

REORGANIZATION MEETING
&
REGULAR MEETING

Salute to Flag: 7:45 P.M.

OPENING STATEMENT: Read by Mayor Dan Mahler.

This is the Reorganization & Regular Meeting of the Wanaque Board of Adjustment and adequate notice has been given and it has been duly advertised by the placement of a notice in the Suburban Trends and Herald News on December 17, 2017 and a notice thereof has been posted on the bulletin board in the Municipal Building in the Borough of Wanaque, 579 Ringwood Avenue, Wanaque, and a copy thereof has been on file with the Borough Clerk

Mayor Mahler swore in Re-Appointed Members Peter Hoffman and Michael Levine

Mayor Mahler swore in New Member Bridget Pasznik

ROLL CALL: Members Jack Dunning, William (Bruce) Grygus, Frank Covelli, Barry Hain, Peter Hoffman, Donald Ludwig, Michael Levine, Suzanne Henderson and Bridget Pasznik.

NOMINATION FOR CHAIRMAN: Member Grygus nominated Jack Dunning, seconded by Member Covelli. No other nominations heard. Nominations closed.

ROLL CALL ON NOMINATION FOR CHAIRMAN: Voting yes were Members Grygus, Covelli, Hain, Hoffman, Ludwig, Levine Henderson and Pasznik. Member Dunning abstained.

NOMINATION FOR VICE CHAIRMAN: Member Ludwig nominated William (Bruce) Grygus, seconded by Member Hoffman. No other nominations heard. Nominations closed.

ROLL CALL ON NOMINATION FOR VICE CHAIRMAN: Voting yes were Members Dunning, Covelli, Hain, Hoffman, Ludwig, Levine, Henderson and Pasznik. Member Grygus abstained.

NOMINATION FOR BOARD ENGINEER: Member Ludwig nominated Christopher Nash of the firm Boswell Engineering for Board Engineer, seconded by Member Hain. No other nominations were heard. Nominations closed.

ROLL CALL ON NOMINATION FOR BOARD ENGINEER: Voting yes were Members Dunning, Grygus, Covelli, Hain, Hoffman, Ludwig, Levine, Henderson and Pasznik.

NOMINATION FOR BOARD ATTORNEY: Member Covelli nominated Ronald P. Mondello, Esq. for Board Attorney, seconded by Member Ludwig. No other nominations were heard. Nominations closed.

ROLL CALL ON NOMINATION FOR BOARD ATTORNEY: Voting yes were Members Dunning, Grygus, Covelli, Hain, Hoffman, Ludwig, Levine, Henderson and Pasznik.

ADOPTION OF NEWSPAPERS: Continue with the Suburban Trends and Herald News: **MOTION TO ACCEPT AND ADOPT THE SUBURBAN TRENDS AND HERALD NEWS AS THE OFFICIAL NEWSPAPERS:** made by Member Covelli, seconded by Member Grygus. Voting yes were Members Dunning, Grygus, Covelli, Hain, Hoffman, Ludwig, Levine, Henderson and Pasznik.

MOTION TO MAINTAIN THE FIRST WEDNESDAY OF THE MONTH FOR THE REGULAR MEETING AT 8:00 P.M.; AND THE SATURDAY PRIOR TO THAT MEETING FOR SITE VISITS AT 10:00 A.M.; AND DIRECT THE BOARD SECRETARY TO ADVERTISE IN ACCORDANCE WITH THE OPEN PUBLIC MEETINGS ACT TO GIVE NOTICE OF THE MEETING DATES FOR 2018: made by Member Grygus, seconded by Member Ludwig. Voting yes were Members Dunning, Grygus, Covelli, Hain, Hoffman, Ludwig, Levine, Henderson and Pasznik.

ADOPTION OF EXISTING PROCEDURES AND BY-LAWS: **MOTION TO ACCEPT EXISTING PROCEDURES AND BY-LAWS (WITH ANY REVISIONS):** made by Member Ludwig, seconded by Member Covelli. Voting yes were Members Dunning, Grygus, Covelli, Hain, Hoffman, Ludwig, Levine, Henderson and Pasznik.

ADJOURN REORGANIZATION MEETING AT 7:55 P.M.

REGULAR MEETING

Chairman Dunning called Regular Meeting to order at 8:06 P.M.

ROLL CALL: Voting yes were Members Dunning, Grygus, Covelli, Hain, Hoffman, Ludwig, Levine, Henderson and Pasznik.

