

MORRIS COUNTY CONSTRUCTION BOARD OF APPEALS

MINUTES

DATE: Regular Meeting Thursday April 22, 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, Edward Bucceri, Harold Endean, (6)
Vice Chairman Ted Maglione, Raymond Stromberg, Craig Villa

ABSENT: Jeffrey Betz, Kimberly Hurley, Michael Spillane (3)

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 March 25, 2010 were previously distributed. Edward Bucceri moved the approval of the minutes. Harold Endean seconded the motion. The Board approved the minutes as submitted by the following roll call vote:

YES: Edward Bucceri, Harold Endean, Vice Chairman Ted Maglione, (5)
Raymond Stromberg, Craig Villa

NO: None (0)

NOT VOTING: Chairman Bruce Alatary (1)

APPROVAL OF RESOLUTION:

James & Shannon Leckie v. Township of Chester MC#2010-1

- The resolution was previously distributed. Ted Maglione moved the approval of the resolution. Harold Endean seconded the motion. The Board approved the resolution as submitted by the following roll call vote:

YES: Edward Bucceri, Harold Endean, Vice Chairman Ted Maglione, Raymond Stromberg (4)

NO: None (0)

NOT VOTING: Chairman Bruce Alatary, Craig Villa (2)

The parties to the appeal to be heard are remaining outside for a few more minutes to have time for negotiation discussion.

The Chairman continued with the items on the Agenda.

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. The documents were made part of the file. **The Board secretary was asked to send a letter requesting a status update and report of the progress at the May 20, 2010 meeting.**

Fox Hills at Rockaway Condominium Association, Inc. (Block 11302, Lot 48 1 JFK Circle) v. Township of Rockaway/Fire Prevention Bureau MC#2010-4 (June 24th – 2nd Mtg. Date)

Leslie Ann Cooper – Hodulich & Cooper (Block 116, Lot 16) v. Twp. of Mendham MC#2010-5 (May 20th – 2nd Mtg. Date)

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 (May 20th – 2nd Mtg. Date)

CASES WITHDRAWN (“Withdrawal Confirmation” letters were faxed & mailed to all parties)

James J. Mahoney P.C. (Premises: 2740 Route 10 West Morris Plains) v. Twp. of Parsippany-Troy Hills Fire Prevention Bureau MC#2010-6. **The appeal fee was processed to be refunded – Fire Official issued a letter that no violation had occurred.**

John M. Battaglia (Block 406, Lot 18) v. Borough of Mendham MC#2010-8. **The applicant is requesting the refund of the appeal fee.** The appeal was filed 3/22/2010 incomplete, completed 3/30/2010 and withdrawn on 4/12/2010. Chairman Alatary made a motion to deny the request for the refund of the appeal fee. Raymond Stromberg seconded the motion. The Board approved the denial of the refund request by the following roll call vote:

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

NO: NONE (0)

John Onorati - 216 Lincoln Street, LLC (Block 94, Lot 1.01) v. Town of Boonton MC#2010-9. **The Board considered the refund of the appeal fee.** A letter was received from the Construction Official indicating to the applicant that no violation existed and withdrew the Notice, therefore the applicant withdrew the appeal.

Chairman Alatary made a motion to approve the request of the refund of the appeal fee. Craig Villa seconded the motion. At this time Board members Edward Bucceri and Harold Endean excused themselves from taking part in the vote due to a potential conflict with appeals concerning the Town of Boonton.

The Board approved the refund of the appeal fee by the following roll call vote:

YES: Chairman Alatary, Ted Maglione, Raymond Stromberg, Craig Villa (4)
NO: NONE (0)

Eric Richard IB CO., LLC. (Block 96, Lot 83.02 site: 50 Williams Parkway Suite A) v. Township of East Hanover MC#2010-11. *The applicant is requesting the refund of the appeal fee.* The appeal was filed 4/1/2010, and withdrawn on 4/21/2010. Chairman Alatary made a motion to deny the request for the refund of the appeal fee. Raymond Stromberg seconded the motion. The Board approved the denial of the refund request by the following roll call vote:

YES: Chairman Alatary, Harold Endean, Raymond Stromberg, Craig Villa (4)
NO: Ted Maglione (1)
ABSTAIN: Edward Bucceri (1)

OPEN ACTION ITEM --- NONE---

OLD BUSINESS --- NONE---

NEW BUSINESS --- NONE---

- A reminder by the Chairman was made that the “Financial Disclosure Form” previously e-mailed are due at the Morris County Clerks office on April 30, 2010. Hard copies are in the meeting package with a mailing label and instructions included.

At this time Board members Edward Bucceri and Harold Endean excused themselves from the proceedings due to a potential conflict of interest.

CASE TO BE HEARD:

Weber Homes at Mountain Lakes LLC v. Town of Boonton *ESCROW APPEAL* MC#2010-10

Appearances:

Representing the appellant: Roy E. Kurnos, Esq., Belsole & Kurnos, LLC, Attorneys at Law, Morristown, New Jersey

Representing the municipality: Dominique Diyanni, Esq., law office of Dorsey & Semrau, Boonton, New Jersey

The Chairman inquired if a remediation attempt had been made. Mr. Dyanni stated that the parties had a mediation meeting on February 27, 2010 but were unsuccessful. The appeal was filed on March 26th.

Mr. Dyanni stated that he just served a motion to Mr. Kurnos and Board counsel Barbato to dismiss/transfer this matter to Superior Court due to the Construction Board of Appeals lacking jurisdiction.

Mr. Kurnos objected to the timeliness of receiving the motion. He stated that he was handed the motion when he walked in at 7:25pm. The appeal was filed on March 26, 2010 and served the Town in Boonton with a certified copy and he had called Mr. Miller the Engineer on his proceedings. He did not hear from anyone since Mr. Kurnos stated that he was under the impression after reading the CBA Board "Rules of Procedures" that anyone would be precluded from introducing any testimony and certainly filing a motion at 7:25 pm at the night of the hearing. After talking to Board counsel he determined that this Board can't hear a contracts action.

Board counsel Barbato asked if Mr. Kurnos concurs with the procedural agreement to stay the case. Mr. Kurnos stated that his understanding is that this matter be deferred pending a decision by Superior Court on the contracts action.

Mr. Barbato stated for the record: "The municipal counsel contends that this is entirely a contract claim and not under the jurisdiction of the Board. They would go further in their motion papers suggesting that the agreement pursuant to the escrow deposit was made. The appellant contends that a portion may be under Boards jurisdiction". Because of the fact that contention is made that an aspect could be heard by the CBA Board Counsel Barbato suggested to the CBA Board that the matter be carried pending the consideration by Superior Court of what the parties agree is a contract claim. "

The appellants counsel asked for a copy of the minutes so he has that for his matter before Superior Court. Chairman Alatary advised that transcripts of the hearing can be requested through the Board secretary.

Chairman Alatary made a motion that the appeal is stayed open ended pending Superior Court decision, and requesting a status update from the parties periodically. The motion was seconded by Raymond Stromberg. Discussion followed. The motion was voted on by the following vote:

YES: Chairman Alatary, Ted Maglione, Raymond Stromberg, Craig Villa (4)

NO: None (0)

The parties were advised that a copy of the approved minutes will be sent to Mr. Kurnos after the May 20, 2010 meeting date. The parties were excused.

NEXT REGULAR MEETING: Thursday May 20, 2010

ADJOURN: On motion duly made and seconded, the meeting was adjourned at 8:30 p.m.

Evelyn Tierney, Board Secretary