

**MORRIS COUNTY CONSTRUCTION BOARD OF APPEALS
MINUTES**

DATE: Thursday, March 23, 2017 - 7:30 p.m.
OIT CONFERENCE ROOM, 30 Schuyler Place, 4th Floor

Chairman Theodore Maglione called the meeting to order
Pledge of Allegiance
Open Public Meeting Statement
Chairman Maglione requested a roll call.

PRESENT:

Regular Members:

Chairman Theodore Maglione, Vice Chairman Jeffrey Betz, John Kostrowski, Jr., (5)
Harold Endean, Craig Villa

Alternate Members:

William Asdal, Sean Donlon, Keith Lynch (3)

ABSENT: Timothy Braden, Kimberly Hurley (2)

ALSO PRESENT: W. Randall Bush, Esq., First Assistant County Counsel
Evelyn Tierney, Board Secretary

APPROVAL OF MINUTES:

Minutes of the meeting held January 26, 2017 were previously distributed. Vice Chairman Jeffrey Betz made a motion to approve the minutes as submitted. Harold Endean seconded the motion. The Board approved the minutes as submitted by the following roll call vote:

YES: Chairman Ted Maglione, Vice Chairman Jeffrey Betz, Sean Donlon, Harold Endean, (7)
John Kostrowski, Jr., Keith Lynch, Craig Villa

NO: None (0)

NOT VOTING: William Asdal (1)

APPROVAL OF MINUTES:

Minutes of the meeting held February 23, 2017 were previously distributed. Chairman Ted Maglione made a motion to approve the minutes as submitted. Keith Lynch seconded the motion. The Board approved the minutes as submitted by the following roll call vote:

YES: Chairman Ted Maglione, William Asdal, Harold Endean, John Kostrowski, Jr., (6)
Craig Villa, Keith Lynch

NO: None (0)

NOT VOTING: Vice Chairman Jeffrey Betz, Sean Donlon (2)

CASE TO BE HEARD

MC#2016-24 P. Belpasso (Block 1708, Lot 4) v. Borough of Fair Lawn, Bergen County (*case received on 12/7/2016 forwarded by Passaic County Construction Board of Appeals due to a conflict of interest*). Case scheduled for 1st hearing on January 26, 2017, 2nd hearing on February 23, 2017, and 3rd hearing on March 23, 2017 on a “Hear or Dismiss” basis as per the Morris County Construction Board of Appeals “Rules of Procedures”.

The appeal was filed by the appellant Mr. Belpasso with the Bergen County Construction Board of Appeals (Bergen Board) for Fire Code Violations issued after an inspection of the subject premises that took place on October 18, 2007. A “Notice” of Imminent Hazard and Order to Take Corrective Action” was issued dated October 19, 2007 by Fire Marshall Bender (now deceased). In addition, a Notice of Code Violation & Order to Pay Penalty, Order to Pay Penalty and Abate Violations, and Notice of Code Violation and Order to Pay Penalties were subsequently issued on January 17, 2008 totaling \$63,000.00 in fines. Conflict issues originally arose before the Bergen Board. On September 14, 2015 the Bergen Board transferred the matter to the Passaic County Construction Board of Appeals (Passaic Board). On December 7, 2016 after the Passaic Board determined that it was in conflict, the Passaic Board forwarded the appeal to the Morris County Construction Board of Appeals (Morris Board).

NOTE: The following is a summary of the hearing on this matter. The official recording of the hearing serves as the official record of this matter.

Appearances:

Representing the Borough of Fair Lawn, Bergen County:
Ronald P. Mondello, Esq.

Representing the appellant: N/A Philip Belpasso (pro se)

Chairman Maglione explained that the Board is authorized to hear the matter for the Violations issued under the Uniform Construction/ Fire Code, and provided an overview of the proceedings.

Counsel Bush indicated that due to the expansive correspondence and documents concerning the case a summary document package was compiled and marked B1-B7 that the members will rely upon for the hearing.

