

**UPPER TOWNSHIP ZONING BOARD OF ADJUSTMENT
REORGANIZATION MEETING MINUTES
JANUARY 12, 2012**

The annual Reorganization meeting of the Upper Township Zoning Board of Adjustment was held at the Township Hall, 2100 Tuckahoe Road, Petersburg, New Jersey at 7:30 p.m.

SUNSHINE ANNOUNCEMENT

SALUTE TO THE FLAG

ROLL CALL

Present: Ted Klepac, Christopher Phifer, Jeffrey Pierson, Andrew Shawl, Matthew Unsworth, Lynn Petrozza, Joseph Healy, Hobart Young, Edward Barr and Paul Casaccio.

Absent: Alistair Lihou

Also in attendance were Dean Marcolongo, Board Solicitor; Paul Dietrich, Board Engineer; Shelley Lea, Board Secretary and Zoning Officer.

SWEAR IN BOARD MEMBERS

TABLED APPLICATIONS

Due to the length of the agenda the following applications were tabled until February 9, 2012. The applicants have agreed to waive the time in which the Board has to act on the applications. No further notice is required.

1. NEW JERSEY AMERICAN WATER – BLOCK 549, LOTS 40 & 41 – BA26-11
2. COMCAST CABLE COMMUNICATIONS INC – BLOCK 588, LOTS 6 & 7 – BA27-11

REORGANIZATION

Mr. Phifer nominated Paul Casaccio as Chair and Mr. Pierson seconded. A motion to close the nominations was made by Mr. Shawl and seconded by Mr. Pierson. In favor: Klepac, Phifer, Pierson, Shawl, Unsworth, Petrozza, Healy, Young, Barr.

PAUL CASACCIO ELECTED CHAIR FOR 2012

Mr. Pierson nominated Matthew Unsworth as Vice Chair and Ms. Petrozza seconded. A motion to close the nominations was made by Mr. Shawl and seconded by Mr. Phifer. In favor: Klepac, Phifer, Pierson, Shawl, Petrozza, Healy, Young, Barr, Casaccio.

MATTHEW UNSWORTH ELECTED VICE CHAIR

A motion was made by Mr. Pierson and seconded by Mr. Unsworth to nominate Dean Marcolongo as Board Solicitor, Paul Dietrich as Board Engineer and Shelley Lea as Board Secretary. A motion to close the nominations was made by Mr. Unsworth and seconded by Mr. Pierson. In favor: Klepac, Phifer, Pierson, Shawl, Unsworth, Petrozza, Healy, Young, Barr, Casaccio.

OFFICIAL NEWSPAPER

A motion to use the Atlantic City Press and the Ocean City Sentinel Ledger as the official newspaper was made by Mr. Shawl and seconded by Mr. Pierson. In favor: Klepac, Phifer, Pierson, Shawl, Unsworth, Petrozza, Healy, Young, Barr, Casaccio.

SWEAR IN BOARD PROFESSIONALS

APPROVAL OF THE DECEMBER 8, 2011 MEETING MINUTES

A motion was made by Mr. Klepac and seconded by Ms. Petrozza to approve the minutes. In favor: Klepac, Unsworth, Petrozza, Young, Barr, Casaccio. Abstain: Phifer, Pierson, Shawl, Healy.

RESOLUTIONS

1. MEETING DATES 2012

A motion to adopt the amended Resolution was made by Mr. Pierson, seconded by Ms. Petrozza. In favor: Klepac, Phifer, Pierson, Shawl, Unsworth, Petrozza, Healy, Young, Barr, Casaccio.

2. MICHAEL & ELIZABETH CLIFFORD – BLOCK 841, LOTS 15 & 16 – BA20-11

A motion to adopt the Resolution was made by Mr. Pierson and seconded by Mr. Unsworth. In favor: Barr, Klepac, Petrozza, Pierson, Unsworth, Young, Casaccio. Abstain: Phifer, Shawl, Healy.

