

MORRIS COUNTY CONSTRUCTION BOARD OF APPEALS

MINUTES

DATE: Regular Meeting Thursday May 20, 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, Vice Chairman Ted Maglione (6)
Michael Spillane, Raymond Stromberg, Craig Villa

ABSENT: Jeffrey Betz, Harold Endean, Kimberly Hurley (3)

ALSO PRESENT:

W. Randall Bush, Esq., Assistant County Counsel
Evelyn Tierney, Board Secretary
ABSENT: Martin Barbato, Esq., Board Attorney

The secretary reported that a quorum was present.

APPROVAL OF MINUTES:

- Minutes of the meeting held April 22, 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, Vice Chairman Ted Maglione (5)
Raymond Stromberg, Craig Villa

NO: None (0)

NOT VOTING: Michael Spillane (1)

Board member Craig Villa excused himself from the proceedings. The Chairman acknowledged his stepping down from the dais for the record.

CASES TO BE HEARD

Leslie Ann Cooper – Hodulich & Cooper (Block 116, Lot 16) v. MC#2010-5
Twp. of Mendham

The Chairman stated that the appeal is based for failure to obtain a certificate of occupancy for which a Notice of Violation and Order to Terminate, and a Notice of Penalty was issued on February 9, 2010. The appeal was received by the Board secretary on March 4, 2010.

Appearances:

Andrew Brewer, Esq., law offices of Maraziti, Falcon & Healey, LLP, *representing the Township of Mendham*

Attorney W. Randall Bush swore in the witnesses:

Leslie Ann Cooper, Owner in Fee

Russell Heiney, Construction Official

Motion was made by Mrs. Cooper that the appeal be dismissed based on the Statue of limitations (NJSA 2A:14-1.2) “The State can’t commence actions beyond 10 years”, in this case it has been 17 years since the issuance of a permit.

Board counsel advised that the Board would reserve and have the municipality respond to the motion made by Mrs. Cooper.

Counsel Brewer stated that the construction took place approximately 16 years ago and a Certificate of Occupancy was never obtained because the necessary inspections were never performed. An order was issued for a home that does not have a CO. The “Notice of Violation and Order to Correct” for the violation that had been in existence for the past 16 years was issued in February. The compliance to the order issued is what the township is seeking before this Board. The township therefore believes that the Statue of Limitations does not apply in any way in this case and is prepared to proceed with the matter before the Board.

The Chairman stated that the Board will reserve on the motion and will continue to hear the case, and stated that there are three options the Board may consider when deciding an appeal which are to uphold, reverse and or modify a notice issued by the Local Enforcing Agency.

Mrs. Cooper stated that she does not have her witnesses in attendance since she was arguing under the Statue of limitations. If she has to defend her appeal based on the Violation she will have to bring witnesses such as her architect who is not available due to an illness and her attorney that represented her during her divorce. The CO has been issued and she feels she is being penalized for the townships files being incomplete. She requested an adjournment in order for her witnesses to be in attendance.

Mr. Heiney, Construction Official for the Township of Mendham stated that it is not the house rather the addition that the Notices were issued for. The township had offered to perform all the necessary inspections and waive any fines in order for the open 1993 permit file to be closed. Mendham Township objected to the adjournment.

The Chairman advised that the Board will grant the continuance and re-schedule the appeal for June 24, 2010 on a “Hear or Dismiss” basis and a notice will be sent prior to the June hearing date.

The parties were excused and the Chairman continued by calling the parties to the next appeal.

Board member Villa re-joined the meeting.

John W. Finamore, Jr. (Block 2306, Lot 28) v. Township of Pequannock
Bureau of Fire Prevention

MC#2010-15

Appearances:

John W. Finamore, Jr., Esq., appearing as pro-se.

The Fire official Mr. Lonagan is not in attendance, and the Chairman stated that the Board will hold this matter and hear the next case on the Agenda to allow some time for Mr. Lonagan to appear.

The Chairman called the parties to the next appeal to the dais.

