

**MORRIS COUNTY CONSTRUCTION BOARD OF APPEALS  
MINUTES**

**DATE:** Regular Meeting Thursday, September 27, 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:** Chairman Ted Maglione, Vice Chairman Edward Bucceri (6)  
Bruce Alatary, Jeffrey Betz, Harold Endean, Kimberly Hurley

**ABSENT:** William Asdal, Keith Lynch, Craig Villa (3)

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

**APPROVAL OF MINUTES:**

Minutes of the meeting held July 26, 2012 were previously distributed. Vice Chairman Edward Bucceri moved the approval of the minutes as submitted. Kimberly Hurley seconded the motion. The Board approved the minutes as submitted by the following roll call vote:

**YES:** Chairman Ted Maglione, Vice Chairman Edward Bucceri (5)  
Bruce Alatary, Harold Endean, Kimberly Hurley

**NO:** None (0)

**NOT VOTING:** Jeffrey Betz (1)

**CASE TO BE HEARD ---NONE---**

**CASE POSTPONED**

MC#2012-12 Timothy D. Oswald (Block 1502, Lot 9) v. Town of Morristown, postponed to **10/25/12, 2<sup>nd</sup> mtg. date.**

**CASES WITHDRAWN (“Withdrawal Confirmation” letters faxed & mailed to all parties and made part of the case files)**

Mr. & Mrs. Cornacchio (Block 131, Lot 51.07 site: 16 Eagle Ct.) v. Township of Randolph **MC#2012-11. Appeal filed 8/17/2012, scheduled for 8/23/12, notice received from CO on 8/22/12 NA to attend. Case stayed to 9/27/12. Appeal withdrawal notice received from applicant 8/22/2012, requesting refund of the appeal fee.** Chairman Ted Maglione made a motion to approve the refund of the appeal fee. The motion was seconded by Edward Bucceri. The motion to approve the refund of the appeal fee was approved by the following roll call vote:

**YES:** Chairman Ted Maglione, Vice Chairman Edward Bucceri (6)  
Bruce Alatary, Jeffrey Betz, Harold Endean, Kimberly Hurley

**NO:** None

**CASES STAYED OPEN ENDED (Request for a status update have been sent 7/30/12)**

√ 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*). (**Status update received 8/3/2012 – requesting case to be carried until November pending possible litigation**). Chairman Ted Maglione made a motion to schedule the matter to be heard at the October 25, 2012 hearing date. Failure by the parties to appear the Board will decide on the case and may “dismiss without prejudice” and remove the case from the Boards docket. The motion was seconded by Edward Bucceri. The motion was approved by the following roll call vote:

**YES:** Chairman Ted Maglione, Vice Chairman Edward Bucceri (6)  
Bruce Alatary, Jeffrey Betz, Harold Endean, Kimberly Hurley

**NO:** None

*The Board secretary will prepare draft notices for review and approval by Board attorney and issue same to all parties to the appeal.*

√ 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*). (**Status update received 8/16/2012 from municipal CO advising that he contacted the DEP and that there is no record for an application made by the appellant, and a status update received from applicant attorney dated 8/23/12**). Chairman Ted Maglione made a motion to schedule the matter to be heard at the October 25, 2012 hearing date. Failure by the parties to appear the Board will decide on the case and may “dismiss without prejudice” and remove the case from the Boards docket. The motion was seconded by Edward Bucceri. The motion was approved by the following roll call vote:

**YES:** Chairman Ted Maglione, Vice Chairman Edward Bucceri (6)  
Bruce Alatary, Jeffrey Betz, Harold Endean, Kimberly Hurley

**NO:** None

*The Board secretary will prepare draft notices for review and approval by Board attorney and issue same to all parties to the appeal.*

√ 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. (Status update*

*received 8/6/2012 – litigation concluded and requesting case to be dismissed since applicant is not owner in fee*). Bruce Alatary made a motion that based on the information provided by letter dated August 6, 2012 from the court appointed attorney Thomas N. Torzewski of the law firm Bortek & Torzewski ,L.L.P., who represents George Scheller, an incapacitated person, and the provided Court Order Docket No: P-2345-09 issued and dated June 17, 2011 by the Honorable Superior Court Judge Deanne M. Wilson the case before the Board shall be “dismissed with prejudice” due to the applicant who filed the appeal a “Kenneth Ryan, Managing Partner, Scheller Properties LLC” not having standing before the Board. The motion was seconded by Edward Bucceri. The motion was approved by the following roll call vote:

YES: Chairman Ted Maglione, Vice Chairman Edward Bucceri (6)  
Bruce Alatary, Jeffrey Betz, Harold Endean, Kimberly Hurley

NO: None

*The Board secretary will prepare draft notification of Board action letter for review and approval by Board attorney and issue same to all parties to the appeal.*

√ Galaxy Diner (Location: 1277 Route 23 South) v. Borough of Butler/ Fire Prevention Bureau MC#2011-28 (*stayed @ 4/26/2012 hearing pending Superior Court litigation*). (***Status update received 8/1/2012 – Scheduled for a Superior Court hearing/trial on 8/21/2012, attorney will advise once concluded and decision is issued***). The Board requested that the secretary contact the appellants attorney and inquire of the proceedings before Court and report back to the Board of the findings at the October 25, 2012 meeting date.

### **CORRESPONDENCE**

Budget balance as of September 27, 2012 = \$755.18

**OLD BUSINESS** --- NONE---

**NEW BUSINESS** --- NONE---

**NEXT MEETINGS: Thursday October 25, 2012**

**ADJOURN:** On motion duly made and seconded, the meeting was adjourned at 8:00 p.m.

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Evelyn Tierney, Board Secretary