

**VERNON TOWNSHIP LAND USE BOARD  
REGULAR MEETING MINUTES  
March 25, 2009**

**CALL THE MEETING TO ORDER**

Mr. Theobald called the meeting to order at 7:10 p.m.

**STATEMENT OF COMPLIANCE:**

Pursuant to the Open Public Meetings Act, Chapter 231, P.L. 1975 adequate notice as defined in Section 4D of Chapter 231, P.L. 1975 has been transmitted from the Vernon Municipal Center to the New Jersey Herald, Star Ledger and Advertiser News on January 23, 2009. Notice is posted on the bulletin board and filed with the office of the Township Clerk.

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

Andrew Borisuk	Arrived at 7:30 p.m.
Mayor Carew -	P
Mark Nelson -	NP
Richard Spoerl -	P
Martin Theobald -	P
Sam Lewin, Alt. #1 -	NP
Chris Hack, Alt. #2 -	P
David Gornstein -	P
Vincent Zinno -	P
Gary Grey -	P
Andrea Cocula -	P

**ALSO PRESENT**

Patrick McNamara, Esq., LUB Attorney  
Louis Kneip, P.E. Township Engineer  
Cynthia Davis, Recording Secretary

Mr. Kneip stated for the record that Mr. Lewin advised that he would not be present at tonight's meeting as he is out of town.

**APPLICATIONS**

**Great Atlantic & Pacific Tea Co., Inc.**  
**Application Number: PB # 11-08-10**  
**Block 145, Lots 1 & 1.05**  
**Amendment to Site Plan (Continued)**

A letter, dated March 18, 2009, was received from the applicant's attorney advising that the applicant seeks an interpretation from the Planning Board, or Board Attorney, whether the area under the overhang is part of the "building" or "structure" of the store. The applicant needs additional time to complete their application for an interpretation before continuing with the hearing. Accordingly, the hearing will be carried to a future date. The Board attorney explained that the LUB will hear their interpretation first and, if

the LUB agrees with their interpretation, the applicant will be done. If the LUB disagrees, the applicant will go forward with their variance application. The applicant will need to re-notice for their next hearing.

**Weichert Realtors**

**PB # 12-04-16**

**Major Site Plan - Extension of time**

Roger Thomas, Esq. from the law firm of Dolan & Dolan came forward. Mr. Thomas advised that the application for a preliminary and final major site plan was approved by the Planning Board in April 2005, and memorialized on May 11, 2005. Subsequently, the applicant had applied and received an extension under Section 52(d) of the MLUL in September 2007, which will expire in May 2009. The applicant is now requesting an extension under 52(a) for one (1) year due to the economic situation.

The Board attorney advised that he reviewed the application and consulted with counsel for the applicant and has no objections to the request. Mr. Kneip has no objections to the request and recommends the request. The extension would run from May 11, 2009, to May 10, 2010.

**OPENED MEETING TO THE PUBLIC**

No one came forward.

**CLOSED THE FLOOR TO THE PUBLIC**

Mr. Spoerl made a motion to grant the extension. Mr. Gornstein seconded the motion. Roll call: CAREW - Y, SPOERL - Y, GREY - Y, ZINNO - Y, GORNSTEIN - Y, COCULA - Y, HACK - Y, THEOBALD - Y.

**Glenn McLaughlin**

**ZB # 11-08-16**

**Block 83.10, Lot 13**

**Rear Yard Setback Variance (Continued)**

(The Board attorney announced that the LUB is functioning as a zoning board on this matter and therefore Mayor Carew and Council member Grey and Mr. Gornstein will step down from hearing this matter. Class 1, 2 & 3 members are automatically recused as a matter of law.)

Note: Ms. Cocula recused herself from this matter also.

Mr. Theobald advised the applicant that after the recusals, 4 members remain (Hack, Spoerl, Zinno and Theobald) eligible to vote on his application, and a vote of 3 out of 4 would be required to approve. The Board attorney advised the applicant that he had the choice of continuing tonight or adjourning the matter to another meeting. The applicant chose to carry the hearing to the April 8, 2009, meeting. No additional notice will be required by the applicant to the property owners or the newspapers.

