

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

The Board discussed the minutes of the last meeting held on December 8, 2004. It was determined that the SHAB had previously authorized Judge Erickson to approve the minutes and that he had entered them in December 2004.

Orientation of New SHAB Members

The members of SHAB 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

Steven. Richard, Legal Counsel, summarized the history of the substantial completeness appeals and the process that SHAB undertook to address them during 2004. Mr. Richard noted that legal briefs were received and arguments were heard in the appeals. He outlined the orders that SHAB entered in late December 2004.

Mr. Richard summarized the remand orders entered by the Rhode Island Supreme Court pertaining to municipal appeals of SHAB's substantial completeness determinations. In total, the Supreme Court remanded seven appeals back to SHAB for more detailed findings of fact and conclusions of law. Mr. Richard noted that he

and the Chair had researched case law regarding the procedures to be utilized by SHAB in processing the remanded appeals. His research confirmed that SHAB should undertake a “de novo” review of the appeals because of the recent changes in SHAB’s membership.

Mr. Richard indicated that SHAB could rely on the previously developed appellate records.

Mr. Richard advised the Board that it should make specific findings and conclusions regarding the disputed issues in each appeal. Mr. Richard also summarized the statutory criteria for determining whether an application may be deemed to be substantially complete.

Richard Licht, Esq., attorney for Churchill & Banks, addressed the Board and suggested that Legal Counsel confer with the Duty Justice of the Supreme Court to seek guidance regarding the procedures to be utilized by SHAB in response to the remand orders. Mr. Richard responded that the Supreme Court recently denied SHAB’s motion for reconsideration of its orders remanding the appeals. Patrick Dougherty, Esq., attorney for Burrillville, stated his position that the issue of the SHAB’s jurisdiction to decide the appeals has not been settled.

Mr. Richard noted that Mr. Dougherty preserved his argument regarding the jurisdictional issue. Mr. Richard suggested to the Board that the filing of new briefs by the parties would prolong the proceedings. He noted that all of the relevant issues were previously

briefed and argued in detail.

Donald Goodrich asked whether SHAB is required to receive more evidence under the Supreme Court's remand orders. Mr. Richard and the Chair agreed that the Board should be able to do its work with the records that were developed through filings and hearings last year.

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 address the remanded appeals. Consistent with the prior practice of former Chair Judge Erickson, Mr. Richard proposed that Chairwoman Shekarchi hold pre-hearing conferences with counsel in the remanded appeals to discuss the processing and scheduling of the remanded appeals.

Charles Maynard agreed that pre-hearing conferences should be held.

Mr. Richard noted that the Chair would report back to the full membership regarding the procedural and substantive issues raised in the pre-hearing conferences.

William White inquired regarding the conditions under which it is proper for a member to recuse himself or herself. 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. Isadore Ramos seconded a motion to authorize the Chair to conduct pre-hearing conferences to identify legal procedural and substantive issues relative to the remanded appeals. Motion passed. Mr. White abstained.

Draft Regulations of the SHAB

Ms. Maxwell explained that the revised regulations were drafted to implement the 2004 amendments to the Low and Moderate Income Housing Act. The proposed changes to the regulations include additional definitions, a clarification of the effect of local affordable housing plans, a description of SHAB's new membership and the establishment of a fee schedule for SHAB appeals. Mr. Richard stated that the proposed amendments delete sections addressing the procedures for municipalities to hear comprehensive permit applications. Some municipalities previously argued that the SHAB lacked the jurisdiction to include such provisions in its regulations. In the 2004 amendments to the Low and Moderate Income Housing Act, the General Assembly adopted detailed statutory procedures for local governments to apply when hearing comprehensive permit applications, which negate the need for SHAB's regulatory provisions applicable to local procedural issues.

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-Hearing Conferences In 2005 SHAB Appeals

The scheduling of pre-hearing conferences was discussed in the following appeals filed in 2005: (1) SHAB No. 2005-01 - Crown Properties vs. the Town of Smithfield, (2) SHAB No. 2005-02 - Block Island Housing vs. the Town of New Shoreham, and (3) SHAB No. 2005-03 - S.W.A.P. vs. the Town of West Greenwich.

Mr. Richard noted that the appeals filed by Crown Properties and Block Island Housing raise common jurisdictional issues because they pertain to SHAB's prior substantial completeness determinations and the remand orders by the Supreme Court. Mr. Goodrich moved that Crown Properties and Block Island Housing appeals be scheduled for pre-hearing conferences. Mr. Maynard seconded. Motion passed unanimously.

Ms. Maxwell summarized the history and travel of the S.W.A.P. appeal, including delays necessitated because the newly constituted SHAB did not have a quorum 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 indicated the developer's appeal raises several procedural and substantial issues, which he would review with the Chair during the pre-hearing conference. Nancy Letendre, Esq., representing West Greenwich, stated that although this appeal was filed in 2005, it may still be subject to the prior version of the Low and Moderate Income Housing Act because the application was filed before the 2004 amendments took effect. Ms. Letendre agreed that a pre-hearing conference with the Chair would be helpful to move the appeal forward. Mr. Richard indicated that the attorney for the interveners would be invited to the pre-hearing conference.

The Chair moved and Mr. Maynard seconded a motion to schedule a pre-hearing conference in S.W.A.P. vs. the Town of West Greenwich. Motion passed unanimously.

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 the selection of 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