

MINUTES
Of the Township of West Milford
ZONING BOARD OF ADJUSTMENT
January 27, 2009
Regular Meeting

Robert Brady, Board Chairman, opened the Regular Meeting of the Zoning Board of Adjustment at 7:53p.m. The Board Secretary read the Legal Notice.

Pledge

The Chairman asked all in attendance to join in the Pledge of Allegiance

Roll Call

Present: Ada Erik, Francis Hannan, Barry Wieser, Frank Curcio, Arthur McQuaid, Gian Severini, James Olivo, Vivienne Erk and Robert Brady

Also Present: Stephen Glatt, Board Attorney, William Drew, Planner, Richard McFadden, Board Engineer, and Denyse Todd, Board Secretary

Absent: none

There are no memorializations.
There are no applications.

DISCUSSION OF THE EMAIL POLICY

Mr. Brady asked for discussion of the by-laws with regard to the email policy. Mr. Glatt spoke with the Township Attorney and the Town has not adopted an email policy. At this time there is no email policy. Mr. Glatt expressed the feelings of the Board with regard to the email policy to Mr. Semrau and he understood the feelings of the Board. There should not be an email whether personal or business, related to Board business.

Mr. Glatt explained to the new members the reasons why the Board should not have an email address. He explained what quasi-judicial means and the types of the applications the Board hears. The Board should be autonomous and only base the decisions on the testimony or documents received from the Secretary or the Professional or the Applicant. If there is an email address available a Board Member could receive email from someone else, open it and not realize what it is. They should not have a Township accessible email address. He also explained that if there are any questions about an application to please contact Mr. Glatt, he does not want anyone to feel uncomfortable. If there was a question whether or not a Board Member has a conflict with an application, he would ask you to step aside, nothing to cause discomfort. He also explained what a quorum was.

Mr. McQuaid explained there have been OPRA requests regarding email activity; it is much easier to say there are none. The Sunshine Act was discussed as well and you do not have to be in the same room talking for it to be constituted as a meeting. There were no other questions.

Mr. Brady commented that our Board can only vote on the evidence, not our conscience, and no one should communicate with any other members or entities. An assumption can be made that if you have a Township email that you will or have used it.

Mr. Brady asked for a motion for approval of the amendment of the By-laws with regard to email addresses for the Zoning Board of Adjustment.

Motion by Arthur McQuaid to approve the amendment to the by-laws.

Second by Ada Erik

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Barry Wieser, Frank Curcio,
Arthur McQuaid, Gian Severini, James Olivo, Vivienne Erk
and Robert Brady

No: none

Mr. Brady asked if there was a need for a guidebook for new members. Mr. Glatt asked when the mandatory course would be taken by the new members, some Board members feel that the responsibility would be on the state once the class has been taken and there should not be anything set by our Board. Mr. Glatt feels that something that is set by the state like the NJPO manual would be a better choice and then there could be a question answer period after reading the guide. There was discussion regarding the price of these books, some members may already have the book. The Secretary will hear back from members who may have the guide.

Motion by Ada Erik for further discussion on the NJPO Guide.

Second by Barry Wieser

All in favor to carry discussion regarding the State Regulations book.

Discussion regarding fee increases for escrow and applications.

Dorrie Fox said that there was enough money budgeted for the publications for Zoning Board materials.

DISCUSSION OF THE PROPOSED FEE INCREASE

Dorrie Fox made a presentation with regard to the fee increases. Ms. Fox asked for any questions or concerns. Mr. Hannan has a problem with raising fees since the economy is so bad unless costs have increased. Mr. Hannan wants additional information with regard to increases.

Mr. McQuaid said that he does not mind the escrows however the application prices should be included in the taxes or reduced. No increase in application fees only in the escrow fees.

Ms. Fox said that the Board might want to send a recommendation to Council. There will be discussion with that regard. Mr. Hannan feels that he already explained his concerns with the fees. Ms. Erik agrees that there is a tax on a tax. Mr. Glatt explained to the Board that the fees and the escrows are separate accounts. He also explained how the escrow works when drawn upon and when an application is denied that there is no reason for them to satisfy what is due. Mr. Hannan asked if it was happening regularly and the Chairman explained the escrow process and the Secretary explained that when it is not complete quickly it will be used on the professional's charges. Mr. Drew has experienced it also and explained his reasons for increases. Mr. Brady wanted to ask Mr. Glatt if there was anything that could be done before the application is heard. Mr. Glatt said not when it was deemed complete. There is a problem with the statutory dates because of approval by default.

