

**MORRIS COUNTY CONSTRUCTION BOARD OF APPEALS
MINUTES**

DATE: Regular Meeting Thursday, October 25, 2012 - 7:30 p.m.
FREEHOLDER PUBLIC MEETING ROOM

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

PRESENT: Chairman Ted Maglione, Vice Chairman Edward Bucceri, Bruce Alatary, (8)
Jeffrey Betz, Harold Endean, Kimberly Hurley, Keith Lynch, Craig Villa

ABSENT: William Asdal (1)

ALSO PRESENT:

W. Randall Bush, Esq., Assistant County Counsel
Evelyn Tierney, Board Secretary

APPROVAL OF MINUTES:

Minutes of the meeting held September 27, 2012 were previously distributed. Bruce Alatary moved the approval of the minutes as submitted. Vice Chairman Edward Bucceri seconded the motion. The Board approved the minutes as submitted by the following roll call vote:

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

NO: None (0)

NOT VOTING: Keith Lynch, Craig Villa (2)

CASE TO BE HEARD

MC#2006-34/1 Tucker Kelley (Block 30503, Lot 12) v. Twp. of Rockaway

Appearances:

Representing the Municipality:

John Iacofano, Esq., Iacofano & Perrone, Morristown, NJ.

Representing the appellant:

David Pennella, Esq., Pennella & Claps, Dover, NJ.

Counsel Bush stated that the parties will be establishing proceedings in going forward on the hearing for the portion of the appeal that had been remanded by the Appellate Division in 2008. The remand allows Mr. Kelley to produce testimony before the Board that at previous meetings had been denied.

Counsel requested which members on the current Board participated at the hearings held January 25, 2007 and February 22, 2007.

The following members indicated that they had been present at the meetings held in 2007: Bruce Alatary, Edward Bucceri, Harold Endean, Kimberly Hurley and Ted Maglione. The members indicated that they are ready to proceed. Chairman Maglione stated that he had performed private work for attorney Pennella. Chairman Maglione indicated that he could participate without conflict of interest. Mr. Iacofano and Mr. Pennella indicated that they had no objection to Chairman Maglione participating in the Kelley appeal. Attorney Pennella asked if the current members had had an opportunity to read the transcripts of the previous hearings.

Counsel indicated that the following files had been provided tonight to the five members listed above for review:

- Minutes of meeting held - January 25, 2007 (Members attending: Bruce Alatary, Edward Bucceri, Harold Endean, Kimberly Hurley, Ted Maglione, Raymond Stromberg, Michael Spillane)
- Minutes of meeting held - February 22, 2007 (Members attending: Bruce Alatary, Jeffrey Betz, Edward Bucceri, Harold Endean, Kimberly Hurley, Ted Maglione, Raymond Stromberg, Michael Spillane)
- Approved Resolution dated (approved) March 22, 2007
 - Including the following attachments:
 - Appeal application received via hand delivery 10/2/2006
 - Notice of Violation and Order to Terminate signed 9/28/2006
 - Notice and Order of Penalty dated 9/28/2006
 - Marked P-4 (T) Copy of three picture “Approval for Electrical Permit #99-1122 (P-4)
 - Marked P-3 (B) Letter dated July 30, 2002 addressed to Mr. Tucker Kelley issued and signed by Andrew Sanfilippo, Construction Official
 - Marked P-2 (S) copy of two pictures of a house
 - P-1 – 3 page “Municipal Court of the Township of Rockaway Morris County, New Jersey Affidavit for Administrative Search Warrant (sworn and subscribed 15th day of November 2006)
 - D-1 – 1 picture of a house with a note “Photo of home”
 - D-2 permit - Construction permit application for Block 30503 Lot 12 Address: 288 Green Pond Road Permit No: 99-1122 signed and dated 11/30/99
 - D-3 – Plans submitted with construction permit – Checklist for required inspections prior to certificate and Drawings (3) A-1, A-2 and A-3 Michael Bengis, Architect – Date on drawings 11-16-99
- Superior Court of New Jersey Appellate Division Docket No: A-1921-07T3 remanding the appeal to the Board – Argued July 8, 2008, Decided July 22, 2008.
- Transcripts (4)
 1. January 25, 2007 (164 pages prepared by Brittany Transcription)
 2. February 22, 2007 (84 pages prepared by Brittany Transcription)
 3. January 25, 2007 (152 pages prepared by KLJ Transcription Services *Denotes transcripts ordered by plaintiff’s attorney)
 4. February 22, 2007 82 pages prepared by KLJ Transcription Services *Denotes transcripts ordered by plaintiff’s attorney)

