

STATE HOUSING APPEALS BOARD

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Draft

Minutes of the November 20, 2007 Board Meeting

The State Housing Appeals Board (“SHAB” or the “Board”) held a public meeting on November 20, 2007 at the Warwick City Hall.

ATTENDANCE

The following members attended the meeting: Cynthia Fagan, Donald Goodrich, Charles Maynard, M. Theresa Santos, William White and Mary Shekarchi, Esq., Chair. Also present were Steven M. Richard, legal counsel to the SHAB, Katherine Maxwell, Christine DaRocha and Karen Slavin, administrative staff to the SHAB.

Chairwoman Shekarchi called the meeting to order at 1:51 p.m.

AGENDA ITEMS

1. Approval of Minutes of SHAB’s September 17, 2007 meeting.

Motion passed unanimously.

Chairwoman Shekarchi noted that had she recused herself from certain matters that were recorded in the minutes. Therefore, her vote to approve the minutes only pertained to those portions of the minutes that did not involve the matter of Sedona Associates v. Smithfield Zoning Board of Review, SHAB Appeal No. 2006-01.

2. Docket Update by SHAB's Legal Counsel.

Mr. Richard noted that Sedona Associates has appealed SHAB's ruling in its appeal to the Rhode Island Superior Court. Mr. Richard also informed the Board that, in Gifford v. SHAB and Women's Development Corporation, the abutter, Ms. Gifford, has requested that the Rhode Island Supreme Court stay the enforcement of the Superior Court's decision affirming SHAB's ruling.

Regarding SHAB Appeal No. 2005-04, Highland Hill v. Cumberland Zoning Board of Review, Mr. Richard noted that this matter is still the subject of mediation before the Supreme Court's Office of Alternative Dispute Resolution.

Mr. Richard also informed the SHAB that the developer in Deer Brook v. Town of Exeter (SHAB 2004-01), which was decided by a predecessor SHAB Board, has informally requested that SHAB

address some implementation matters. The Town of Exeter has objected to any further SHAB involvement in the matter. The parties were instructed to file formal motions if they wish to request that SHAB consider its jurisdiction to review any matters relating to the implementation issues.

3. Motion to Intervene by Abutters and Interested Parties - Church Community Housing v. Town of Little Compton, SHAB appeal #2007-02

Christopher Zangari, counsel for abutters and interested parties, confirmed to the SHAB his clients have also appealed the Little Compton Planning Board decision to the Rhode Island Superior Court.

Chairwoman Shekarchi questioned counsel on the steps that they are undertaking to ensure coordination of efforts in the two appeals occurring concurrently before the Superior Court and SHAB. She suggested that counsel should find practical procedures to ensure that there is no duplication of efforts and conflicting results in the two pending appeals.

Mr. Richard noted that appellate jurisdiction is dependant on the proper characterization of a local board decision. He further noted that the bifurcated appeal routes stated in the Low and Moderate Income Housing Act. He noted that there is a potential that the

Superior Court and SHAB could reach different results on the same record.

Raymond Holland, counsel for Church Community, claimed that there are substantive differences between the appeal before SHAB and the abutters' appeal in Superior Court. The developer was before SHAB appealing the reduced number of units the local board had allowed (twenty of the proposed twenty-eight). On the other hand, the abutters' appeal at Superior Court disputed the town's decision to grant any of the requested 28 units.

Arguing the Motion to Intervene, Mr. Zangari described the nature of the potential harm to his clients' properties that might result from the town's approval. He further argued that the Planning Board decision was arbitrary, meeting notice has been insufficient and the decision was inconsistent with the Little Compton Comprehensive Plan.

Mr. Holland responded that the Motion should not be considered by SHAB because, with the exception of one person, the movants were not direct or 200 ft. abutters to the proposed development.

Representing the town of Little Compton, Mr. Humphrey stated that the Town had no objection to the Motion to Intervene.

The Board deliberated following the arguments. Primarily because of issues raised concerning drainage and traffic and the potential harm

that could result to the movants' properties, SHAB's members stated that the standards for intervention under Section 8 of SHAB's Regulations had been met.

Mr. Goodrich moved to grant the Motion to Intervene. Mr. Maynard seconded. Motion passed unanimously.

SHAB's legal counsel suggested that, in lieu of establishing a briefing schedule in the SHAB appeal, the parties should first seek to have a Superior Court judge assigned to the pending judicial appeal. All counsel agreed that the two appeals must be coordinated to the fullest extent possible.

4. Regional Development Corp. v. Town of Cumberland, SHAB appeal

2007-01. Motion for Instructions by Town of Cumberland.

Chairwoman Shekarchi recused herself from this matter. Mr. Goodrich, as Acting Chair, presided.

Mr. Richard noted that Mr. Goodrich conducted a pre hearing conference with the parties' counsel. During that conference Mr. Goodrich advised counsel that the local review board's decision lacks proper findings and conclusions to support its determination. As a result, counsel for the town and the developer stipulated to a remand of the matter back to the local review board for limited

purpose of issuing proper findings and conclusions.

Representing the Town of Cumberland, Solicitor Thomas Hefner informed the SHAB that the composition of the local review board has changed since the date of the stipulation and its current membership is not the same as those persons who rendered the decision on the application.. Mr. Hefner therefore filed the Motion for Instructions, requesting that SHAB instruct the local review board on how to proceed.

For the developer, Michael Kelly argued against the granting the Motion for Instructions, contending that SHAB lacks the authority to instruct the local review board on how to conduct its deliberations and votes.

During the hearing, Mr. Hefner withdrew the Motion for Instructions.

By consensus, and in accordance with its standard practice, SHAB agreed to Mr. Kelly's request for 45 days to brief the developer's arguments on the merits of the appeal.

Adjournment

There being no further business before the Board, the meeting adjourned by unanimous vote at 3:47 PM.

Respectfully submitted,

Mary B. Shekarchi, Esq.

Chairperson

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