

SWAP, INC.,)
)
 Appellee)
)
 v.)
)
 ZONING BOARD OF REVIEW OF)
 THE TOWN OF WEST GREENWICH,)
 and BLUEBERRY HEIGHTS, INC.,)
 Appellants)

Case No. SU 06-0182
 SHAB No. 2005-03

CONSENT ORDER

_____ This matter is before the Court on the appeals of the Town of West Greenwich and Blueberry Heights, Inc. from a Decision of the State Housing Appeals Board (“SHAB”) reversing a Decision of the Zoning Board of Review for the Town of West Greenwich (“Zoning Board”). The SHAB Decision had the effect of granting the equivalent of master plan level approval for a proposed residential development on Victory Highway (Route 102) on property owned by Rhode Island Housing And Mortgage Finance Corporation (“Rhode Island Housing”).

The developer/ applicant/ appellee is SWAP, Inc. (“SWAP”), a nonprofit corporation. The application proceeded below pursuant to the Rhode Island Low And Moderate Income Housing Act, R.I.G.L. §45-53-1, et seq. (“the Act”).

The matter has been mediated through the Court’s Appellate Mediation Program with the assistance of Mr. Justice Weisberger (Ret.), and has resulted in the appellants Town of West Greenwich and Blueberry Heights, Inc. and appellee SWAP reaching agreement for dismissal of the Town’s and Blueberry Heights, Inc.’s appeal and modification of the SHAB Decision on the terms and conditions set forth below:

1. The June 23, 2006 Decision of SHAB reversing the May 9, 2005 Decision of the Zoning Board is hereby affirmed, with the exception that the Decision is modified as follows:

(a) SWAP's master plan approval is based on the following changes being incorporated as part of (and conditions to) said master plan approval, all of which are based on the public interest and the unique and particular needs and housing goals of the Town of West Greenwich.

(i) **Unit Count/Density/"Affordable" Component**

The development shall include approximately forty (40) "family" (3 bedroom) single family dwellings available to persons of Low or Moderate Income as defined in the Act. (This provision shall not preclude SWAP from complying with requirements of applicable state or federal subsidy programs that require the dwellings to be sold to person of lower incomes.) This threshold requirement of 40 moderate income family units shall not be modified unless it is demonstrated to the reasonable satisfaction of the Comprehensive Permitting Authority that this condition would render the project "infeasible" as defined in R.I.G.L. §45-53-3(3).

The total number of dwellings in the development shall be fifty (50), all of which shall be family (3 bedroom) units.

(ii) **Planning Board Role**

The Planning Board of the Town of West Greenwich shall replace the Zoning Board of the Town of West Greenwich as the Comprehensive Permitting Authority for this application. The remaining permitting regimen shall follow the course of the preliminary/ final approval process contemplated by the 2004 amendments to the Low And Moderate Income Housing Act, R.I.G.L. § 45-53-1, et seq.

(iii) **Deed Restriction**

All low or moderate income units constructed as part of the development shall be subject to a ninety nine (99) year affordability restriction.

(iv) **Buffering/Setbacks**

In order to permit staggered, varying house placements, the no cut buffer area along the southerly/ westerly boundary of the property (i.e., the boundary of lots within the development running perpendicular to Victory Highway closest to Victory Highway) shall be 50 feet, which area shall include (within said 50 feet) the water line easement area, and front setback relief shall be granted accordingly. Along the boundary between the development and A.P. 14, Lot 15-1, the width of the no-cut buffer shall be 25 feet.

(v) **Building Envelopes**

In order to avoid future zoning enforcement issues, the Preliminary and Final Plan submissions shall show the proposed building envelopes for each lot (showing the setbacks for each lot) and these shall be reflected in both the purchase and sale agreements and chain of title for the individual lots so that the eventual homeowners are clearly aware of the applicable setbacks.

(vi) **Cisterns**

The development shall require two 10,000 gallon cisterns for fire protection and one radio call box.

(vii) **Alternate Ingress/Egress**

In view of the looped nature of the roadway network, alternate means of ingress/ egress shall not be required. However, a “stub” shall be maintained on the property between two lots adjacent to A.P. 14, Lot 15-1 (and ending at A.P. 14, Lot 15-1) so as to not foreclose future options for alternate or emergency access for both the subject parcel and A.P. 14, Lot 15-1.

(viii) **Review Fees**

The parties shall make reasonable and diligent efforts to agree on reimbursement to the Town for future reasonable, necessary and customary engineering review fees actually

incurred, based on scopes of work and estimates provided to SWAP and approved in advance, such approval not to be unreasonably withheld. There shall be no Town administrative fee required for the preliminary final plan submissions. SWAP shall reimburse/ pay the Town with respect to the outstanding bill from Fuss and O'Neil.

(ix) **Open Space**

The Town of West Greenwich shall, subject to the approval of Rhode Island Housing, have the option to acquire a fee interest in the open space areas created in the development and to correspondingly become responsible for the maintenance of said areas. There shall be no cost or price to the Town to exercise said option, but the option must be exercised within 30 days after the development receives Final Approval.

(x) **Water Connections**

All direct residential abutters adjoining the development directly adjacent to the water line easement (i.e., the easement running parallel to Victory Highway along the southerly/ westerly boundary of the property) shall have the right at their expense to connect to the water line located within said easement area provided they provide notice of their prospective desire to do so within 120 days following final approval and agree to abide by reasonable guidelines established by SWAP for said connections (including the time within which they must be accomplished; indemnification for costs and claims; restoration of the property after construction of the connection, etc.). Moreover, said connections shall be allowed only if the Rhode Island Department of Health (“DOH”) approvals for the proposed public water supply improvements are such as to make clear that there is adequate capacity in the system to service such additional dwellings in addition to the dwellings in the subject development and in the Blueberry Heights community. The Town of West Greenwich and Blueberry Heights, Inc. shall be provided with notice of and be allowed to participate (at their

expense) in the DOH review and any associated hearing process regarding the approval of the expansion of the water system.

(xi) Roadways/Sidewalks/Parking

The road standard shall be a 24' wide paved travel way, with 1 foot "cape cod" berms on each side, and a meandering asphalt sidewalk path on one side. Along the site entrance road there shall be a lighted staging area for a bus stop on the same side as the sidewalk. The homeowners shall be responsible for maintenance and removal of snow from the sidewalks, and covenants in the Homeowners Association documents shall so provide. Notice shall be posted within the development that on-street overnight parking shall not be allowed, and a covenant shall be contained in the Homeowners' Association documents limiting parking to driveways only.

(xii) Vesting

The Master Plan Approval accomplished hereby shall be deemed vested for a period of three years.

(xiii) Units To Be Counted

All of the Low/ Moderate income units to be developed as contemplated hereby shall be such as to be counted (by reason of municipal density bonus or otherwise) toward the Town's progress toward the Ten Percent (10%) low/ moderate income housing percentage goal prescribed by the Act.

Entered as an Order of this Court this ____ day of _____, 200__.

By Order:

Enter:

Approved In Form And Substance:

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