

**STATE HOUSING  
APPEALS BOARD  
(AN OVERVIEW OF  
WHAT SHAB DOES AND  
HOW IT WORKS)**



**STEVEN M. RICHARD**

# STATE HOUSING APPEALS BOARD MEMBERSHIP

- Section 45-53-7(a)(1) states that SHAB consists of seven (7) voting members appointed by the Governor
  - Attorney knowledgeable in land use regulations serves as Chair (Kelly Morris Salvatore, Esq.)
  - One affordable housing developer (Vacant)
  - One affordable housing advocate (Brenda Clement)
  - One business community representative (Luis Torrado)

# STATE HOUSING APPEALS BOARD MEMBERSHIP - CONT.

- Municipal members (three and an alternate)
  - Two of whom shall be from municipalities with populations of less than 25,000
  - Two of whom shall be from municipalities with populations of 25,000 or greater
  - One zoning board member, one local planning board member, one city council member, and one town council member
  - Current Municipal Members
    - James Grundy – North Kingstown
    - Mary Meagher – Jamestown
    - Robert Najanian – North Smithfield
    - David Soucy - Woonsocket



# THE APPEALS PROCESS (STATUTORY PROVISIONS)

- Section 45-53-5 states that an appeal of a local review board decision shall be filed with SHAB within twenty (20) days after the date of the decision
- SHAB shall notify local review board within ten (10) days to “transmit a copy of the decision and the reasons for that decision to the appeals board”
- SHAB shall hear the appeal within twenty (20) days after the receipt of the applicant’s statement
- By majority vote, SHAB shall state its findings of fact and conclusions of law within thirty (30) days after the termination of its hearing.



# THE APPEALS PROCESS (IN PRACTICE)

- It often takes a municipality time to compile record exhibits and transcripts of local review board proceedings. Records can range from a few hearings to approximately a dozen hearings on comprehensive permit application.
- SHAB Chair holds a pre-hearing conference with counsel for the parties to discuss transmittal of records, setting of briefing schedule, and any particular evidentiary issues of concern.
- Intervention allowed under SHAB's regulations.
- Briefs entail
  - Applicant's brief
  - Responsive brief by municipality and any abutters; and
  - Applicant's reply brief.



# THE APPEALS PROCESS (IN PRACTICE) - CONT.

- SHAB holds a hearing to receive oral arguments (typically 30-60 minutes per side) and asks questions after the arguments.
- SHAB may request post-hearing briefs.
- SHAB returns for a second hearing to deliberate publicly and vote on findings/conclusions.
- Counsel writes decision for SHAB members' review and approval

# WHAT IS ISSUE NO. 1?

**Density**

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# SHAB'S POWERS

Section 45-53-6(b) states:

In hearing the appeal, the state housing appeals board shall determine whether: (i) **in the case of the denial of an application**, the decision of the local review board was consistent with an approved affordable housing plan, or if the town does not have an approved affordable housing plan, was reasonable and consistent with local needs; and (ii) **in the case of an approval of an application with conditions and requirements imposed**, whether those conditions and requirements make the construction or operation of the housing infeasible and whether those conditions and requirements are consistent with an approved affordable housing plan, or if the town does not have an approved affordable housing plan, are consistent with local needs.





# SHAB POWERS – CONT.

Section 45-53-6(c) states that, in making its determination, SHAB's standards of review include, but are not limited to:

- The consistency of the decision to deny or condition the permit with the approved affordable housing plan and/or approved comprehensive plan;
- The extent to which the community meets or plans to meet housing needs, as defined in an affordable housing plan, including, but not limited to, the ten percent (10%) goal for existing low and moderate income housing units as a proportion of year-round housing.
- The consideration of the health and safety of existing residents.
- The consideration of environmental protection; and
- The extent to which the community applies local zoning ordinances and review procedures evenly on subsidized and unsubsidized housing applications alike.



# SHAB POWERS (SHAB'S OPTIONS UNDER 45-53-6(D))

- If the appeals board finds, **in the case of a denial**, that the decision of the local review board was not consistent with an approved affordable housing plan, or if the town does not have an approved affordable housing plan, was not reasonable and consistent with local needs, it shall vacate the decision and issue a decision and order approving the application, denying the application, or approving with various conditions consistent with local needs.
- If the appeals board finds, **in the case of an approval with conditions and requirements imposed**, that the decision of the local review board makes the building or operation of the housing infeasible, and/or the conditions and requirements are not consistent with an approved affordable housing plan, or if the town does not have an approved affordable housing plan, are not consistent with local needs, it shall issue a decision and order, modifying or removing any condition or requirement so as to make the proposal no longer infeasible and/or consistent, and approving the application.



## SHAB POWERS – CONT.

- Decisions or conditions and requirements imposed by a local review board that are **consistent with approved affordable housing plans and/or with local needs shall not be vacated, modified, or removed by the appeals board** notwithstanding that the decision or conditions and requirements have the effect of denying or making the applicant's proposal infeasible.

THANK YOU. QUESTIONS?



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