

**MORRIS COUNTY CONSTRUCTION BOARD OF APPEALS**

**MINUTES**

**DATE:** Regular Meeting Thursday December 16, 2010 – 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, Harold Endean, (6)  
Kimberly Hurley, Raymond Stromberg, Craig Villa

**ABSENT:** Chairman Bruce Alatary, Edward Bucceri, Michael Spillane (3)

**ALSO PRESENT:**

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

The secretary reported that a quorum was present, and advised that the hearings have to be ending by midnight as advised by County Administration, Building & Grounds Department.

**APPROVAL OF MINUTES:**

Minutes of the meeting held November 18, 2010 were previously distributed. Kimberly Hurley moved the approval of the minutes. Discussion followed. A minor change on page five was made. Harold Endean 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, (6)  
Kimberly Hurley, Raymond Stromberg, Craig Villa

**NO:** None (0)

**CASES TO BE HEARD**

Fox Hills at Rockaway Condominium Association, Inc. (Block 11302, Lot 48 MC#2010-4  
1 JFK Circle) v. Township of Rockaway/Fire Prevention Bureau

Appearances:

John M. Iacofano, Esq., law office of Iacofano, Fiamingo & Perrone, Morristown, NJ.  
Robert Griffin, Esq., law office of Griffin & Griffin, P.C., Randolph, NJ

The following witnesses were sworn in by Counsel Barbato:

Craig Babcock, Fire Marshal

Andrew Sanfilippo, Construction Official, Township of Rockaway  
Phyllis Smith, resident and serving as a Member of the Board of Directors for the Fox Hill Condo Association

Counsel Iacofano's opening statement indicated that the property is a Senior Condominium Development in Rockaway Township which received a Certificate of Occupancy approximately 9 years ago. Subsequently, complaints were received by the Fire Official and Fire Marshal when performing Fire Education classes at the Condo Association that some residents in the "Windsor" units are not able to hear the Fire alarm in their individual condominiums/apartments. The Fire Marshal requested an audible re-test in particular for the "Windsor Units". Those tests were performed and showed that the "Windsor Units" were not compliant with applicable standards. The Township and the Association had numerous discussions regarding modifications to the system.

Counsel Griffin's opening statement followed indicating that the Association received a Violation Notice with three Violations stated (1. Perform sound testing in all units, 2. Correct deficiencies in all "Windsor Units", and 3. Correct deficiencies in all units). There are 672 senior citizens units. The system that was installed by the Developer and approved by the Township nine years ago did meet all regulations and requirements. The Association believes that the system has been maintained as per code section NJAC 5:70-3.907.20.1 Maintenance required. As stated in NJAC 5:70-3.1 it is not the intent of the subchapter to require the installation or upgrading of any system, equipment or building component not already required by NJAC 5:70-4.

Fire Marshal Babcock was called to testify. He holds the necessary licenses to serve as a Fire Marshal (Fire Official) in the State of New Jersey, and is familiar with the file regarding the history of this Development. The premises were not occupied at the time the CO was issued. The first written complaint had been received in 2004. In 2008 and in 2009 when performing Fire Prevention presentations in each of the Buildings he was approached by some residents that the Fire alarm was not audible in their units. Testing was performed and the standards were not met. Therefore, the Violation was issued.

The following documents were submitted as evidence and marked:

- D-1 Letter on letterhead of BH Security dated November 13, 2009 addressed to Fox Hills Rockaway – RE: Fire Alarm Inspections
- D-2 3 page document – DB Sound Testing per NFPA72 Testing Site: Fox Hills, Name: Don Thomas
- D-3 3 page document – DB Sound testing per NFPA72 Testing Site: Fox Hills, Name: Monroe Ross

Cross examination followed and objections were made to the questioning of the witness. Question was withdrawn. Questions by the Board followed.

Ms. Smith was called to testify. She is a resident and serves as a member on the Condominium Association Board of Directors. She indicated that the system has been maintained as installed. The Association had been in contact with a Canadian Company to possibly have a system upgrade which turned out to be too costly for the residents.

Cross examination followed and objections were made by Counsel Iacofano. Re-direct and questions by the Board followed.

Closing statements followed by both counsel. Discussion by the Board followed.

A motion was made by Raymond Stromberg to find in favor of the Township that all three Violations were correctly issued and that corrective action should take place in order to comply with code standards. The motion was seconded by Jeffrey Betz. Discussion followed. The motion was modified by Ted Maglione that the Board upholds the Notice of Violation issued by the Township, and that within 30 days the Condominium Association submits a corrective action compliance plan to the Township for their acceptance and approval. The motion was seconded by Jeffrey Betz and 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)

Vice Chairman Ted Maglione advised the parties that the decision is final as of tonight and that a written resolution will be approved at the next meeting of the Board scheduled for January 27, 2011 and mailed shortly thereafter to all parties to the appeal. The parties were excused.

Vice Chairman continued and called the parties to the next appeal. This hearing is a continuance from the November 18, 2010 date, and the five members voting would be the two special members: Ted Maglione, Craig Villa, and three regular/alternate members: Harold Endean, Raymond Stromberg and Jeffrey Betz. The other members in attendance are invited to participate in the hearing.

