STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: September 30, 2024)

THE TOWN OF LINCOLN *Appellant*	:	
v.	:	**C.A. No. PC-2023-00484**
THE STATE HOUSING APPEALS BOARD and WOMEN'S DEVELOPMENT CORPORATION *Appellees*	:	

DECISION

KEOUGH, J. Before this Court is an appeal by the Town of Lincoln (Town) from a decision (Decision) of the State Housing Appeals Board (SHAB) approving Appellee Women's Development Corporation's (WDC) comprehensive permit application (application). The Town of Lincoln Planning Board (Board) had previously denied master plan approval of WDC's application. Jurisdiction is pursuant to G.L. 1956 § 45-53-5.

I

Facts and Travel[1]

The instant appeal concerns a proposed development on property located at 0 Breakneck Hill Road, Lincoln, Rhode Island, Assessor's Plat 20, Lot 23 (property, lot, or parcel). The lot consists of 11.5 acres of heavily wooded area, of which only 4.75 acres is suitable for development. The parcel is described as being "'adjacent to a recently

[1] The Certified Record is 1,469 pages, contained in six separate parts. *See* Docket. Citations to the record will reference the relevant page number for the consolidated file and not the individual document pages.

constructed, high-density residential development to [the east] (Stone Creek), a farm and equestrian center to the south, Route 146 to the west, and a single-family residence to the north that fronts Breakneck Hill Road." (R. at 4) (internal quotations omitted). The entrance to the property is located just east of the intersection with the Route 146 off-ramp. *Id.* "A significant wetland area exists on the western portion of the site with a narrow river flowing through the northern portion of the site from west to east." *Id*. at n.3 (internal quotations omitted).

The parcel is "surrounded by a variety of uses including single family houses, a condominium complex, a recreational facility, and several commercial buildings," as well as the Community College of Rhode Island's Flanagan Campus. (R. at 4.) It is located in an "RS-20, Residential Single Family" zoning district, which was "established to promote low- to moderate-density single-family residential areas throughout the Town." R. at 5; *see also* Lincoln Zoning Ordinance Art. II, § 260-7. Each unit located in an RS-20 zoning district requires 20,000 square feet of land and requires a frontage of 120 feet. R. at 5, 6; *see also* Lincoln Zoning Ordinance Art. IV, § 260-22.

A. Comprehensive Permit Application/Decision

On February 16, 2018, Judith L. Randall and Paul Randall, owners of the property, executed an Owner Authorization Form for Subdivision authorizing WDC, a nonprofit community development corporation, to apply for a comprehensive permit with the Town. (R. at 3.) In its application, which was submitted to the Town on October 30, 2018, WDC proposed a forty-four-unit rental housing development, comprised of two buildings, each containing twenty-two apartments, to be known as "Breakneck Hill Units." (R. at 68-69.) The buildings would contain ten one-bedroom apartments, twenty-

six two-bedroom apartments, and eight three-bedroom apartments, of which three would be compliant with the Americans with Disabilities Act (ADA). (R. at 5.) According to the proposal, all forty-four units would be designated as low- and moderate-income housing. *Id.*

As part of its application, WDC requested relief from nine Land Development and Subdivision Regulations (R. at 364-65[i]) as well as six waivers from the Lincoln Zoning Ordinance (R. at 363-64[ii].) In particular, the proposed development would constitute a significant density increase that would necessarily exceed the allowable density in an R-20 zone.[2] (R. at 9.) Of additional concern was the fact that the frontage of Breakneck Hill Road is only 34.9 feet, not the 120 feet required, so that access to the two buildings would need to be by private road. (R. at 6.) Finally, because the proposal would necessarily require that public water be supplied to the development, the application also proposed a gravity pipe sewer connection that would "travel the length of the Development's driveway, cross under a state road to a property owned by the Pawtucket YMCA and tie into a new pump station, which will be situated next to an existing pump station serving the YMCA and Stone Creek." (R. at 26.)

Acknowledging the "scope of its requested significant density increase," WDC proposed "mitigation measures and infrastructure assurances" to address both the sewer

[2] Depending on which method is used to calculate the size of the density increase, different figures are revealed. The raw upland density calculation method takes "the raw area of upland and divid[es] it by the allowable minimum lot size, in this case 20,000 square feet." This results in a 340 percent increase in density. (R. at 9.) The yield plan density is calculated by applying "all the regulatory requirements, including roads, drainage, and lot dimensions" and results in a 1,367 percent increase in density. *Id*. WDC maintains that the application of the yield plan density calculator has no basis in law or fact, but insists that under either scenario, it had proposed "mitigation measures and infrastructure improvements" that would address the increased density. WDC's Br.at 18-19 n.11.

and traffic concerns resulting from the proposal. (R. at 9-10.) Regarding the sewer, WDC assured the Town that there was availability to tie into the existing sewer line and that the sewer line was privately owned. (R. at 9.) WDC further provided a conditional approval letter from the YMCA Board of Directors allowing WDC to tie into the existing Breakneck Hill station sewer line as long as certain conditions were met. (R. at 6.) Regarding the traffic concerns, WDC provided an acknowledgement from the Rhode Island Department of Transportation (DOT) that a proposed entrance and exit for the property was acceptable and included DOT's agreement to install a left turn lane to ease pre-existing traffic conditions, as well as the possible installation of a traffic light. (R. at 739.)

