

**MORRIS COUNTY CONSTRUCTION BOARD OF APPEALS
MINUTES**

Thursday, March 25, 2021 - 2 p.m.
Webex Video Meeting/Hearing

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, (4)
John Kostrowski, Jr., Keith Lynch

Alternate Members: Timothy Braden, Sean Donlon, Kimberly Hurley, Nick Marucci (4)

ABSENT: Herold Endean (1)

ALSO PRESENT: Stephen H. Shaw, Commissioner Director
Staci L. Santucci, Esq., Assistant County Counsel
Sheila M. Leary, CPM, Board Secretary
Shelly Burd, Administrative Executive Assistant

APPROVAL OF MINUTES:

Minutes of the meeting held on January 28, 2021 were previously distributed. Member Keith Lynch made a motion to approve the minutes as submitted. Member John Kostrowski, Jr., seconded the motion. The Board approved the minutes as submitted unanimously.

YES: Chairman Theodore Maglione, Vice Chairman Jeffrey Betz, (6)
John Kostrowski, Jr., Keith Lynch, Sean Donlon, Nick Marucci

NO: None (0)

NOT VOTING: Timothy Braden, Kimberly Hurley (2)

APPROVAL OF RESOLUTIONS: NONE

CASES TO BE HEARD: MC#2020-10 Michael Battista (529 Waterfront Properties LP – BOA 6-20)
v. Harding Township

Appearances:

Mark M. Roselli, Esq., Attorney for Harding Township, New Jersey
Gary T. Hall, Esq., Attorney for the Board of Adjustment, Harding Township, New Jersey
Michael Battista, Owner in Fee, 529 Waterfront Properties LP

Witness were sworn in by Assistant County Counsel, Staci L. Santucci, Esq., and the parties agreed to the suggested stipulation of the exhibits. Chairman Maglione stated that the matter would be heard within a one hour to conclude at 3:00 P.M.

The Board considered the following documents that were previously received by the Board Secretary and distributed to the Board members, constitute the record:

A-1 Battista email dated 12/30/20 with attached Revenue Transmittal Form(s), escrow checks totaling \$13,060,

A-2 2009 New Jersey Code, Title 40 Municipalities and Counties; 40:55D-3- Definitions; shall, may; A to C.

M-1 Memorandum from Gary T. Hall, Esq., to Arnold Lakind, Esq., with invoices

M-2 § 171-15 Municipal Land Use and Development Fees; §171-16 Land Use Procedures and Variance; §171-23 Technical Review Fees

M-4 N.J.S.A. 40:55D-53.2 Payment to Professionals for Services Rendered to Municipality

M-5 N.J.S.A. 40:55D-53.2a Dispute by applicant over Professional Fees; Notification of Parties; Appeals

M-6 2014 WL 6460761 Johnathan Wishnia, Plaintiff-Appellant v. Zoning Board of Adjustment of the Township of Warren and BAC Center of Excellence, LLC, Defendants-Respondents (A-0883-12T2) Submitted Nov. 20, 2013; Decided Nov. 19, 2014

M-11 Township of Harding Resolution BOA 01-2020 – Appointment of Gary T. Hall, Esq.

Mark M. Roselli, Esq., on behalf of the Township of Harding, presented his case and called upon his witness, Mr. Gary T. Hall, Esq., a contracted attorney for the Township of Harding, who testified that the fees charged to the escrow account known as, 529 Waterfront Properties, LC – BOA 6-20, were in accordance with municipal and state law. Further, Mr. Hall testified that he provided to the attorney representing 529 Waterfront Properties, LB, (Arnold Lakind, Esq.) the corresponding vouchers and itemized statements for the professional fees. To support Mr. Hall’s testimony, and the case for Harding Township, documents described and marked as M-1, M-2, M-4, M-5, M-6 and M-11 were presented.