Resul Dauti (Block 4106, Lot 8) v. Township of Pequannock

MC#2010-16

The Chairman stated for the record that this appeal is for failure to obtain a permit. The Notice and Order of Penalty April 13, 2010, appeal received on May 10, 2010 which makes the appeal potentially filed out of time.

Attorney W. Randall Bush swore in the witnesses:

Robert Grant, Construction Official
Resul Dauti, applicant-Owner in Fee

Mr. Grant stated that a settlement was reached between the parties. The municipality reduced the original fine imposed by 90% to a total of \$250. Mr. Dauti agreed to file a completed permit application within 90-days from today. Mr. Dauti agreed to the settlement.

The Chairman advised that the settlement reached between the parties resolves the case before the Board and may not be brought before the Board at a later date.

A ten minute break was announced.

After the break the Chairman called the parties to the appeal previously placed on hold to allow for the Fire Official Dennis Lonagan to appear.

John W. Finamore, Jr. (Block 2306, Lot 28) v. Township of Pequannock
Bureau of Fire Prevention

MC#2010-15

Neither the Fire official Mr. Lonagan nor another person representing the Bureau of Fire Prevention is in attendance.

Appearances:

John W. Finamore, Jr., Esq., appearing as pro-se.

The Chairman indicated that the Board could not proceed in the matter without the municipality being in attendance to put on their case. The Chairman indicated that the matter would need to be rescheduled to the next regularly scheduled hearing on June 24th.

Mr. Finamore stated that he has stopped practicing law due to personal medical problems and he is not sure if he could be here next month to put on his case. He objects to the municipality not appearing and to any continuances of the appeal.

The Chairman made a motion to stay the matter to the next hearing on a “Hear or Dismiss” basis since this is a fire code issue and might be a potential life safety issue. Raymond Stromberg seconded the motion. Discussion followed. The motion was voted on by the following roll call vote:

YES: Chairman Alatary, Edward Bucceri, Raymond Stromberg (3)

NO: Ted Maglione, Michael Spillane, Craig Villa (3)

The motion failed.

Raymond Stromberg made a motion to reverse the Notice for failure of the Local Enforcing Agency to prosecute the case. Chairman Alatary seconded the motion. Discussion followed. The motion was voted on by the following roll call vote:

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

NO: None (0)

The motion passed unanimously and the approved minutes will reflect the decision made tonight. A letter will be sent to the Fire Official indicating the Board’s decision to reverse the Notice. The parties were excused and 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. Iaciofano. Another status update was received on December 9, 2009 from the municipal attorney, Mr. Iaciofano, 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. Iaciofano indicating that the parties were working on a settlement agreement, and the Board will be notified once it is finalized. The documents were 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*)

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 24 th – 2 nd 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 HD (June 24 th – 3 rd Date)
Mr. & Mrs. Therriat (Block 22, Lot 3.01 worksite: 216 Oak Street) v. Town of Boonton	MC#2010-12 (July 22 nd – 2 nd Date)
Eleven-Ten Associates (Block 3, Lot 13.04 worksite: 92 Hartmans Corner Road) v. Washington Township – WARREN COUNTY	MC#2010-13 (July 22 nd – 1 st Date)
William Schaefer (Block 4401 Lot 42) v. Township of Pequannock Bureau of Fire Prevention	MC#2010-14 (July 22 nd – 2 nd Date)
Tower Associates Realty, LLC (Block 6101, Lot 2) v. Morris Township	MC#2010-17 (June 24 th – 2 nd Date)

**CASE FORWARDED TO SOMERSET COUNTY (Due to potential conflict of interest – appeal received
May 13, 2010 and forwarded same day – copied all parties to the appeal)**

Donald & Irene Cresitello v. Town of Morristown (*ESCROW*) MC#2010-18

CASE WITHDRAWN (“Withdrawal Confirmation” letters faxed & mailed to all parties) ---NONE---

OPEN ACTION ITEM --- NONE---

OLD BUSINESS --- NONE---

NEW BUSINESS

Treasurer Report: Balance as of May 20, 2010 = \$3,296.94

NEXT REGULAR MEETING: Thursday June 24, 2010

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

Evelyn Tierney, Board Secretary