

**MINUTES  
Of the Township of West Milford  
ZONING BOARD OF ADJUSTMENT**

**OCTOBER 12, 2006  
SPECIAL MEETING**

7:45 p.m.

Tonya Cubby, Acting Board Secretary, opened the meeting with the reading of the Legal Notice.

**1. PLEDGE**

Robert Brady, Board Chairman, asked all in attendance to join in the Pledge of Allegiance.

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**2. ROLL CALL**

Present: Regular Members Francis Hannan, Daniel Jurkovic, Gian Severini, and Robert Brady.  
Alternate Members William Lynch and Barry Wieser

Also Present: Stephen Glatt, Board Attorney, William Drew, Planning Director, and Tonya Cubby, Acting Board Secretary.

Absent: Ada Erik, Arthur McQuaid, Ed Spirko, Richard McFadden, Township Engineer

Mr. Brady, Board Chairman, noted that this special meeting was scheduled primarily for the memorializations of Resolutions from prior meetings, and continuation of a discussion regarding one application that may require retainment of a substitute attorney. Deviating from the agenda, Mr. Brady requested that the following application be called:

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**3. APPLICATIONS CARRIED FROM PREVIOUS MEETINGS**

**Siobhan and Donald Partington**

**Appeal #0680-0736**

Block 11103; Lot 5.02

Snake Den Road; R-4 Zone

Completed: April 26, 2006

Deadline: December 7, 2006

Appeal of a decision of the Zoning Officer pursuant to the MLUL C.40:55D-70a.

Mr. Jurkovic noted that the Board of Adjustment had been provided with a resume' for attorney Thomas Germinario, and upon review, he felt that Mr. Germinario had suitable experience to serve as substitute for the Board. He motioned that Mr. Drew, Planning Director, contact Mr. Germinario to be present for the Board in this matter, and also requested a certification of funds from the Township Council. Mr. Brady replied that Mr. Drew has suggested that fees for Mr. Germinario may be provided through the escrow account of the applicant. Upon consultation with the Board Attorney and Planning Director, Mr. Brady stated that the matter of payment for substitute counsel would be investigated as this issue hasn't come before this Board prior to this.

Mr. Glatt, Board Attorney, explained to Mr. Partington that the applicant usually pays the fees out of the escrow account when the Board has to retain a professional in hearing an application. Mr. Partington may be billed for retaining another attorney because he has requested that Mr. Glatt recuse himself from this application.

Mr. Drew advised that Mr. Germinario would be available for the October 24, 2006 regular Board of Adjustment meeting. Mr. Hannan requested, in addition to Mr. Jurkovic's motion, that Mr. Germinario be required to meet all local ordinances and requests. Mr. Jurkovic stated that Township Attorney Fred Semrau should approve of Mr. Germinario's retention. Mr. Glatt stressed that Mr. Partington's application should be scheduled first on the October 24, 2006 agenda and that Mr. Germinario be present at this time. Mr. Brady directed that all necessary

paperwork and appropriations should be completed prior to Mr. Germinario's appearance on behalf of the Board. Mr. Drew stated that he would review the matters brought up regarding the retention of Mr. Germinario with the Township Attorney. Mr. Glatt addressed Mr. Partington and said that he would investigate the payment responsibility so that that Mr. Partington would be apprised prior to the October 24, 2006 meeting.

Mr. Brady stated that due to member absences, Alternate #1 William Lynch and Alternate # 2 Barry Wieser would be serving as regular Board members at the present meeting. Additionally, they would be able to vote on this motion because this appeal has technically not been heard yet.

**Motion** by Mr. Jurkovic to retain Thomas Germinario, Esq. as substitute counsel for Appeal #0680-0736, motion to include the specifications noted above.

**Second** by Mr. Severini.

**Roll Call Vote:**

Yes: Francis Hannan, Daniel Jurkovic, Gian Severini, William Lynch, Barry Wieser and Robert Brady.

No: None

Absent: Ada Erik, Arthur McQuaid, Ed Spirko

**Motion carried.**

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#### 4. MEMORIALIZATIONS

##### **Resolution 13-2006**

**Vincent Lanza (Flanders)**

Bulk Variance #0430-0673

Block 2708; Lot 1, 5, 6

Relief pursuant to MLUL C.40:55D-70C and 35, which was approved.

**Motion** by Mr. Brady to approve the resolution.

**Second** by Mr. Hannan.

**Roll Call Vote:**

Yes: Francis Hannan and Robert Brady

No: None

Absent: Ada Erik, Arthur McQuaid

**Motion carried.**

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##### **Resolution 14-2006**

**Vincent Lanza (Flanders)**

*De minimis* exception from the Residential Site Improvement Standards, which was approved.

