

REORGANIZATION & REGULAR MEETING

Lebanon Township Board of Adjustment
Municipal Bldg 530 West Hill Road Glen Gardner, N.J.

February 23, 2011

The Reorganization and Regular Meeting was called to order at 7:35 p.m. by Board Secretary Gail Glashoff. Present were: Mr. Machauer, Mr. Kozlowski, Mr. MacQueen, Mr. Terzuolo, Mr. Perry, Mr. Abuchowski, Mr. Eberle, Mr. Maurizio, Attorney Gallina, Planner Bolan and Engineer Risse. Excused: Mr. Nagie

In compliance with the "Open Public Meetings Act" notice is hereby given that the Lebanon Township Board of Adjustment has re-scheduled their Reorganization & Regular Meeting to Wednesday February 23, 2011 at 7:30 p.m. prevailing time in the Main Meeting Room in the Municipal Building. The Business portion of the meeting will start at the conclusion of the Reorganization Meeting. Notice of this meeting was published in the Hunterdon Review on February 9, 2011. Copies of the agenda were mailed to the Hunterdon Review, Hunterdon County Democrat, Express Times, Courier News, Star Ledger and posted on the bulletin in the Municipal Building on February 16, 2011.

SWEAR IN: Joseph Maurizio Class IV Alternate I 2 year term
 William Machauer Class IV Alternate II 1 year unexpired term

Ms. Glashoff had Attorney Gallina swear in Mr. Maurizio and Mr. Machauer.

NOMINATIONS FOR CHAIRMAN:

Ms. Glashoff asked for nominations for Chairman. Motion by Mr. MacQueen and seconded by Mr. Perry to nominate Mr. Terzuolo as Chair. Being no further nominations, motion by Mr. Eberle and seconded by Mr. Perry to close the nominations. Unanimously approved. Congratulations to Mr. Terzuolo.

NOMINATIONS FOR VICE CHAIRMAN:

Chairman Terzuolo asked for nominations for Vice Chair. Motion by Mr. MacQueen and seconded by Mr. Eberle to nominate Mr. Abuchowski. Being no further nominations, motion by Mr. MacQueen and seconded by Mr. Perry to close the nominations. Unanimously approved. Congratulations to Mr. Abuchowski.

APPOINTMENTS:

- a. John Gallina, Esq.
- b. Michael Bolan, PP
- c. Steve Risse, Engr. (Bayer/Risse Engrs.).
- d. Gail W. Glashoff, Board Secretary
- e. Guy Wilson, Esq. (Alternate Attorney)
- f. Jim Kyle, PP (Alternate Planner)
- g. Lucy Grozinski, Court Stenographer

Motion by Mr. MacQueen and seconded by Mr. Eberle to appoint the people listed above. Unanimously approved.

ADOPT RESOLUTIONS:

- a. Annual Notice Schedule
- b. Authorizing Agreement for Professional Services

Ms. Glashoff read from the Annual Notice Schedule the meeting dates for 2011 and the Agreement for Professional Services. Motion by Mr. MacQueen and seconded by Mr. Perry to adopt both resolutions as presented. Unanimously approved.

ADOPT RESOLUTION FOR PROFESSIONALS ON PAY TO PLAY:

Motion by Mr. MacQueen and seconded by Mr. Abuchowski to adopt the resolution for professionals on Pay to Play. Unanimously approved.

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ADOPT PROFESSIONAL CONTRACTS:

- a. John Gallina, Esq.
- b. Michael Bolan, PP
- c. Bayer/Risse Engrs. (Steve Risse, Engr.)
- d. Guy Wilson, Esq. (Alternate Attorney)
- e. James Kyle, PP (Alternate Planner)

Ms. Glashoff informed the board that the rates for the professionals has stayed the same as last year. Motion by Mr. MacQueen and seconded by Mr. Eberle to approve the contracts for the board's professionals for 2011. Unanimously approved.

APPOINT APPLICATION REVIEW COMMITTEE:

Ms. Glashoff read the names of those board members who served last year: Chairman Terzuolo, Mr. Kozlowski and Mr. Perry with Mr. Maurizio as the alternate member. Motion by Mr. Kozlowski and seconded by Mr. Maurizio to appoint the approve mentioned board members to the Review Committee. Unanimously approved.