On November 27, 2019, a certificate of completeness was issued for the application. (R. at 921.) A Technical Review Committee (TRC) reviewed the application and submitted reports to the Board, who thereafter held hearings on the application on December 18, 2019, January 22, 2020, and February 26, 2020. *Id.* A public information meeting was held on July 22, 2020, at which time WDC presented testimony of its experts including Dean Harrison, Director of Real Estate for WDC; Timothy Behan, Project Engineer; James Cronan, Traffic Engineer; Virginia Branch, Architect; Scott Rabideau, Wetland Biologist; and Ashley Sweet, Planner. (R. at 719-20, 921.) The hearing was then opened to members of the public as well as interested abutters, including a representative of the adjacent Stone Creek development. (R. at 770.)

On October 28, 2020, the Board unanimously voted to deny the application, which vote was recorded on November 20, 2020. (R. at 921.) The Board found that the

application was not consistent with local needs as identified in the Town's local zoning ordinance or comprehensive plan and did not adequately address concerns for the environment and the health and safety of current residents. (R. at 921-22.) In particular, the Board explicitly referenced concerns with the current traffic situation, which the increased density of the proposed development would only exacerbate, as well as issues with the proposed sewer line and proximity to wetlands. *Id.* The Board further stated that although the Town has an Approved Affordable Housing Production Plan, it was "Not applicable" because the Town has not reached the stated goal of 10 percent of its housing stock qualifying as low- and moderate-income housing. *Id.*

B. SHAB Appeal/Decision

WDC appealed the Board's decision to SHAB, which SHAB heard on April 29, 2022. At the hearing, counsel for the Town and WDC presented their cases and took questions from various board members.[3] (R. at 19, 59-152.) The matter was continued to June 9, 2022, at which time the four member SHAB reconvened, deliberated, and ultimately determined that the Board erred in its denial of the application and that "WDC had sufficiently presented a master plan presentation of [the] proposed development." (R. at 19; *see also* R. at 153-64.)

In issuing its decision, SHAB stressed that this is only the first of a three-stage process for approval of a comprehensive permit–master plan review, preliminary plan review, and final plan review. (R. at 10; G.L. 1956 § 45-23-39(b).) SHAB indicated that at the master plan stage, the applicant must submit a "'conceptual' presentation,"

[3] Also present at the hearing were several abutters and their counsel who had previously been allowed to intervene, although it is not clear from the record when that happened. SHAB's counsel was also present and participated in the hearing.

including documents and evidence relative to the proposed construction and potential impact. (R. at 11.) The preliminary plan review stage, however, is more detailed, requiring engineering plans, permits, etc. (R. at 10-11 (citations omitted).) After reviewing the record before it, SHAB concluded that the Board "erred in holding WDC to a higher showing than is necessary to satisfy conceptual master plan level approval" and that, at this stage, WDC had "presented a sufficiently detailed master plan level presentation that justifies . . . proceeding forward to the more particularized preliminary plan level of review." (R. at 11-12.)

Specifically, SHAB found that the Town had failed to address in detail whether it had an approved affordable housing plan or relied on it as a basis of its denial, instead determining it was not applicable. (R. at 19.) With respect to sewer/drainage issues, SHAB found that there was sufficient conceptual proof regarding WDC's intended sewer service plan. *Id.* SHAB also indicated that while there are traffic concerns in the area, it was not the applicant's duty to resolve what SHAB considered to be a pre-existing matter; nevertheless, the four members determined that WDC had presented a mitigation design proposal that was sufficient at this stage in the plan review process. (R. at 19-20.) With respect to "significant proposed density increase," SHAB determined that it could not be viewed in isolation "but must also be viewed in light of the State's and Town's need to enhance the availability of low- and moderate-income housing." (R. at 20.) SHAB concluded that while the "density increase is larger than others allowed in the surrounding area," it was not inconsistent with the surrounding area and/or the development located on the neighboring lot. *Id.* Therefore, SHAB determined that the application met the "conceptual level of proof required at the master plan level stage" and

could proceed to the preliminary plan review, where all parties would "have their full opportunity to address the merits of the proposed project[.]" *Id.*

From this Decision, the Town filed its appeal, arguing that it was both arbitrary and capricious. *See generally* Town of Lincoln's Brief (Town's Br.). Specifically, the Town maintains that as it relates to density of the proposed development, SHAB applied the wrong standard of review, failing to first determine whether the Board's decision was reasonable and consistent with local needs. *Id.* at 6-8. The Town also asserts that the proposed approval for the adjacent Stone Creek development has no bearing on whether WDC's proposal adversely impacts the health and safety of the community. *Id.* at 9. Relative to the Board's concern about increased traffic, the Town maintains that SHAB failed to consider reliable and credible evidence in the record, instead basing its conclusion on mitigation reports that were "clearly speculative." *Id.* at 12. Finally, with respect to the Board's concerns regarding sewer service to the site, it is the Town's contention that there remained outstanding questions regarding ownership of the "private force-main and whether the [a]pplicant would be able to utilize it for sewer service." *Id.*

WDC insists that the Decision was neither arbitrary nor capricious as SHAB provided a "clear explanation of its reasoning to grant master plan approval of WDC's [a]pplication." Brief of Applicant and Developer Women's Development Corporation (WDC's Br.) at 16. WDC maintains that the decision addressed all the issues presented to the Board, specifically density, traffic, and sewer service, and determined that the "expert reports, expert testimony and other evidence" supported approval of the master plan as it is consistent with the local needs. *Id.* at 25. Moreover, WDC asserts that its

proposal is consistent with the need to provide affordable housing in the State, something which the Town has failed to do, and therefore SHAB's Decision is "without error." *Id*.

