

Minutes of the Regular Meeting of the Morris Plains Board of Adjustment held on April 28, 2014 at 7:30 p.m. in the Council Chambers, 531 Speedwell Avenue. The following members were present:

Mrs. Rosemary Lopez
Mr. Jack Cox
Mr. David Schulz, Vice Chairman
Mr. Robert Webster
Mr. Mark Karr
Mr. Roy Stewart
Mr. Michael Bozza, Chairman

Mr. William Denzler, Borough Planner
Mr. Leon Hall, Borough Engineer
Mr. Michael Sullivan, Board Attorney

Absent: Mrs. Ruth Mills
Ms. Joan Scaccia

PLEDGE OF ALLEGIANCE TO THE FLAG

The meeting was called to order by Mr. Bozza. Mr. Bozza made the statement that adequate notice of this meeting has been published and posted in accordance with Chapter 231 of the Public Law of 1975, "Open Public Meetings Act."

Mr. Bozza advised the Board that Mr. Martin Reilly has submitted his resignation. He thanked Mr. Reilly for his many years of service to the Board and to the community. He then welcomed Mr. Jack Cox as the newest member of Board serving as the second Board Alternate. Mr. Karr is now the Board's first Board Alternate and Mr. Webster is now a full member of the Board.

Roll Call

Yeas: Mrs. Lopez, Mr. Cox, Mr. Schulz, Mr. Webster, Mr. Karr,
Mr. Stewart, Mr. Bozza
Nays: None
Absent: Mrs. Mills, Ms. Scaccia

Motion carried.

APPROVAL OF MINUTES

Mr. Bozza stated the next matter for action at this meeting is the approval of the Board minutes for the January 27, 2014 Re-Organization Meeting.

Mr. Schulz moved to approve the minutes of the January 27, 2014 Re-Organization Meeting, seconded by Mrs. Lopez.

Roll Call

Yeas: Mrs. Lopez, Mr. Schulz, Mr. Webster, Mr. Karr, Mr. Stewart,
Mr. Bozza
Nays: None
Abstain: Mr. Cox
Absent: Mrs. Mills, Ms. Scaccia

Motion carried

COMMENTS FROM THE PUBLIC

Mr. Bozza opened the meeting to the public to speak on matters other than those on the agenda. Seeing no one, he closed the public portion of the meeting.

BA-6-11 Denise Yuliano – 49 Dogwood Road Block: 72 Lot: 12 (rear)

Mr. Bozza stated this application is on tonight's agenda for memorialization of the resolution in this matter.

Mr. Sullivan advised that while there is not usually public comment before the adoption of a resolution, two letters have been received from Anthony Sposaro, Esq. dated February 11, 2014 and April 24, 2014 on behalf of his clients, Martin and Tracy Dragos, who are the owners of adjacent property at 49 Dogwood Road, Morris Plains. Additionally, a letter dated April 24, 2014 was received from Virginia Ryan, Esq. on behalf of the Applicant.

Mr. Sposaro introduced himself to the Board as representing Martin and Tracy Dragos. The proposed development means a lot to his clients, both financially and for quality of life. He commented on an existing and recorded easement in favor of his clients and encumbering the property that is the subject of this application. The Applicant knew this was of record in the County Clerk's office since 2010; there is no dispute about this fact. The plans submitted to this Board and approved by the Board conflicts with that easement. The Applicant did not reveal this information to her attorney, her engineer and she did not inform the Board either. He also commented that the Applicant has not been present at the various meetings when this application was heard and speculated why. Further, he commented on the existence of the two attorneys involved on behalf of the Applicant – Mr. Louis Rago and Ms. Virginia Ryan. He spoke about the responsibilities that lawyers have in the course of their work. He discussed the matter of what he termed the “post-approval” process. He commented on the apparent confusion of who is the Applicant's attorney at this point in time, discussing the correspondence received from both Mr. Rago and Ms. Ryan.