The package is as follows:

- B-1 December 7, 2016 – Case file received from Passaic County Assistant County Counsel Monica Chacon, Esq.
- B-2 December 8, 2016 – Board Secretary emailed an acknowledgement letter - receipt of appeal to all parties
- B-3 List of Exhibits/Record – Chronology/Timeline of Communications & Correspondence – (December 19, 2016 through March 23, 2017 - totaling 75 items)

- B-4 February 15, 2017 12:14 PM – E-mail submission by Mr. Belpasso with one attachment – 10 pages (same as February 13, 2017 6:00 PM email) – including Mr. Bender, Fire Marshall Memorandum 2-27-2008 and Notice of Violation, Order to Pay Penalty and Abate Violations, Notice of Code Violation and Order to Pay Penalty
- B-5 March 3, 2017 – Correspondence package issued by W. Randall Bush, Esq. to Hon. Judge Waldor (16 pages)
- B-6 March 23, 2017 11:13 AM – E-mail from Ronald Mondello, Esq. with one attachment – 5 pages
- B-7 March 23, 2017 5:10 PM – E-mail from Belpasso with one attachment – 3 pages responding to counsel Mondello’s 11:13 AM submittal

The parties stipulated that the documents on the list marked B-1 through B-7 are a part of the case file and record. In addition, Counsel Mondello provided a documents package “Exhibit List” FL-1-56 marked as M-1 that he will rely upon during his witness testimony.

Counsel Bush confirmed with Mr. Belpasso that his February 15, 2017 submittal and the violations listed in B-4 are under appeal. The chronological summary lists a total of \$63,000.00 in fines for Fire Code Violations. An inspection of the premises owned by Mr. Belpasso on October 18, 2007 noted, “Premises are found to be occupied by owner plus five (5) tenants, thereby constituting its use a “Rooming House”.

Mr. Belpasso objected by stating “I object to all this, the issue is do they apply. There is no case because these violations only apply to a licensed rooming house; they don’t apply to a residence”.

Counsel Bush advised Mr. Belpasso that the municipality would have an opportunity to present its case and he will have an opportunity to cross-examine and address what was presented.

Chairman Maglione stated that we have to have the municipality first address what the violations are and substantiate their claim, and if the violations do not apply, the appellant can present that argument when it is his turn.

Counsel Bush swore in the witnesses that will be testifying as well as Philip Belpasso.

The municipality’s first witness to testify was Detective Lieutenant Joseph Dawicki, Borough of Fair Lawn Police Department. Lieutenant Dawicki stated that he was at the location on October 18, 2007 to assist Fire Inspector Bender. Two occupants, Christopher Jones and Jack Shapiro who indicated that they lived there, provided entry. Lieutenant Dawicki took pictures of the interior, which are part of Exhibit M-1 marked FL-1-26. Lieutenant Dawicki explained the conditions of the premises and read from a report marked FL-33 dated October 18, 2007. Lieutenant Dawicki additionally, read reports marked FL-34 dated October 19, 2007 and FL-35 dated January 10, 2008. Lieutenant Dawicki stated that he had read the correspondence marked FL-36 page 2, dated September 30, 2013 issued by Mr. Belpasso. It is Lieutanant Dawicki’s opinion that the premises are used as a boarding facility with at least a dozen if not more separate partitioned living quarters with numerous makeshift air mattresses, towels, blankets, clothing personal items throughout which made it clear to him that numerous people live there.

Cross-examination followed and Mr. Belpasso asked why Lieutenant Dawicki did not issue an illegal rooming house summons if he felt that way. Lieutenant Dawicki indicated that the Police Department does not enforce or write code violations.

Chairman Maglione stated for the record that the Morris Board deals with the Uniform Construction Code and what is contained in the Construction Code only. Zoning issues do not pertain to this Board. The mandate of the Board is to resolve disputes within the Construction Code. Going forward, please limit all testimony to the construction code.

Discussion followed regarding the number of occupants and length of stay that would trigger the rooming house or boarding house classification under the UCC, IBC and RBC. Counsel Mondello stated that through his witnesses' testimony he is establishing a record.

The next witness to testify was Officer Robert Manning, Borough of Fair Lawn Police Department. Officer Manning stated that he was present at the location on October 18, 2007 with Lieutenant Dawicki and Fire Inspector Bender. Officer Manning saw separated spaces within the interior, with debris and makeshift sleeping areas as well as unsanitary bathroom and kitchen areas. The basement area was occupied, and egress was a potential safety issue.

Cross-examination followed and Mr. Belpasso asked if Officer Manning saw any locks on doors or if he asked the occupants if they had paid money. Officer Manning answered that he did not see locks since there were no real doors rather makeshift partitions, and he did not know if the occupants paid money.

The next witness to testify was Carol Wagner, Director of Health & Human Resources, Borough of Fair Lawn. Ms. Wagner summarized a report dated October 12, 2007 identified and marked as FL-44. On April 21, 2009 Ms. Wagner performed an inspection and provided a report marked as FL-43 issued to Judge Langan, Bergen County Civil Court dated April 23, 2009, as per Judge Sween's Civil Commitment Order Docket #BECC00604-09 dated April 9, 2009 and marked FL-42. Ms. Wagner testified regarding the condition of the spaces. Ms. Wagner opinion was that it appears that multiple persons occupy the house. Ms. Wagner continued to testify regarding a report dated October 24, 2016 she issued to Richard Bolan, Construction Official marked FL-52, which provides a summary of the inspection. Ventilation, washing, and plumbing fixtures on the lower level unsatisfactory. The overall condition of the premises on October 2016 were similar to the inspection she had performed in 2009.

