

**STATE OF RHODE ISLAND
KENT, SC**

SUPERIOR COURT

TOWN OF EAST GREENWICH AND THE
TOWN OF EAST GREENWICH PLANNING BOARD

Appellant,

v.

THE STATE HOUSING APPEALS BOARD AND
DIVISION ROAD NEIGHBORHOOD, LLC,

Appellees,

and

DIVISION ROAD MITIGATION FUND,
STEPHEN J. CORNWALL, AND DEBORAH THOMAS

Intervenors.

APPEAL/COMPLAINT

Introduction

This action is an appeal of a decision of the State Housing Appeals Board. The Appellant, the Town of East Greenwich and the East Greenwich Planning Board, bring this action pursuant to RIGL 45-53-5(d)&(e) and/or RIGL 45-53-5.1(i) and/or RIGL 42-35-15 & RIGL 42-35-15.1.

Parties

1. Appellant, the Town of East Greenwich (“Town”) and the East Greenwich Planning Board (“Board”), is a Rhode Island municipal corporation and the official board thereof authorized to hear comprehensive permit applications in the Town of East Greenwich.
2. Appellee, the State Housing Appeals Board (“SHAB”), is the board authorized to hear the comprehensive permit appeal at issue in this matter.
3. Appellee, Division Road Neighborhood, LLC (“DRN”), is a Rhode Island limited liability company that filed the comprehensive permit at issue in this case.

4. Intervenor, Division Road Mitigation Fund and Stephen J. Cornwall and Deborah Thomas (the “Intervenor”) are abutters to the property subject to the comprehensive permit application at issue in this matter who both participated before the Board and were permitted to intervene before SHAB.

Jurisdiction

5. This Honorable Court has jurisdiction over this matter pursuant to RIGL 45-53-5(d)&(e) and/or RIGL 45-53-5.1(i) and/or RIGL 42-35-15 & RIGL 42-35-15.1.

Facts

6. The Town and Board reallege and reassert the allegations contained in Paragraphs 1 through 5 as if set forth fully herein.
7. DRN filed a comprehensive permit application for master plan approval with the Board proposing development of a parcel located at Assessor’s Map 67, Plat 13, Lots 35 and 53.
8. DRN’s proposed master plan called for the new construction of 410 residential units.
9. The Board heard testimony and held a public the master plan public informational meeting on June 15, 2022, April 19, 2023, May 03, 2023, May 17, 2023, June 21, 2023, and July 19, 2023.
10. On August 2, 2023, the Board voted to deny DRN’s application for master plan approval and written decision was recorded on August 3, 2023, which is attached hereto as **Exhibit 1**.
11. DRN appealed the denial to SHAB, and Intervenor were allowed to intervene in the appeal as they are abutters to DRN’s proposal.

12. SHAB received briefing from the parties and heard oral argument on November 27, 2023, where SHAB voted to direct the parties to draft a written decision overturning the Board's decision to be issued by the Board thereafter.
13. SHAB issued a written decision overturning the Board on December 30, 2023, which is attached hereto as **Exhibit 2**.

COUNT I

(Appeal of SHAB decision)

14. The Town and the Board hereby re-allege and incorporates by reference paragraphs 1 through 13 of this Appeal as if set forth fully herein.
15. SHAB prejudiced substantial rights of the Town and the Board in that SHAB's decision was:
 - (a) In violation of constitutional, statutory, or ordinance provisions;
 - (b) In excess of the authority granted to the zoning board of review by statute or ordinance;
 - (c) Made upon unlawful procedure;
 - (d) Affected by other error of law;
 - (e) Clearly erroneous in view of the reliable, probative, and substantial evidence of the whole record; and/or
 - (f) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

WHEREFORE, the Town and the Board pray that this Honorable Court:

- (1) Review SHAB’s decision in accordance with the applicable provisions of the Rhode Island General Laws, the opinions of this Court and the Supreme Court of the State of Rhode Island, and other applicable law;
- (2) Reverse SHAB’s decision in this matter; and
- (3) Grant such other and further relief as may be deemed just and proper under the circumstances.

The Town of East Greenwich and
The East Greenwich Planning Board,
By its attorney,
/s/ Andy Teitz
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Certification

I, the undersigned, hereby certify that on December 30, 2023, pursuant to Rule 80 of the Superior Court Rules of Civil Procedure, served the within complaint via email on the following counsel for the parties:

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/s/ Peter Skwirz