Continuing, Mr. Sposaro advised that his clients hired an engineering firm that created a detailed concept plan that was submitted to the Board. He then explained what he believes is the principal difference between the plan approved by the Board and the plan before the Board now. The difference relates to the proposed driveway. In his experience representing applicants and serving as a Board attorney, he has never seen anything quite like this. He advised that he and Mr. Sullivan have discussed the issue of notice; the problem issue being that several property owners failed to receive appropriate notice. However, it appears to have been strictly caused by a failure on the part of the U. S. Postal Service, not the Applicant. He provided commentary on his feelings about this oversight and the problems that have ensued due to it. He concluded his presentation and thanked the Board for its time and consideration.

Ms. Virginia Ryan introduced herself to the Board stating there is nothing new that she just heard that is not contained in letters that are before the Board. She believes this matter will eventually wind up in the courts where it belongs and a judge will decide the outcome. “The truth will come out in its own time, but this is not the forum.”

Mr. Bozza opened the meeting to the public to speak on this matter.
Mr. Harry Augenblick was sworn in by Mr. Sullivan.

Mr. Augenblick, 48 Dogwood Road, Morris Plains, asked about the infrastructure pertaining to the property behind the Dragos.

Mr. Sullivan stated this meeting is not to re-open the hearing in the sense of testimony. The plans are available for review. Mr. Hall can provide answers to specific questions. He explained what might happen going forward – if the hearing is re-opened and if the hearing is not re-opened – and what Mr. Augenblick could do in either case.

Mr. Bozza asked if there were any other comments or questions from the public. He requested a motion to close the public portion of the meeting.

Mr. Webster moved to closed the public portion of this meeting, seconded by Mr. Karr. Voice vote. All in Favor. **Motion carried.**

Mr. Sullivan stated this is an odd set of circumstances. There are two issues: (1) the issue of notice and (2) the issue of the easement.

As to notice, he stated "Any notice made by Certified Mail . . . shall be deemed complete upon mailing." Therefore, once the actual mailing is done the notice is deemed complete. He provided citation information. He stated "We are a creation of the legislation; we do not have equitable powers to expand and go away from the clear language of the statute." He believes that under the statute the notice was satisfied. He provided additional citation information.

Continuing, Mr. Sullivan commented on the easement matter. This easement with the Applicant as Grantor and Mr. and Mrs. Dragos as Grantees was dated June 6, 2006 and recorded on June 12, 2006 in Deed Book 20533 at page 1790. He provided specific details mentioned in the easement agreement. This easement was not shown on the plan and there was no testimony offered by the Applicant about it. He read excerpt from the Cox and Koenig book (Section 28-3.4, 2014 edition, page 665, Section 3.4(a)). The excerpt relates to restrictive covenants and deeds.

Relevant commentary was provided by Mr. Sullivan, stating that he sees this now as a dispute between private parties, not properly before this Board. It is his opinion that the motion by Mr. Sposaro to re-open the hearing for both the notice issue and the fact that the easement was not disclosed to the Board, although unfortunate, he does not believe the Board should re-open the hearing. The Board will not have a trial as to whether or not the easement is valid.

The Board members discussed their positions and asked questions with regard to the information provided by Mr. Sullivan's commentary.

Mr. Sullivan stated what he believes will occur next at this meeting – someone will make a motion to either re-open or not re-open the hearing and a vote will be taken. Depending on which action succeeds, the Board will then adopt a resolution. Easements are supposed to be included on plans.

Mr. Sullivan swore in Mr. Hall.

In response to a Board member's question, Mr. Hall commented that the Dragos can use this easement area for whatever purpose they see fit, as stated in the easement agreement. While Mr. Sullivan advises that the Board is not in the business of enforcing the easement agreement, but unless Mr. Sullivan told him otherwise he would review this easement and make his review comments based on the restrictions within this easement.

Mr. Sullivan commented on what he sees as the Board's functional responsibilities as a Board and in this matter specifically. If the parties intend to fight over the scope and issues relating to the easement, they are going to have to go to court.