Counsel Iacofano indicated that any new evidence should be proffered to the Board members by his adversary. Since the township has lost their primary witness Mr. Sanfilippo, and the secondary witness Mr. Creran who retired approximately two years ago and has moved out of state. Lisa Ryden, former township engineer had been offered in 2007 as a potential witness for the township, Ms. Ryden has passed away which leaves the township without witnesses.

Mr. Pennella stated that both parties in this matter have tirelessly tried to resolve the matter since the 2008 appellate division decision. Those efforts were not successful. Opportunity should be given to the Board to review the transcripts and review any evidence that had been submitted and accepted at the hearings.

Counsel Bush indicated that diligence by both parties is noted in trying to resolve the matter.

The appeal will continue to be heard at the hearing scheduled for Thursday December 20, 2012 to allow for the members to review the files and read the transcripts. An attorney conference will take place prior to the hearing to assure the record provided to the members is complete, and all exhibits and evidence is complete in the record and included.

The parties agreed and were excused. The Chairman called the parties to the next appeal to the podium.

MC#2010-36 Giovanni Granata (Block 4602, Lot 2 worksite: 11 Newark Pompton Turnpike) v. Township of Pequannock

Appearances:

Representing the Municipality:

Bryant Gonzalez, Esq., Weiner Lesniak LLP, Parsippany, NJ

Representing the appellant:

Diane Marie Acciavatti, Esq., Wayne, NJ

Counsel Gonzales indicated that a settlement agreement was made between the parties in March 2011. The parties agreed that the township would reduce the amount of penalty in exchange for the applicant to make a DEP application for the improvements that were installed in the basement level in violation of the Flood Plain regulations. The applicant did receive a determination of the flood hazard area regulation and applicability to the property. The next step is to file for the actual flood hazard waiver permit application.

Counsel Acciavatti indicated that she just determined today October 25, 2012 what exactly the next step with the DEP for a “flood hazard waiver permit application” involves. The application will be made within the next 30 days.

Bruce Alatary made a motion to dismiss the appeal without prejudice. Vice Chairman Edward Bucceri seconded the motion. Discussion followed. The Board approved the motion by the following roll call vote:

YES: Chairman Ted Maglione, Vice Chairman Edward Bucceri, Bruce Alatary, Jeffrey Betz, Harold Endean, (5)

NO: None (0)

NOT VOTING: Kimberly Hurley, Keith Lynch, Craig Villa (3)

The parties were excused and the Chairman continued with the items on the Agenda.

CASE POSTPONED

MC#2012-12 Timothy D. Oswald (Block 1502, Lot 9) v. Town of Morristown, postponed to *11/15/12 HD – 3rd mtg. date.*

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

--- NONE ---

CASE STAYED

MC#2011-28 Galaxy Diner (Location: 1277 Route 23 South) v. Borough of Butler/ Fire Prevention Bureau (*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*). *Board secretary spoke to attorney for appellant on 9/28/12 who advised that the matter was tried and parties awaiting issuance by the Judge of the Final Decision/Order, he will advise once it’s completed. Board secretary received an email from attorney on 10/19/12 who advised that the parties are still awaiting the written court decision*).

CORRESPONDENCE

Budget balance as of October 25, 2012 = \$755.18

OLD BUSINESS --- NONE---

NEW BUSINESS

Board member Bruce Alatary announced that he will be resigning from the Board as of December 31, 2012. The Board thanked him for his long time service on the Board as Member and Chairman.

NEXT MEETINGS: Thursday November 15, 2012

ADJOURN: On motion duly made and seconded, the meeting was adjourned at 9:30 p.m.

Evelyn Tierney, Board Secretary