

The regular meeting of the Delaware Township Board of Adjustment held on the noted date, was called to order by Chair Cline at 7:32 p.m., in Township Hall, Sergeantsville, New Jersey.

#### PLEDGE OF ALLEGIANCE

#### STATEMENT

Chair Cline read a statement noting that the requirements of the Open Public Meetings Act had been met.

#### ROLL CALL

Present: Emmons, Fowler, Gilbreath, Manley, McAuliffe, Szwed, Warren, Cline

Absent: Kenyon

Also present: Attorney Steve Goodell, Attorney Scott Miccio, Engineer Rick Roseberry

The Board decided to start the application and move the other business items to follow the application.

#### APPLICATIONS

Roger and Holly Locandro, Block 41, Lot 1.10, being sought: approval for Phase Two Final Subdivision, with all other necessary permits, waivers, variances, and conditions that may arise in the course of the public hearing.

Board Attorney Goodell started by noting that there seems to be an issue with proper notification, which is the Board's first concern in accepting jurisdiction. Attorney Goodell noted that a letter was received by the Board from Larry Wohl, who is a property owner within 200 feet of the subject property. Mr. Wohl stated that he is the owner of Block 40, Lot 15.01. Mr. Wohl noted that two notices were received; one contained incorrect information and the other was late.

Mr. Locandro was sworn in. He stated that the notice was done two times. He agreed that the first notice had an error concerning viewing time and that the second notice was one day late. He noted that the basic information was given in the first notice that went out on 11/21/19. He noted that the error was in the office hours. He noted that the newspaper notice was published with corrected office hours. Mr. Locandro stated that a second notice was created and sent out to the same list of property owners and via certified mail. He stated that this notice went out on 12/03/19 and should have gone out on 12/02/19.

Mr. Wohl referenced Cox on land use, section 18-1.2.E, on Form of Notice. He noted one particular: that the notice should be done at least ten days prior to the hearing.

Attorney Goodell opined that the Board does not have jurisdiction to hear this application. He repeated the errors but noted that the correction does not comply with the regulations.

Mr. Locandro stated that they would be happy to re-notice for the next meeting. He noted that there have been no changes in Township zoning or in the Zoning Ordinance. He opined that the information between the two notices is adequate information.

Attorney Goodell repeated that the statute is very clear about notice, including the hours that an application can be viewed and the time period within which the notice should be given. He further noted that the Board could go forward with a hearing, but that the issue of notice can be raised by anyone at any time, including residents, audience members, and Board members.

Mr. Wohl asked that his letter sent to the Board be marked into evidence, which was done, LW-1. It was noted that the envelope with the date on it was admitted as LW-2.

Attorney Goodell stated that notice is jurisdictional and that the Board cannot begin unless notice is proper. He reiterated the specific requirements of the law. He noted that the notice was done twice in an effort to correct the deficiencies. He repeated that the issue about the notice could be raised at any time, if the application is started.

Attorney Goodell stated that the Board could accept the notice, as presented. He stated that the applicant has made the argument that notice was good.

Member Manley asked about case law concerning notice of less than 10 days. Attorney Goodell stated that there is none. Member Manley asked about case law concerning the notification of office hours. Attorney Goodell stated that there is none. Attorney Goodell repeated that the decision is jurisdictional.

Member Manley asked about the consequences of this jurisdictional issue. Attorney Goodell stated that if the jurisdictional issue is raised, the application has to be sent back. He further noted that if a positive decision were to be rendered, it would be overturned.

A question arose about liability. Attorney Goodell stated that this is not a liability issue.

Member McAuliffe asked about the timeliness of the original notice. Attorney Goodell noted that the corrective notice superseded the original notice. Attorney Goodell stated that Mr. Locandro's argument is that the two notices together make a good notice.

When questioned, Attorney Goodell noted that it is not relevant to know if anyone came in to view the application.

Member Emmons asked about the liability to the town if this issue is appealed somewhere along the line. Attorney Goodell noted that the Township will have to defend a position and such a defense will cost money. He further noted that there could be a need to revise the Board's Rules and Regulations to discuss rules of rehearing.

Attorney Goodell reiterated that if there is a vote to adopt final subdivision, there could be a provision in the Board rules for any party to reconsider the decision; including Board members.

Member Gilbreath asked about the applicant's right to postpone the hearing and re-notice for the next hearing. Attorney Goodell stated that this is not the Board's concern.

Chair Cline asked about the rules on rehearing. Chair Cline read from the Board's Rules and Regulations, page 9, section 2:9.1, as follows:

2:9.1. Rehearing. Any applicant or other interested person may, within 20 days after the publication of notice of the decision, move the Board for a rehearing of the matter by filing an application in the form of a letter addressed to the Board containing a brief statement of the grounds relied upon. If the motion is granted by the Board, it shall fix a date for rehearing and shall require the moving party to give notice to all persons who participated in the original hearing or hearings, upon such terms as the Board may deem adequate. The Board may grant a rehearing on its own motion when unusual circumstances so require in the interest of justice.

Attorney Goodell stated that once the rehearing is in court, the Board admits its error or defends its action.

Mr. Locandro repeated that the first notice was legal. Attorney Goodell stated that he is giving the Board all of the options. Mr. Locandro repeated that the first notice is legal and that the second notice was a courtesy.

