

MORRIS COUNTY CONSTRUCTION BOARD OF APPEALS

MINUTES

DATE: Regular Meeting Thursday August 26, 2010 – 7:30 p.m.
FREEHOLDER PUBLIC MEETING ROOM

Chairman Bruce Alatary called the meeting to order and read the Open Public Meeting Statement.

Chairman Alatary requested a roll call.

PRESENT: Chairman Bruce Alatary, Jeffrey Betz, Edward Bucceri, Harold Endean, (9)
Kimberly Hurley, Vice Chairman Ted Maglione, Raymond Stromberg,
Michael Spillane, Craig Villa

ABSENT: None (0)

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

The secretary reported that a quorum was present.

APPROVAL OF MINUTES:

Minutes of the meeting held July 29, 2010 were previously distributed. Ted Maglione moved the approval of the minutes as submitted. Edward Bucceri seconded the motion. The Board approved the minutes as submitted by the following roll call vote:

YES: Chairman Bruce Alatary, Edward Bucceri, Harold Endean, Vice Chairman Ted Maglione, (6)
Raymond Stromberg, Craig Villa

NO: None (0)

NOT VOTING: Jeffrey Betz, Kimberly Hurley, Michael Spillane (3)

CASE TO BE HEARD

Deborah Post v. Chester Township (Block 33, Lot 4) *ESCROW APPEAL* MC#2009-35

The Chairman stated that the five members voting would be the three special members: Ted Maglione, Craig Villa, Michael Spillane and the two regular members: Bruce Alatary and Edward Bucceri. The other members are invited to participate in the hearing.

Appearances:

Deborah Post, Owner in Fee

John Suminski, Esq. Counsel representing the Township of Chester

Witnesses were sworn in by Board Attorney Barbato:

Deborah Post, representing herself
Peter Turek, P.E., Township Engineer
George Ritter, P.P., Township Planner
Toni Theesfeld, Tax Collector and Assistant Finance Officer
Carol Isemann, Municipal Clerk/Administrator
Sarah Jane Noll, Planning & Zoning Administrator and Zoning Official
Gary Dossantos, P.P., Associate with Mr. Ritter's firm
Willard Bergman, Esq., Chester Township Planning Board Attorney

Opening statements followed.

Counsel Suminski stated that the appeal stemmed from a Planning Board application for a two lot subdivision of a 66 acre property with the remaining acres to be under Farmland Preservation. Two Public Hearings have been held and the subdivision was subsequently approved. Numerous issues had to be addressed with the subdivision, and the witnesses will testify to the time spent reviewing plans etc. An attempt was made to remediate the matter including a public hearing held by the municipal Committee on the matter with a resolution issued to mediate, which was unsuccessful.

Ms. Post filed a law suit with Superior Court regarding the charges and fees. The Honorable Judge Bozonelis was assigned to the matter. A Motion of Summary Judgment was made by the township which was granted in part to the defendants, and the case was dismissed by Judge Bozonelis. Ms. Post made a motion to reconsider his decision and Judge Bozonelis denied the reconsideration motion, but remanded the appeal back to this Board to make a decision under the Municipal Land Use Law. The Court did maintain jurisdiction on this case. The municipality understands that there are ten (10) issues that Ms. Post is appealing and he made a short summary of those ten issues and the municipal response to each of the points.

Counsel Suminski stated that the fairness and reasonableness of the billing appealed by Ms. Post will have to be addressed line by line and a determination made by this Board. The rates that are paid to the professionals are set by the Township Council by Ordinance. Testimony will show a survey that was done in reviewing other surrounding municipalities and their rates and the Chester Township rates are within or lower rates of some of those surrounding municipalities.

Ms. Post's opening statement followed. She stated that the ten points raised by Mr. Suminski are her ten points raised in her submission made to the Board on July 19, 2010 consisting of Tab A-H. The details of the ten points are under Tab B. She indicated her acknowledgement of the document submission by the town consisting of a 3 page letter issued by Mr. Suminski dated July 22, 2010. Her intention is to go through some of the issues raised in Mr. Suminski's letter and comment on them and then review the history of the legal issues in abstract, followed by going through each of the line items on each of the professionals billing Invoices.

Ms. Post proceeded to provide her summary of the application, municipal charges and statutory basis.

Board Attorney Barbato provided advice to the Board relative to the hearing of the matter. Counsel advised the Board that the code states under NJAC 5:23A-2.2(e) that the appellant or his or her

representative shall present the bases for his/her disagreement. The applicant has a disagreement with the bills, therefore more than a statement concluding that the bills are excessive should be provided. The burden of proof of the factual basis lies on the appellant. The Board in deciding escrow appeals made a procedural determination which concluded that escrow matters are battles of the experts. The Board's decision was upheld by Superior Court in their determination that a special expert's testimony is necessary for the bases of an escrow appeal.

Board Attorney Barbato suggested that it could be helpful to review the Statutory Legal issues closer between the two parties to see if an issues list can be agreed upon to make the hearing process and the various parts easier for the Board to review and eventually decide upon. The Chairman agreed and announced a break to allow for the discussions between the parties.

After the break Board Attorney Barbato informed the Board for the record that he is stating ten issues and their statutory applicable law that the parties agreed upon that are under legal contention. At the next hearing those ten issues will be addressed first and decided on as Phase I, before going forward into Phase II which will be line by line Invoice billing issues.