Block 2708, Lot 1, 5, 6

**Motion** by Mr. Brady to approve the resolution.

**Second** by Mr. Hannan.

**Roll Call Vote:**

Yes: Francis Hannan and Robert Brady

No: None

Absent: Ada Erik, Arthur McQuaid

**Motion carried.**

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##### **Resolution 21-2006**

**Vincent Lanza (Lookover)**

Bulk Variance #0530-0717, which was approved.

Block 206, Lot 14.02

**Motion** by Mr. Brady to approve the resolution.

**Second** by Mr. Severini.

**Roll Call Vote:**

Yes: Gian Severini and Robert Brady

No: None

Absent: Ada Erik, Arthur McQuaid

**Motion carried.**

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**Resolution 22-2006**

**Vincent Lanza (Lookover)**

*De minimis* exception from the Residential Site Improvement Standards, which was approved.

Block 206, Lot 14.02

**Motion** by Mr. Severini to approve the resolution.

**Second** by Mr. Brady.

**Roll Call Vote:**

Yes: Gian Severini and Robert Brady

No: None

Absent: Ada Erik, Arthur McQuaid

**Motion carried.**

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**Resolution 23-2006**

**Sprint Spectrum, L.P.**

Use Variance #0640-0730; Preliminary & Final Site Plan #0620-0226AB, which was dismissed without prejudice.

Block 1701; Lot 59

Mr. Glatt noted that a resolution for this application was not available, that the application was dismissed in July, then heard by the Board, but has not been completed at this time. Details of this would be included in the final resolution.

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**Resolution 24-2006**

**Marten Richardsen**

Bulk Variance #0630-0735, which was approved.

Block 1604; Lot 1.02 (West Milford)

Block 61; Lot 19 (Vernon)

**Motion** by Mr. Jurkovic to approve the resolution.

**Second** by Mr. Severini.

**Roll Call Vote:**

Yes: Daniel Jurkovic, Gian Severini, and Robert Brady

No: None

Absent: Ada Erik, Arthur McQuaid

**Motion carried.**

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**Resolution 25-2006**

**Nancy and Roy Ruys**

Bulk Variance #0630-0738, which was approved.

Block 6503; Lot 1

**Motion** by Mr. Jurkovic to approve the resolution.

**Second** by Mr. Severini.

**Roll Call Vote:**

Yes: Daniel Jurkovic, Gian Severini, and Robert Brady

No: None

Absent: Ada Erik, Arthur McQuaid

**Motion carried.**

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**Resolution 26-2006**

**David and Kimberley Borer**

Bulk Variance #0630-0739, which was approved.

Block 5604; Lot 2

**Motion** by Mr. Jurkovic to approve the resolution.

**Second** by Mr. Brady.

**Roll Call Vote:**

Yes: Daniel Jurkovic, Gian Severini, and Robert Brady

No: None

Absent: Ada Erik, Arthur McQuaid

**Motion carried.**

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**Resolution 27-2006**

**Mark and Dawn Nowacki**

Bulk Variance #0630-0733, which was approved.  
Block 14901; Lot 20

**Motion** by Mr. Jurkovic approve the resolution.

**Second** by Mr. Severini.

**Roll Call Vote:**

Yes: Daniel Jurkovic, Gian Severini, and Robert Brady  
No: None  
Absent: Ada Erik, Arthur McQuaid

**Motion carried.**

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**Resolution 28-2006**

**Donald Weise and Connie Burton**

Bulk Variance #0630-0742, which was approved.  
Block 7605; Lot 5

**Motion** by Mr. Jurkovic to approve the resolution.

**Second** by Mr. Brady.

**Roll Call Vote:**

Yes: Daniel Jurkovic, Gian Severini, and Robert Brady  
No: None  
Absent: Ada Erik, Arthur McQuaid

**Motion carried.**

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**Resolution 29-2006**

**Martin Nordsvan**

Bulk Variance #0630-0743, which was approved.  
Block 4403; Lot 4

**Motion** by Mr. Jurkovic to approve the resolution.

**Second** by Mr. Severini.

**Roll Call Vote:**

Yes: Francis Hannan, Daniel Jurkovic, Gian Severini, William Lynch, and Robert Brady  
No: None  
Absent: Ada Erik, Arthur McQuaid, Ed Spirko

**Motion carried.**

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**5. CONTINUATION OF CLOSED SESSION**

Mr. Brady stated that the next order of business was the continuation of the Closed Session that was carried from September 26, 2006 Closed Session due to the late hour. Mr. Jurkovic referred to the Resolution No. 31-2006 and motioned that the language be amended to reflect that the discussion by the Board in Closed Session was to retain outside, independent counsel for review and advice on legal compliance, and to discuss procedural issues related to the Board. He noted that implication of litigation is misleading and factually incorrect. Mr. Brady agreed with the amendment to the language in the resolution.

**Motion** by Mr. Jurkovic to amend the language in Resolution 31-2006.

**Second** by Mr. Brady.

**Roll Call Vote:**

Yes: Francis Hannan, Daniel Jurkovic, Gian Severini, William Lynch, Barry Wieser, and Robert Brady.  
No: None  
Absent: Ada Erik, Arthur McQuaid, Ed Spirko

**Motion carried.**

8:14 p.m.