II

Standards of Review

A. SHAB Standard of Review

When an application for a comprehensive permit filed pursuant to the Low- and Moderate-Income Housing Act (the Act) is denied, the applicant may appeal the local review board's decision to SHAB for a review of the application. Section 45-53-5(a).[4] [5] Specifically, § 45-53-6(b)-(d) provides that in the case of the denial of an application SHAB "shall determine whether . . . 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[.]" Section 45-53-6(b). A nonexclusive list of standards for reviewing an applicant's appeal is delineated in § 45-53-6(c) and includes:

[4] Effective July 1, 2023, § 45-53-5. "Appeals--Judicial review," was repealed but remained effective until January 1, 2024, "at which time the provisions of [the] section shall sunset and be repealed and replaced by § 45-53-5.1." This new statutory scheme eliminates SHAB and directs that a "decision of a local review board may be appealed by the applicant or an aggrieved party . . . to the superior court for the county in which the property is situated." Section 45-53-5.1(a). From there the court may affirm the decision of the board or "remand the case for further proceedings, or may reverse or modify the decision if substantial rights of the appellant have been prejudiced because of findings, inferences, conclusions, or decisions that were arbitrary, capricious or unreasonable." Section 45-53-5.1(g).

[5] In reviewing a decision by SHAB, the Court must apply the law as it existed "when the applicant-developer submitted its application for a permit to the zoning board." *East Bay Community Development Corporation v. Zoning Board of Review of the Town of Barrington*, 901 A.2d 1136, 1144 (R.I. 2006). While certain provisions of the Act were repealed in 2023, the instant application was filed on October 30, 2018. The standard for review of a SHAB decision by the Superior Court at that time was consistent with the same provisions of the Act that existed in July 2006.

> "(1) The consistency of the decision to deny or condition the permit with the approved affordable housing plan and/or approved comprehensive plan;
> "(2) 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;
> "(3) The consideration of the health and safety of existing residents;
> "(4) The consideration of environmental protection; and
> "(5) The extent to which the community applies local zoning ordinances and review procedures evenly on subsidized and unsubsidized housing applications alike."

Additionally, § 45-53-6(d) provides in relevant part:

> "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 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 . . . . 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."

B. Superior Court Standard of Review

The Act further provides this Court with the specific authority to review a decision or order of SHAB. Section 45-53-5(d). The Court conducts the review "without a jury" and considers the record of the hearing before SHAB. *Id.* If the Court finds "that additional evidence is necessary for the proper disposition of the matter, it may allow any party to the appeal to present that evidence in open court[.]" *Id.* The Superior Court's review of a SHAB decision is governed by § 45-53-5(e) of the Act, which provides:

> "The court shall not substitute its judgment for that of the state housing appeals board as to the weight of the evidence on questions

> of fact. The court may affirm the decision of the state housing appeals board or remand the case for further proceedings, or may reverse or modify the decision if substantial rights of the appellant have been prejudiced because of findings, inferences, conclusions, or decisions which are:
> "(1) In violation of constitutional, statutory, or ordinance provisions;
> "(2) In excess of the authority granted to the state housing appeals board by statute or ordinance;
> "(3) Made upon unlawful procedure;
> "(4) Affected by other error of law;
> "(5) Clearly erroneous in view of the reliable, probative, and substantial evidence of the whole record; or
> "(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion."

When reviewing a SHAB decision, the Court employs a deferential standard. *Town of Smithfield v. Churchill & Banks Companies, LLC*, 924 A.2d 796, 800 (R.I. 2007). Thus, the Court will examine "the certified record to determine if there is any legally competent evidence therein to support [SHAB]'s decision." *Barrington School Committee v. Rhode Island State Labor Relations Board*, 608 A.2d 1126, 1138 (R.I. 1992). "Legally competent evidence is indicated by the presence of 'some' or 'any' evidence supporting [SHAB's] findings." *Rhode Island Public Telecommunications Authority v. Rhode Island State Labor Relations Board*, 650 A.2d 479, 485 (R.I. 1994) (internal quotation omitted.)

III

Analysis

A. The Low and Moderate Income Housing Act

In response to "an acute shortage of affordable, accessible, safe, and sanitary housing for its citizens of low- and moderate- income, both individuals and families," the General Assembly enacted the "Rhode Island Low and Moderate Income Housing Act," which requires each city and town to "provide opportunities for the establishment of low-

and moderate- income housing . . . to assure the health, safety, and welfare of all citizens of this state . . . ." Section 45-53-2. In order to facilitate this, "§ 45-53-4 of the [A]ct provides for a streamlined and expedited application procedure" called the comprehensive permit application. *Town of Coventry Zoning Board of Review v. Omni Development Corporation,* 814 A.2d 889, 894 (R.I. 2003). The comprehensive permit is "a single application for a special exception to build [low- and moderate-income] housing in lieu of separate applications to the applicable local municipal boards," which is "submitted to the zoning board of review of a city or town by any public agency, nonprofit organization, or limited equity housing cooperative proposing to build low- and moderate-income housing." *Id.* Sections 45-53-4 of the Act and 45-23-39, General Provisions-Major land development and major subdivision review stages, outline the application and review process for a comprehensive permit, which essentially includes three stages: master plan review, preliminary plan review, and final plan review. Each stage requires different evidence and materials to be submitted to the local board, and courts have grappled with the level of proof required for each stage. *See, e.g.*, *Town of Barrington v. North End Holdings Co., LLC*, No. PC-2014-3500, 2016 WL 1569319, at *11 (R.I. Super. Apr. 14, 2016).[6]