ALSO PRESENT: Attorney Mondello and Engineer Nash

Application #ZBA2017-06 – Serrano, Carmela Applicant, 15 Evergreen Avenue, Haskell, NJ, Block 406, Lot 12

Chairman Dunning advised the Board that this was the application from November 1, 2017 that we carried to January. They haven't met all the demands of the Building Department as far as inspections, permits, etc. This is the application where the garage was converted to a bedroom and bathroom without permits.

Attorney Mondello advised that the Board has two options: (1) You can either carry it to the next meeting, or (2) you can make a Motion to Dismiss Without Prejudice, which would entail them re-filing and paying the fees again.

Member Hoffman questioned if they were going through the process?

Chairman Dunning and Board Secretary answered yes.

Chairman Dunning stated we are going to carry and we told them that already. They are working with the Building Department trying to get up to speed on what they have to do. Attorney Mondello questioned at the last meeting did we say we would carry the matter to the January meeting?

Board Secretary advised yes and they didn't have to re-notice.

Chairman Dunning advised the way that we told them we would carry it to January so they could catch up with the Building Department.

Attorney Mondello stated if we said January and now we are making an announcement that it is going to be carried until February; that is fine.

Vice Chairman Grygus questioned where are we on time?

Attorney Mondello stated you have 120 days to resolve it and that is the law. Let us talk about reality. Do you really think this woman is going to run into court on a prerogative writ to force the judge to say okay you didn't decide the case within 120 days so therefore I am granting it. I think that is highly unlikely because it is going to cost her about \$10,000. If the Board is concerned about that, dismiss it, without prejudice and have her re-file.

Member Covelli questioned was the application complete?

Attorney Mondello stated that wouldn't have been here if it wasn't. The had proper notice. Member Hoffman commented that I think it was deemed complete on the application, but we found other evidence/discovery.

Attorney Mondello stated that is different. That doesn't divest the Board of jurisdiction or

the applicant. From a legal perspective, she noticed and from an engineering perspective the right documents were there. Of course, there were huge deficiencies in the actual application, but that doesn't mean that we go back in time.

Member Ludwig commented that being it was supposed to be heard tonight and people that would possibly come in to object or whatever should be out there. I don't see a problem with carrying. They could be here giving notice themselves that there was a problem.

Attorney Mondello commented that is true and the issue/concern before the Board is you have 120 days to decide an application unless of course, the applicant waives those time restrictions, and we don't have somebody here to waive that.

Vice Chairman Grygus questioned can we make a motion to carry it to the February Meeting with a condition that an extension be granted by the end of the week.

Attorney Mondello stated just have her write one sentence that she waives. If the applicant is unwilling to waive the time restrictions, in that case, dismiss it without prejudice.

Chairman Dunning questioned that if we dismiss it, and since they illegally converted the garage to a bedroom, then it is up to the Building Department to follow up on it?

Attorney Mondello agreed and said they could write a cease and desist and appear before the Municipal Court Judge in Wanaque on the illegal occupancy.

MOTION TO CARRY APPLICATION TO THE FEBRUARY 7, 2018 MEETING WITH THE CONDITION THAT WE RECEIVE AN EXTENSION OF ANY TIME

RESTRICTIONS: made by Vice Chairman Grygus, seconded by Member Covelli. Voting yes were Chairman Dunning, Vice Chairman Grygus, Members Covelli, Hain, Hoffman, Ludwig, Levine, Henderson and Pasznik. Motion Carried

PUBLIC DISCUSSION: Let the record show there was no one to come forward.

RESOLUTION: Application #ZBA2017-07 – Breen, Dorothy & Joseph, Applicants 88 Grist Mill Road, Wanaque, NJ (Block 200.01/Lot 1) to construct a new inground swimming pool.

MOTION TO MEMORALIZE THIS RESOLUTION AS PREPARED BY BOARD

ATTORNEY: made by Member Grygus, seconded by Member Ludwig. Voting yes were Chairman Dunning, Vice Chairman Grygus, Members Hain, Ludwig, Hoffman and Henderson. Member Covelli not qualified. Motion Carried

RESOLUTION: Application #ZBA20167-09 – Magee, Robert & Evelyn, Applicants 1028 Ringwood Avenue, Haskell, NJ (Block 411/Lot 25) to construct a new two-car garage.

MOTION TO MEMORALIZE THIS RESOLUTION AS PREPARED BY BOARD

ATTORNEY: made by Member Ludwig, seconded by Member Hoffman. Voting yes were Chairman Dunning, Vice Chairman Grygus, Members Hain, Ludwig, Hoffman and Henderson. Member Covelli not qualified. Motion Carried

CORRESPONDENCE: Board Secretary handed out the Records of the Police with regard to parking complaints/issues/summons on Railroad Avenue, Erie Avenue and Villa Place from 2013 to present. She is also handed out the NJ Planner Pamphlet.