Mr. Hall explained what he normally would have done if the easement had been indicated on the plans and that he would bring any concerns he had to the attention of the Board.

Cross discussion between Board members and Mr. Sullivan, including that some Board members believe they have not had a fair opportunity to review this application due to missing facts/information. One member also argued that he does not readily accept the law's statements regarding the notice issue – in this case it prohibits commentary and participation from and by the public on an application. The Board does operate in a quasi-judicial manner. This member also read information (Points) concerning the Board's role/mission in the presentation of applications.

Continued cross discussion about how the Board can proceed going forward at this meeting.

Mr. Sullivan suggested that someone make a motion to either re-open the hearing or to not re-open the hearing.

Mr. Hall asked if there is a motion to re-open the hearing, does it get acted on in the form of a resolution. Could this hearing occur as soon as next month?

Mr. Sullivan replied yes, that a resolution would be adopted to that effect. He recommended making a motion first, and then depending on what that motion is, he will explain further.

Mr. Stewart moved that this hearing be re-opened for consideration by this Board, seconded by Mrs. Lopez.

Roll Call

Yeas: Mrs. Lopez, Mr. Schulz, Mr. Karr, Mr. Stewart
Nays: Mr. Webster, Mr. Bozza
Abstain: Mr. Cox
Absent: Mrs. Mills, Ms. Scaccia

Motion carried

Mr. Sullivan distributed a draft resolution rescinding the approval of this application that was granted in January 2014 for the Board to review. This resolution will serve as a memorialization of the action just taken to re-open the hearing.

Mr. Sullivan read the draft resolution, primarily so the public would know what it contains. The resolution requires that new notice be prepared by the Applicant, that the application will be re-heard at the Board's next meeting on Monday, May 19, 2014, that the Applicant shall provide notice in accordance with the statute, and that the Applicant must submit revised plans depicting the easement.

Mr. Hall recommended that the Boundary Survey also be revised to show the easement.

Mr. Sullivan agreed to Mr. Hall's request.

Mrs. Lopez moved that this resolution be approved, seconded by Mr. Karr. One of the Board members commented on the procedural mix-up that resulted in the current situation.

Mr. Stewart read the Mission Statement for the Board of Adjustment and further suggested that the resolution should include a statement that a number of property owners failed to receive the original notice. Ultimately, it was decided not to include this statement.

Roll Call

Yeas: Mrs. Lopez, Mr. Schulz, Mr. Karr, Mr. Stewart
Nays: Mr. Webster, Mr. Bozza
Abstain: Mr. Cox
Absent: Mrs. Mills, Ms. Scaccia

Motion carried

Mr. Sullivan stated this revised resolution is adopted, the approval is rescinded and the re-hearing is scheduled for May 19, 2014. Notice is required.

Mr. Hall reminded that submissions must be received 14 days prior to the date of the next Board meeting.

The Board Secretary advised that the escrow situation on this application is just even. But, there will be no money after this meeting.

CORRESPONDENCE AND BILLS

Mrs. Lopez moved the payment of the vouchers, seconded by Mr. Karr. Voice vote. All in favor. **Motion carried.**

NEW BUSINESS

2013 Annual Report of the Zoning Board of Adjustment

Mr. Bozza thanked Mr. Webster and the Board Secretary for putting this report together. He read a resolution relating to the adoption of this annual report.

Mr. Schulz moved that the annual report be adopted, seconded by Mr. Karr.

Roll Call

Yeas: Mrs. Lopez, Mr. Cox, Mr. Schulz, Mr. Webster, Mr. Karr,
Mr. Stewart, Mr. Bozza

Nays: None

Abstain: None

Absent: Mrs. Mills, Ms. Scaccia

Motion carried

OLD BUSINESS

None.

There being no further business, Mr. Webster moved the meeting be adjourned, seconded by Mrs. Lopez. Voice vote. All in favor. **Motion carried.**

Karen M. Coffey
Commission Secretary

Maureen Sullivan
Recording Secretary