[6] Pursuant to applicable statutory provisions, at the master plan stage, the applicant must provide supporting materials including but not limited to "information on the natural and built features of the surrounding neighborhood; existing natural and man-made conditions of the development site, including topographic features, the freshwater wetland and coastal zone boundaries, the floodplains, as well as the proposed design concept, proposed public improvements and dedications, tentative construction phasing; and potential neighborhood impacts." Section 45-23-39(c)(1)(ii). At the preliminary plan review stage, the applicant must provide supporting materials including but not limited to "engineering plans depicting the existing site conditions; engineering plans depicting the proposed development project; a perimeter survey; and all permits required by state or federal agencies" prior to commencement of construction. *Town of Barrington v. North*

Once the application is received, a local review board may approve, conditionally approve, or deny the application. Section 45-53-4; *see also Omni Development Corp.*, 814 A.2d at 894. The local review board may deny the request for any of the five following reasons:

> "(I) [i]f the city or town has an approved affordable housing plan and is meeting housing needs, and the proposal is inconsistent with the affordable housing plan;
> "(II) [t]he proposal is not consistent with local needs, including, but not limited to, the needs identified in an approved comprehensive plan, and/or local zoning ordinances and procedures promulgated in conformance with the comprehensive plan;
> "(III) [t]he proposal is not in conformance with the comprehensive plan;
> "(IV) [t]he community has met or has plans to meet the goal of ten percent (10%) of the year-round units or, in the case of an urban town or city, fifteen percent (15%) of the occupied rental housing units as defined in § 45–53–3(5)(i) being low- and moderate- income housing; [or]
> "(V) [c]oncerns for the environment and the health and safety of current residents have not been adequately addressed." Section 45-53-4(d)(F).

After the local board makes its decision on the comprehensive permit application, the applicant has the right to appeal to SHAB for a review of the application within twenty days of the decision. Section 45-53-5(b).

Once an appeal is received, SHAB has the authority to "override unreasonable local requirements, the overly strict application of which frustrate the development of affordable housing in municipalities that need it most." *East Bay Community Development Corporation*, 901 A.2d at 1154. As previously stated, in cases where an application is denied, SHAB must first determine if the Town has an approved affordable housing plan and whether the local board's decision was consistent with that plan.

End Holdings Co., LLC, No. PC-2014-3500, 2016 WL 1569319, at *8 (R.I. Super. Apr. 14, 2016); *see also* § 45-23-39(d).

Section 45-53-6(b). If no plan exists, SHAB must determine whether the board's decision is reasonable and consistent with local needs. *Id.* In so doing, SHAB reviews the local ordinance, requirement, or regulation upon which the local board based its denial. *Omni Development Corporation*, 814 A.2d at 898-99.

> "[A] zoning or land use ordinance, requirement, or regulation is consistent with local needs when it is imposed by a city or town council after a 'comprehensive hearing,' and that community has met or exceeded its statutory minimum for low- and moderate-income housing units; and has adopted a comprehensive plan that includes a housing element that addresses the need for low- and moderate- income housing for that community. With respect to these communities, the Legislature conclusively has determined that any zoning or land use ordinance that is properly enacted is consistent with local needs." *Id*. at 898-99.

Conversely, "[i]n cities and towns that fall short of the statutory quota for low- and moderate-income housing units, land use ordinances and requirements are not conclusively deemed consistent with local needs." *Id*. at 899. Instead, SHAB must look to the definition of "consistent with local needs" as set forth in § 45-53-3:

> "'Consistent with local needs' means reasonable in view of the state need for low- and moderate-income housing, considered with the number of low-income persons in the city or town affected and the need to protect the health and safety of the occupants of the proposed housing or of the residents of the city or town, to promote better site and building design in relation to the surroundings, or to preserve open spaces, and if the local zoning or land use ordinances, requirements, and regulations are applied as equally as possible to both subsidized and unsubsidized housing. Local zoning and land use ordinances, requirements, or regulations are consistent with local needs when imposed by a city or town council after a comprehensive hearing in a city or town where:
>
> > "(i) Low- or moderate-income housing exists which is: (A) In the case of an urban city or town which has at least 5,000 occupied year-round rental units and the units, as reported in the latest decennial

> census of the city or town, comprise twenty-five percent (25%) or more of the year-round housing units, and is in excess of fifteen percent (15%) of the total occupied year-round rental units; or (B) In the case of all other cities or towns, is in excess of ten percent (10%) of the year-round housing units reported in the census.
> "(ii) The city or town has promulgated zoning or land use ordinances, requirements, and regulations to implement a comprehensive plan that has been adopted and approved pursuant to chapters 22.2 and 22.3 of this title, and the housing element of the comprehensive plan provides for low- and moderate-income housing in excess of either ten percent (10%) of the year-round housing units or fifteen percent (15%) of the occupied year-round rental housing units as provided in subdivision (5)(i)." Section 45-53-3; *see also Omni Development Corporation*, 814 A.2d at 899.

