

**MORRIS COUNTY CONSTRUCTION BOARD OF APPEALS
MINUTES**

DATE: Regular Meeting Thursday, April 26, 2012 – 7:30 p.m.
FREEHOLDER PUBLIC MEETING ROOM

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

PRESENT: Jeffrey Betz, Harold Endean, Keith Lynch, Chairman Ted Maglione, (5)
Craig Villa

ABSENT: Bruce Alatary, William Asdal, Vice Chairman Edward Bucceri, (5)
Kimberly Hurley, Michael Spillane

ALSO PRESENT:
Martin Barbato, Esq., Board Attorney
Evelyn Tierney, Board Secretary

APPROVAL OF MINUTES:

Minutes of the meeting held March 22, 2012 were previously distributed. Keith Lynch moved the approval of the minutes as submitted. Harold Endean seconded the motion. The Board approved the minutes as submitted by the following roll call vote:

YES: Jeffrey Betz, Harold Endean, Keith Lynch, Chairman Ted Maglione, Craig Villa (5)

NO: None (0)

CASE TO BE HEARD

Galaxy Diner (Location: 1277 Route 23 South) v. Borough of Butler/ Fire Prevention Bureau
MC#2011-28.

Appearances:

Bob Kasolas, Esq., Brach Eichler L.L.C., 101 Eisenhower Parkway, Roseland, NJ 07068
Dan Hagberg, Construction Official
Robert Westdyk, Fire Official

Counsel Kasolas stated that there is pending litigation in Superior Court Law Division before the Honorable Judge Rand between his client Galaxy Diner Inc., tenant and Cocca Realty Inc., owner of premises 1277 Route 23 South, Butler NJ, including issues addressing the responsibility of whom will be covering the monitory costs and complete construction in order to comply with the Uniform Fire Code regulations in regards to the second egress.

A summary judgment motion is pending which would resolve all the issues scheduled for May 4th with a tentative trial date scheduled for June 2012. His client does not dispute the necessity of the work, but believes he is not responsible to perform or pay for the work since he is the tenant of the property and not the owner. An appeal filed back in 2010 to the Morris County Construction Board of Appeals (MC##2010-26) which was settled between the parties prior to a hearing had a written settlement agreement which was between Galaxy Diner and the Borough indicated that Galaxy Diner will make the necessary improvements with the owner of the property being responsible for all monetary costs associated. The following documents were provided for Board review:

- Letter/Settlement agreement dated November 15, 2010 issued by Bob Kasolas addressed to Robert Oostdyk, Esq, (executed by signature of Daniel Hagberg, Fire Official at the time.)

Mr. Hagberg was asked if he agreed that the pending litigation and the decisions expected would address the issues in regards to the case before the Board, in particular the "Order to Pay Penalty and Abate Violations" issued December 10, 2011. Mr. Hagberg confirmed. Current Fire Official, Robert Westdyk was asked if he agreed since he issued the most recent December 10, 2011 "Violation Notice". To be noted is that Cocca Realty Inc. was also noticed on the December 10, 2011 Notice, but no appeal had been filed with the MCCBA by Cocca Realty Inc., the owner of the premises.

Counsel Barbato recommended that the appeal be stayed until the matter is heard and decided upon by the Court of higher jurisdiction as it's the Boards long standing policy. Counsel Kasolas was requested to keep the board informed of the Superior Court proceedings in this matter, and pending that decision the case may either be withdrawn or a hearing is requested before the Board. Fire Official Westdyk asked if a record of tonight's preceding would be available. The Board secretary was asked to provide a copy of the approved minutes once approved to Fire Official Westdyk. The parties thanked the Board for their time. The parties were excused and the Chairman continued with the items on the Agenda.

CASES POSTPONED (*Postponement requests/consent and case correspondence was made part of the file*)

Fox Hills at Rockaway Condominium Association, Inc. (Block 11302, Lot 48 1 JFK Circle) v. Township of Rockaway Fire Prevention Bureau **MC#2012-4**. *Postponement request received 3/13/12 to carry to May. (5/24/12 2nd Mtg. Date).*

Fox Hills at Rockaway Condominium Association, Inc. (Block 11302, Lot 48 1 JFK Circle) v. Township of Rockaway Fire Prevention Bureau **MC#2012-6**. *Postponement request received 4/3/12 to carry to May. (5/24/12 2nd Mtg. Date).*

Kristen Development LLC (Block 4 Lot 6.4 worksite: 4 Bridgewater Lane) v. Borough of Lincoln Park **MC#2012-7** (*5/24/12 2nd Mtg. Date*).

CASES STAYED OPEN ENDED

Tucker Kelley (Block 30503, Lot 12) v. Twp. of Rockaway **MC#2006-34/1** (*stayed to a date TBD by attorneys as per letter dated 12/14/11*).

Giovanni Granata (Block 4602, Lot 2 worksite: 11 Newark Pompton Turnpike) v. Township of Pequannock **MC#2010-36** (*stayed @ 3/24/2011 pending DEP waiver decision, status update received 12/15/2011, stayed to 2/23/2012, letter received 12/30/11 requesting to cancel meetings, stayed open ended*).

Scheller Properties LLC (Block 20, Lot 50) v. Township of Washington **MC#2010-21** (*Status update received from Court appointed guardian (George Scheller an incapacitated person) Mr. Torzewski, Esq. dated October 29, 2010, and August 25, 2011. Appearance requested @ 12/15/2011 meeting to provide a status update. Status update received 12/15/2011, matter still pending before Superior Court.*

CASES WITHDRAWN (*“Withdrawal Confirmation” letters faxed & mailed to all parties and made part of the case files*)
Dean Curtis/Curtis Realty (Block 78, Lot 15 worksite: 588 Route 10) V .Township of Randolph **MC#2011-17**

Mr. & Mrs. Henry (Block 4113, Lot 19 worksite: 19 Tall Oaks Lane) v. Township of Mt. Olive **MC#2012-5**

CORRESPONDENCE--- NONE---

OLD BUSINESS --- NONE---

NEW BUSINESS --- NONE---

NEXT MEETINGS: Thursday May 24, 2012

ADJOURN: On motion duly made and seconded, the meeting was adjourned at 8:15 p.m.

Evelyn Tierney, Board Secretary