

Lebanon Township Board of Adjustment
October 25, 2006
Page 2

ITEM FOR DISCUSSION:

a. Budget 2007

Mr. Abuchowski asked about General Codes. Ms. Glashoff explained that the \$3,000.00 has not been charged as yet to the 2006 budget. She put the amount in the budget for 2007 in the event that the bill comes in after the first of the year. Mr. Abuchowski wanted to know if we would be charged a total of \$6,000.00. Ms. Glashoff said no, our share of the expense is only \$3,000.00. Ms. Glashoff noted by the time the budget goes to the Committee for review and approval; she will know whether the charge will go to 2006 or 2007. Right now it is up in the air.

Chairman Terzuolo asked about the \$500.00 increase in Attorney. Since we haven't reached the amount budgeted, Chairman Terzuolo asked to keep it the same as 2006. He then asked about the Planner. Ms. Glashoff informed the Chairman that Banisch's bills are usually 2 months behind. Chairman Terzuolo told Ms. Glashoff to have them get up to date and if a letter needs to be written, he will sign it. Chairman Terzuolo then asked about the amount budgeted for the Court Stenographer. Ms. Glashoff stated that we are already over budget and the year is not over. Chairman Terzuolo noted that this board has always been the cheapest entity in the Township. We have a very good attorney and we avoid litigation. Chairman Terzuolo asked about the line item for Computer Work. Ms. Glashoff stated the bill was split between the two boards. Chairman Terzuolo stated that the Computer Work money should be split three ways, Zoning Board, Planning Board and Ms. Glashoff should pay the other one third. Chairman Terzuolo asked Ms. Glashoff in her other duties for the Township, does she use her computer. Ms. Glashoff answered no not as Records Coordinator. At the conclusion of the board's discussion, Chairman Terzuolo asked for a motion to approve the proposed budget for 2007. Motion by Mr. Kozlowski and seconded by Mr. MacQueen to approve the proposed budget for 2007 as amended. Unanimously approved.

b. Set Date for Reorganization Meeting in January, 2007

Ms. Glashoff offered the second Wednesday in January to leave the fourth Wednesday for an application. Mr. MacQueen asked who was up for reappointment. Ms. Glashoff said she has not looked over the list as yet, but will have those people whose terms are up listed on the next agenda. After a brief discussion, motion by Mr. MacQueen and seconded by Mr. Kozlowski to hold the Reorganization Meeting of the Board of Adjustment on January 10, 2007 at 7:30 p.m. Unanimously approved.

Mr. Kozlowski asked why McGreevy was not on the agenda. Ms. Glashoff informed the board that the applicant has decided to apply for the variance for the septic system and the timing was not there for noticing for this evening. The McGreevy application is scheduled for November 8th along with the Sleep Center application. Chairman Terzuolo did not know if he would be available for the November 8th meeting.

UNFINISHED BUSINESS:

Cingular Wireless
c/o Judith Babinski, Esq.
Pitney Hardin, L.L.P.
P.O. Box 1945
Morristown, N.J. 07962

Block #24 Lot #20
Route 513 R3

CONTINUATION OF A PUBLIC HEARING
(Letter for Continuance from Applicant)

Conditional Use/Site Plan/Variances
Cell Tower in a Residential Zone as a
third use on the property

Ms. Glashoff read the letter from Attorney Babinski granting an extension time to December 31, 2006 and will be on the agenda December 13, 2006. Chairman Terzuolo asked why the applicant was scheduled on December 13th. Ms. Glashoff informed the Chair that the November 8th meeting date already had two applications scheduled. This is why Cingular was scheduled for December 13th. Chairman Terzuolo asked Ms. Glashoff to contact the applicant and reschedule to January. Attorney Gallina stated if the applicant would not be willing to extend the time and come in January, the board will have to have their meeting in December. Attorney Gallina

Lebanon Township Board of Adjustment
October 25, 2006
Page 4

Attorney Fraser had Christine Woods sworn in. Ms. Woods stated that when they owned the property they never lived there and purchased it in 1989-1990 until they sold to Mr. McConnell in 1997. Ms. Woods stated that at the time they purchased the property, the little house was being used as an apartment. Ms. Woods also stated that the apartment was empty along with the main house at the time they sold it. During the time Ms. Woods owned the property the little house was being rented and they had one or two tenants at a time. Ms. Woods said while they owned the property they replaced the toilet, the tub and the kitchen sink. Ms. Woods stated that Mr. Schnitzer lived in the little house because his wife was not a very good housekeeper and he didn't want to deal with all the clutter. When Ms. Schnitzer moved, it took 7 dumpster loads to clean out the main house.

