

**MORRIS COUNTY CONSTRUCTION BOARD OF APPEALS
MINUTES**

DATE: Thursday, February 28, 2019 - 7:30 p.m.
MC CBA Hearing Room
30 Schuyler Place, 2nd Floor, Morristown, NJ 07960

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, (5)
Harold Endean, John Kostrowski, Jr., Craig Villa

Alternate Members: William Asdal, Sean Donlon, Kimberly Hurley, Keith Lynch (4)

ABSENT: Timothy Braden (1)

ALSO PRESENT: Staci L. Santucci, Esq., Assistant County Counsel
Evelyn Tierney, Board Secretary

APPROVAL OF MINUTES:

Minutes of the meeting held on January 24, 2019 were previously distributed. John Kostrowski Jr., made a motion to approve the minutes as submitted. Harold Endean seconded the motion. The Board approved the minutes as submitted by the following roll call vote:

YES: Chairman Theodore Maglione, Vice Chairman Jeffrey Betz, Harold Endean, (9)
John Kostrowski, Jr., Craig Villa, William Asdal, Sean Donlon,
Kimberly Hurley, Keith Lynch

NO: None (0)

CASES TO BE HEARD

MC#2019-3 Richard Tkach (Block 30603 & 30604, Lot 14 & 5 worksite: 3 and 10 Bunt Street) v. Township of Denville

Appearances:

Jonathan Testa, Esq., Dorsey & Semrau, representing the Township of Denville
Sal Poli, Construction Official, Township of Denville
Samantha Anillo, Township of Denville Engineer
Joseph Dunn, District Manager, Morris County Soil Conservation District
Johanna Gonzales, Owner of Property located on 3 Bunt Street
Richard Tkach, applicant

NOTE: The following is a summary of the hearing on this matter. The official recording of the hearing serves as the official record of this matter.

Counsel Santucci swore in the witnesses.

Counsel Testa stated that he previously provided a written motion to the Board to dismiss the matter for lack of jurisdiction. The basis for the motion is that the issues involving this matter and the Stop Construction Orders in dispute pertain to administrative agencies that are not under the jurisdiction and regulations of the Uniform Construction Code, and this Board. For example, the Soil Conservation Stop Construction Order, the municipal land use law/zoning issues, and the modifications and interpretation of the Developers agreement.

Chairman Maglione denied the motion, and indicated that this Board will only be able to hear and decide the issuance of the Stop Construction Order issued by Sal Poli, Construction Official for the Township of Denville which was issued under the State of New Jersey, Uniform Construction Code regulations as per N.J.A.C. 5:24A. The Board does not have jurisdiction over zoning boards, planning boards, or other governmental agencies.

Counsel Testa offered a motion to dismiss due to Mr. Tkach, not being authorized to represent the owners of the properties known as 3 Bunt Street, and 10 Bunt Street. Counsel Testa noted that he was notified earlier in the day that the homeowners have decided to no longer employ Mr. Tkach on their projects. Counsel Testa provided a two page document with an effective date of February 20, 2019. The document was marked M-1. Ms. Gonzales, property owner of 3 Bunt Street testified that the contract with Mr. Tkach is in the process of being terminated, and a separation agreement will be entered into in the near future as noted in the document marked M-1. The document was sent to Mr. Tkach on January 28, 2019 via e-mail, certified and regular mail. Ms. Gonzales stated that she was informed that Mr. Tkach will not sign the separation agreement until outstanding invoice payments are made. Ms. Gonzales stated that property owner of 10 Bunt Street could not make it tonight, but is listed on document marked M-1.

Mr. Tkach noted that the separation agreement has not been signed. Chairman Maglione clarified that Ms. Gonzales is the property owner and as such controls who can represent her. There are two issues before the Board, 1. Owner representation, and 2. Prior approval. The conditions of the prior approval cannot be met as they pertain to site plan approval, and Soil Conservation issues which are not within the jurisdiction to be heard by this Board.

Construction Official Sal Poli testified that he inspected the property and issued two Stop Work Orders for not meeting prior approval requirements pertaining to Soil Conservation, Engineering and the Developers agreement. The documents were marked:

- M-2 – Stop Work Order, Block 30604, Lot 5, 3 Bunt Street dated January 8, 2019
- M-3 – Stop Work Order, Block 30603, Lot 14, 10 Bunt Street dated January 9, 2019

Mr. Tkach testified that only one of the homeowners is present tonight, and that he is still listed on the permits. Permits were issued approximately a year and a half ago. The modular houses are ninety percent completed and built. There were issues that delayed the delivery of the modular homes until July of 2018, as well as issues with driveway and road access to the properties. A lot of the items the town is asking for cannot be resolved, such as road widths, tree removal, and driveway drainage issues. Mr. Tkach stated that he believes that there are conflicts of interest, and requests that jurisdiction in this matter be turned over to another municipality or the Department of Community Affairs.

A motion was made by John Kostrowski, Jr, to uphold the issuance of the Stop Construction Order issued by the municipality dated January 8, 2019 for 3 Bunt Street, Block 30604, Lot 5, Michael & Johanna Gonzales, Owner in Fee. William Asdal seconded the motion. Discussion followed. The applicant does no longer have authorization to represent the owner in fee. The issuance of the Stop Construction Order was appropriate for failure to meet the conditions of prior approvals. The motion was approved by the following roll call vote:

YES: Chairman Theodore Maglione, Vice Chairman Jeffrey Betz, Harold Endean, (9)
John Kostrowski, Jr., Craig Villa, William Asdal, Sean Donlon,
Kimberly Hurley, Keith Lynch

NO: None

Chairman Ted Maglione made a motion to uphold the issuance of the Stop Construction Order issued by the municipality dated January 9, 2019 for 10 Bunt Street, Block 30603, Lot 14, Andrew Main & Malgorzata Krol, Owner in Fee. John Kostrowski, Jr., seconded the motion. Discussion followed. It was noted that owner is not present at tonight's hearing. The issuance of the Stop Construction Order was appropriate for failure to meet the conditions of prior approvals. The motion was approved by the following roll call vote:

YES: Chairman Theodore Maglione, Vice Chairman Jeffrey Betz, Harold Endean, (9)
John Kostrowski, Jr., Craig Villa, William Asdal, Sean Donlon,
Kimberly Hurley, Keith Lynch

NO: None

The parties were excused.

