

**MORRIS COUNTY CONSTRUCTION BOARD OF APPEALS
MINUTES**

**DATE: Monday September 30, 2013 - 7:30 p.m.
FREEHOLDER PUBLIC MEETING ROOM**

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 Ted Maglione, Edward Bucceri, Harold Endean, Craig Villa (4)
Alternate Members:
William Asdal, Sean Donlon, Kimberly Hurley, Keith Lynch (4)
ABSENT: Vice Chairman Jeffrey Betz (1)
ALSO PRESENT:
W. Randall Bush, Esq., Assistant County Counsel
Evelyn Tierney, Board Secretary

APPROVAL OF MINUTES:

Minutes of the meeting held June 27, 2013 were previously distributed. Craig Villa moved the approval of the minutes as submitted. Edward Bucceri seconded the motion. The Board approved the minutes unanimously. Not voting: member William Asdal, Kimberly Hurley and Keith Lynch.

CASES WITHDRAWN (*“Withdrawal Confirmation” letters faxed & mailed to all parties and made part of the case files*)

MC#2013-8 Phil Neto Associates, LLC (Block 770 Lot 5 worksite: 199 New Road) v. Township of Parsippany-Troy Hills

MC#2013-10 Robert Colangelo (Block 98, Lot 45.5 worksite: 540 Lynne Drive) v. Township of Parsippany-Troy Hills

CASE POSTPONED (*All correspondence made part of the file*)

None

CASE FORWARDED TO SOMERSET CBA – Conflict of Interest

MC#2013-12 John Cronk (Block 802, Lot 23 worksite: 42 ½ Randall Ave.) v. Township of Mine Hill

CORRESPONDENCE

None

CASE TO BE HEARD

MC#2013-13 Brian Coombs (Block 2008, Lot 12 Worksite: 445 B&C Route 23) v. Township of Pequannock

The following witnesses were sworn in by board counsel:

Brian Coombs
Robert Grant Construction Official, Township of Pequannock

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.

Mr. Coombs testified that he received a Notice of Violation and Order to Terminate and a Notice and Order to Pay Penalty dated September 9, 2013 for failure to apply for a permit for what he believes is minor work and does not require permits. He is opening a salon and has purchased video cameras to protect his business and workers. It was unclear whether the fire walls have been penetrated; the system is not hard wired.

Mr. Grant testified that he received a call from a neighboring business owner on September 5, 2013 regarding video cameras on the premises. He reviewed the file and did not find a permit for the work. He went to the location on September 6, 2013 and noticed the video cameras on the outside of the building, but did not have access to the inside of the building to inspect, therefore he issued to Notices dated September 9, 2013.

Discussion followed by the Board. As per code NJAC 5:23-2.14 and NJAC 5:23-2.17A iii the work requires a permit and inspections.

A motion was made by Harold Endean that the applicant, Mr. Coombs apply for a Permit for the minor work within 48 hours by October 2, 2013 which will abate the penalty of \$2000.00. If Mr. Coombs does not obtain the permit within 48 hours the penalty will be enforced. Inspections will follow thereafter. The motion was seconded by William Asdal. The Board approved the motion by the following roll call.

YES: Chairman Ted Maglione, Edward Bucceri, Harold Endean, Craig Villa, (5)
William Asdal

NO: None

NOT VOTING: Sean Donlon, Kimberly Hurley, Keith Lynch (3)

The parties were excused and the Construction Official was asked to advise the Board once the permit is being applied for. The Chairman called the next parties to the podium.

CASE TO BE HEARD

MC#2013-7 Karen Schatz (Concerning Pietrantuono Property, Location: 59 Clover Hill Rd., Millington)
v. Township of Long Hill (*ESCROW APPEAL*)

Appearances:

Henry F. Furst, Esq., Furst & Lorie, Montclair New Jersey
John R. Pidgeon, Esq., Pidgeon & Pidgeon Princeton New Jersey

The following witness was sworn in by board counsel:

Barry M. Hoffman, Esq., Bernstein & Hoffman Scotch Plains New Jersey

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.

Documents of record:

M1 = Letter Brief dated May 15, 2013 (5 pages) issued by John R. Pidgeon, Esq.

P1 = Letter Brief dated May 31, 2013 (9 pages) issued by David Owen, Esq.

P2 = Letter dated March 7, 2013 issued by the Long Hill Township Administrator Neil Henry addressed to Mr. Furst, Esq., attorney for Ms. Schatz – *to be provided by counsel Furst – requested at the hearing held on September 30th – letter was not previously provided to the Board.*

B-1 = Appeal application to the CBA Board filed on March 26, 2013 by David Owen, Esq., on behalf of his client Karen Schatz.

Mr. Hoffman provided testimony as to his background in Planning and Land Use Board experiences and provided detail on his services he provides to various municipalities in the State of New Jersey. He testified that he provided and issued the certified Invoice to the Township of Long Hill for a total of \$1,058.60 for 6.7 hours for services between December 11, 2012 and January 2, 2013 regarding Ms. Schatz's appeal interpretation inquire to the Board of Adjustment. Mr. Hoffman testified concerning his business practice within his office on billing and provided detailed explanation on each of the charges listed. He stated that his fees are reasonable and more than fair for the work and research provided.

Counsel Furst objected to the how the invoice hours are recorded and its submission as to the foundation of the business practice. Board noted objection and advised that the Invoice and Voucher as provided is a business record and are issued within standard operating procedures as testified by Mr. Hoffman.

Cross examination and questions by the Board followed.

Counsel Furst stated that he believes that the business practice is not acceptable as a contemporaneous practice. Testimony provided by Mr. Hoffman concerning two to three days delay in recording billing time is in his opinion not contemporaneous. The fees are unreasonable and excessive for the minor work provided by Mr. Hoffman and he objects to the fees charged against his client escrow account.

Counsel Pidgeon summarized that Mr. Hoffman provided testimony on what service he provided and his process of billing the Township of Long Hill for those services as per the ordinance. No evidence has been submitted to the contrary and therefore that the appeal should be dismissed and the fees are upheld.

Counsel Furst summarized that his client requested an interpretation on how to appeal a Board of Adjustment decision. There are two issues presented. The first is the motion to dismiss, and the second is the propriety of the charges. He asked that the Board apply State statute under NJSA 40:55D-1 et seq. that review fees are only able to be charged for an application of land development. His position is that the municipality provided to his client as indicated in a letter

dated March 7, 2013 by the Township Administrator Neil Henry that the CBA Board has jurisdiction to deal with propriety of the escrow ordinance. This Board has jurisdiction to overrule the municipal escrow ordinance. His client was advised to file an application which incurred fees in excess of \$1000 which he believes are excessive and unreasonable.

Extensive discussion by the Board followed.

A motion was made by Craig Villa that the Board does not have the authority to decide on the jurisdiction of whether or not the escrow fees could be charged by the Long Hill Township as their ordinance provides. After reviewing the fees and hearing testimony the fees charged are reasonable and therefore upheld. The motion was seconded by Kimberly Hurley. Discussion followed. The motion was approved by the following roll call:

YES: Chairman Ted Maglione, Edward Bucceri, Harold Endean, Craig Villa, (5)
Kimberly Hurley

NO: None

NOT VOTING: William Asdal, Sean Donlon, Keith Lynch (3)

The parties were excused and advised that the approval by the Board of the written resolution will take place at the regular meeting on October 24, 2013 and provided to the parties shortly thereafter.

NEXT MEETINGS: Thursday October 24, 2013

ADJOURN: On motion duly made and seconded, the meeting was adjourned at 10:15 p.m.

Evelyn Tierney, Board Secretary