In this scenario, SHAB is required to "examine the decision *and* the ordinance or regulation on which it rests and determine whether the regulation or ordinance is reasonable in light of the state's need for low income housing" and "the need to protect the health and safety of the community as a whole[.]" *Omni Development Corporation*, 814 A.2d at 899. Although consideration of "consistenc[y] with local needs" under § 45-53-3 largely overlaps with the factors set out in § 45-53-6(c), SHAB must conduct an analysis under both sections. *See East Bay Community Development Corporation*, 901 A.2d at 1148. "In sum, SHAB must examine the regulation or ordinance in light of these criteria, decide whether the ordinance or regulation is consistent with local needs, and set forth the evidence it relied upon in reaching this conclusion and resolve any disputed issues of fact." *Omni Development Corporation*, 814 A.2d at 899.

Accordingly, in this case SHAB was required to first determine whether the Town had an approved affordable housing plan and whether the Board's decision was consistent with that plan. If there was no approved affordable housing plan, SHAB was

required to analyze whether the denial of WDC's application was reasonable and consistent with local needs. This first requires a determination of whether the Town has met or exceeded its statutory minimum for low- and moderate-income housing units. If it has not, SHAB must review the ordinances or regulations upon which the Board based its denial to determine if the decision was reasonable and consistent with local needs. Finally, it must analyze the Board decision pursuant to the factors enumerated in § 45-53-6(c). If SHAB has not followed the proper procedures and its decision has prejudiced the substantial rights of the appellant, this Court may reverse or modify the decision. *Id.*

1. Town of Lincoln Affordable Housing Plan

In its Decision, SHAB found that the Town of Lincoln's Comprehensive Plan and integrated "Housing Element" expired on September 9, 2009, and thus, the Town did not have an approved affordable housing plan. (R. at 21.) The Town insists, however, that SHAB should have focused on its "'standalone' Affordable Housing Production Plan dated November 2004," because that is what the Board relied upon in denying the application. *Id.* According to the Town, if SHAB had done so, it would have been required to affirm the Board's decision because it was consistent with the Affordable Housing Production Plan. *See* § 45-53-6(d). Conversely, WDC urges this Court to reject the Town's argument, stating that the "Town cannot have it both ways now on appeal," by arguing that SHAB "must find that the Planning Board's denial was based upon the Affordable Housing Development Plan, when no such analysis is addressed in the Planning Board Decision as a justification for the denial of WDC's Application." WDC Br. at 17. In this Court's opinion, both arguments miss the mark.

The record in this case reveals that the Town of Lincoln's Affordable Housing Production Plan is a stand-alone plan that was not included as part of its Comprehensive Plan, which expired on September 19, 2009. (*See* R. at 926-76.) It was adopted by the Lincoln Planning Board on October 27, 2004 and adopted by the Lincoln Town Council on November 16, 2004. (R. at 926.) In its Decision, SHAB appears to acknowledge this fact but further indicated, and the record supports the finding, that the Board had specifically determined that the criteria contained therein were "Not applicable" because the Town had "not reached the stated goal of having 10% of its housing stock qualifying as low- and moderate- income housing according to Title 45." (R. at 922.) Accordingly, there is no evidence to support the Town's assertion that the Planning Board's denial was based upon the Affordable Housing Development Plan. *See* Town's Br. At 6.

Nevertheless, despite the Board's failure to consider the Town's Affordable Housing Development Plan in its decision, SHAB was not relieved of *its* obligation to do so in hearing the appeal. Indeed, whenever an application filed pursuant to the Act is denied, "the state housing appeals board *shall* determine whether . . . 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 need[s]." *See* § 45-53-6(b) (emphasis added). The fact that the Town has failed to meet its stated goal of 10 percent low- to moderate-income housing may very well be a valid basis upon which to conclude that the Board's decision was inconsistent with the Town's Affordable Housing Production Plan; nevertheless, the analysis still needs to be done. Failing to address the plan in its decision, regardless of whether the

Board relied upon it, constitutes clear error of law as it violates the applicable procedures and statutory provisions provided for in the Act.

2. Reasonable and Consistent with Local Needs

Even if SHAB was not required to consider the Town's Affordable Housing Production Plan as part of its review because the Board had not done so, the Town further argues that SHAB's Decision must be vacated because it failed to follow the statutorily prescribed procedures and/or apply the appropriate standard of review. Specifically, the Town maintains that in order for SHAB to overturn a decision of a local planning board, it must first determine whether the denial was reasonable and consistent with local needs. Town's Br. at 4. In situations where a city/town has not reached the statutory minimum requirements relative to its low- and moderate-income housing inventory (as is the case in the instant matter), the Town argues that SHAB is required to analyze the local zoning ordinances in conjunction with the Board's decision to determine if it was reasonable, balancing the state/town's need for low income housing with the need to protect the health and safety of the surrounding community. *Id.* at 4-6. The Town insists that the Board's decision to deny WDC's application, based on the excessive density increase, sewer concerns, and traffic concerns was reasonable and consistent with local needs. *Id.* at 8-13. Accordingly, the Town maintains that SHAB erred in vacating the Board's decision.

