

## **STATE HOUSING APPEALS BOARD**

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**DRAFT**

### **Minutes of the April 18, 2008 Board Meeting**

**The State Housing Appeals Board (“SHAB” or the “Board”) held a public meeting on April 18, 2008 at the Warwick City Hall.**

### **ATTENDANCE**

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

**Chairwoman Shekarchi called the meeting to order at 2:00 p.m.**

### **AGENDA ITEMS**

## **1. Approval of minutes of SHAB's November 20, 2007 and December 11, 2007 meetings**

**Chairwoman Shekarchi noted for the record that she attended the November 20, 2007 meeting but had recused herself from the Regional Development v. Town of Cumberland appeal and did not participate in that matter. Therefore, her vote to approve minutes pertained only to other matters in which she participated in that day. A motion made by Mr. Goodrich to approve the minutes for November 20, 2007 and December 11, 2007 meetings was seconded by Mr. Maynard. Motion passed unanimously.**

## **2. Docket Update by SHAB's Legal Counsel.**

**Mr. Richard first updated the Board on the court status of appeals taken from SHAB decisions. In the Women's Development Corporation v. Town of Richmond, the Rhode Island Supreme Court declined an abutter's petition for a writ of certiorari seeing further appellate review of a Superior Court Decision affirming SHAB's Decision.**

**Mr. Richard further informed the Board that the Rhode Island Supreme Court has suggested mediation to the parties in 3**

**“substantial completeness” appeals involving the Town of Burrillville. Absent a successful resolution through that process, the Supreme Court will issue a decision by the end of its term in June or July.**

**The Highland Hills matter remains stayed before the SHAB by stipulation of the parties. Reports from counsel indicate that the Town of Cumberland and the developer are attempting to settle that matter.**

**An appeal has also been filed by a Westerly developer, NEMA. A conference with attorneys was held by the chair on March 17, 2008. The parties have stipulated to remand that matter back to the local board.**

**The last case on SHAB’s docket involves Church Community Housing Corporation v. Little Compton Local Board of Review. Mr. Richard noted that there were two proceedings that arose out of that local decision, one before SHAB and another filed by abutters in Superior Court. The parties have stipulated to try to resolve the issues first in Superior Court.**

**3. Clarks Falls Realty, LLC. v. Town of Hopkinton, SHAB appeal # 2006-02.**

**The chair noted that there was a previous hearing on this matter during which the parties made oral arguments. The Board had asked**

**for additional briefs on specific matters to aid in its deliberations.**

**Representing the town of Hopkinton, Patricia Buckley, Esq. clarified to the Board that the local decision on the comprehensive permit was an approval for a non specified number of units. The final number of approved units would be derived using the local cluster subdivision ordinance, plus a density bonus, plus such additional units necessary to make the project financially feasible. Peer review economic analysis would be used to determine the final number of units needed to make the project economically feasible. The SHAB questioned counsel at length regarding the ultimate percentage of affordable units that could result by applying the formula stated in the decision.**

**Responding for Clark's Falls, Karen Pelczarski, Esq. contended that project feasibility was not an issue but rather, the SHAB should focus on the comprehensive permit application and the commitment of the developer to a minimum of 26% affordable units.**

**Ms. Buckley countered that the Town has made very significant advances in approving other affordable housing developments, and further argued that the local decision was drafted to require the developer to respect the environmental sensitivity of the site.**

**On examining the Hopkinton decision, Mr. Ostiguy moved to find that the decision of the local board was an approval with conditions. Mr.**

**Goodrich seconded. Motion carried unanimously.**

**Upon deliberation by the members, Chairwoman Shekarchi moved to find the Hopkinton had not met its 10% requirement for low and moderate income housing. Mr. Goodrich seconded. Motion carried unanimously.**

**SHAB next deliberated the consistency if the Planning Board's decision with local needs as defined in Chapter 45-53-3(2). Members questioned the adequacy of the local decision to ensure that a minimum percentage of low to moderate income housing would be built. Chairwoman Shekarchi moved to find that the town's R80 zoning and the cluster zoning requirement were not reasonable and not consistent with local needs. Mr. Goodrich seconded. Mr. Ostiguy and Mr. Maynard voted in the affirmative. Ms Fagan voted no, noting her opinion that the decision that the town's progress toward affordable housing evidenced the consistency of the decision with local needs for affordable housing.**