Cross-examination of Mr. Hall by Mr. Battista, regarding the authority of the Harding Township to charge fees and referenced the correspondence from his attorney, Arnold Lakind, Esq., dated October 28, 2020. More specifically, Mr. Battista argued that he was not an, “applicant” rather, an appellant to the Harding Board of Adjustment and not subject to fees charged to an applicant for development. Documents described and marked as A-1 and A-2 were presented.

Mr. Roselli objected to the claims made by Mr. Battista as factually inaccurate and presented without an expert witness or attorney to substantiate his position that Harding Township acted without authority. Chairman Maglione stated that the fees and actions of Harding Township appeared to comport with the standard and opened the discussion to the Board. Alternate Board member Nick Marucci agreed with Chairman Maglione and further stated that the fees were justified by ordinance and Statute as Mr. Battista made application to the Township of Harding for the appeal with the initial step/requirement being to post an escrow account for review by the Township’s professional (in this case, Mr. Hall). Vice Chairman Jeffrey Betz stated that there was no testimony to show Harding acted without authority. Board member Keith Lynch followed with his opinion that the description of the fees charged were fair and lawful. Board member John Kostrowski, Jr. agreed with the Board and no proof had been provided to suggest that the charges were illegal or unlawful. Alternate Board members, Tim Braden, Sean Donlon and Kimberly Hurley agreed with the Board’s opinions and statements.

The Board, by motion of Chairman Theodore Maglione stated that Harding Township does have the authority to charge for the professional services of Mr. Hall, in compliance with the UCC and their actions are affirmed. Member, John Kostrowski, Jr. seconded the motion.

The board members as shown on the voting record below approved the motion:

YES: Chairman Theodore Maglione, Vice Chairman Jeffrey Betz, (5)
John Kostrowski, Jr., Keith Lynch, Nick Marucci,

NOT VOTING: Timothy Braden, Kimberly Hurley, Sean Donlon (3)

CASE(S) POSTPONED (correspondence received/ issued - made part of the case files)

MC#2017-8 Estate of Edward Cantor (Block 12 Lots 1.10, 1.12) v. Township of Chester (*1st mtg. date 10/26/2017 - stayed pending Superior Court proceedings to 2/25/21*)

MC#2019-6 Reiter & Rayter, Tatiana & Wyczeslav (Block 96, Lot 47, worksite: 30 Katie Court) v. Township of East Hanover (*1st mtg. date 3/28/2019, 2nd mtg. date 5/23/2019, 3rd mtg. date 8/22/2019 – stay pending US Supreme Court appeal proceedings*)

MC#2019-7 Reiter & Rayter, Tatiana & Wyczeslav (Block 96, Lot 47, worksite: 30 Katie Court) v. Township of East Hanover (*1st mtg. date 5/23/2019, 2nd mtg. date 8/22/2019 - stay pending US Supreme Court appeal proceedings*)

MC#2019-23 Madison Movie Development LLC (Block 2702, Lot 24 worksite: 14 Lincoln Place) v. Borough of Madison (*1st mtg. date 1/23/2020, continued stay pending BOA/other jurisdiction determination*)

MC#2020-7 Thomas Caltabellotta (Block 25, Lot 35 worksite: 6 Cambridge Road, Morris Plains, NJ v. Township of Parsippany – Stayed due to disruption of municipal operation/ COVID-19 (medical illness)

MC#2020-9 Matthew & Marybeth Massoud 27 Iroquois Ave v. Lincoln Park
Stayed due to disruption of municipal operation/ COVID-19 (medical illness)

CASE(S) WITHDRAWN: NONE

CORRESPONDENCE:

- Budget Balance – March 25, 2021 = \$2646.93

OLD BUSINESS - Discussion followed regarding the need to fill the alternate member vacancy with a qualified candidate (subcode electrical/plumbing background)

NEW BUSINESS –

NEXT MEETING: April 22, 2021 **3:00 P.M.**

ADJOURN: On motion duly made and seconded, the meeting adjourned at 3:21P.M.

Sheila M. Leary, CPM

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Board Secretary