WDC asserts that SHAB's Decision merely provided master plan approval relative to the conceptual review of the proposed project. WDC's Br. at 2, 12. WDC insists that the Decision does not infringe on the Board's ability to address any density, sewer, and traffic concerns in more detail during the preliminary plan process, and that

the Board erred in requiring a higher showing than necessary to satisfy the conceptual master plan level approval. *Id*. at 2, 10. According to WDC, when the appropriate level of review is applied, it is clear WDC had presented sufficient information to justify SHAB's reversal of the Board's decision and allowing the application to proceed forward. *Id.* at 9.

a. Density

With respect to the significant increase in density associated with the proposed development, the Town insists that SHAB's Decision is arbitrary and capricious because it does not address the Town's zoning ordinances. Town's Br. at 6. Specifically, the Town argues that SHAB was required to assess whether its density ordinance was consistent with local needs, and it failed to do so. *Id*. at 7-8. Further, it asserts that the fact that Stone Creek had been approved and that mitigation measures were proposed has no consequence on the density ordinance's impact on health and safety or whether it is consistent with local needs. *Id*. at 9. Conversely, WDC argues that SHAB did not err in viewing the project as a whole and considering the need to comply with affordable housing obligations. WDC Br. at 19. WDC maintains that it met its burden in discussing mitigation efforts and SHAB was correct in so finding. *Id*.

"In cities and towns that fall short of the statutory quota for low- and moderate-income housing units, land use ordinances and requirements are not conclusively deemed consistent with local needs." *Omni Development Corp.*, 814 A.2d at 899. Instead, the reviewing body must determine if the local zoning or land use ordinances "are reasonable in view of the state need for low- and moderate- income housing," while also considering "the need to protect the health" of the residents, the need "to promote better site and

building design in relation to the surroundings, or to preserve open spaces," and determine if zoning or land use ordinances "are applied as equally as possible to both subsidized and unsubsidized housing." *Id. (*citing § 45-53-3(2)). "In these municipalities, it is incumbent upon SHAB to examine the decision *and* the ordinance or regulation on which it rests[.]" *Omni Development Corp.*, 814 A.2d at 899.

> "Only upon a finding that a particular ordinance or regulation fails to meet these criteria, may SHAB declare that it is not consistent with local needs. Thus, SHAB's first order of business is to examine the zoning and land use regulations and ordinances upon which the zoning board's decision rests and the community's comprehensive plan to determine whether the regulations are consistent with local needs." *Omni Development Corp.*, 814 A.2d at 900; *see also Housing Opportunities Corporation v. Zoning Board of Review of the Town of Johnston*, 890 A.2d 445, 451 (R.I. 2006) (SHAB's role is to examine the zoning and land use regulations upon which the zoning board rested its decision and compare those to the comprehensive plan).

Here, the Board found that the proposed density-increase of 1,367 percent over the existing limit in the RS-20 zoning district was "excessive." (R. at 921.) Indeed, the zoning ordinance from which WDC sought relief, Lincoln Zoning Ordinance Art. III, § 260-9C, would allow only 10.35 units, while the proposal sought to build forty-four units. Further, under Lincoln Zoning Ordinance Article IV, § 260-22, a lot must have 20,000 square feet per dwelling unit. *Id.* Instead, WDC seeks a waiver, in which the lot will have 4,708.31 square feet per dwelling unit. (R. at 7.) Ultimately, the Board concluded that based on the submitted plans, reports and testimony presented, the increase in density (as well as the attendant negative impact on "the traffic situation" and outstanding concerns relative to the sewer system) was not consistent with the "local . . . ordinances and procedures promulgated in conformance with the comprehensive plan[.]" (R. at 921.)

In reversing the decision, SHAB found that "[t]he density increase is larger than others allowed in the surrounding area, but not totally inconsistent with the nature of the surrounding area, including the adjacent 61-unit Stone Creek development." (R. at 20.) SHAB further indicated that while it was "sensitive to the density increase sought here," "density issues must not be analyzed solely as a pure numerical calculation, but must also be assessed in light of the Town's" need for additional affordable housing. (R. at 22-23.) SHAB concluded that at the master plan level, it found WDC to have "sufficiently proposed site mitigation measures and infrastructure assurances to address potential adverse impacts of the requested density increase." (R. at 23.)

While SHAB certainly reviewed the Board's decision relative to the density increase and appropriately considered the mitigation measures, assurances, and other efforts of WDC, SHAB was first required to examine the zoning and land use regulations and ordinances upon which the Board based its decision to determine whether they were consistent with local needs; it did not In fact, the record is devoid of *any* discussion relative to the applicable ordinance(s) or regulation(s) on which SHAB based its decision. In other words, nowhere does SHAB specifically articulate whether the Town's density ordinances/regulations, especially as they pertain to the RS-20 district and dwelling unit size, are "reasonable" when balanced against the need to provide low- and moderate-income housing as well as the desire to protect the health and safety of its residents, as is required. *See Housing Opportunities Corporation*, 890 A.2d at 450; *Omni Development Corp.*, 814 A.2d at 900. Therefore, in this regard SHAB failed to follow the statutorily

prescribed procedures and/or apply the appropriate standard of review, thereby constituting an error of law.[7]

b. Traffic

Despite the above findings, which in the Court's view necessitates a reversal of SHAB's Decision, the Court will address the remaining two issues raised on appeal, starting first with traffic concerns. Specifically, as it relates to the increased traffic in the area that would necessarily result from construction of the proposed development, the Town argues that SHAB's decision is arbitrary and capricious because its findings were speculative at best. Town's Br. at 12. The Town asserts that there is credible evidence in the record that the health and safety of existing residents would be negatively impacted by the addition of traffic to Breakneck Hill Road. *Id*. at 11. WDC disputes this assertion, arguing instead that SHAB did appreciate and acknowledge the concerns with traffic but were correct in stating that it would need to be addressed further at the next stage of review. WDC's Br. at 21-22. It argues that SHAB's reliance on WDC's agreement to condition the project on DOT's construction of the traffic light is justified and more than meets WDC's burden. *Id*.