PRESENTATION OF MINUTES: December 8, 2010 Regular Meeting

Motion by Mr. Kozlowski and seconded by Mr. Abuchowski to approve the minutes as amended. Unanimously approved.

December 16, 2010 Regular Meeting

Motion by Mr. Kozlowski and seconded by Mr. Maurizio to approve the minutes with minor corrections. Unanimously approved.

RESOLUTIONS:

- a. Garden Solar Block #3 Lot #5
Use Variance w/conditions Buffalo Hollow Road B2

The board reviewed the resolution of Garden Solar and made corrections. At the conclusion of the board's discussion, motion by Mr. Kozlowski and seconded by Mr. Eberle to approve the resolution of Garden Solar as corrected.

ROLL CALL Yes: Mr. Kozlowski Mr. Perry **Abstain:** Mr. Machauer
Mr. MacQueen Mr. Eberle Mr. Maurizio
Mr. Terzuolo Mr. Abuchowski
Absent: Mr. Nagie

- b. Transtar Truck & Autobody Block #41 Lot #4
Site Plan w/conditions Route 513 I5

The following people were present to discuss the Transtar Resolution: Attorney Gilbert, Mr. Tranquilli and Attorney Knox. Chairman Terzuolo said we have had some issues with escrow and asked Ms. Glashoff if her request for escrow monies have been completely brought up to date. Ms. Glashoff said no. Chairman Terzuolo asked if there was enough money in the escrow account to pay the bills on tonight's agenda. Ms. Glashoff said no. Chairman Terzuolo said the board will not hear this application until they get paid. Attorney Gilbert asked if the board was adjourning this hearing this evening? Attorney Gilbert noted in the Resolution that in order to get permits, Mr. Tranquilli has to be current on both escrow and taxes. Attorney Gilbert didn't know why it would be aborted at this time. Ms. Glashoff said she needs escrow monies to pay bills. Attorney Gilbert said this board has proceeded on a regular schedule and has had special meetings and said none of the special meetings Mr. Tranquilli has objected to or refused. Attorney Gilbert said that Mr. Tranquilli has spent an enormous amount of money between the Use Variance and this Site Plan to come before this board and be heard. Attorney Gilbert said if the board refuses to hear Mr. Tranquilli this evening he will object. He understands if the board needs money in order for them to proceed, but did not feel it would be appropriate to adjourn the discussion this evening. Attorney Knox, for the objectors said he understands the amount of money in question is a couple of hundred dollars. Attorney Knox said delay works against the objectors and the applicant to delay this any longer. Attorney Knox said there is a lot in favor in moving forward with the discussion on the resolution this evening. Ms. Glashoff agreed with

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Attorney Knox regarding the amount of money needed at this moment. The account is on going and can not have a zero balance. Ms. Glashoff said she wants to have these bills on the Township Committee's agenda for approval and payment next week and will need \$243.98 to make that happen, but will still need to have money in the account. Mr. Tranquilli said he will bring in the money tomorrow so these bills can get paid. Ms. Glashoff said she will need more. Mr. Tranquilli said he will bring in next week \$1,000.00 for the escrow account. Attorney Gilbert asked if \$300.00 was brought in tomorrow in order to get these bills paid and the additional monies next week would that be sufficient. Attorney Gallina noted that one of the conditions in the Resolution is that all fees and escrows have to be paid. Also in the MLUL it states that if escrows are not paid then no more work is to be done on the application. The board discussed this issue at length. In the resolution it will state that \$300.00 will be given to the Board Secretary by tomorrow February 24th and \$1,000.00 will be given to the Board Secretary by Friday March 4th.