**Motion** by Mr. Jurkovic for the Board to go into Closed Session per amended Resolution 31-2006.

**Second** by Mr. Hannan.

**Roll Call Vote:**

Yes: Francis Hannan, Daniel Jurkovic, Gian Severini, William Lynch, Barry Wieser, and Robert Brady.

No: None

Absent: Ada Erik, Arthur McQuaid, Ed Spirko

**Motion carried.**

Mr. Glatt requested that the Board take a short recess prior to closed session.

**Motion** by Mr. Hannan to recess prior to Closed Session

**Second** by Mr. Severini.

**On a Voice Vote, all were in favor of recessing prior to beginning Closed Session.**

**Motion carried.**

Mr. Brady informed the public that following a short recess and Closed Session the Board would return to act on resolutions, if any, that may result from the Closed Session discussions. At that time the Public Portion of the meeting would be adjourned.

Mr. Glatt reviewed the Closed Session resolution and the necessity for its adoption.

**Motion** by Mr. Hannan to rescind the motion for a recess.

**Second** by Mr. Severini

**On a Voice vote, all were in favor of rescinding the motion for a recess.**

**Motion** by Mr. Jurkovic to rescind the Closed Session Resolution No.31-2006.

**Second** by Mr. Lynch.

**Roll Call Vote:**

Yes: Francis Hannan, Daniel Jurkovic, Gian Severini, William Lynch, Barry Wieser, and Robert Brady.

No: None

Absent: Ada Erik, Arthur McQuaid, Ed Spirko

**Motion carried.**

Mr. Glatt stated that the meeting should begin at the point that the Closed Session ended at 12:33 a.m. on September 26, 2006.

Mr. Jurkovic motioned for certification of funds from the Township Council for an amount up to \$8,000.00 for retention of special counsel to review the Board's legal compliance in all areas. The Board discussed the issues. Mr. Hannan noted that the Township Attorney cannot be used for consultation on these issues based on Land Use laws. Mr. Jurkovic concurred, noting that a compliance audit is necessary. Mr. Hannan opined that this could be termed a legal audit for the Zoning Board.

Mr. Jurkovic noted that problematic issues, including contracts, should be dealt with, and that the Board of Adjustment welcomes proper direction and guidance in areas that have been recently criticized. Discussion by the Board regarding contract language; Mr. Jurkovic reviewed Municipal Land Use Law as it applies to this issue. Mr. Brady stated that standardized contracts should be required for all entities in the Township. He emphasized that the Board serves to give the public an opportunity for open government and that recent events have resulted in the Board becoming somewhat paralyzed in effecting the process that serves the people. Mr. Jurkovic stressed that the Board needs to provide an autonomous and impartial forum for the public.

**Motion** by Mr. Jurkovic to request from the Township Council a certification of funds for an amount not to exceed \$8,000.00 for purpose of retention of special counsel to provide the Zoning Board with a legal compliance audit and to answer questions from Board members on procedural issues.

**Second** by Mr. Hannan

**Roll Call Vote:**

Yes: Francis Hannan, Daniel Jurkovic, Gian Severini, William Lynch, Barry Wieser, and Robert Brady.  
No: None  
Absent: Ada Erik, Arthur McQuaid, Ed Spirko

**Motion carried.**

Mr. Brady noted that Mr. Drew is directed by the Board to approach the Township Council regarding this motion for a legal audit.

On the matter of correspondence, Mr. Jurkovic stated that the Board, as a quasi-judicial body, should not receive outside communications not related to Board issues, as they could interfere with the effectiveness of the Board. The special counsel that is to be retained should be queried regarding this matter and a procedure should be put in place. Mr. Glatt noted that, as the Board Attorney, he generally reviews all communications and recommends distribution, if necessary, to the Board. Mr. Brady concurred with Mr. Jurkovic to seek advice from outside counsel on this matter.

**Motion** by Mr. Jurkovic to withdraw drafting a letter to the Township Council regarding correspondence received without the knowledge or consent of the entire Governing Body of the Township of West Milford.

**Second** by Mr. Hannan.

**Roll Call Vote:**

Yes: Francis Hannan, Daniel Jurkovic, Gian Severini, William Lynch, Barry Wieser, and Robert Brady.  
No: None  
Absent: Ada Erik, Arthur McQuaid, Ed Spirko

**Motion carried.**

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**6. ADJOURNMENT**

**Motion** by Mr. Lynch to adjourn the meeting at 8:48 p.m.

**Second** by Mr. Severini

**On a Voice vote, all were in favor of adjournment of the Special Meeting of the Zoning Board of Adjustment.**

**Motion carried.**

Approved:

Respectfully submitted by

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Tonya E. Cubby, Acting Secretary  
Zoning Board of Adjustment