

## **STATE HOUSING APPEALS BOARD**

**44 Washington Street**

**Providence, Rhode Island 02903**

**Phone - (401) 457-1214**

**Fax – (401) 457-1140**

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

### **Minutes of the September 19, 2005 Board Meeting**

**The September 19, 2005 meeting of the State Housing Appeals Board (“SHAB” or “Board”) was called to order at 2:01 PM at Pawtucket City Hall by Mary Shekarchi, Esq., Chair. Board members in attendance were Mary Shekarchi, Esq., Charles Maynard, Donald Goodrich, Cynthia Fagan, M. Theresa Santos, Steven Ostiguy and Dr. Isadore Ramos. Also present were Steven Richard, Esq., legal counsel to the Board, and Katherine Maxwell and Christine DaRocha, administrative staff to the SHAB. William White and M. Theresa Santos were not present. Ms. Shekarchi declared a quorum.**

### **Approval of Minutes of July 18, 2005 Meeting**

**Mr. Goodrich made a motion that SHAB approve the minutes of its July 18, 2005 meeting, which Ms. Fagan seconded. Mr. Ostiguy abstained from the vote, and the rest of the SHAB members voted**

**unanimously to approve the minutes.**

### **Review of SHAB's Proposed Access To Public Records Act Policy**

**Mr. Richard summarized the draft policy delineating the SHAB's procedures to allow the public to access its public records. Mr. Richard noted that the draft policy should be published for comments in accordance with the requirements of the Administrative Procedures Act. Mr. Ostiguy made a motion that SHAB publish the regulations for public comment, which Mr. Maynard seconded. The motion passed unanimously.**

### **Discussion of SHAB's Process of Notifying Parties of Agenda Items**

**Ms. Maxwell informed the Board that at least one developer recently expressed concerns that its principals were unaware that its appeal was posted on a SHAB meeting agenda. Mr. Richard noted that SHAB publishes all of its meetings in accordance with the Open Meetings Law. SHAB also informs counsel for the parties of the agenda items in advance of a meeting. Mr. Richard noted that attorneys who have entered their appearances in SHAB matters bear the responsibility to keep their clients informed. Mr. Richard stated that SHAB's notification protocols are consistent with the processes used by our courts and other administrative bodies, whereby notice is provided to counsel for the parties. The Chair and Legal Counsel shared their opinion that SHAB's standard notification practices**

**should remain unchanged. Ms. Fagan made a motion that SHAB adhere to its standard notification practices, which Dr. Ramos seconded. The motion passed unanimously.**

## **Review of SHAB's Proposed Amendments To Its Regulations Implementing The Low And Moderate Income Housing Act**

**The Board addressed the status of SHAB's proposed amendments to its Regulations Implementing the Low and Moderate Income Housing Act. Mr. Richard summarized the material changes to be effectuated by the amendments, including the deletion of provisions governing municipal procedures and the addition of a fee schedule applicable to newly filed appeals. The Chair requested information supporting the various fees delineated in the proposed amendments. Ms. Maxwell summarized her research of the fees utilized by similar housing appeals boards in other jurisdictions, and she provided details regarding a budgetary analysis of SHAB's operations. Following the discussion, Mr. Goodrich made a motion that SHAB publish the draft Regulations for public comment, which Mr. Ostiguy seconded. The motion passed unanimously.**

## **Victory Woods v. Town of West Greenwich Zoning Board of Review, SHAB Appeal No. 2005-3**

**Ms. Maxwell did not participate in the discussion of this matter because Rhode Island Housing owns the Victory Woods property.**

**Ms. Maxwell left the room during SHAB's discussion regarding the Victory Woods appeal.**

**Chairwoman Shekarchi reported that the West Greenwich Zoning Board raised two issues during the prehearing conference held on August 3, 2005.**

**First, the West Greenwich Zoning Board wished to alert SHAB that one of its members, Charles White, may have a conflict issue in this appeal. Chairwoman Shekarchi indicated that Mr. Richard has alerted Mr. White of the issue. Mr. White, who was absent from the meeting, will evaluate the issue and determine whether he will recuse himself from this appeal.**

**Second, the West Greenwich Zoning Board expressed concerns about Rhode Island Housing's provision of administrative assistance to SHAB in this appeal, given that Rhode Island Housing owns the property that is the subject of Victory Woods' application. Mr. Richard suggested that his law firm, Nixon Peabody, can provide the administrative assistance to SHAB and maintain all of the records pending the completion of the appeal.**

**Chairwoman Shekarchi confirmed that Mr. Richard has advised the parties of his representation of Rhode Island Housing in various matters, including a pending Superior Court case. Attorney Nancy Letendre stated that the Zoning Board has no objection to Mr.**

