

# MORRIS COUNTY CONSTRUCTION BOARD OF APPEALS

## MINUTES

**DATE:** Re-Org Meeting Thursday January 27, 2011– 7:30 p.m.  
FREEHOLDER PUBLIC MEETING ROOM

Vice Chairman Ted Maglione called the meeting to order and read the Open Public Meeting Statement.

Vice Chairman Ted Maglione requested a roll call.

**PRESENT:** Vice Chairman Ted Maglione, Jeffrey Betz, Edward Bucceri, Harold Endean, (7)  
Kimberly Hurley, Craig Villa, Chairman Bruce Alatary *arrived at 8 p.m.*

**ABSENT:** Raymond Stromberg, Michael Spillane (2)

**ALSO PRESENT:**

Martin Barbato, Esq., Board Attorney  
Evelyn Tierney, Board Secretary

**APPROVAL OF MINUTES:**

Minutes of the meeting held December 16, 2010 were previously distributed. Harold Endean moved the approval of the minutes. Discussion followed. A modification on page two was made. Craig Villa seconded the motion. The Board approved the minutes as modified by the following roll call vote:

**YES:** Vice Chairman Ted Maglione, Jeffrey Betz, Harold Endean, (5)  
Kimberly Hurley, Craig Villa

**NO:** None (0)

**NOT VOTING:** Edward Bucceri (1)

**RESOLUTIONS FOR APPROVAL**

- Approval of Resolution 2011/1 (2011/2012 CBA Meeting Time/Dates). The Board reviewed the 2011/2012 meeting date schedule for any potential conflicts. Edward Bucceri made a motion to approve resolution for the 2011/12 meeting schedule as submitted. Harold Endean seconded the motion. The Board approved the resolution by the following roll call vote:

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

**NO:** None (0)

- Fox Hills at Rockaway Condominium Association, Inc. (Block 11302, Lot 48 1 JFK Circle) v. Township of Rockaway/Fire Prevention Bureau MC#2010-4. The resolution was previously distributed. Discussion followed and modifications were made on page three. Jeffrey Betz moved the approval of the resolution as modified. Craig Villa seconded the motion. The Board approved the resolution with the changes indicated on page three by the following roll call vote:

**YES:** Vice Chairman Ted Maglione, Jeffrey Betz, Harold Endean, Kimberly Hurley, Craig Villa (5)

**NO:** None (0)

**NOT VOTING:** Edward Bucceri (1)

**CASE TO BE HEARD**

Mr. & Mrs. Rojas (Block 5701, Lot 32) v. Town of Morristown MC#2011-1

Appearances:

Michelle Rojas, Owner in Fee

Vijayant Pawar, Esq., Municipal Attorney, Town of Morristown

Counsel Pawar advised the Board that the parties are requesting a 30-day stay of the appeal to allow for a potential settlement which will include the following:

- 1) Ms. Rojas will provide immediate access to the Building Department Inspector to inspect the garage.
- 2) Provided that there are no additional building violations the town agrees to reduced the fine to be charged to (\$250) as well as the permit fee charges.
- 3) Ms. Rojas will file for a permit application.

Ms. Rojas concurred. The Vice Chairman advised the parties that the appeal is stayed to the February 24, 2011 hearing date and asked that if a settlement is reached between the parties prior to the February meeting date the applicant will advise the Board Secretary. The parties were excused and the Vice Chairman called the next appeal and parties to the podium.

**CASE TO BE HEARD**

Deborah Post v. Chester Township (Block 33, Lot 4) *ESCROW APPEAL* MC#2009-35 which is a continuance of previous hearings held in August, November and December 2010.

Appearances:

Deborah Post, pro se, Owner in Fee

John Suminski, Esq., Counsel representing the Township of Chester

Witnesses were advised by Counsel Barbato that they were still sworn in from the previous hearing held on November 18, 2010:

Deborah Post, pro se, representing herself

Peter Turek, P.E., Township Engineer

George Ritter, P.P., Township Planner  
Carol Isemann, Municipal Clerk/Administrator  
Sarah Jane Noll, Planning & Zoning Administrator and Zoning Official

Vice Chairman Ted Maglione asked Mr. Suminski regarding the procedural issues raised by Ms. Post in her fax transmittals dated December 13 and 15, 2010. Counsel Suminski commented that he believes that the Board is in full compliance with hearing the appeal.

A motion was made by Vice Chairman Ted Maglione to continue with the currently adopted procedures and as established at the previous hearings. Harold Endean seconded the motion. The motion was approved by the following roll call vote:

**YES:** Vice Chairman Ted Maglione, Harold Endean, Jeffrey Betz, Raymond Stromberg (5)  
Craig Villa

**NO:** None (0)

**NOT VOTING:** Kimberly Hurley (1)

Mr. Suminski stated that under Tab D in the previously submitted "Black Binder" there are two Invoices #9-49 and #9-73. Mr. Suminski provided to the Board and Ms. Post the second page to each of the Invoices which lists the details (date, time, rate & description).

Mr. Ritter testified regarding Invoices dated July 5, 2009 #9-49 (2 pages) and October 4, 2009 #9-73 (2 pages) charges. He believes that the charges were necessary and reasonable.