At this point the board reviewed the Resolution for any corrections. During the review of the resolution, Chairman Terzuolo referred to the letter dated February 17, 2011, the item mentioned in the letter on Page 21 of the Resolution is not paragraph 9 but paragraph 8 regarding the sandblasting and hammering. Attorney Gilbert said that the wording is limiting his client to the number of hours he can sandblast. Chairman Terzuolo noted that this was only until the sandblasting unit was installed and approved in the building. The hours would then change from 8:00 am to 5:00 pm to 7:00 am to 7:00 pm Monday thru Friday. Chairman Terzuolo stated that the sandblasting and hammering were restricted until the sandblasting unit was installed and approved in the building, the hours would increase. Attorney Gilbert said the way this is written in the Resolution his client is being deprived. Chairman Terzuolo noted the wording is incorrect and it should be corrected. Chairman Terzuolo said once the sandblasting unit is installed and the noise survey is taken at the property line, he meets the requirements, he can sandblast in there from 7:00 pm to 7:00 pm. Attorney Gilbert said Mr. Tranquilli may wish to install the sandblasting unit in the existing building and wanted to know if this was acceptable to the board. Chairman Terzuolo asked Engineer Risse for his comments. Attorney Gilbert said that since the board is encouraging Mr. Tranquilli to get this unit installed ASAP, he is willing to install it in the existing building for now and once the new building is built then the sandblasting unit will be installed in the new building permanently. Engineer Risse said once the unit is installed in the existing building the noise test will need to be done. It was agreed by all that the noise test will be done twice, once in the existing building and again in the new building.

Attorney Gilbert at this point referred to the hammering and said that Mr. Tranquilli will bring inside the building everything possible when hammering, but there are items that have to be hammered outside. Attorney Knox asked to speak. Attorney Knox said his clients do not have a problem with the proposal regarding the sandblasting unit, but would like to see it in the Resolution. Attorney Gallina noted that **A10 & A11** will be added and spelled out in the Resolution as a condition. Attorney Knox referred to the hammering issue and his clients understand there are times when hammering has to be done outside but would like it spelled out in the Resolution. Any hammering done inside the doors of the building will be closed. Attorney Gilbert said in the hot summer the doors can not be closed but it is not a problem in the winter months. Chairman Terzuolo agreed regarding the summer months, it would be a violation with OSHA. Also, the time for working on Saturday outdoors should be limited from 9:00 am & 3:00 pm. Attorney Gilbert said Mr. Tranquilli hours of operation have been from 7:00 am to 7:00 pm and he has been in operation for 22 years. Attorney Gilbert went on to say that there is no reason why the applicant can't continue his hours of operation Monday thru Friday from 7:00 am to 7:00 pm. Mr. Tranquilli is taking great pains to move everything into the building. Attorney Gilbert said his client should be able to continue operating under the hours specified. Attorney Gilbert said his client would like to operate from 8:00 am to 5:00 pm on Saturday without any outside hammering.

Planner Bolan asked about the sandblasting going into the existing building and wanted to know what was coming out of the building to make room. Attorney Gilbert said nothing is coming out and Planner Bolan wanted to know why it wasn't being done now. Attorney Gilbert said there are tools and large equipment in the building at this time. Planner Bolan noted that we don't know what is exactly coming out of the building to make room for the sandblasting unit. Attorney Gilbert said not being able to operate from 8:00 to 5:00 pm deprives him and shortened his work day by 96 days per year. One of the bays is currently empty that he can use for the sandblasting unit and nothing will need to be removed from the building. Attorney Gallina said until the

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sandblasting unit is installed and the noise survey is taken and the results furnished and approved, the sandblasting and hammering is limited to 8:00 am to 5:00 pm Monday thru Friday outside, Chairman Terzuolo answered yes. Attorney Knox said to recall the history of this, the municipal court had ordered that the applicant would file a Site Plan application almost immediately but it turned out to be almost 3 years and the applicant was to clean up the sandblasting issues and the outside storage. Attorney Knox said this application serves two purposes: 1. does the applicant get Site Plan approval, 2. does the Court's desire to have the issues of sandblasting outdoor resolved get taken care of. There are 3 possible events that can occur after this approval, one is the applicant can proceed in a timely manner and after the discussion regarding finances this evening the likelihood of the project proceeding, the second possibility is that the project will not proceed and the third is that the applicant will commence litigation and to stall for another 2 years in Superior Court. Attorney Knox said what needs to be considered is that after the 270 days pass and nothing is happening or your in litigation, is the applicant allowed to sandblast outdoors or not. The Resolution has to have in it a clear finding of fact and conclusion of law that the sandblasting outdoors has been and still is illegal and contrary to the 1991 Resolution. Chairman Terzuolo said if it is not in the Resolution then Attorney Gallina will change the language. Chairman Terzuolo said it was his understanding to take the sandblasting, suspend it until such time till this unit can be installed. Chairman Terzuolo said the board wants to make sure that the sandblasting unit goes inside and also that it meets the state standards for noise. Chairman Terzuolo stated that the board has no testimony that outside sandblasting is illegal. None was given or offered. The board is not an enforcement agency and we have no expert here tonight. Chairman Terzuolo said that once the unit is installed inside, our Engineer will be present for the noise survey. Chairman Terzuolo said it was the intension of the board that no sandblasting would be done outside and if it is not in the Resolution it will be. Attorney Knox reaffirmed from the approval that no sandblasting will be done outside and will only commence once the unit has been installed in the building. Chairman Terzuolo said that is correct.

