of December 29, 2004.

Mr. Richard reminded the Board that, should they decide to undertake a new review of the substantial completeness appeals, in reviewing the records the Board’s deliberations would be aided by concentrating on items in dispute and making findings of fact independently on each of them. Mr. Richard also pointed out the statutory requirement that for each application in the aggregate, to establish substantial completeness, the local record should be examined to determine in each situation if there were Zoning Board of Review hearings and whether the Zoning Board of Review acted in a manner that suggested they deemed the applications substantially complete.

Richard Licht, Esq., attorney for the developer, addressed the Board and suggested that Legal Counsel seek an opinion from Duty Justice of the Supreme Court on guidance as to an adequate procedure for the Board to follow in dealing with remands. Patrick Dougherty, Esq.,

attorney for the town, stated the issue of the SHAB's jurisdiction to decide the appeals has not been settled and the SHAB should hear the opinions of the attorneys on how to proceed through re-briefing of the issues.

Mr. Richard noted that Mr. Dougherty preserved his argument on jurisdiction of the SHAB and argued that re-briefing the issues would only prolong the substantial completeness appeals process that has already gone on for a very long time.

Mr. Goodrich asked whether it was true that the Supreme Court wanted more information on the decisions and whether the entire Board needs to review the cases to supply that information. Mr. Richard and the Chair agreed that the SHAB would need to do that work and address those decisions.

Nancy Letendre, attorney for the Town of West Greenwich, questioned whether the SHAB members who heard the petitions last year and still sit on the newly constructed Board could form a sufficient quorum to take the necessary action to support the December 8, 2004 decision. Mr. Richard recommended that it would be better procedurally if the entire SHAB continue to go forward. Suggesting a long standing practice of the former Chair Judge Erickson and the former SHAB, he proposed that pre-hearing conferences be held with counsel to discuss the issues and decide whether or not briefings are appropriate.

Mr. Maynard suggested having pre-hearing conferences and asked if they would include oral presentations. Mr. Richard stated that historically the Chair would hold pre-hearing conferences with counsel and interested parties and report back to the SHAB. Pre-hearing conferences could address issues of process and substance either particular to cases or global determinations that would affect all cases.

Mr. White questioned the Board and Legal Counsel about conditions under which it is proper to recuse oneself. The Chair instructed staff to construct a list of interested parties for each appeal so all SHAB members, particularly new members, would be able to determine situations where there might exist potential for conflict of interest.

Mr. Goodrich moved and Dr. Ramos seconded a motion to authorize the Chair to conduct pre-hearing conferences to identify legal procedural and substantive issues relative to the remand consideration. Motion passed. Mr. White abstained.

Draft Regulations of the SHAB

Ms. Maxwell explained the revised regulations were drafted to implement changes in the law. These changes were described as additional definitions, the requirement of review consistent with local needs as outlined in the local affordable housing plans, the changed

make-up of the SHAB consistent with the Separation of Powers Act and the establishment of a fee schedule for SHAB appeals. Mr. Richard pointed out that several sections of the former regulations were stricken because they directed municipalities deal with appeals in a specific manner. In early 2004, many municipalities had argued that the SHAB lacked the jurisdiction to do this. In the 2004 amendments to the Housing Act, the General Assembly directed local governments on specific procedures for hearing comprehensive permit applications. Thus, the SHAB regulations sections dealing with these matters were no longer needed and therefore stricken in the new regulations.

The reasoning behind the imposition of a fee structure was discussed. Ms. Maxwell outlined the public notice requirement prior to adoption of the regulations. Board members agreed they needed more time to review the draft regulations. Mr. Goodrich made a motion that the Board take under advisement the new regulations and that in two weeks time notify the Chair of any substantial changes and in the absence of any substantial changes that the Chair be authorized to start the process to advertise the rules. Mr. White seconded the motion. Motion passed unanimously.

Pre-briefing Conference Schedule for 2005 SHAB Appeals

Pre-briefing conference schedule was discussed for 2005 SHAB appeals 2005-01, Crown Properties vs. the Town of Smithfield,

2005-02, Block Island Housing vs. the Town of New Shoreham, and 2005-03, S.W.A.P. vs. the Town of West Greenwich.

Mr. Richard pointed out the overlapping appeals involving Crown Properties and Block Island Housing. He then recommended that pre-hearing conferences for these matters be held simultaneously at the pre-hearing conference to be set up for the 2004 appeals which deal with the same substantial matters. Mr. Goodrich moved that Crown Properties, 2005-01 and Block Island Housing, 2005-02 be included in the pre-hearing schedule already allowed for both of these projects and report back to the Board. Mr. Maynard seconded. Motion passed unanimously.

The history and travel of the S.W.A.P. appeal, 2005-03, was recounted by Ms. Maxwell, including delays necessitated by the SHAB not having a fully reconstituted Board membership until the end of June 2005.

William Landry, Esq., representing S.W.A.P., noted that Blueberry Heights trailer park, an abutter, had made a motion to intervene. Mr. Landry then indicated he had both procedural and substantial issues to raise and would be happy to have a pre-hearing conference with the Chair. Nancy Letendre, Esq., representing West Greenwich, noted that while S.W.A.P. is a new appeal it is still subject to the older Low and Moderate Income Housing Act because the application was filed before the changes to the legislation were made. Ms. Letendre

agreed to a pre-hearing conference with the Chair on behalf of the town. Mr. Richard indicated that even though the attorney for the interveners was not present today, he would be included in the pre-hearing conference and his motion to intervene would be considered.

The Chair moved and Mr. Maynard seconded a motion to allow a pre-hearing conference to be scheduled in the matter of 2005-03, S.W.A.P. vs. the Town of West Greenwich. Motion passed unanimously.

Mr. Richard noted that Robert Craven, Esq., attorney for the abutters, should be invited to the pre-hearing conference.

Consideration of Selection of Legal Counsel for the SHAB

Mr. Richard left the meeting. Ms. Maxwell pointed out the two law firms that had responded to a request for proposal to provide legal services to the SHAB including Steven Richard, Esq.'s firm Nixon Peabody. Mr. Goodrich said that changing legal counsel to the SHAB at this time made no sense because of the volume of litigation and it would be like changing horses in mid-stream and recommended that the Board take up the matter of legal counsel at a later date. Michael Milito, Esq., attorney for Rhode Island Housing, recounted the history of the provision of legal services to the SHAB and noted the extreme increase in the volume of work and also noted the new make-up of the SHAB membership. Since Rhode Island Housing solicits

requests for proposals every two years, and did so again in April of 2005, a provision for the SHAB legal services was included in the Request for Proposal. Mr. Milito also indicated that the SHAB could write their own Request for Proposal for legal services.

The Board discussed the number of old and new appeals and determined that the majority are old cases. Dr. Ramos suggested the issue of changing new legal counsel could be revisited in the future at an agreed upon time. Mr. Goodrich moved that the consideration of selection of new legal counsel be made at the December SHAB meeting. Ms. Santos seconded the motion. Motion passed unanimously.

Mr. Maynard asked about the date and time for the next meeting and moved that August 15th would be a good day for the next meeting. Ms. Fagan seconded. Motion passed unanimously.

The meeting adjourned at 4:15 PM.

Respectfully submitted,

Mary Shekarchi, Esq., Chair