3. NORMA BECKER PROCACCINO – BLOCK 857, LOT 9 – BA25-11

A motion to adopt the Resolution was made by Mr. Pierson and seconded by Mr. Unsworth. In favor: Barr, Klepac, Petrozza, Pierson, Unsworth, Young, Casaccio. Abstain: Phifer, Shawl, Healy.

SPECIAL MEETING – FEBRUARY 28, 2012
SPECIAL MEETING DATE

Due to the length of the agenda a special meeting has been scheduled on Tuesdsy, February 28, 2012 at 7:30 p.m.

CONTINUED APPLICATION

1. T & R HOLDINGS LLC – BLOCK 348, LOT 1.01 – BA01-11

Continuation of an application for amended preliminary and final site plan approval, a use variance since the TR zoning district does not specifically allow the marina use or multiple residential units, bulk variances and variances for providing storm water calculations and asphalt parking area, to renovate an existing tri-plex at 2 Meadowview Lane, Tuckahoe.

Mr. Casaccio and Mr. Healy stepped down. Mr. Pierson acted as Chair.

Mr. Pierson spoke in regards to comments that he has heard lately. He addressed the zoning application process.

Solicitor Marcolongo reviewed the variances being requested by the applicant.

John Scott Abbott was present to represent Robert Breunig who opposes the various use variances and bulk variances being requested. Mr. Abbott asked to have Resolution BA14-94 entered as an exhibit. The resolution was marked P-12. The minutes of January 12, 1995 were marked P-13. A copy of the construction permit applied for by the previous owner in 2004 was marked P-14. A copy of a Notice and Order of Penalty dated June 19, 1995 was marked P-15. An eight-page document from the DEP was marked P-16. A copy of an Inspection Summary Report was marked P-17.

Fred Akers, Administrator of The Great Egg Harbor Watershed Association and The Great Egg Harbor Scenic and Recreational River Council, was sworn. He stated that Upper Township is a member of the River Council. He testified it is a fact that the water quality in the Tuckahoe River is impaired. There is a special restriction for shell fishing. He submitted a map that he created that was marked P-18.

Mr. Akers testified he is a trained GIS professional and gets data from the NJDEP. The map that he created reflects the March 10, 2011 DEP update regarding the Shellfish status. Special restriction means that harvest is allowed with a special permit requiring further purification of the shellfish before sale.

Mr. Akers believes that pathogens are the concern in the river. He stated that new septic being installed would increase the problem. He could not produce any proof that the TR zoning district was created because of this problem.

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There was discussion as to whether Mr. Akers was an opposition witness or member of the general public. He stated that he was invited by Mr. Abbott to attend the hearing. He agreed that the septic on Mr. Breunig's property also contributes to the water pollution. Barbara Allen Woolley Dillon, ABR Consultants, 2 Aquarium Drive, Camden, New Jersey, was sworn. Ms. Dillon has been a licensed planner since 1998. She is familiar with the Upper Township Master Plan and Zoning Ordinance and has reviewed this application. The Board recognized Ms. Dillon as an expert witness.

Ms. Dillon described the surrounding area. She read the purpose of the TR zone from the ordinance. It is her understanding there has been some type of residential use of the property and that boats have docked here and parking has occurred on the site. She has reviewed prior resolutions including BA14-94 (exhibit P-12) and an official transcript from a prior meeting. She stated that the resolution indicates that the previous owner testified there were 3 to 7 boat slips when he purchased the property and that he added one additional boat slip. He also testified the existing building was a triplex and that he made changes to one unit. She feels the testimony at that time shows intent to abandoned one of the units and no longer has the pre-existing non-conforming status.

Ms. Dillon testified that it appears to her that the TR zoning district was created as part of the 2006 plan endorsement to the state. Prior to that the property was zoned Conservation. She gave her opinion as to why this two-acre zone was created and why multi family is not permitted. She testified that marinas are not a permitted use in the TR zone, however the previous zoning classification did allow marinas. She feels that adding a third dwelling unit would increase the use of the septic system.