As stated in *North End Holdings Co., LLC* and *LR 6-A Owner, LLC v. Town of Hopkinton Planning Board*, No. PC-2013-1328, 2016 WL 1715391 (R.I. Super. Apr. 22, 2016), an applicant must provide a general plan which addresses issues raised by the

[7] It is of note that as it relates to the significant increase in density, the Town insists "the fact that the Stone Creek development had previously been approved has no consequence on the *density ordinance's* impact on the health and safety of the community, or how the Application promotes better site design or the ability to preserve open spaces." Town's Br. at 9. While that may or may not be true, it is relevant in determining whether the zoning or land use ordinances "are applied as equally as possible to both subsidized and unsubsidized housing," and thus was a factor appropriately considered by SHAB. Section 45-53-3.

Board and the community. *North End Holdings Co., LLC*, 2016 WL 1569319, at *11; *LR 6-A Owner, LLC*, 2016 WL 1715391, at *7. The applicant is not required to produce specific engineering plans. *Id*. In *LR 6-A Owner, LLC*, the court stated that although the Board may outright deny an application for failure to address environmental concerns, or other concerns pursuant to § 45-53-4(a)(4), these concerns do not need to be conclusively determined at the master plan stage. *LR 6-A Owner, LLC*, 2016 WL 1715391, at *7.

Here, the Board stated that the proposed project didn't promote the public health, safety, and general welfare of the Town, and relied on findings that the "current traffic situation along Breakneck Hill Road is of great concern based on personal experiences of several TRC members and Planning Board members as well as abutter's comments presented at the Public Informational Meeting." (R. at 921-22.) The Board added that the traffic study indicated that the area is already a Level F rating, and the proposed development would just make it worse, especially considering the proximity to the Route 146 off ramp. (R. at 923.) Many abutters also noted that they cannot turn left out of their driveways and instead must go right and then turn around to avoid the dangerous condition. *Id.* Abutters and Planning Board members added that there is a high risk of accident in the area, with many experiencing near misses. *Id.* The TRC further expressed its great concern regarding traffic in the area and cited a February 25, 2020 letter from the Chief of Police about his concern over peak-hour traffic congestion.

Notwithstanding the fact that SHAB failed to address the local zoning ordinances in rendering its decision, it did acknowledge the significant traffic safety concerns but found that WDC had provided a sufficient general plan to address the issues. Specifically, it found that "WDC has met its burden to propose mitigation measures to

the traffic concerns and impacts relating to its development." (R. at 26.) Beyond WDC's traffic expert's conclusions, SHAB afforded great weight to WDC's proposed mitigation measures. Specifically, DOT acknowledged that a proposed entrance and exit ramp is acceptable and includes an agreement to install a left turn lane which will ease existing traffic. (R. at 19.) Further, WDC represented that it would work with DOT to install a traffic light and indicated in "its clear and unequivocal stipulation that if the traffic signal does not come to fruition, the developer will *not* proceed with the project." (R. at 25-26.) Finally, WDC's traffic expert noted that the proposed development would likely not increase the level of traffic, especially considering the mitigation measures that will be employed. At this level of review and relying on the legally competent evidence that supports SHAB's findings, WDC did provide a sufficient general plan both acknowledging the traffic concerns and proposing mitigation.

c. Sewer

Finally, the Town argues that SHAB's findings regarding the sewer service were arbitrary and capricious because questions were raised and never answered by WDC. Town's Br. at 12. Conversely, WDC argues that this is a matter that should be addressed at the preliminary plan stage. WDC's Br. at 24.

"'A planning board has the power to disapprove a proposed subdivision plat if the sewer system is inadequate, or where the plans submitted do not show an adequate method of sewage disposal.'" *See Town of Smithfield v. Bickey Development, Inc.*, No. 11-1017, 2012 WL 4339200, at *11 (R.I. Super. Sept. 19, 2012) (quoting 5 Arlen H. Rathkopf, *The Law of Zoning and Planning*, § 90:36 (2005). In *Bickey Development, Inc.*, the local zoning board denied the developer's comprehensive permit application

because of the negative environmental, health, and safety consequences of the proposed sewer system. *Id*. at *7. Specifically, there were issues with the pumping station during major storms with the possibility of a sanitary discharge situation. *Id*. at *9. SHAB vacated the denial and granted master plan level review primarily because it determined that the board "should not have denied the application outright at the master plan level, but should have allowed the application to proceed to a further and more detailed analysis of the sewer infrastructure issues during the preliminary and final plan review stages." *Id*. at *8. This court overturned SHAB's decision, however, finding that at the master plan review level, the developer was required to present a generalized plan as to possible solutions to the sewer issues, which it did not do. *Id*. at *11.