**Richard's service as SHAB's counsel in this appeal.**

**The parties agreed that the forty-five day filing period for Victory Woods' brief may start on September 19, 2005, and that the briefs of the Zoning Board and intervening abutters will be due forty-five days after Victory Woods' filing.**

### **Report on Prehearing Conferences in the Burrillville and Smithfield Substantial Completeness Appeals**

**Chairwoman Shekarchi briefed the Board regarding the prehearing conferences that she held in the three Burrillville appeals (Pascoag Apartments, LLC, Crystal Lake, LLC and East Avenue Development Realty, LLC) and three Smithfield appeals (Smithfield Hills, LLC, Churchill & Banks, LLC, and Crown Properties, LLC). Based on legal research, the Chair and counsel reported that SHAB's change in composition effective January 1, 2005 necessitates a de novo review of these appeals. Patrick Dougherty, counsel for the Burrillville Zoning Board, stated that his client does not agree that a de novo standard of review applies. Mr. Richard responded that no counsel has submitted any legal memoranda to rebut SHAB's previously stated position that de novo review is proper.**

### **Motion for Oral Arguments in Substantial Completeness Appeals**

**Chairwoman Shekarchi raised the issues presented by a joint motion filed by Smithfield Hills, LLC, Churchill & Banks, LLC and Crown Properties, LLC requesting the right to make oral arguments prior to SHAB's deliberations in their appeals. The Chair and counsel suggested that if the Board wishes to hear oral arguments, it should prescribe time limits. Further, if oral arguments will be heard in the three Smithfield appeals, the parties in the three Burrillville appeals should likewise be afforded the opportunity to present oral arguments.**

**Mr. Goodrich made a motion that SHAB hear oral arguments in the three Burrillville appeals during the September 19, 2005 meeting and in the three Smithfield appeals during SHAB's October meeting. He further moved that the oral arguments should be limited to ten minutes. Mr. Maynard seconded the motion, which passed unanimously.**

### **Report on The Status of Two Appeals Filed By For-Profit Developers In 2005**

**Mr. Richard advised the Board that two for-profit developers have filed appeals to SHAB during 2005. Both appeals relate to applications that were previously heard as part of SHAB's substantial completeness determinations in December 2004. In each appeal, the developer argues that the municipal zoning board should have held hearings on remand, notwithstanding the fact that the municipality**

**was seeking the Supreme Court's appellate review of SHAB's substantial completeness determination.**

**In one appeal, Block Island Housing v. Town of New Shoreham, SHAB Appeal No. 2005-2, Attorney David Iglizzi reported that the developer and the Town of New Shoreham have been engaged in settlement efforts. Mr. Goodrich made a motion authorizing SHAB's Chair to hold a prehearing conference, if necessary, with counsel for the parties, which Mr. Maynard seconded. The motion passed unanimously.**

**In the other appeal, Crown Properties LLC. v. Town Of Smithfield, SHAB Appeal No. 2005-1, Attorney Iglizzi indicated that the Zoning Board's counsel was not present. Therefore, SHAB continued discussion of this appeal to a later date.**

### **Report On Supreme Court's Review of Two SHAB Decisions**

**Mr. Richard informed the Board that the Rhode Island Supreme Court will hear two appeals on its October 4, 2005 Show Cause Calendar relating to prior SHAB Decisions. In one case, Armand Cortelleso v. Town of Smithfield Zoning Board of Review, SHAB denied the developer's appeal because of his lack of standing due to his sale of the property at issue. In the other case, West Reservoir, LLC. v. Town of Smithfield Zoning Board of Review, SHAB denied the developer's appeal because it was not substantially complete, particularly due to**

**the developer's failure to address properly the commercial features in its proposed mixed-use development. Mr. Richard indicated that he will attend the arguments and report back to the Board.**

**Mr. Ostiguy left the meeting at this point and did not participate in the below-listed Burrillville appeals.**

### **SHAB's Hearings And Deliberations In The Three Burrillville Substantial Completeness Determinations**

**SHAB received oral arguments from Attorney Patrick Dougherty (counsel for the Burrillville Zoning Board of Review) and Attorney William Landry (counsel for the developers) in the following three appeals:**

- Pascoag Apartments, LLC. v. Burrillville Zoning Board of Review, SHAB Appeal No. 2004-12;**
- Crystal Lake, LLC. v. Burrillville Zoning Board of Review, SHAB Appeal No. 2004-13; and**
- East Avenue Development Realty Corporation v. Burrillville Zoning Board of Review, SHAB Appeal No. 2004-14.**