Ms. Dillon testified in regards to the variances being requested. She listed the additional variances she feels are needed for the project that were not specifically requested. She believes that an additional use variance is needed for type of structure not permitted. She feels a D5 variance is needed for density since they are exceeding the number of dwelling units allowed on this size lot. She stated that the applicants have not requested a variance for the minimum 50 ft setback from the center or Route 50 required in section 20-6.9(b) of the ordinance since only 45 ft is proposed to the septic bed. She calculates that at least 24 parking spaces are required. She believes that a variance is needed for tree preservation. She stated that it is her understanding the trees have been removed. She reviewed the maximum building coverage. She does not agree with the justification given for granting the variances requested. It is her understanding that the applicant has not made any effort to buy additional land.

Ms. Dillon testified the required side yard setback is 30 ft and the applicant is proposing 3.4 ft. She feels it would be a detriment to increase the height of the building. She believes that the light, air and open space of Mr. Breunig's property would be negatively impacted since the height of the structure would be double. She believes that the proposal contradicts eight special reasons in the land use law. There was discussion concerning the impervious coverage. Mr. Maffei testified that the coverage would be

increased to provide for a handicap space. Ms. Dillon calculates that the three dwelling units equal 6.12 dwelling units per acre. These are three distinct units that will create distinct transportation patterns. She stated that no turning radiuses were supplied for either in or out of Meadowview Lane, which is a narrow road. She stated that sufficient off street parking is not proposed. She believes that doubling the height of a structure that already does not meet most of the requirements in the zoning ordinance does not contribute to good civic design.

Ms. Dillon feels that what is being proposed is inconsistent with what is happening across the river in Corbin City since it is zoned Conservation. She stated that there is already supposed to be public access to the water as shown on the deed from 1910. She does not believe that the applicant has demonstrated the enhanced quality of proof as justification for variance relief requested since they have not addressed any recommendations in the Mater Plan. She feels that the applicant's proposal is inconsistent with four of the ten general objectives in the 2006 Mater Plan Reexamination Report. She believes this type of mixed use would be more appropriate in a center. She does not believe the application would promote the Township's natural resources. She stated that the 1994 Master Plan stresses the significance of the Tuckahoe River.

Ms. Dillon testified there are other zoning districts where marinas are a permitted use. There are currently 6 marinas in the Township. There are several boat ramps within a quarter mile of the site. She stated that the applicant has not mentioned any sort of undue hardship in regards to the non-conforming conditions. She believes they have failed to meet the special reasons and positive criteria. She believes there would be several negative impacts from this proposed development since the ten slips and three dwelling units is totally inconsistent with the surrounding neighborhood. She again stated that the proposed use is not consistent with the Conservation zoning in Corbin City directly across the river. She stated that the development is located in close proximity to the wetlands. She stated that since the Tuckahoe River is a class I river body there is supposed to be a 300 ft buffer from the river. She feels this would be a substantial detriment since the marina and multi use are not permitted uses. She feels the requested variances are excessive. She also feels that the Board should be asking themselves if this could be spot zoning for one particular site. She questions the public benefit since she believes it was stated that this is for the applicants benefit. In closing, Ms. Dillon stated that she does not believe the D type variances or other variance relief should be approved.

Ms. Dillon stated that an environmental impact statement was not submitted. Solicitor Marcolongo stated that a waiver was requested.

There was a short recess at this time.

Mr. Facenda asked Ms. Dillon questions in regards to Resolution BA14-94 (Exhibit P12). Mr. Facenda stated that this document does not indicate that the property was never used as a triplex or a marina. Ms. Dillon agreed that she does not know the former applicants

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intent she has never met him. She agreed that nowhere does the Resolution say that Mr. Graiser intended to abandon any use. She stated that there are no residential properties on Meadowview Lane that has the required 2 acres.

Ms. Dillon testified that she is not a certified environmental planner or engineer but has taken several environmental courses.

