

Draft

STATE HOUSING APPEALS BOARD

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Minutes of the September 14, 2006 Board Meeting

The State Housing Appeals Board (“SHAB” or the “Board”) held a public meeting on September 14, 2006 at Pawtucket City Hall.

ATTENDANCE

The following Board members attended the meeting: Chairwoman Mary Shekarchi, Charles Maynard, Donald Goodrich, Steve Ostiguy, William White. Steven M. Richard, legal counsel to the Board, was also present. M. Theresa Santos and Cynthia Fagan were not present.

Chairwoman Shekarchi called the meeting to order at 2:10 p.m.

AGENDA ITEMS

1. Approval of Minutes of SHAB's July 27, 2006 Meeting

Mr. Goodrich made a motion, which Mr. Ostiguy seconded, to accept the minutes of the July 27, 2006 meetings as presented.

The motion passed unanimously.

2. Docket Update by SHAB's Legal Counsel

Mr. Richard provided an update on the status of the written decision by SHAB on the matter of Women's Development Corporation vs. the Town of Richmond.

3. Highland Hills, LLC vs. the Town of Cumberland Zoning Board of Review

SHAB Appeal No. 2005-4

SHAB received detailed briefs from all parties to this appeal. They are available for public inspection upon request.

Mr. Richard requested that counsel for all parties explain the long and complicated procedural history of this matter, supplementing the briefs they had filed with SHAB. Counsel for parties included Edward McCormick, Esq. representing the Cumberland Zoning Board, Mark Russo, Esq. representing the Town of Cumberland, Mark Horan, Esq.

representing abutters and William Landry, Esq. representing Highland Hills, LLC.

Mr. White acknowledged a potential conflict with Attorney Russo, pertaining to a lawsuit. Counsel for all parties expressed no objection to Mr. White's continued involvement on the Board for this appeal.

In response to SHAB's request to define the procedural and substantive matters properly before it, counsel argued their positions in light of the two separate appeal tracks that had been taken from the original Cumberland Zoning Board's 2003 decision. From that Zoning Board decision which denied the developer's request for 343 units but approved 160 units on the subject site, both abutters and the Town separately took appeals directly to Supreme Court . The developer appealed the Zoning Board's decision to SHAB. The SHAB upheld the Town of Cumberland Zoning Board's decision approving 160 in the Highland Hills appeal, basing its decision on the record evidence of the Zoning Board hearings. Regarding the abutters appeal of the original Zoning Board decision directly to the Supreme Court, the Court remanded the that appeal back to Cumberland Zoning Board of Review for further findings in support of its decision. Upon its second review, the reconstituted Cumberland Zoning Board denied the developer's application outright. It is from this decision that the current SHAB appeal, 2005-4, is taken.

Mr. Landry for the developer and Mr. Russo for the Town argued that they had together crafted a Consent Agreement on the matter through the Supreme Court Appellate Mediation Program. That Consent Agreement, signed by Justice Weisberger was based on a compromise in the number of units that the previous SHAB had upheld for the Town in SHAB Appeal 2003-1 (dated April 6, 2004). Counsel for the developer argued that SHAB should consider its own original decision supporting Cumberland's original ZBR decision allowing 160 units.

Record evidence and arguments by opposing counsel established that neither the abutters nor the Zoning Board of the Town of Cumberland were parties to the Consent Agreement. Counsel for the Cumberland Zoning Board and counsel for the abutters argued that the Consent Order was not binding upon them, nor should it be binding upon the SHAB. They argued instead that the abutters appeal of the original Zoning Board decision, remanded by the full Supreme Court back to the Zoning Board for further findings, was the only substantive matter that SHAB should consider in its appellate review. Counsel maintained that the review by SHAB should be limited to examination of the record evidence concerning the Highland Hills application for 343 units. They maintained that the denial of the second Zoning Board, granting zero units was the only proper matter before the SHAB on appeal.

Questioning by the SHAB sought to determine whether the original

application for 343 units had been amended by the developer for the second Zoning Board to reflect 160 units.

On the matter of whether to limit SHAB's appellate review of the Highland Hills matter to the denial by the second Zoning Board of the developers's petition , Mr. White moved that SHAB's role jurisdictionally in the case be limited to only to a review of the record evidence as it relates to the Zoning Board decision and that SHAB will not consider the record evidence and weigh it against the stipulation, and further, it shall not consider the findings of fact and conclusions of law and stipulation of Consent Order, dated April 24, 2006 against record evidence. Mr Goodrich seconded. Motion passed unanimously.

The Chairwoman offered counsel opportunity to file separate briefs to be focused on the limited jurisdiction, as determined by SHAB.

ADJOURNMENT

A motion to adjourn passed unanimously, and the meeting ended at 5:06 PM.

Respectfully submitted,

Mary B. Shekarchi

Chairwoman