VOUCHERS: submitted by Ronald Mondello, Esq. for attendance at the January 3, 2018, Meeting in the amount of \$300; for preparation of the Magee Resolution in the amount of \$450; and for preparation of the Breen Resolution in the amount of \$450.

MOTION TO APPROVE: made by Member Ludwig, seconded by Member Hain. Voting yes were Chairman Dunning, Vice Chairman Grygus, Members Covelli, Hain, Hoffman, Ludwig, Levine, Henderson and Pasznik.

MOTION TO APPROVE DECEMBER 6, 2017 MINUTES: made by Member Hain, seconded by Member Grygus. Voting yes were Chairman Dunning, Vice Chairman Grygus, Members Hain, Hoffman, Ludwig and Henderson. Members Covelli, Levine and Pasznik were not qualified.

ENGINEER'S REPORT: Nothing to report.

DISCUSSION: MKR Enterprises/Tree Tavern - Attorney Mondello did circulate the Motion prepared by Attorney Fernicola. The Zoning Board was not named as a defendant in that Motion, but part of his Motion is that he wants to add a count to his Complaint which would basically be naming the Zoning Board and saying that our decision was arbitrary, capricious and was unreasonable. I think he is going to lose that Motion and the Judge is going to say why don't you just file a Prerogative Writ because that is the normal vehicle to sue a Zoning Board or Planning Board and say what they did was incorrect. I suspect that within the next 45 days, maybe 60 days, we are going to get served with a Complaint where the Bellantes will be suing the Zoning Board saying that you guys screwed up.

Member Hoffman questioned on which count? On the acceptance of the pre-existing condition or the granting of the Variance.

Attorney Mondello answered you could be sure it will be everything.

Vice Chairman Grygus commented I thought the crux of this whole thing was against the Borough and Mayor & Council that they never had the right to approve the hours.

Attorney Mondello stated that litigation continues and now he is trying to boot-strap a Prerogative Writ by saying you know what, I just want to add.

Vice Chairman Grygus commented that his argument was that our Board never had the right to hear it. Since he said that from day one, I would think that would be the thrust of his case.

Attorney Mondello commented, if the Board didn't have the right to hear the matter, why did the Judge send it here? I think that Motion will be denied and the Judge will tell him to file a Prerogative Writ and then the Bellantes will file the Prerogative Writ and you will

have to authorize me to defend again that Prerogative Writ at some point in time and we will take it from there.

Member Covelli stated the Borough will be named too.

Attorney Mondello stated he has a separate lawsuit, an Order to Show Cause, where he names the Borough and basically everybody but us.

Member Covelli questioned is he seeking monetary or injunctive?

Attorney Mondello answered I think both.

Member Levine asked what is Prerogative Writ?

Attorney Mondello answered it is a fancy name for saying that some regulatory agency or some government official acted improperly. In this case, the standard is quite high. You had to have acted arbitrarily, capriciously or unreasonably, which is a very high standard. The Judge may not agree with what you did, but that's not the standard. He would have to find that you had no reason, in logic or fact or law, to come to the conclusion that you came to and I think that is going to be a far stretch given the amount of hearing time and testimony that went into the matter and Resolution. Of course, the Judge is guided by is the Resoltuion. This will go to the Judge that remanded the matter to the Board.

Member Covelli commented didn't Attorney Fernicola stated that the Judge was incorrect in remanding the matter to this Board?

Attorney Mondello commented I don't remember that.

Chairman Dunning stated he said the Judge was incorrect picking 1979.

Member Hoffman stated his whole premise was the wrong date that we were using for pre-existing condition.

Member Covelli questioned was he accusing the Judge of that or us using that as the foundation for our decision?

Chairman Dunning stated the Judge gave us the date.

Attorney Mondello commented, if you think about it, I don't think the Judge gave us the date and I think that is the date, according to Attorney Rubin, that he got from the Borough and that is the year he gave the Judge, and the Judge said I am going to hold you to that year. That is fine. The Board found that the use existed since like 1944 so whether you want to call in 1979, 1920's, 1950's. Attorney Fernicola does spend a lot of time saying you should have used 1979, but if we found that it existed before 1979, and we spoke about 1951 and 1944, what does 1979 matter? The Judge will let us know.

Chairman Dunning stated 1955, when zoning was put in place in Wanaque.

Member Hoffman stated it preceded the 1955 zoning ordinances and they produced the proof.

Attorney Mondello stated I bring this up because it is coming, and we will vigorously defend against it; end of story.

MOTION TO ADJOURN: Motion carried by a voice vote.

Jennifer A. Fiorito
Board of Adjustment Secretary