**OPENED MEETING TO THE PUBLIC FOR ITEMS OTHER THAN THOSE LISTED ON AGENDA**

No one came forward.

**CLOSED MEETING TO THE PUBLIC.**

**OPENED MEETING TO THE PUBLIC (upon Ms. Paladini's arrival and request)**

Ms. Paladini came forward to advise that she had listened to the tape of the last (LUB) meeting and heard the discussion about the attorney fee for Mr. McNamara for the sum of \$661.75 for attorney review on the ordinance in connection with the historic designation of the Board of Education building. She said that a vote simply should have been taken for, or against the designation, and that there was no need for attorney review. Ms. Paladini stated that that Mr. McNamara should refund the \$661.75 back to the town. She explained that she was disappointed, after the wonderful meeting in January 2009, to hear a board member make statements that Ms. Paladini felt were a "mockery of the Historic Preservation Commission."

Mr. McNamara explained that the work that he performed was not a review of an ordinance. It was in response to two concerns that had been raised going back to 2007 when the matter (historic designation of the Bd. of Ed. Building) was first presented. He felt it was important, since the Board of Education did not originally consent to the designation, to research cases about the rights of government to extend by eminent domain or redevelopment certain limitations upon use of private or public property. Also, he continued, a concern was expressed whether such a designation was appropriate given that this was a public building and that the State Board of Education laws confer upon a municipal Board of Education independent authority to use and dispose of property as they see fit. As a result of that research he was able to conclude that the Board could continue by approving the designation with that acknowledgement. Mr. McNamara also stated that the case law about the rights of government to impose restrictions on other people's property has dramatically changed in this State and in this Country in the last several years. Regardless of when this ordinance was written, he was not going to have the Board take an action he thought was unconstitutional or in any way violated the ordinance.

Mr. Borisuk explained to Ms. Paladini that the question came up how the Board's designation would effect the Board of Education building and Mr. McNamara was asked to research that issue. He went on to say that it was only after his explanation was presented, that the Board of Education and, he himself, was favorable to the designation.

**CLOSED MEETING TO THE PUBLIC**

## **MINUTES**

**March 11, 2009**

Mr. Gornstein made a motion to approve the minutes from the February 25, 2009, Land Use Board meeting. Mayor Carew seconded the motion. Roll call: BORISUK - Y, COCULA - Y, HACK - Y, SPOERL - Y, THEOBALD - Y, ZINNO - Y, CAREW - Y, GORNSTEIN - Y.

## **RESOLUTIONS**

### **Contract for Professional Planning Services for Jessica Caldwell of Harold Pellow & Associates**

Ms. Cocula made a motion to approve the contract. Mr. Gornstein seconded the motion. All were in favor.

## **LAND USE BOARD DISCUSSION ITEMS**

### **Letter, dated January 22, 2009, from B. Hefele, Esq., Hardyston Township application.**

The Board attorney explained that Mr. Hefele is representing Crystal Springs Construction, LLC, on a project called "Horse Valley" in Hardyston which contains a small piece of property of less than an acre located in the Scenic Lakes section of Vernon Township. There is no development whatsoever planned for this piece of property and it will be left as Open Space. Mr. Hefele is requesting a letter from the Board stating that Vernon does not want to retain jurisdiction on this matter. Mr. Kneip and Mr. McNamara recommended that the Board advise that Vernon will not take jurisdiction. Mr. McNamara advised that he would ask Mr. Hefele to advise the LUB on how the area is being left as open space whether by Homeowner's Association or if it will be deeded. On behalf the LUB, Mr. McNamara will send a letter to the applicant's counsel and to Hardyston Township Board advising that this Board will not take jurisdiction.

Mr. Borisuk made a motion for the Board to not take jurisdiction on this piece of property. Mr. Gornstein seconded the motion. Roll call: BORISUK - Y, CAREW - Y, SPOERL - Y, GREY - Y, ZINNO - Y, GORNSTEIN - Y, COCULA - Y, HACK - Y, THEOBALD - Y.