Cross examination by Ms. Post followed. Objections were made by Counsel Suminski as to the questioning of his witness Mr. Ritter. Extensive discussion followed regarding the relevance of documents Ms. Post wanted to submit and be marked as evidence into the record. The Vice Chairman advised that the cross examination of the witness should continue and ask Ms. Post to continue with the cross examination. Ms. Post continued with the cross examination and numerous objections by Counsel Suminski followed and the Board informed Ms. Post to continue with the cross of the direct testimony provided only.

The following document was provided by Ms. Post.

- Letter dated September 8, 2009 on Ritter & Plante Associates, LLC letterhead (9 pages) page 6 missing in submission copy

Cross examination and re-direct followed. Question by the Board followed of the witness. The witness was excused.

Counsel Suminski waived his right to a closing statement. As to the letter Ms. Post provided earlier in the day questioning the procedures of the Board as in the previous hearings by deciding the Mr. Bergman's invoices ample opportunity was provided for cross and closing statements. Ms. Post's lack of providing an expert witness, Ms. Post is afforded to provide her closing statement providing her legal

argument as well as testifying which is the same path then in the previous hearing deciding Mr. Bergman's Invoices and charges.

Counsel Barbato advised that Counsel Suminski provided his response to Ms. Post request to change procedures as outlined in her letter provided to Counsel Suminski and the Board earlier in the day.

Vice Chairman Ted Maglione made a motion that in keeping the continuity in the proceedings as established in previous hearings and not to alter them as requested by Ms. Post outlined in her earlier submitted letter and addressed by Ms. Suminski. The motion was seconded by Kimberly Hurley. The Board voted to keep the previous established procedures in hearing the matter in place by the following roll call vote.

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

**NO:** None (0)

**ABSTAIN:** Chairman Bruce Alatary (1)

Ms. Post summarized by testifying extensively why she believes that all charges and services on the Invoices provided by Mr. Ritter she believes were not necessary and or reasonable.

Counsel Suminski indicated that he would like to state for the record that rather interrupting Ms. Post and objecting after each statement, on behalf of the township he objects to the misrepresentation of facts stated in Ms. Post's summary testimony.

Discussions by the Board followed.

Vice Chairman Ted Maglione made the following motion. Due to a lack of an expert witness who could refute some of the charges in questions, and the lack of the burden of proof to invalidate or alter the Invoice the motion is that Invoice #9-49 and #9-73 are valid and should be paid in full. The motion was seconded by Harold Endean. Discussion followed. The Board voted to uphold the Invoices as issued by the following roll call vote:

**YES:** Vice Chairman Ted Maglione, Jeffrey Betz, Harold Endean, Kimberly Hurley, Craig Villa (5)

**NO:** None (0)

**NOT VOTING:** Edward Bucceri, Chairman Bruce Alatary (2)

The Board advised the parties that the appeal will be continued to be heard at the next regular meeting scheduled for Thursday February 24, 2011. Ms. Post objected to the scheduling and asked for a postponement of the appeal. The Board advised as stated prior that the appeal hearing will continue at the February 24, 2011. The parties were excused.

Chairman Alatary continued with the items on the Agenda.

**CASE FORWARDED TO SOMERSET COUNTY** *(Due to potential conflict of interest – appeal received January 12, 2011 and forwarded 1/13/2011 – copied all parties to the appeal)*

Domenick Alberto v. Town of Morristown (*ESCROW*)

MC#2011-2 NA

**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, stayed 10/24/05 update received 1/9/08, status update requested 1/24/201, phone call received from applicant on 1/26/11 – he will review documents and get back to the Board within the week).*

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, 9/14/2010, 10/15/2010, 11/12/2010, 1/13/2011 - and made part of the file)*

Scheller Properties LLC (Block 20, Lot 50) v. Township of Washington

MC#2010-21 *(stayed open ended @6/23/2010 pending litigation, status update received 10/29/2010)*

Tucker Kelley (Block 30503, Lot 12) v. Twp. of Rockaway

MC#2006-34/1 *(stayed to April)*

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

MC#2010-36 *(2/24/2011 2<sup>nd</sup> Mtg. Date)*

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

- Ron Clark & Robyn Valle (Block 40501, Lot 13) v. Twp. of Rockaway MC#2006-9
- Weber Homes at Mountain Lakes LLC v. Town of Boonton  
*ESCROW APPEAL* MC#2010-10
- Corey Dash (Block 10614, Lot 10, worksite: 98 Stephen St.) v. Township of Rockaway MC#2010-35

**CORRESPONDENCE**

Budget Balance as of 1/26/2011 =\$852.86

**OPEN ACTION ITEM** --- NONE---

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

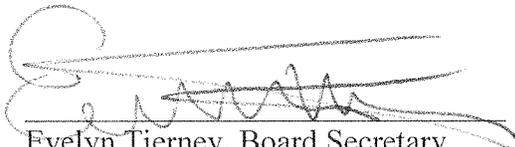
**NEW BUSINESS**

- Approval of 2011 Meeting Dates. The Board approved Resolution 2011/1 earlier in the meeting.
- Board member 2011 contact information was distributed and Board members asked to inform Board Secretary of any updates/changes.
- New adopted Codes & Standards (2009 International Mechanical Code, Int. Fuel Gas Code, Building/Residential Code NJ Edition, and National Standard Plumbing Code Illustrated) were distributed to all members.

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**NEXT MEETINGS: Thursday February 24, 2011**

**ADJOURN:** On motion duly made and seconded, the meeting was adjourned at 11:30 p.m.

  
Evelyn Tierney, Board Secretary