

STATE HOUSING APPEALS BOARD

44 Washington Street

Providence, Rhode Island 02903

Phone (401) 457-1214

Fax (401) 457-1140

kmaxwell@rhodeislandhousing.org

Draft

Minutes of the June 24, 2009 Board Meeting

The State Housing Appeals Board (“SHAB” or the “Board”) held a public meeting on June 24, 2009 at the Warwick City Hall.

ATTENDANCE

The following members attended the meeting: Charles Maynard, Cynthia Fagan, Steve Ostiguy, M. Theresa Santos 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 1:32 p.m.

AGENDA ITEMS

1. Approval of minutes of SHAB's October 22, 2009 meeting

Mr. Maynard questioned the wording on the motion determining SHAB's lack of jurisdiction in the matter of NEMA vs. Westerly. Corrected minutes reflecting this change were requested by Chairwoman Shekarchi.

2. Docket Update by SHAB's Legal Counsel.

Mr. Richard noted there were several appeals in SHAB's pipeline likely to be heard later in the year and that activity in court related to SHAB's decisions was light.

3. Atlantic East LLC vs. Town of Narragansett SHAB appeal # 2008-05.

 Motion to Strike Intervenors Reply Brief

For Atlantic East, Attorney Anthony DsSisto argued that he had insufficient time to respond to the Intervenors Memorandum in Response to Appellant's Brief because it had been received a week before the meeting. Patrick Dougherty argued against the motion to strike his reply brief, noting his reply only restated arguments in his original brief. Mr. Maynard moved to deny the Motion to Strike.

Motion carried.

- **SHAB's Jurisdiction**

For the Intervenors, Mr. Dougherty argued that the SHAB lacked jurisdiction to consider the appeal on the grounds that the appellant, Atlantic East LLC did not legally exist at the time the local hearings on the comprehensive application began. Mr. DeSisto, arguing for the appellant, maintained the application was complete and further, the issue of the ownership of the property had not been raised in the Narragansett meetings. The Board examined the Narragansett town form that entitled the local application to proceed to local hearing and questioned counsel. The Board found that the local application had been accepted by the Town and was complete. The Board determined they had jurisdiction to hear the appeal.

- **Oral Arguments**

For the appellant, Mr. DeSisto claimed that the record showed that the Narragansett Planning Board was able to make all of the required positive findings needed to approve the development, with the exception that they did not find the affordable units were sufficiently integrated into the development as a whole. He further argued that the Planning Board's decision lacked findings on what would be an appropriate mix of low and moderate income units with market rate units; therefore the decision was insufficient and flawed.

Representing the town, Mr. McSally argued the Planning Board was correct in denying the application because the development as proposed lacked spatial and location integration between the low and moderate income units and market rate units and were not comparable in architectural style. The location of the market rate units in the ocean front building and the lack of specifics on the rehab in the rear existing building led to the town's inability to make a positive finding the affordable units were sufficiently integrated throughout the development. He maintained the local record showed also that the scale of the market and the affordable units was not comparable. SHAB member Mr. Ostiguy questioned the level of the Planning Board's efforts to attach conditions to an approval of the permit that would enhance integration of the affordable and market rate units in the development. Mr. McSally countered that the Planning Board had no statutory obligation to do so.

For the abutters, Mr. Dougherty argued that the record evidence showed that the Planning Board was, if anything, pre-disposed to grant the application and that some of their positive findings were in fact, flawed such as the finding of consistency with the comprehensive plan. He further maintained that the application was really for 2 separate developments, one being the existing building and one being the proposed new ocean front building.

SHAB members questioned Mr. Dougherty on the proposal's

conformance with the affordable housing plan. Mr. Dougherty maintained that the density of the project was inappropriate and not sufficiently protective of coastal features. He argued that although project's density had been contemplated in the affordable housing plan, the yield of low and moderate income units from the proposal was not sufficient to meet local needs.

Mr. DeSisto maintained that under the enabling statute the Planning Board had the discretion to apply conditions to the permit that, in their view, would have achieved more desirable unit integration. The SHAB members discussed the adequacy, scale and location of the affordable units.

The SHAB deliberated and agreed that Narragansett did not meet its 10% affordable housing goals. The SHAB further found that the denial was not consistent with the town's affordable housing plan. Upon further deliberation, the SHAB found that the application was consistent with the need to protect health and safety. Addressing the issue of unit integration, Chairwoman Shekarchi noted testimony before the local board by an architect attesting that all units were of comparable size. Mr. Ostiguy noted that the number of affordable units proposed by the appellant exceeded the number for the site in the affordable housing plan. Mr. Maynard noted the local board failed to describe what acceptable unit integration would be.

The Chair moved to vacate the town's decision. Motion carried.

Adjournment

The meeting adjourned at 5:16 p.m.

Respectfully submitted,

Mary B. Shekarchi, Esq.

Chairperson

▪