

Draft

STATE HOUSING APPEALS BOARD

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Minutes of the April 20, 2010 Board Meeting

The State Housing Appeals Board (“SHAB” or the “Board”) held a public meeting on April 20, 2010 at the Middletown Town Hall.

ATTENDANCE

The following members attended the meeting: Charles Maynard, Donald Goodrich, Cynthia Fagan, Theresa Santos and Chairwoman Mary Shekarchi, Esq. Also present were Steven M. Richard, legal counsel to the SHAB, Katherine Maxwell, and Karen Slavin, administrative staff to the SHAB. SHAB member Steve Ostiguy was recused from the Dry Bridge appeal matter and did not attend the meeting.

Chairwoman Shekarchi called the meeting to order at 2:15 p.m.

AGENDA ITEMS

1. Review and approval of minutes of SHAB's November 24, 2009 meeting

Motion to approve minutes passed unanimously.

2. Docket Update by SHAB's Legal Counsel.

Mr. Richard informed the members that their decision on Atlantic East v. Town of Narragansett has been appealed to Superior Court by both the Town and the abutters. He further noted that the SHAB docket currently contained 6 appeals, 3 of which were ready for adjudication.

The Chairwoman suggested the SHAB might schedule further meetings in the evening to reduce the scheduling conflicts that have pushed back hearing dates on several occasions. Mr. Landry suggested that due to many local evening committees meetings, SHAB scheduling could be just as difficult in the evenings as in the afternoons. Mr. Ruggiero agreed. Ms. Shekarchi suggested that it may make sense to retain evening meetings as an option to consider periodically, rather than waiting a very long period to find suitable times during the afternoon hours.

3. Motion to Reduce Fees Warm Supportive Homes, Inc. SHAB Appeal # 2010-01

Douglas Emmanuel Esq. explained that Warm Supportive Homes, Inc, is a not for profit agency struggling with a very tight budget. Their funds have been earmarked for constructing the eight units for the disabled above the current WARM soup kitchen, the subject of this appeal. Assessing the full non profit appeal fee would force WARM to seek additional state or federal funds to cover that cost. He pointed out that funds to pay the fee could not be guaranteed from those state or federal sources. Mr. Goodrich moved to reduce the SHAB filing fee for WARM Supportive Homes, Inc. to \$500. Motion passed unanimously.

4. Motion to Reduce Fees New England Framing Contractors, LLC. SHAB Appeal # 2009-03

Mr. Landry acknowledged that the appellant is a for profit developer. He informed the Board that the appeal would be tightly focused upon the condition of approval set by the Scituate local review board. He further informed the Board that the local record for this appeal is quite brief because the hearings themselves were very brief. He then pointed out that the SHAB regulation allows for appeal fees to be charged that are not in excess of actual costs associated with the

appeal. Mr. Richard and Ms. Maxwell explained how the costs per appeal are calculated and paid by Rhode Island Housing. They indicated that a good estimate of the actual cost of processing the appeal could be made. Mr. Goodrich moved that if, after paying legal bills and other appeal costs, that sum is less than the appeal fee paid by the developer, that any remainder should be remitted back to the developer. Motion passed unanimously. Mr. Landry indicated that SHAB would receive briefs on this appeal approximately by the end of June.

5. Dry Bridge Development v. Town of North Kingstown SHAB Appeal # 2008-03

Mr. Richard explained to the Board that, due to the lengthy and complex nature of this appeal, the Chair had held two pre-hearing conferences with counsel to come to an agreement on a way to streamline the issues. A bifurcated approach was established to facilitate the resolution of the issues presented by the appeal. Accordingly, counsel had both submitted short memoranda on the first limited set of issues before the SHAB today.

For the appellant, Mr. Landry began by pointing out that the subject comprehensive permit application was filed with North Kingstown at the end of 2003. He argued that the standards against which the North Kingstown Board evaluated the permit only come into effect after the application had been submitted. Mr. Richard pointed out

that the first town hearing on the application did not occur until 2007 and asked Mr. Landry whether the town had discretion to look at the application's consistency with local need in light of matters concerning affordable housing developments that occurred during 4 year period between 2003 and 2007. In response, Mr. Landry maintained that the town could consider the condition of the property and the town's needs during the hearings but that the controlling standards for approval were contained in the pre-2004 moratorium law. Turning to that law, Mr. Richard pointed out that SHAB had the authority under it to consider additional factors other than those listed in the law.

Mr. Goodrich pointed out that the transcript of the first local hearing indicated that the local board was aware of other approvals and pending approvals for affordable housing developments in the town at that time. But there didn't seem to be agreement between the appellant and the local board on whether to consider those matters. Mr. Landry argued that, in the end, the local board's decision included findings related to the later local affordable housing plan and comprehensive planning documents. He maintained that these should not have been considered because they did not exist at the time of the 2003 local application.

Mr. Peter Ruggiero, responded for the Town. He stated that the Town did not dispute the applicability of the pre-moratorium law. Rather, the Town questioned what the application of that law meant regarding

local regulations. He pointed out that the Town had a comprehensive plan in 2001. He further argued that in accordance with the *East Bay v. Barrington*, the court supported SHAB's decision, indicating that an existing plan may not be used to deny a comprehensive permit application but rather, local boards must look to the merits of the application based on the evidence.

On questioning by Mr. Goodrich, Mr. Ruggiero responded that he believed Dry Bridge's comprehensive permit application was vested in 2003 and thus protected from evaluation under any new regulations or plan adopted after that time. But that vesting did not prevent the local board from considering relevant factual evidence in decision making. He argued that the town correctly considered all the relevant evidence to determine whether the application was consistent with local needs. He maintained that the town did not use any ordinances enacted after the application in a dispositive way to come to their decision on Dry Bridge's comprehensive permit application.

SHAB members and legal counsel discussed the appropriateness of applying the pre 2004 law standards to the review. For the town, Mr. Ruggiero agreed that the pre moratorium standard should apply but disagreed that there was a violation of that standard in light of the evidence presented to the town. He argued that the SHAB should review the local testimony and transcripts to determine how the law applies. Mr. Goodrich moved that the SHAB accept the stipulation of

the parties that in regards to review of the application, the provisions of the Low and Moderate Income Housing in effect on February 13, 2004, are controlling. Motion passed unanimously.

Mr. Landry continued with arguments, contending that Dry Bridge's application to the North Kingstown local review board contained evidence sufficient for a master plan level review in accordance with RIGL 45-23-40. He contended that statutory description should apply. He noted that SHAB applied that standard in the Deer Brook appeal, so the same standards should be applied to current Dry Bridge decision appeal.

Mr. Ruggiero countered that RIGL 45-23-40 doesn't define the rules concerning master plan standards for the SHAB. He argued that the town did not apply unreasonable standards to the evidence presented. He continued, pointing out that SHAB's Deer Brook decision also included a review of the evidence regarding to health, safety and welfare impacts of that project. He emphasized that local boards are required in their decisions to make findings regarding the standards articulated in the SHAB statute and rules, based on meaningful credible evidence. Chairwoman Skekarchi moved to accept a stipulation of the parties to accept SHAB's analysis under RIGL 45-53-4 supplemented by the SHAB rules in effect on February 13, 2004, and in accordance with SHAB's analysis and rules articulated in its prior Deer Brook v. Exeter decision. Motion carried unanimously.

6. Other Business

The Board discussed the importance of scheduling a second hearing on the Dry Bridge matter as soon as possible.

Adjournment

The meeting adjourned at 4:12 p.m.

Respectfully submitted,

Mary B. Shekarchi, Esq.

Chairperson

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