Next case to be heard:

MC#2019-4 Ricardo Gomez, Contractor (Block 3404, Lot 48 worksite: 407 Woodland Road)
v. Borough of Madison

NOTE: The following is a summary of the hearing on this matter. The official recording of the hearing serves as the official record of this matter.

Appearances:

Raymond Codey, Esq., representing the Borough of Madison
Russel Brown, Construction Official
Ricardo Gomez, Contractor

Counsel Santucci swore in the witnesses.

Counsel Codey stated that he previously provided a written motion to the Board to dismiss the matter due to the appeal being filed sixteen days after the issuance of the Notice and not within the fifteen days as required by Administrative Code.

Chairman Maglione denied the motion, and indicated that this Board has set precedence and accepted and heard appeals filed within a reasonable timeframe beyond the fifteen day filing time limit.

Russel Brown testified that a Stop Construction Order and a Notice and Order of Penalty was issued on January 10, 2019 by subcode official, Mickey Quinn, while he was on Medical leave. The Notices were issued after it was brought to the Borough's attention that major renovations were performed to the dwelling without permits, inspections and or approvals. The following documents were marked:

- M-1 Stop Construction Order, Block 3404, Lot 48, 407 Woodland Road dated January 10, 2019
- M-2 Construction Violation Identification document dated January 10, 2019
- M-3 Notice and Order of Penalty, Block 3404, Lot 48, 407 Woodland Road dated January 10, 2019

Mr. Brown stated that he has received a set of architectural plans dated May 6, 2018 which were marked M-4. The Board did not receive a copy of the plans. The plans show structural repairs, structural openings, new electric service, bathrooms, and kitchen renovation on all levels of the property.

As of today, no request for building permits or inspections have been made by the applicant, or owner in fee to the municipality. Mr. Gomez did file for a zoning permit in early February 2019.

Mr. Gomez who is authorized to represent the Owner of the property as per letter dated February 27, 2019 that was provided to the Board and Mr. Codey previously testified that he is the contractor for the project located on 407 Woodland Road. Mr. Gomez stated that he is aware of the code requirements, and acknowledged that he did not request the permits as required. He has worked for this property owner in various municipalities located in West Orange, Jersey City and Newark, and has never failed to apply for the necessary permits in those municipalities.

Mr. Gomez further testified that for this project he received five sets of plans from the Architect in May of 2018. A family issue arose and he had to be out of the country. Mr. Gomez stated that he made a mistake, and once he realized that he had failed to apply for the permits it was too late and construction had taken place. Mr. Gomez noted that all work performed was performed by licensed subcontractors.

Mr. Gomez noted that once he received the Stop Construction Order in January 2019 he visited the town to talk about the penalty. Mr. Gomez stated that he filed for a zoning permit for the work performed on the driveway and patio. The Zoning permit was issued last week.

Counsel Codey noted that at no time was Mr. Gomez precluded to obtain the building permits. The Penalty was issued in order to bring about compliance, and get the building inspected to assure all building code requirements are met and a Certificate of Occupancy may be issued to any potential owner of the property. The house is currently listed for sale in excess of \$900,000.00.

A motion was made by John Kostrowski, Jr, to uphold the issuance of the Stop Construction Order and Notice and Order to Pay Penalty issued by the municipality dated January 10, 2019 for 407 Woodland Road, Block 3404, Lot 48, 407 Woodland Road LLC, Owner in Fee. William Asdal seconded the motion. Discussion followed in which the Board noted that contractor admitted that the work was performed without the required permits. To date the contractor has failed to apply for the required permits. The municipality issued the \$8,000.00 penalty in order to bring about compliance. The motion was approved by the following roll call vote:

YES: Chairman Theodore Maglione, Vice Chairman Jeffrey Betz, Harold Endean, (9)
John Kostrowski, Jr., Craig Villa, William Asdal, Sean Donlon,
Kimberly Hurley, Keith Lynch

NO: None

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

CASES 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
(*stayed pending Superior Court hearings (1st mtg. date 10/26/2017 - stayed pending Superior Court proceedings to 3/28/2019)*)

MC#2019-1 Intergroup Corporation c/o Meadowbrook Gardens (Block 60, Lot 136 worksite:
3579 Route 46 East, Building A-H) v. Twp. of Parsippany Troy Hills Division of
Fire Prevention (*1st mtg. date 1/24/2019, 2nd mtg. date 2/28/2019, 3rd mtg. date will be 3/28/2019 HD*)

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

---NONE---

CORRESPONDENCE

- Budget Balance as of February 28, 2019 = \$2,233.90

OLD BUSINESS

- The Board secretary processed UFC subscription renewal for 2019 with the State of New Jersey, Division of Fire Safety, Publication Unit

NEW BUSINESS ---NONE---

NEXT MEETING: Regular Meeting, Thursday March 28, 2019

ADJOURN: On motion duly made and seconded, the meeting adjourned at 8:35 p.m.

Evelyn Tierney, Board Secretary