Cross-examination followed and Mr. Belpasso asked Ms. Wagner why no illegal rooming house ticket was issued in 2009 as per the town ordinance. Ms. Wagner stated that she does not know and that is not her regulation to enforce. Chairman Maglione ask what violations pertain to the uniform construction code. She indicated that the concern was regarding the plumbing. The inspector in 2007 saw a sump pump where the water from the shower area was feeding into a sump pump and referred it to the construction official at that time.

The next witness to testify was Ann Peck, Assistant Zoning Officer since 2006, Borough of Fair Lawn. Ms. Peck's job responsibilities include house inspections. Ms. Peck received a complaint from neighbors regarding numerous cars and persons entering the premises. Ms. Peck indicated that she had reviewed the memorandum dated February 27, 2008 issued by Fire Inspector Bender marked as FL-53. When Ms. Peck inspected the premises a few years prior to 2007 there were two other occupants, lots of debris, the interior itself was a maze with makeshift partitioned areas and unsanitary conditions. Ms. Peck was not at the inspection that occurred on October 18, 2007, but based on Mr. Benders report

she issued the Zoning Notice of Violation dated October 19, 2007 marked as FL-37 listing the various zoning ordinance sections.

Cross-examination followed and Mr. Belpasso asked Ms. Peck why she never followed up on the Violation she issued. Ms. Peck stated that she was aware that Fire Code Violations were also issued and rather than place a burden, Ms. Peck was expecting compliance, which would eliminate the zoning violations.

The next witness was sworn in by Counsel Bush. Dennis Kolano, the retired Fair Lawn Construction Official & Zoning Officer from 2004-2012. Mr. Kolano testified that Ms. Peck at the time reported to him and the Notice she issued dated October 19, 2007 marked as FL-37 was the appropriate step. Mr. Kolano was present at the inspection on October 18, 2007 with Fire Marshall Bender. Mr. Kolano believes that Mr. Belpasso operates a boarding house due to the number of people there and the make shift spaces throughout the house. Unrelated persons occupy the rooms. Nothing was proper or coming close to code with extension cords running around the place. Floors were covered with blankets, mattresses and debris. You could barely stand in the kitchen area with Styrofoam boxes littering the floor and debris in general. FL-39 is a report dated June 6, 2003 issued by the former construction official Thomas A. Van Hook addressed to the Hon. Judge Mizdol regarding a warrant to enter and inspect for zoning and construction violations 40-09 Kuiken Terrace, Fair Lawn, NJ. Mr. Van Hook's report summarizes that Mr. Van Hook at the time believed that a boarding house was existing at the premises.

FL-41 is an additional report dated June 17, 2003 by the former construction official Mr. Van Hook summarizing the conditions of the premises and the issuance of a summons for violation of ordinance 125-15H for running a boarding house.

FL-38 is a letter dated January 23, 1997 to Mr. Belpasso issued by Mr. Van Hook. The letter informs Mr. Belpasso that he is in violation of zoning ordinance 26-6.13A for maintaining a boarding house and that a summons will be issued on January 31, 1997 if the violation is not abated.

Chairman Maglione again indicated to the parties that zoning matters are not under the purview of this Board and cannot be addressed. Counsel Mondello objected and stated that at some point this Board will be asked to determine if Mr. Belpasso was operating a boarding house.

Counsel Bush stated that per Counsel Mondello's letter brief dated March 23, 2017 marked B-6 "The core issue, with all due respect to the Board, is best resolved in the Municipal Court". The core issue is a zoning matter, which is not before this Board.

Testimony continued by Mr. Kolano. FL-45 is an April 10, 2008 Notice of Violation and Order to Terminate that he issued to get things going. The Notice was never acted on. FL-46 is an April 22, 2009 report issued to Judge Langen containing Mr. Kolano's opinion on the condition of the house. It was Mr. Kolano's opinion, that the house in October of 2007 was used as a boarding house.

Cross-examination followed and Mr. Belpasso asked Mr. Kolano how he determined that it was a boarding house under the UCC. Mr. Kolano answered that he did not, since he was there as the zoning officer under the property maintenance code. Questions by the Board followed regarding the various zoning property maintenance violations issued but not acted upon appearing to have occurred on the premises since 1997.