Reference: 40:55D-53.2.13(a) applicable language addresses the services provided and are chargeable – review of applications and review in preparation of documents. Those provisions apply to the following points:

4. Charges not statutorily allowed
5. Engineer billing for travel time
6. Professional review for other professional work product
7. Professional Planner and Engineer billing for attendance at Board meetings

Decision to be made by Board: What is the scope of that language?

Reference: 40:55D-53.2.13(c) applicable language addresses the services provided and their timeframe and preparation requirement. Those provisions apply to the following points:

1. Documents not provided in a timeframe that the statutory allows
2. Invoices not properly prepared (quarterly hours)
3. Invoices/ Vouchers not reviewed by the CFO

Decision to be made by Board: Assuming a violation occurred in the preparation and delivery of the bills, what is the remedy?

Reference: 40:55D-53.2.13(e)

Points 8 and 9 will be resolved by deciding the appropriateness.

– Decision to be made by Board: On an Application presently pending are attorney bills for services provided prior (assuming they were) recoverable.

10. Transcript charges – point closed and will not be addressed by Board.

The parties have agreed to research the three legal issues based on case law and share their research and the cases that they plan on using and or discover. At the next Board hearing the legal issues will be addressed, once those issues are resolved and closed, the Board can go forward with hearing the reasonableness and necessary facts which will be through testimony.

Mr. Suminski concurred with the proposal. Ms. Post stated that she wants to make sure her rights are met and she will be able to go through the voucher and address the charges line by line.

The Chairman stated that Phase I will be the statutory issues and their applicability. Phase II will be addressing the charges item by item as well as hearing witness testimony.

The parties agreed, and after scheduling discussions, the Board stayed the appeal and will continue the hearing on Thursday November 18, 2010. The parties were excused.

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

- Mr. Bove, Jr. (Block 40.08, Lot 23) v. Twp. of East Hanover MC#2005-37 (*pending Court Decision*)
- Ron Clark & Robyn Valle (Block 40501, Lot 13) v. Twp. of Rockaway MC#2006-9 (*stayed pending litigation*)
- Tucker Kelley (Block 30503, Lot 12) v. Twp. of Rockaway MC#2006-34/1 (*remanded appeal by Appellate Div. July 08 - 1st Mtg. Date 10/2/08, 2nd Mtg. Date 12/11/08, 3rd will be 2/26/09 – stayed open ended with a monthly update request) Letter sent to parties dated March 26, 2009 by Board secretary requesting a status update. A status update was received on April 3, 2009 from the municipal attorney, Mr. Iacofano. Another status update was received on December 9, 2009 from the municipal attorney, Mr. Iacofano, indicating that the parties are close to a settlement agreement. Status update request sent by the Board Secretary dated April 26, 2010. A status update was received on May 18, 2010 from the municipal attorney, Mr. Iacofano indicating that the parties were working on a settlement agreement, and the Board will be notified once it is finalized. A status update was received on August 19, 2010 from attorney Iacofano. The documents were made part of the file.*)
- William Schaefer (Block 4401 Lot 42 – Denial of Permit 2/25/2010, Block 2604, Lot 19 Notice of Unsafe Structure 2/17/2010 = worksite: 441 Turnpike) v. Township of Pequannock MC#2010-7 (*stayed open ended with monthly status update – update received dated July 6, 2010, 8/6/2010 - and made part of the file*)
- Weber Homes at Mountain Lakes LLC v. Town of Boonton **ESCROW APPEAL** MC#2010-10 (*stayed open ended @4/22/2010 meeting, pending litigation*)
- Scheller Properties LLC (Block 20, Lot 50) v. Township of Washington MC#2010-21 (*stayed open ended @6/23/2010 pending litigation*)
- Fox Hills at Rockaway Condominium Association, Inc. (Block 11302, Lot 48 1 JFK Circle) v. Township of Rockaway/Fire Prevention Bureau MC#2010-4 (9/23/2010 HD)
- Eleven-Ten Associates (Block 3, Lot 13.04 worksite: 92 Hartmans Corner Road) v. Washington Township – **WARREN COUNTY** (60-DAY REQUEST RECEIVED 7/22/2010 – Municipality objecting - 30 day granted to August 26, 2010 – fax received July 28, 2010 from municipal attorney indicating his unavailability on August 26, 2010. Special hearing date requested – Denied by Board @ 7/29/2010. Hearing for September 23, 2010 requested. Letter sent to all parties by Board Secretary on August 9, 2010 carrying the matter to September 23, 2010 at which time it is Hear or Dismiss). MC#2010-13 (9/23/2010 HD)
- UPS (Block 741, Lot 1/02) v. Twp. of Parsippany-Troy Hills Fire Prevention Bureau MC#2010-25 (9/23/2010 HD 3rd Mtg. Date)
- Galaxy Diner (Location: 1277 Route 23 South) v. Borough of Butler Fire Prevention Bureau MC#2010-26 (9/23/2010 2nd Mtg. Date)

CASE WITHDRAWN (“Withdrawal Confirmation” letters faxed & mailed to all parties)

Union Cemetery Association (Block 2, Lot 14) v. Township of Washington MC#2010-22

OPEN ACTION ITEM --- NONE---

OLD BUSINESS --- NONE---

NEW BUSINESS --- NONE---

2010 REGULAR MEETINGS: **Thursday September 23, 2010**
 Thursday October 28, 2010
 Thursday November 18, 2010
 Thursday December 16, 2010

ADJOURN: On motion duly made and seconded, the meeting was adjourned at 11:00 p.m.

Evelyn Tierney, Board Secretary