Attorney Gilbert said he can not allow the record to remain as Attorney Knox left it. Attorney Gilbert said they were before the Municipal Court Judge as a result of your Zoning Officer issuing a summons. Mr. Tranquilli had already filed an application with this board and told the Judge that the application had been filed. Ms. Glashoff asked what year that was and Attorney Gilbert did not remember. Attorney Gilbert said his client filed his application before appearing in court. Attorney Gallina said until the sandblasting unit is installed and the noise survey has been furnished and if the board was limiting the time that the sandblasting and hammering can take place. Attorney Gallina said he wants to be clear on exactly what the board wants. Mr. Maurizio said it has to cease until the unit is installed and the noise survey has been done. Attorney Gallina asked about the hours of 8:00 am to 5:00 pm. Mr. Abuchowski said it was regarding the hammering outside and once the unit is installed and the noise survey is done, then both sandblasting and hammering will be done indoors between the hours of 7:00 am and 7:00 pm. The response was yes. Mr. Abuchowski asked if the hours on Saturday were resolved.

Attorney Gallina said the prior Resolution had 7:00 am to 7:00 pm Monday to Saturday. Mr. Abuchowski asked that there is no outside hammering on Saturday at all. The answer was yes. Attorney Gilbert said if you refuse to let Mr. Tranquilli to do any hammering and sandblasting until the unit is installed inside he may be out of business for 2 or 3 months. At present the sandblasting has been done in a tent which is a canvas covering of over 4 walls but it is an enclosure that he has been using for the sandblasting. Mr. Tranquilli is looking to purchase a unit and install it inside the existing building so he can do away with the "tent". For now he is using the tent for sandblasting and is hammering outside as the need presents. If the board is saying that he can't hammer or sandblast until he installs the unit. It could take 2-3 months to acquire the unit and assembly it in the building. Mr. Abuchowski said the hammering has been resolved and the issue is the sandblasting. Attorney Gilbert said that the Municipal Court Judge told him to proceed with the application. Mr. Abuchowski asked how long it will take to put the unit inside. Attorney Gilbert said he did not know. Mr. Tranquilli interjected and stated that it takes 2-3 months for the order and then it has to be installed. Mr. Tranquilli stated that they do not hammer outside but that the door is open and the noise travels over to the Grossman property. Mr. Abuchowski said that what isn't resolved is the duration of sandblasting outside in the tent during the time your going to need to put the sandblasting inside the building. Attorney Knox said in his letter he suggested 90 days. Attorney Knox said that at the end of the 90 days

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Ms. Glashoff stated adding in the bills from the addendum of \$525.22, with the original total of \$10,750.98, it now brings the grand total to \$11,276.20. Motion by Mr. Kozlowski and seconded by Mr. Abuchowski to approve the bills as amended. Unanimously approved.

Attorney Gallina announced that the trial/oral arguments on the Edwards matter will be heard on Monday February 28, 2011.

CORRESPONDENCE:

- a. New Jersey Planner*
- b. Law Bulletin - December, 2010/January, 2011 & February, 2011*
- c. Law of the Land (8 Articles) additional which includes the January Agenda*

Being no further business to come before the board, nor comments from the public, motion by Mr. Abuchowski and seconded by Mr. Eberle to adjourn the meeting at 9:25 p.m. Unanimously approved.

CHAIRMAN BRUCE TERZUOLO

GAIL W. GLASHOFF, BOARD SECRETARY