A short break was announced.

Counsel Mondello requested that an adjournment be granted to have his two other witnesses available to testify. The additional witnesses, Richard Bolan, Construction Official and Don Santangelo, Fire Official could not be here tonight, and will provide further information to the Board on what is on file and conditions, as they currently exist.

Mr. Belpasso objected to the adjournment being granted since the issuing Construction Official at the time testified tonight and that the people now in the positions do not know what occurred at the time of the inspections and the issuance of the violations. The additional witnesses will have no additional information the Board has not heard already from the other witnesses. In addition, Mr. Belpasso stated that the \$63,000 fine imposed on him are outrageous, and he does not have that kind of money.

Discussion and questions by the Board followed regarding the adjournment request. The Chairman read into the record paragraph one of counsel Mondello's March 23, 2017 correspondence submitted and marked B-6, which states, "At the outset, the Board should know that the Borough never has and never was seeking monetary penalties from Mr. Belpasso who is indigent. The Borough has only been seeking compliance since 1997, unfortunately unsuccessfully."

The parties agreed to a settlement of the matter and shook hands. The following withdrawal conditions were noted for the record:

- The parties agree to the appeal being withdrawn with prejudice before this Board
- The parties will seek a plenary trial before Fair Lawn Municipal Judge Steven C. Schechter, and either way the Judge rules the penalties will not be in excess of one Dollar (\$1.00) per violation.
- The Federal Court lawsuit will remain intact and the municipality will defend against it vigorously.

The appeal is hereby withdrawn with prejudice before the Morris County Construction Board of Appeals.

Counsel Bush explained that with the above withdrawal, the appeal and its Violations filed thereunder may not be brought back before this Board, and the matter will be marked closed. Mr. Belpasso agreed on the record.

Harold Endean made a motion to accept the withdrawal of the appeal as agreed upon by both parties. John Kostrowski, Jr., seconded the motion. Discussion followed. The Board approved the motion by the following roll call to accept the appeal withdrawal with prejudice as stipulated.

YES: Chairman Theodore Maglione, Vice Chairman Jeffrey Betz, William Asdal, (8)
Sean Donlon, Harold Endean, John Kostrowski, Jr., Keith Lynch, Craig Villa

NO: None

The Chairman thanked everyone for attending the meeting, and continued with the items on the Agenda.

CASES POSTPONED *(correspondence received/ issued - made part of the case files)*

MC#2015-20 Center Court at Morristown LLC (Block 9003, Lot 10 worksite: 65 Columbia Rd) v. Township of Morris Bureau of Fire Prevention (11/19/15 1st meeting date, stayed pending Superior jurisdiction decision, Board will be kept updated on progress – status update received 4/20/16, and 11/14/16)

MC#2017-3 William T. Cooper, Sr. c/o Cooper, Cottell & Taylor LLC (Block 113, Lot 1 worksite: 25 West High Street) v. Borough of Somerville - Bureau of Fire Prevention (SOMERSET COUNTY) (1st meeting date 3/23/2017, 2nd meeting date will be 4/27/2017)

CASES WITHDRAWN *(“Withdrawal Confirmation” letters issued to all parties and made part of the case files)*

---NONE---

CORRESPONDENCE

Budget Balance as of March 23, 2017 = \$2,111.90

OLD BUSINESS

- Discussion & approval of revised “Rules of Procedures” (paragraph two - Counsel Representation). The Board reviewed revised paragraph two.

“Pursuant to N.J.A.C. 5:23A-2.2(a) “Hearing procedures”

All parties to any dispute shall be accorded full opportunity to address the construction board of appeals, present testimony, examine, and cross-examine witnesses, consistent with reasonable rules or procedures and due process. All testimony shall be under oath or affirmation. Parties shall be allowed to appear through legal counsel or public or corporate officers. Construction, subcode and fire officials may appear and testify on behalf of their local enforcing agencies.”

Vice Chairman Jeffrey Betz made a motion to approve the revised “Rules of Procedures” with the revised paragraph two as shown above. Harold Endean seconded the motion. The Board approved the revised “Rules of Procedures” by the following roll call vote:

YES: Chairman Theodore Maglione, Vice Chairman Jeffrey Betz, William Asdal, Sean Donlon, Harold Endean, John Kostrowski, Jr., Keith Lynch, Craig Villa (8)

NO: None

NEW BUSINESS ---NONE---

NEXT MEETING: Thursday April 27, 2017

ADJOURN: On motion duly made and seconded, the meeting adjourned at 9:50 p.m.

Evelyn Tierney, Board Secretary