**Applying an additional statutory standard of review, the SHAB next considered the consistency of the decision with the approved comprehensive plan. The Board noted references consistent with the Comprehensive Plan in the local decision. Mr. Ostiguy moved to find that the local decision was consistent with the Comprehensive Plan. Mr. Goodrich seconded. Mr. Maynard and Mr. Fagan voted in the affirmative. Chairwoman Shekarchi voted no, her opinion being that**

that the formula for density in the decision did not significantly further the achievement of plan goals.

Considering whether the local decision was consistent with consideration of the health and safety of current and future residents, Mr. Goodrich noted that the local record revealed traffic concerns expressed by neighbors. However, the Clarks Falls traffic expert concluded traffic generated by the development did not pose a health and safety risk. The Town had presented no credible evidence to refute that opinion. Ms. Fagan noted that full consideration of health and safety impacts was limited because the local decision was made with Master Plan level information. Permitting from state agencies required for future preliminary local review would determine the protection of the health and safety of current and future residents. Mr. Goodrich moved to find that the record evidence presented for the master plan level decision was insufficient to determine the consistency of that decision with the requirements to protect the health and safety of residents. Mr. Maynard seconded. Motion passed unanimously.

SHAB next considered the reasonableness of the local decision regarding the need for environmental protection. Mr. Goodrich noted that consideration of environmental protection would be better addressed at later stages of the project review. The SHAB determined it had insufficient evidence before it to make a conclusive determination regarding the consideration of environmental

protection. Mr. Goodrich moved to find that the SHAB had insufficient evidence to determine consideration of environmental protection. Ms. Fagan seconded. Motion passed unanimously.

SHAB next considered whether local community zoning ordinances and special exception proceedings were applied evenly in subsidized and unsubsidized housing applications. Mr. Goodrich suggested the local zoning would frustrate those in need of affordable housing. Mr. Ostiguy felt that the planning board did not review the application that was presented to them but rather, came up with their own plan for what the project should be. Ms. Fagan pointed out that another subsidized, all affordable project, Wood River Village, had been approved by the local board. Chairwoman Shekarchi argued that the decision simply applied the local zoning ordinance to the development with minimal additional density to allow for affordable housing. Ms. Shekarchi moved to find that the planning board's decision to condition the applicant's proposal indicated that the local zoning ordinances are not applied evenly to subsidized and unsubsidized housing. Mr. Goodrich seconded. Mr. Ostiguy and Mr. Maynard voted in the affirmative, Ms. Fagan voted no. Motion carried.

Considering whether any other factors should be reviewed prior to making their final decision, SHAB turned to the question of whether the conditions in the local decision might make it impossible for the project to move forward. The members deliberated the statutory

**definition of “infeasible” and whether it applies only to public agencies, nonprofit corporations and limited equity housing corporations. Chairwoman Shekarchi moved to find that, as the appellant is a for profit developer, project feasibility is not an issue for SHAB to consider in their decision, in light of the statutory definition. Mr. Goodrich seconded. Motion carried unanimously.**

**The Chair moved to find that the conditions in the local decision were not reasonable and consistent with local needs. Mr. Goodrich seconded. Mr. Ostiguy and Mr. Maynard vote in the affirmative. Ms. Fagan voted no, noting her opinion that the decision was consistent with local needs.**

**After deliberations and weighing the local record evidence Chairwoman Shekarchi moved to vacate conditions one and two of the local decision and approve the applicant’s master plan subject to review at preliminary and final plan review. Mr. Goodrich seconded. Motion carried unanimously.**

**The chair expressed gratitude to counsel for the parties noting the particular challenges presented by this case and the helpfulness of the supplemental briefing and argument.**

#### **4. Other Business**

**The Chair noted that the SHAB members had been reappointed and she anticipated confirmation of appointments.**

**Adjournment**

**Meeting adjourned at 4:15 PM.**

**Respectfully submitted,**

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**Mary B. Shekarchi, Esq.**

**Chairperson**

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