STATE HOUSING APPEALS BOARD

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Minutes of the July 31, 2013 Board Meeting

The State Housing Appeals Board ("SHAB" or the "Board") held a public meeting on June 5, 2013 at Warwick City Hall.

ATTENDANCE

The following members were present: Chairwoman Kelley Morris, Joseph Caffey, Brenda Clement, James Grundy, June Sager Speakman, Robert Cuttle, Luis Torrado and municipal alternate member Steven Stycos. Also present were Steven M. Richard, legal counsel to the SHAB, and Christine DaRocha, administrative staff to the SHAB. Because all municipal members were present, Mr. Stycos did not participate in the deliberations and voting in the Ocean Breeze Condominium, LLC v. Town of Narragansett appeal discussed below.

Call to Order

Chairwoman Morris called the meeting to order at 4:06 p.m.

Approval of 6/5/13 Minutes

The Board unanimously approved the 6/5/13 minutes.

Update from SHAB's legal counsel regarding status of docket

Mr. Richard stated that SHAB's Decisions in the LR-6A Owner, LLC (Brushy Brook) v. Hopkintonand Pesaturo/Gemma v. Cumberland were appealed to Superior Court.

Regarding NEMA v. Westerly, settlement efforts are still ongoing and SHAB will monitor the status of the appeal.

Regarding North End Holdings v. Barrington, counsel are drafting the parties' briefs.

Regarding SWAP v. West Greenwich, the town has filed a motion to dismiss, which should be ready for a hearing in September depending on the availability of SHAB members and the parties' legal counsel.

Continuation of Oral argument by counsel for parties, including questioning by SHAB membership and counsel with regard to Ocean Breeze Condominium, LLC vs. Town of Narragansett, SHAB Appeal

No. 2009-02

A summary of the continued hearing and deliberations is provided below. A full transcript of the continued hearing and deliberations is available to the public upon request.

Chairwoman Morris stated that the Town's plan calls for 32 units on the entire designated area listed in Table 16. She noted that the developer's application would result in 16 new units bring the total units to 40 with just 4 low and moderate income (LMI) units. She acknowledged that Table 16 raises some ambiguities, but the Planning Board received an interpretation from Statewide Planning that the 31 lots were envisioned for the listed parcels (which the Town rounded up to 32).

Mr. Grundy stated that his view regarding Table 16 can be construed in various ways regarding its allowance for conversion, expansion or new construction. Also, in his view, the affordable housing plan's density formula appears to allow the type of elderly housing proposed by the developer's application. He referred to the Planning Board's 4/29/09 minutes and statements by at least one Planning Board member that the Town cannot reasonably expect that any property owner would provide strictly 8 LMI units without any bonus. Mr. Grundy stated that it is reasonable to conclude that the Town should have allowed the developer's proposed new construction.

Ms. Speakman questioned how the developer's proposal fits into the plan's requirements without increasing the density significantly. She questioned how the proposal would be consistent with the density requirements for the parcels. She further stated that, even with R-80 zoning, dense development exists on the lots. Mr. Cuttle stated that he concurred with Ms. Speakman's comments about the density issues.

Attorney Donald Packer, representing the developer, argued that the comprehensive plan recognizes that the R-80 zoning is not the appropriate zoning for the site. He outlined the developer's arguments in support of the multi-family project with its proposed density, claiming that it meets the intention of the plan and promotes its goals of additional elderly housing. Mr. Packer stated that lot 132 should be analyzed as part of the appellate review, even though the Town did not list it among the parcels on Table 16. Chairwoman Morris asked if lot 132 is unbuildable due to wetlands. Mr. Packer stated that the record does not support such a conclusion.

Attorney William Landry, counsel for the intervening abutters, argued that lot 132 contains vernal pools and mucky soils. The intervenors contend that the developer is improperly using lot 132 to support the density analysis, yet the lot is not listed in Table 16. Mr. Landry concluded that the proper reading of the plan does not allow the level of new construction proposed by the developer and a total of 32 units were envisioned on all of the parcels with a density of no more than

eight units per acre.

Attorney James Howe, representing the Town, argued that SHAB cannot rewrite the Town's affordable housing plan and that SHAB must focus on the reasonableness of the Planning Board's determinations in light of the record evidence. Attorney Howe contended that the Planning Board undertook a detailed review of the record and evaluated all relevant considerations based upon its ordinances and affordable housing plan.

Mr. Torrado stated his opinion that the appeal raises a primary consideration of whether the Planning Board reasonably interpreted the methodology and intent of the affordable housing plan, particularly in its interpretation of Table 16.

Mr. Richard reminded the SHAB members that they must base their deliberations on the record evidence only.

Votes

Chairwoman Morris moved and Mr. Cuttle seconded the motion to uphold the Narragansett Planning Board's decision denying master plan approval for the comprehensive permit application. The Motion passed 5 votes to 1, with Mr. Grundy voting no. SHAB will issue a written decision regarding its ruling.

Adjournment

The meeting adjourned at 6:18 p.m.

Respectfully submitted,

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Kelley Morris, Esq., Chairwoman