Deborah Post v. Chester Township (Block 33, Lot 4) *ESCROW APPEAL* MC#2009-35

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)

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  
Gary DosSantos, P.P., Associate with Mr. Ritter's firm  
Willard Bergman, Esq., Chester Township Planning Board Attorney

Willard Bergman was called to testify. He is a practicing attorney since 1972 mostly in Land Use Planning. He is the Planning Board attorney for the Township of Chester for the past 14 years. Mr. Bergman testified regarding his Invoices and charges dated April 16, 2009 through December 28, 2009. 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. Bergman. Re-direct followed.

Ms. Post asked to introduce a letter issued by Mr. Suminski and call him as a witness. Counsel Barbato, Suminski and Ms. Post reviewed the letter and it was determined that what Ms. Post would like to present is not admissible. The letter was part of the mediation process at which no settlement was reached and therefore, can not be accepted into evidence. Furthermore, Counsel Suminski cannot be a witness for the appellant which would be considered an attorney client breach.

Ms. Post stated that she does not agree with the charges by Mr. Bergman. In particular the Farmland Application review charges, she believes is not within the scope of the subdivision application. The preparation of an Invoice is not a valuable service to the applicant and should not be charged against her account. The review of soil test results should not be performed by the attorney of the Planning Board, and therefore should not be chargeable against her account, as well as communications with the Planning Board Secretary.

Counsel Suminski summarized that the Municipal Planning Board Attorney Mr. Bergman testified on what the charges were for, and that they were allowable, reasonable and necessary. No expert witness was offered to rebut the testimony provided. The Township asks that Mr. Bergman's Invoices are sustained.

Ms. Post summarized that she believes that the services provided by the Planning Board Attorney are for the benefit of the municipal Board and therefore, she believes that the time spent on her application was not necessary and is not reasonable.

Extensive Discussions by the Board followed.

Vice Chairman Ted Maglione made a motion to uphold all of Mr. Bergman's Invoices as submitted. The motion was seconded by Craig Villa. Discussion followed. The Board voted to uphold the Invoices as issued by the following roll call vote:

**YES:** Vice Chairman Ted Maglione, Harold Endean, Jeffrey Betz, Craig Villa (4)

**NO:** Raymond Stromberg (1)

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

Ms. Post requested that a special meeting to be scheduled before January 25, 2011 since she is away on vacation for two months and returns on March 25, 2011. Counsel Suminski objected to the request and stated that a two month postponement was already granted to Ms. Post for the apple season. Counsel Suminski stated that if Ms. Post is not in attendance at the January meeting he will make a motion to dismiss the appeal for failure to prosecute.

Vice Chairman Ted Maglione made a motion to continue with the appeal hearing at the next regular meeting scheduled for January 27, 2011. The motion was seconded by Raymond Stromberg and approved by the following roll call vote:

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

**NO:** None (0)

The Board advised the parties that the appeal will be continued to be heard at the next regular meeting scheduled for Thursday January 27, 2011. The parties were excused.

**CASES STAYED/POSTPONED** (*“Postponement requests/consent and case correspondences were made part of the file”*)

Mr. Bove, Jr. (Block 40.08, Lot 23) v. Twp. of East Hanover	MC#2005-37 ( <i>pending Court Decision</i> )
Ron Clark & Robyn Valle (Block 40501, Lot 13) v. Twp. of Rockaway	MC#2006-9 ( <i>stayed pending litigation</i> )
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 ( <i>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 - and made part of the file</i> )
Weber Homes at Mountain Lakes LLC v. Town of Boonton	<b>ESCROW APPEAL</b> MC#2010-10 ( <i>stayed open ended 4/22/2010 meeting, pending litigation</i> )
Scheller Properties LLC (Block 20, Lot 50) v. Township of Washington	MC#2010-21 ( <i>stayed open ended @6/23/2010 pending litigation</i> )

**CASES POSTPONED TO 1/27/2011 & February 2011**

Corey Dash (Block 10614, Lot 10, worksite: 98 Stephen St.) v. Township of Rockaway	MC#2010-35 ( <i>1/27/2011 2<sup>nd</sup> Date</i> )
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Tucker Kelley (Block 30503, Lot 12) v. Twp. of Rockaway

MC#2006-34/1 (February 2011 TBD-  
mid/end of March)

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

Telco Communications v. Town of Morristown

MC#2010-31

Applicant is requesting the refund of the appeal fee. Raymond Stromberg made a motion to approve the refund of the appeal fee. Kimberly Hurley seconded the motion. Discussion followed. The motion to refund the appeal fee was approved by the following roll call vote:

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

**NO:** None (0)

Berley Associates LTD. (Block 5801, Lot 24) v. Town of Morristown

MC#2010-33

**CORRESPONDENCE** --- NONE---

**OPEN ACTION ITEM** --- NONE--- **OLD BUSINESS** --- NONE--- **NEW BUSINESS** --- NONE --

**2010/2011 MEETINGS:** Thursday January 27, 2011 (4<sup>th</sup> Thursday, Re-Org Mtg.)

**ADJOURN:** On motion duly made and seconded, the meeting was adjourned at 11:40 a.m.

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Evelyn Tierney, Board Secretary