**Counsel addressed the issues of SHAB's jurisdiction to hear the appeals and the substantial completeness of each application for a**

**comprehensive permit. SHAB has a transcript of the oral arguments available for public review upon request.**

**During its deliberations, SHAB made the following three conclusions of law applicable to the three appeals:**

- By a 4-1 vote, SHAB concluded that it has jurisdiction to make the substantial completeness determinations pursuant to § 45-53-6(f)(1);**
- By a 4-1 vote, SHAB concluded that it should apply a de novo standard of review due to the change in its composition since its initial substantial completeness determinations; and**
- By a 4-1 vote, SHAB concluded that § 45-53-6(f)(1)(ii) is inapplicable because the Zoning Board did not hold any hearings on the three applications prior to the moratorium.**

**SHAB member, Cynthia Fagan, dissented in each of the above-listed votes. Ms. Fagan based her dissenting votes on her view that the moratorium precluded any use of the Low and Moderate Income Housing Act by for-profit developers. She questioned the propriety of the appeals particularly given that the Zoning Board has yet to hold hearings or make any determinations on the applications due to the moratorium.**

**A. Pascoag Apartments, LLC. v. Burrillville Zoning Board of Review,**

## **SHAB Appeal No. 2004-12**

**During its deliberations in Pascoag's appeal, SHAB made the following findings:**

- By a 5-0 vote, SHAB found that Pascoag had described sufficiently its requested exceptions, waivers and variances;**
- By a 5-0 vote, SHAB found that Pascoag submitted a proper letter of funding eligibility issued by Rhode Island Housing and Mortgage Finance Corporation; and**
- By a 5-0 vote, SHAB found that Pascoag provided sufficiently detailed site development plans.**

**Based on its findings, SHAB concluded as follows:**

- By a 5-0 vote, SHAB concluded that Pascoag's application was, as of February 13, 2004, substantially complete as to substantially all of the ten elements delineated in § 45-53-6(f)(1)(i)(A-J); and**
- By a 4-1 vote (Ms. Fagan dissenting), SHAB concluded that the Pascoag's application should be remanded to the Burrillville Zoning Board for further hearings to be held in accordance with § 45-53-6(f)(2).**

**B. Crystal Lake, LLC. v. Burrillville Zoning Board of Review, SHAB Appeal No. 2004-13**

**During its deliberations in Crystal Lake's appeal, SHAB made the following findings:**

- By a 5-0 vote, SHAB found that Crystal Lake had described sufficiently its requested exceptions, waivers and variances;**
- By a 5-0 vote, SHAB found that Crystal Lake submitted a proper letter of funding eligibility issued by Rhode Island Housing and Mortgage Finance Corporation; and**
- By a 5-0 vote, SHAB found that Crystal Lake provided sufficiently detailed site development plans.**

**Based on its findings, SHAB concluded as follows:**

- By a 5-0 vote, SHAB concluded that Crystal Lake's application was, as of February 13, 2004, substantially complete as to substantially all of the ten elements delineated in § 45-53-6(f)(1)(i)(A-J); and**
- By a 4-1 vote (Ms. Fagan dissenting), SHAB concluded that Crystal Lake's application should be remanded to the Burrillville Zoning Board for further hearings to be held in accordance with §**

**45-53-6(f)(2).**

**C. East Avenue Development Realty Corp. v. Burrillville Zoning Board of Review, SHAB Appeal No. 2004-14**

**During its deliberations in East Avenue's appeal, SHAB made the following findings:**

- By a 5-0 vote, SHAB found that East Avenue had described sufficiently its requested exceptions, waivers and variances;**
- By a 5-0 vote, SHAB found that East Avenue submitted sufficient evidence of site control; and**
- By a 5-0 vote, SHAB found that East Avenue submitted a proper letter of funding eligibility from Rhode Island Housing and Mortgage Finance Corporation.**

**Based on its findings, SHAB concluded as follows:**

- By a 5-0 vote, SHAB concluded that East Avenue's application was, as of February 13, 2004, substantially complete as to substantially all of the ten elements delineated in § 45-53-6(f)(1)(i)(A-J); and**
- By a 5-0 vote, SHAB concluded that Crystal Lake's application should be remanded to the Burrillville Zoning Board for further**

**hearings to be held in accordance with § 45-53-6(f)(2).**

**SHAB will issue written Decisions setting forth its findings and conclusions in each of the three above-listed appeals. The Decisions will be entered by the time of SHAB's October 2005 meeting.**

**Adjournment**

**The meeting adjourned at 6:30 PM.**

**Respectfully submitted,**

**Mary Shekarchi, Esq., Chair**