Chairman Terzuolo asked if the board had questions of the witness. There were no questions from the board nor from Board Attorney Gallina. The hearing was opened to the public for questions of Ms. Woods. There were none. The next witness sworn in to give testimony was Karl Pfingst. Mr. Pfingst stated before moving to Kodiak Trail, he lived on North Road directly across from the property in question. Mr. Pfingst stated he lived on North Road from 1991 to 2003. Mr. Pfingst said he did see renters while he lived across the street. He also saw a bathroom and a kitchen in the apartment. Chairman Terzuolo asked if the board had questions of the witness. Mr. Machauer asked if Mr. Pfingst knew when the structure was built. Mr. Pfingst said he only knows from what the neighbors have said that it has always been an apartment. The structure has been there a long time at least 35 years. Attorney Gallina asked Mr. Pfingst how long he lived on North Road. Mr. Pfingst stated 13 years. When opened to the public for questions there were none.

At this time, Chairman Terzuolo had Township Tax Assessor Mary Mastro sworn in to give testimony on behalf of the board. Attorney Gallina stated that the Assessor was asked to attend the meeting this evening to give some insight into this application regarding the tax assessment records for the Township regarding this property. Ms. Mastro had been approached by Zoning Officer Bill Skene regarding the property. Ms. Mastro started with chronological order with her records. The first Revaluation was conducted in 1971. In July of 1971 Michael Morris a registered appraiser in Hunterdon County did the inspection of the property. At that time, there were 2 bedrooms, 1 bath in the main house on the property. Mr. Morris references a shed in good quality condition being 24x14 in size with a 2 fixture bathroom and was priced as a shed with a value of \$5,300.00. The next time the property was assessed was June 24, 1987. The main house is a 1 story dwelling unit 24' x 24' and the comments in the file stated the rooms in the main house was full of boxes halfway up to the ceiling. The owner at that time was not living in the main house, said she was living in the lower level of the second building and it was difficult to inspect the interior of the building because of the stored material. There is a secondary house with a picture also dated June 24, 1987 of secondary building, 14' wide with the bottom level being 24' deep with the top level 14x18. In 1987 it is listed with no kitchen, living space on first floor with a 2 fixture bathroom with 2 bedrooms on upper level. Comments in the file state, floor register hanging down to lower level also stored material making inspection difficult. Attorney Gallina asked what the record states about the upper level. Ms. Mastro stated the record shows 2 bedrooms on the second level which is 14' x 18'. Bottom room is a living room and 2 fixture bathroom. After the 1987 revaluation was conducted there was a small addition to the main house. There was a porch which became enclosed to be additional living area.

The next time the property was inspected was in 2001. Ms. Mastro had photos of the property from 2001. At this time, the main house was described as before but under the ownership of Mark McConnell. Ms. Mastro noted that she has all the deeds for the property. Mark McConnell purchased the property in 1997. The Schnitzer had purchased the property in September of 1957. Ms. Mastro reviewed for the board the photos of the property from 2001 which show the main house and the other little building to the right. The property was inspected on March 29, 2001, the main house had a tenant named Janus. The main house still consists of 2 bedrooms, 1 bath. The secondary building, the inspector was unable to gain access to it so it was continued on to be 2 bedrooms on second floor and 2 fixture bath on lower level with the size being the same. Ms. Mastro informed the board that the secondary building has never been assessed or considered a separate living unit because of not having a kitchen and a full bath, it would not be considered under assessment standards as livable space. Ms. Mastro offered the exhibits for the board to look at. Mr. McConnell's attorney reviewed the documents. Chairman Terzuolo asked if we mark them into evidence then we have to keep them. Attorney Gallina stated if the board is going to consider them they have to be marked. As Ms. Mastro approached Attorney Gallina she was told to stop by the Chairman since they were having a legal discussion.

Lebanon Township Board of Adjustment
October 25, 2006
Page 5

Attorney Gallina stated if the board is going to make them evidentiary with regard to this hearing they should be marked and identified. Mr. MacQueen said then she doesn't get them back? Attorney Gallina stated after an appropriate appeal period then they can be returned. Mr. Kozlowski asked about making copies of the documents. Attorney Gallina said technically you should have originals but if they are exact copies then that should suffice if she needs these documents in her office. Ms. Mastro said it was not a problem. Chairman Terzuolo said to mark them into evidence.

Attorney Gallina marked the following exhibits: **B1**-Property Record Appraisal Card by Michael Morris Associates, July 26, 1971, **B2**-Property Record Appraisal Card June 24, 1987 by Michael Morris Associates with a separate card for each structure & photos, **B3**-Property Record Appraisal Cards consisting of two sheets dated March 29, 2001, one card is on main building and second card is the small building, **B4**- Larger photo of main house dated March 16, 2001, **B5**- Photo of small building dated March 16, 2001, **B6**-Current Appraisal Card for secondary building showing 588 square feet without 3 fixture bathroom with a value of \$22,600.00 not considered living space, **B7**-Deeds from Geist to Schnitzer dated September 20, 1957. Chairman Terzuolo asked why we needed the deeds marked into evidence. Attorney Gallina stated in the event that anyone wants to know the chain of title for reference, **B8**-Deed from Chester Gameon, Executor for Elizabeth Schnitzer to the Woods dated April 1, 1992, **B9**-Deed from Woods to McConnell dated August 8, 1997, **B10**-Summary of assessments of the property.