### **Attendance at meetings**

Mayor Carew asked the Board attorney what the rule was for removing a member of the Board due to absences. He stated his concern was due to hearings possibly being adjourned due to some members having to step down from zoning matters. Mr. McNamara stated that a member must miss a number of consecutive meetings (possibly 4 consecutive meetings, but he would research same), unexcused. He said a board member can only be removed by the governing body for cause at hearing.

## **ESCROWS AND VOUCHERS**

**Board Engineer - Louis M. Kneip, P.O., P.E., CME**

None.

Board Attorney - Patrick McNamara, Esq. - Scarinci & Hollenbeck

None.

Board Fees - Total \$118.80

Cynthia Davis - Recording Secretary DOS - March 2009 (\$105.00)

Cynthia Davis - Asst. Board Secretary DOS - March 2009 (\$13.80)

Mr. Gornstein made a motion to approve the above vouchers. Ms. Cocula seconded the motion. All were in favor.

Bond Reductions

Colonial Developers

PB # 8-02-12

Block 20, Lot 29

Initial Bond - \$590,353.92

Mr. Gornstein made a motion to accept the bond reduction to \$354,642.00 based on the storm infrastructure that has been installed to date and upon Mr. Kneip's recommendation. Mr. Zinno seconded the motion. Roll call: CAREW - Y, SPOERL - Y, GREY - Y, ZINNO - Y, GORNSTEIN - Y, COCULA - Y, HACK - Y, THEOBALD - Y.

Request for Escrows to be closed

John McMonagle

ZB # 5-07-6

Front Yard Setback Variance

Block 42.10, Lot 17

John McMonagle

ZB # 10-07-16

Front Yard Setback Variance

Block 159.06, Lot 12.01

(Mayor Carew, Council member Grey, Mr. Borisuk and Mr. Gornstein abstained from this vote.)

Mr. Spoerl made a motion to refund and close the escrow for this matter. Mr. Hack seconded the motion. Roll call: SPOERL - Y, ZINNO - Y, COCULA - Y, HACK - Y, THEOBALD - Y.

**Status of Pending Applications**

Mr. Kneip briefly listed the pending applications.

Zoning Board Voucher

Board Attorney - Laddey, Clark & Ryan\_Omni Point Communications (ZB # 10-08-14), DOS December 2008 (\$546.00)

(Mr. Gornstein, Mayor Carew, Mr. Borisuk and Council member Grey abstained from this vote)

Mr. Spoerl made a motion to approve of the above voucher. Mr. Theobald seconded the motion. All were in favor.

Ms. Cocula read a statement to respond to the article in the local newspaper as follows:

I feel I must respond to the statement made in a local paper. I never made a mockery of any volunteer group. I respect anyone that would give of their time to Vernon township or any entity without financial benefit. My comments were not made to hurt or belittle the Historic Commission. I respect their important work as I do any other board here in Vernon. All boards and commissions are an important part of our township.

My comments were taken out of context. I did say that when anything is nominated for Historic Preservation this event cost the township money. I referred to the Historic Preservation Commission from years ago because I had firsthand knowledge that a local resident did nominate many sites, this occurred in the mid 1990s when the Historic Preservation Ordinance was proposed by the late Don Ross attorney at law. That was the sole intent of my comments.

I support and respect all the Historic Preservation Commission does trying to preserve Vernon's rich history of all future generations to enjoy. I am also proud to tell you that I worked for the Historic Preservation for several years as a volunteer and gave a lot of time and energy to this group. So in closing I thank all the boards and commissions for their time and efforts.

#### **ADJOURNMENT**

Mr. Hack made a motion and Mr. Zinno seconded the motion to adjourn the meeting at 8:16 p.m. All were in favor.

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Transcribed by Cynthia Davis on April 1, 2009

#### **CERTIFICATION**

I, the Assistant Board Secretary, hereby certify that the above minutes were approved at the regularly scheduled meeting of the Land Use Board on April 8, 2009.

Respectfully submitted,

Cynthia Davis