In this case, unlike *Bickey*, the record reveals that WDC provided adequate assurances and more than a generalized plan of the proposed sewer system. A September 30, 2019 letter from the YMCA of Pawtucket to WDC stated that the YMCA Board of Director's had voted to conditionally approve the connection by WDC to the Breakneck Hill Station sewer line. (R. at 6.) This was conditioned on WDC contributing toward the capital costs of the current pumping station, providing for engineering, installation, hookup, licensing, and a back-up generator for the expanded system and contributing toward the costs of operation, repairs, and future improvements and town assessments related to the system, if any, after the project comes online with the expanded system. (R. at 6.) Although at the initial public Board meeting the representative for Stone Creek noted that his clients would object to the development if the development would have a negative impact on Stone Creek, it was noted that the YMCA agreement with the Town regarding the pump station and sewer line provided for new connectors. Further, it was

argued that WDC would not even be entering any piping of Stone Creek's, other than the pump itself, which is shared. (R. at 778.) Therefore, at this level of review, WDC did provide a sufficient, generalized plan of the proposed sewer system.

IV

Conclusion

For the foregoing reasons, this Court finds that SHAB erred in failing to address the Town's Affordable Housing Production Plan and/or determining whether the Board's Decision was consistent with that plan. In addition, the Court further finds that SHAB erred in failing to determine whether the local zoning ordinances, specifically as they related to the significant increase in density attached to the proposal, were reasonable and consistent with local needs. This clear error of law necessitates granting the Town's appeal, vacating SHAB's Decision, and remanding the case to the Town of Lincoln Planning Board in order to conduct the appropriate analysis.[8] Counsel shall submit an appropriate order in accordance with this Decision.

[8] As was discussed, *supra*, SHAB no longer exists, therefore the case must be remanded to the local review board for further proceedings.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**The Town of Lincoln v. The State Housing Appeals Board and Women's Development Corporation**
CASE NO:	**PC-2023-00484**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**September 30, 2024**
JUSTICE/MAGISTRATE:	**Keough, J.**
ATTORNEYS:	
For Plaintiff:	**Anthony Desisto, Esq.** **Stephen J. Antonucci, Esq.** **Mark E. Hartmann, Esq.**
For Defendant:	**Steven M. Richard, Esq.**
For Interested Party:	**Stephen J. Angell, Esq.** **David V. Igliozzi, Esq.**

[i] The specific relief requested from the Lincoln Land Development and Subdivision Regulations was as follows:

	Section and Article	**Requirement**	**Proposed**	**Relief Requested**
1	§ 22, Article C(4)	Private streets not allowed	Private Driveway	Relief from § 22, Article C(4)
2	§ 22, Article C(1)	Street right-of-ways have same width	Street right of way is not proposed	Relief from § 22, Article C(1)
3	§ 22, Article C(5)	Street pavement width between curbs not less than thirty feet in width	Street pavement width of twenty-four feet between the curb	Relief from six feet of pavement width
4	§ 22, Article C(7)	Grades within cul-de-sac shall not exceed 1%	Grade within cul-de-sac will in some areas be 2%	Relief from requirement of not exceeding 1% grade in certain areas
5	§ 22, Article C(10)	Centerline curve must have a radius of not less than 150 feet	Northern approach will have 113-foot radius	Relief from § 22 Article C(10) allowing a radius of less than 150 feet
6	§ 22, Article C(11)	Curb radius at intersection with state highways shall be fifteen feet	Curb radius at intersection with state highway determined during PAP process likely less than fifteen feet	Relief from § 22, Article C(11)
7	§ 23, Article A(4)	Granite curbing to be used	Granite curbing proposed in state R.O.W and bituminous berm proposed on private property	Relief from requirement of all granite curbing to allow for granite curbing in state R.O.W. and bituminous berm on private property

8	§ 23, Article A(9)	Permanent granite monuments placed at all corners	Locations and materials to be determined by R.I. Registered Land Surveyor at Preliminary Plan reviewed/approved by Town Engineer	Relief from § 23, Article A(9) as topography requires
9	§ 22 Design Standards-Article C 22.1	Sidewalk width of five feet	Sidewalk width of four feet	Relief from one foot of sidewalk width

[ii] The specific relief requested from the Lincoln Zoning Ordinance was as follows:

	Chapter and Section	**Requirement**	**Proposed**	**Relief Requested**
1	Article III § 260-9C Use Regulations Residential	Multifamily, three or more units not allowed	Forty-four residential dwelling units in two buildings	Waiver from use regulations to allow forty-four residential dwelling units in RS-20 zone
2	Article IV Dimensional Requirements § 260-22 Residential Districts	Width of RS-20 zoned lot not less than 120 feet	Width is 34.9 feet	A waiver of 85.1 feet is required
3	Article IV Dimensional Requirements § 260-22 Residential	Maximum heigh of Building in RS-20 zoned lot is thirty-five feet	Height of buildings in proposed development is forty-one feet	Waiver from maximum building heigh allowing an additional six feet
4	Article V Parking and Loading Residential Parking § 260-31 A	Residential Parking requirement is minimum of two spaces for each unit plus two spaces for the office or ninety spaces	Proposal is for seventy spaces	Waiver from requirement of an additional twenty spaces

5	Article IV § 260-22 Residential Districts	20,000 square feet per unit	4,708.31 square feet per unit (23.5%)	Waiver from requirement of 20,000 square feet per unit
6	Article IV § 260-22 Residential Districts	RS-20 zoned lot requires fifty feet rear setback	Proposal is for thirty-six rear setback	Waiver from fourteen feet of rear setback