Ms. Dillon explained how she calculated the number of parking spaces are needed. Mr. Dietrich stated that his parking analysis was based on the marina use and not retail since they would only be selling bait. Mr. Maffei confirmed that the storage area would be ancillary to the dwelling units and would not require additional parking spaces. Solicitor Marcolongo explained that six spaces are needed for the residences, five spaces based upon the watercraft, one space for an employee and one space for the retail for a total of thirteen parking spaces. There was discussion as to whether or not the storage area should be included as part of the square footage of the units.

Ms. Dillon agreed that buy / sell letters are not required since this is not vacant land and that there is no additional vacant land to acquire. She agreed that only one purpose of zoning must be met. Mr. Facenda stated that the bulkhead would protect the applicant's property from flood and further advance the purposes of zoning. She did not agree but stated that the bulkhead will be installed regardless of what happens to the lot.

Ms. Dillon stated there is a potential that as few as three residents could occupy the dwellings or it could be more. She stated that the property is located approximately 200 ft from Corbin City and 200 ft from the town center.

Ms. Dillon testified that she couldn't identify the species of plant material that were removed from the site but she remembers they were located closer to the bridge. She does not know who removed them. She understands the boat slips will be rented to the general public as well as the residential units. She agrees that the general public would benefit from this development.

Ms. Dillon stated there are not any multifamily dwellings or combined residential and commercial uses in the immediate area. Mr. Young stated there are five to six apartment buildings in Tuckahoe as well as a triplex on Route 49. Some are even combined with a commercial use such as the embroidery shop with three units, the real estate office 1 on the bottom and two apartments above and the pizza parlor with three units above, 11 of which are located in the town center and on smaller lots. It was determined that Corbin City was noticed and that there was no reply from them.

Mr. Young stated he was the zoning officer in 1994 during the previous application involving the previous owner. He has been in the building and has a great history of the property. He stated that Mr. Graiser was issued a violation because he converted one of the downstairs units into a clubhouse. The kitchens and bathrooms were still in all three units. Mr. Grasier went before the Board for the expansion of the marina and the

conversion of the clubhouse. The interpretation was that there was never a site plan for a marina and for him to go beyond what was already there needed approval. It was his opinion that the former owner did not abandon the use. He found that Mr. Graiser was

advertising for the club and adding more boat slips which is why he shut the operation down.

In answer to a question involving the required 300 ft buffer Mr. Dietrich answered that since the site is disturbed in his opinion there would not be the class one water issues since they are not creating any new disturbance closer to the rive although it is the jurisdiction of the DEP. Ms. Dillon argued that that a commercial marina did not exist in 1994.

Solicitor Marcolongo advised that the application would be continued at the February 9, 2012 meeting at 7:30 p.m.

BILLS

A motion to pay the submitted bills was made by Mr. Shawl, seconded by Ms. Petrozza, and approved with all in favor.

APPROVAL OF THE CLOSED SESSION MINUTES FROM THE PREVIOUS MEETINGS INVOLVING LITIGATION

A motion to approve the minutes was made by Mr. Unsworth, seconded by Ms. Petrozza, and approved.

DISCUSSION

Solicitor Marcolongo stated that since the application for New Jersey American Water Company is so complex and many residents have concerns it has been suggested to him that the Board hire their own real estate appraiser to determine if the proposed water tower would affect real estate values in that area. Mr. Dietrich stated that this would help the Board so that they were sure there are sufficient professionals on hand to address questions and provide expertise. The applicant would be required to pay for the professional.

A motion to authorize Solicitor Marcolongo to obtain proposals or bids needed to hire a real estate appraiser for these services was made by Mr. Unsworth, seconded by Ms. Petrozza, and approved. Abstain: Shawl.

ADJOURNMENT

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A motion to adjourn the meeting was made by Mr. Unsworth, seconded by Mr. Phifer, and approved. The meeting was adjourned at 10:52 p.m.

Submitted by,

Shelley Lea