

STATE HOUSING APPEALS BOARD

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Minutes of the January 24, 2006 Board Meeting

The January 24, 2006 meeting of the State Housing Appeals Board (“SHAB” or “Board”) was called to order at 2:07 pm at the Warwick Town Hall by Mary Shekarchi, Esq. Chair. Board members in attendance were Mary Shekarchi, Esq., Chair, Charles Maynard, Donald Goodrich, Cynthia Fagan, M. Theresa Santos, William White, and Stephen Ostiguy. Also present were Steven Richard, Esq. legal counsel to the Board, Katherine Maxwell and Christine DaRocha administrative staff to the SHAB. Ms. Shekarchi declared a quorum. Mr. Richard noted for the record that since the sitting Board members were all in attendance there was no need to call into service the municipal alternate member, Dr. Isadore Ramos, who was not present.

Approval of Minutes of October 17, 2005 Meeting

Mr. Ostiguy made a motion that SHAB approve the minutes of its October 17, 2005 meeting, which Mr. White seconded. The minutes were approved unanimously.

Report by SHAB's Counsel on Status of SHAB Docket Matters and Appeals Pending Before the RI Supreme Court

Mr. Richard briefed the Board on SHAB matters pending before the Supreme Court and summarized four recent opinions issued by that Court on appeals from SHAB decisions, noting that in all four cases the Supreme Court affirmed decisions made by the predecessor SHAB Board. Mr. Richard noted that in addition, two other appeals are pending before the Court and he would keep the Board informed of future opinions as they are issued by the Court. Mr. Richard summarized the substance of the appeals pending on SHAB's docket. Mr. Richard suggested that he will prepare updates periodically for the convenience of Board members.

Report by Chair

The Chair reported that a pre-hearing conference on a matter pending before the SHAB, Women's Development Corporation vs. the Town of Richmond, had been held in her office on January 12, 2006. Counsel

for the Town and Developer agreed to a briefing schedule.

Adoption of Amendments to SHAB's Rules Implementing the Low and Moderate Income Housing Act, Established Pursuant to R.I.G.L. 45-53

The Chair requested any additional public comment on the proposed Rules. Ms. Maxwell noted a comment received from Mr. John O'Brien, Chief of Statewide Planning and former SHAB member. Mr. O'Brien's comment pointed out a typographical error. Ms. Maxwell noted that a corrected page of the Rules had been distributed to the members to replace the page containing the error, along with a cover memorandum. Mr. Richard suggested marking the memorandum Public Comment #1 and appending it to the transcript of this meeting. Mr. Ostiguy moved to adopt the amendments to the Rules with the addition of Public Comment #1 as reflected in the memorandum. Mr. Maynard seconded. Motion passed unanimously.

Adoption of SHAB's Rules Relating to SHAB's Access to Public Records

The Chair opened up the matter for any additional public comment. Ms. Maxwell noted that none had been received. Ms. Fagan moved and Mr. White seconded the motion that the SHAB Access to Public Records Rules be adopted. Motion passed unanimously.

Block Island Housing vs. the Town of New Shoreham

(SHAB Appeal No.'s 2004-8 and 2005-2)

Mr. Richard explained that, although they involved the same development, two separate appeals had been made to SHAB. The first, 2004-8, was an appeal to SHAB for a determination of substantial completeness. The second appeal, 2005-2, was taken upon the alleged failure of the local zoning board to open a public hearing on the application in a timely manner. Mr. Richard then noted that representation had been made to the Chair that settlement negotiations had been proceeding. Settlement negotiations had produced a Consent Agreement signed by the Town and Developer. Motions to Intervene had been received from attorneys representing abutters who were present.

Attorneys Iglizzi and Packer, representing the Developer and New Shoreham respectively, presented a Dismissal Stipulation captioned in the RI Supreme Court, Block Island Housing, the Town of New Shoreham Zoning Board of Review, the Town of New Shoreham and Block Island Housing, Appeal No.'s 2005-22A, 2005-105-MP consolidated appeals. Attorney Iglizzi had stated however that parties had not yet had an opportunity to file the Dismissal Stipulation in the Supreme Court. Noting for the Board that the matter had been remanded to SHAB by the Supreme Court for further findings of fact and conclusions of law to support its determination of substantial completeness, and also noting that the appeal would effectively end if filed and accepted by the Supreme Court, the Chair

opened the floor to counsel for an opportunity to speak on how they wished to go forward with procedural issues. Before counsel spoke, Mr. Ostiguy questioned what the legal effect would be if SHAB tabled the matter until its next meeting, when some of the pending matters might be resolved.

Mr. Richard indicated that in his opinion the 2004-8 substantial completeness determination was still subject to a remand order to the SHAB.

Mr. Goodrich posed a question inquiring whether the Town's entry into a consent agreement with the developer constituted evidence that the Town considered the application substantially complete. Mr. Richard pointed out that SHAB must address the substantial completeness issues and Motion to Intervene if the Supreme Court appeal is not dismissed. Discussion ensued concerning SHAB's past practice concerning interveners' participation in substantial completeness matters. The chair directed Mr. Packer, counsel for the Town of New Shoreham, to begin. Mr. Packer argued the legal effect of Supreme Court Remand Orders on the Consent Agreement. Mr. Iglizzi offered to submit a Dismissal Stipulation to the SHAB on the 2005-2 appeal. Mr. Dougherty then made arguments on behalf of his clients, Robert and Karen Hayden, abutters to the proposed development.

Mr. Richard noted that the SHAB Chair, with advice of legal counsel,

determined that SHAB had no record to endorse the merits of the Consent Agreement. Mr. Dougherty reserved on behalf of his clients any and all rights they may have applicable to the dismissal stipulation.

Mr. Paul Ryan added his perspective on procedural matters related to Supreme Court orders and dismissal stipulations generated from other SHAB appeals.

The Chair moved that the Stipulation in the matter of Appeal No. 2005-2 be accepted by SHAB. Mr. Richard advised that the motion should be clear that the acceptance of the Dismissal Stipulation is not designed to create any findings or conclusions by the SHAB as to the merits of the Consent Agreement. Mr. Goodrich seconded. Motion passed unanimously.

The Chair moved to put the matter of appeal no. 2004-8 off until the February SHAB meeting. Mr. White seconded. Motion passed unanimously.

The Chair moved to put off until the February meeting hearing the Motions to Intervene in order to have the benefit of more specific direction from the Supreme Court. Mr. White seconded. Motion passed unanimously.

S.W.A.P. vs. the Town of West Greenwich ZBR

Mr. Richard explained that Rhode Island Housing is an interested party in this appeal and that he retains custody of this record. Mr. Richard distributed copies of the appeal record along with summaries of the contents. He noted that attorney briefs were not included but would be forwarded to the Board once they had all been received. The Chair noted that the anticipated hearing date for this matter would be some time in April. The place for the meeting was to be determined.

Meeting adjourned at 3:30 PM

Respectfully submitted,

Mary Shekarchi, Esq., Chair