Mr. Glatt explained that the applicants who send it in there completeness items a little at a time will take more money for each review. Ms. Fox was asked if it was a percentage in increases and she explained that they were all different and that she sat down with the Secretary and it was discussed individually along with going through old applications to decide what the increases should be. Ada Erik asked if the Checklist talks about escrow and it was explained that initial submission requires escrow and also a signed escrow agreement stating that when depleted an addition deposit is required. Mr. Drew said once initial escrow is submitted it is the due diligence of the office staff to follow up. There is nothing in ordinance that states that before application is heard the escrow needs to be deposited. Mr. Glatt explained that escrow money goes in a separate

account, and there are bills sent to the applicant and the can protest a bill. Mr. Drew said that he sends the vouchers every month to the applicants. Land Use Law says consultants are required to send billing to the applicants.

Mr. Brady explained that when no additional permits are required we have no recourse since there is no reason for the applicant to pay up because they already have what they need. Mr. Glatt said if someone doesn't pay the arrearage of an account that the Township is still required to pay the professional so if it isn't up to date, the tax payers ultimately pay for the bills. The Township Attorney can be involved but is it worth the cost of having the Township Attorney collect the additional escrow owed. Mr. Glatt explained that the secretary has to try to collect after the fact. The Planner said he looked at the fees and it doesn't seem to be much more than a few hundred dollars. The fence application is different because it is presently so low.

Mr. Hannan doesn't have a problem with the escrow fee change since a deficit would be charged to the taxpayers but doesn't want the application fees changed. Ms. Fox explained that the Planning Department will be assuming the administrative functions of the escrow. Mr. McQuaid thanked Ms. Fox and said that he supports the escrow but not the application fees. Mr. McQuaid asked if the applicant has an explanation of where the escrow goes and the purpose of the escrow and he was told yes.

Mr. Brady said that each application area with the exception of the fence there is a \$200.00 increase and the fence was a \$500.00 increase. The fence is a higher amount because they don't need an additional permit. Mr. Brady said since the people who deal with this on a regular basis proposed the fees that there is really no need for further discussion. There will be two votes.

Motion by Arthur McQuaid to support escrow fee increases
Second by Ada Erik

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Barry Wieser, Frank Curcio, Arthur McQuaid, Gian Severini, Robert Brady
No: none
Abstain: none

Motion by Arthur McQuaid for no increases to application fees as it is felt that it is a tax on a tax. Citizens have already paid the tax for services and they shouldn't have to pay an increase for the services.
Second by Ada Erik

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Barry Wieser, Frank Curcio, Arthur McQuaid, Gian Severini, Robert Brady
No: none
Abstain: none

DISCUSSION OF THE ANNUAL REPORT

The Board discussed the items they would like included in the Annual Report.

APPROVAL OF PROFESSIONAL BILLS

Motion by Ada Erik to approve the attorney's bills
Second by Francis Hannan

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Barry Wieser, Frank Curcio, Arthur McQuaid, Robert Brady
No: none
Abstain: none

Motion by Ada Erik to approve the bills for the Board Planner
Second by Arthur McQuaid

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Barry Wieser, Frank Curcio, Arthur McQuaid, Robert Brady
No: none
Abstain: none

Motion by Ada Erik to approve Substitute Planner Bills
Second by Francis Hannan

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Barry Wieser, Frank Curcio, Arthur McQuaid, Gian Severini, Robert Brady
No: none
Abstain: none

The New Jersey Planner was distributed with the packets.

Mr. Glatt said that all briefs regarding Vincent Lanza have been submitted and they are waiting for a trial date.

APPROVAL OF MINUTES

Motion by Ada Erik to approve the minutes of December 18, 2008
Second by Barry Wieser

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Barry Wieser, Frank Curcio, Arthur McQuaid, Robert Brady
No: none
Abstain: Gian Severini

There was discussion regarding the Advanced Board Training Mr. Hannan would like to attend the Newton class on March 21, 2009, there will be a better chance of Highlands content in Sussex.

Mr. Brady asked if there was no other business if there was a motion to adjourn.

Motion by Ada Erik to adjourn
Second by Barry Wieser

All in favor to adjourn the regular meeting of January 27, 2009

Meeting adjourned at 9:14p.m.

Adopted:
March 24, 2009

Respectfully submitted by,

Denyse L. Todd, Secretary
Zoning Board of Adjustment