Mr. Wohl reiterated that the most judicious decision is to not to hear the application. Mr. Wohl further opined that time has lapsed and that many previous conditions concerning this application have not been met.

Mr. Wohl addressed the issue of jurisdiction. He stated that the notice is bad, when strictly construed. He noted that the second notice was only done nine (9) days prior to the meeting and that the first notice has an error. He opined that the Board does not have jurisdiction.

There was a discussion about the fact that notice for a final major subdivision is not required, per N.J.S.A. C40-55D47. Mr. Wohl opined that this section is not applicable to this application. He noted that there has been a phased final major subdivision concerning this property and application.

Board Engineer Roseberry and Board Attorney Miccio reviewed the ordinance and found two sections in reference to this matter, as follows:

§230-89D. Public Hearing. The Planning Board shall set the date of the public hearing in accordance with §230-74, Notice Publication, and §230-88E, Action by the Planning Board, of this chapter.

It was noted that the Township Ordinance substantiates the need for proper notice.

There was a discussion about the extensions that have been granted concerning this project. It was noted that the last extension granted for this project is to expire on January 7, 2010.

After a discussion concerning an expired NJ DEP Letter of Interpretation (LOI), it was noted that the Board does not have the ability to grant a time extension.

Mr. Locandro reiterated that the first notice is legal and that there are corrected office hours in the second notice.

Attorney Goodell referenced the MLUL, 40:55D-12, concerning the legal requirements of the notice. It was noted that specific sections of this act, 7.1 and 7.2, describe what must be included, such as the date and time of the meeting, the description of the application, and the location and time for viewing the application and associated materials, including maps.

Chair Cline stated that he feels that there are two questions here, one about the validity of the notice and one concerning the expiration of the application itself. Mr. Wohl stated that he has done some research on this project and finds that there are many resolution conditions for approval that have not been fulfilled. Mr. Wohl stated that he feels that this project is beyond its time extension.

Member Fowler made a motion that the notice is inadequate and the application should not proceed. Member Warren seconded the motion.

Chair Cline noted that a yes vote means that the application will not proceed.

**Roll Call Vote**

Aye: Emmons, Fowler, Gilbreath, Manley, McAuliffe, Warren, Cline

Concurs: Szwed

Nay: None

Absent: Kenyon

It was concluded that the application will not be heard at tonight's meeting, that the applicant must re-notice for the January, 2020 meeting.

Board Engineer Roseberry stated that the Board can proceed with completeness, notice is not required to determine completeness. He noted that the application was filed prior to the expiration and that determining completeness does not nullify the preliminary approval. He noted that completeness is an administrative function.

Board Engineer Roseberry referenced his memo on completeness. In his memo, Mr. Roseberry noted that he has no objection to some of the waivers requested. He noted that there is missing information from outside agencies. He noted that the Board could deem it complete to see where the missing information is.

Chair Cline asked if the application can be moved to the next meeting in order for condition items to be verified and/or demonstrated. Mr. Locandro stated that he has some of the proofs and could present them to the Board.

Member Fowler made a motion to deem the application complete with some missing information to be provided. Member Emmons seconded the motion.

**Roll Call Vote**

Aye: Emmons, Fowler, Gilbreath, Manley, McAuliffe, Warren, Cline

Concurs: Szwed

Nay: None

Absent: Kenyon

Board Engineer Roseberry stated that the Board has 45 days to grant final approval. Mr. Locandro requested that the application be adjourned to the March meeting. Mr. Locandro granted the Board an extension to hear the application at the meeting in March.

Chair Cline thanked members of the audience for attending.

MINUTES: November 19, 2019

The Board discussed the minutes, noting changes and typographical errors. It was moved by Member Manley to approve said minutes. Member Gilbreath seconded the motion. Said motion was approved by voice vote, with an abstention by Members Emmons and Szwed.

MEMORIALIZATIONS - none

Planning Board report

Liasion Fowler stated that there was nothing to report. He noted that many of the subcommittees had not met.

2020 Budget

The Board discussed a preliminary Budget, noting that the formal request will be made in February.

Member Fowler made a motion to use \$600.00 of the Board's 2019 Budget as part of the money needed to purchase a new laptop for the Administrative Officer. Member Emmons seconded the motion.

**Roll Call Vote**

Aye: Emmons, Fowler, Gilbreath, Manley, McAuliffe, Warren, Cline

Concurs: Szwed

Nay: None

Absent: Kenyon

Bill List

**Bill List: Engineering Services – Van Cleef Engineering Associates LLC**

Escrow Charges

58/3, Walker, #3935006-2

\$332.50

Member Manley made a motion to approve payment of this voucher from noted escrow account. Member Gilbreath seconded the motion that was approved by voice vote.

There was a discussion about how to obtain all of the information needed for all of the conditions for the consideration of the final subdivision approval for Mr. Locandro's project. It was noted that Board has to make sure that all conditions and compliances have been met.

Chair Cline wished Members a Merry Christmas and a Happy New Year.

ADJOURNMENT: 8:35 pm

It was moved, seconded, and unanimously carried to adjourn at the noted time.

Respectfully submitted,

Kathleen E. Klink,  
Administrative Officer, Secretary