Ms. Mastro informed the board that in reviewing the file she was unable to find any reference to the septic systems because she was asked by a code official if there was a shared septic system on the property. Whenever anything is done on a property regarding the septic system a copy of the approval with a copy of a map attached to the cover blue sheet is sent to the Township. There is nothing in her file or the construction file. Chairman Terzuolo asked Ms. Mastro as of what date do you get these from the Board of Health. Chairman Terzuolo asked what year did this start because there are legal repairs that have been made to septic systems in this township, his house included and this Township doesn't have it on file. Ms. Mastro informed Chairman Terzuolo that since she has been the Tax Assessor, these forms come to the Township monthly. Chairman Terzuolo asked how long has she been the Assessor. Ms. Mastro informed him she is now in her 5 year as the Tax Assessor. Chairman Terzuolo told Ms. Mastro that she really doesn't know how long this practice has been going on. Ms. Mastro noted she has seen County Board of Health reports in the files that date back many years.

The board asked questions of Ms. Mastro at this time. Mr. Machauer referred to the upgrades that have been done over a period of years to improve the property in question. Mr. Machauer asked if Ms. Mastro would agree that this building has been occupied continually for many years. Ms. Mastro stated that she can only go by what is listed in the record and by what is actually there. Mr. Machauer asked about the tax bills for this property and is there one tax bill for the entire property or is there two separate tax bills for the buildings. There is one tax bill per Ms. Mastro. Mr. Machauer asked in her position would she assume or would you agree that since they have been collecting taxes on this property all these years that it has been recognized as a viable residence. Ms. Mastro responded stating that in 1971 it was listed as a shed with a 2 fixture bath valued at \$5,300.00, then in 1988 showed it to be 252 square feet of a second level and 322 square feet of a first level with no 3 fixture bathroom and no mention of a kitchen, an appraiser would not consider that living space. Mr. Machauer asked if it were taxed as a living space. Ms. Mastro stated it was taxed as a little building with a 2 fixture bath in it. Per Ms. Mastro an assessor office will not declare a legal use, they will record what they see. Mr. Machauer asked if the Tax Assessor in 1971 was Lester Apgar. Ms. Mastro answered yes with Carole Hoffman taking over a few years later.

Mr. Kozlowski asked about the bath fixtures and what constitutes a full bath. Ms. Mastro said, a toilet, sink and either tub or shower. A two fixture is considered a sink and toilet. Mr. MacQueen asked if there were any record that an assessor actually went into this building. During each revaluation, it describes what was scene and the second one describes what was actually in the building. It was the third appraiser that was unable to get into the building.

Being no further questions by the board, Chairman Terzuolo asked if the applicant had any questions. Attorney Fraser asked to see the exhibits. Attorney Fraser asked if Ms. Mastro has ever visited the property. Ms. Mastro answered no. Attorney Fraser noted that the file states 2 fixture bath and no kitchen and Ms. Mastro answered it was correct. Attorney Fraser asked if there was any reference to a kitchen in 2001. Ms. Mastro stated that no one was able to get into the building and if a kitchen was put in between 1987 and 2001 the appraiser was unable to gain

**Lebanon Township Board of Adjustment
October 25, 2006
Page 6**

access. During the questions, Ms. Mastro referred to the property cards which describes the main house and the little house which is classified as a shed for 1971, 1987 and 2001. Attorney Fraser asked about the square footage of the building. Ms. Mastro said the lower level is 322 square feet and the upper level is 252 square feet with a total of 574 square feet. The measurements of the building were the same in 2001. It was noted that the second level was not taken into account with the first revaluation in 1971. Attorney Fraser stated that the record in 1987 reflected no kitchen and there is no information that a kitchen exist presently in the building. Chairman Terzuolo asked if there were any questions of Ms. Mastro from interested parties. There were none.

At this time, Attorney Fraser made her summation to the board. At the conclusion of the summation, Chairman Terzuolo opened the hearing to the public for comments and statements. Ms. Christine Woods & Mr. Pflugst gave statements. Being no further statements or comments, Chairman Terzuolo closed the evidence taking portion of the hearing.

Mr. Machauer quoted the section of the ordinance which refers to Supplementary Apartments and based on the ordinance the board has to decide whether the apartment existed before the ordinance went into effect. Mr. Kozlowski asked if the apartment is vacant for a period of time is it still considered a supplementary apartment. Attorney Gallina stated that just because it was not in use for awhile does not mean that it has been vacated. If you abandon a pre-existing, non-conforming use, you lose your protection. Also, if you change the use and then try and put it back to the original pre-existing non-conforming you lose your protection. Mr. MacQueen noted that the neighbors have said that people have lived there for many years, it sounds like this secondary structure has been used for living. If there are two septic systems it has been done for a long time. For whatever reason someone put two septic systems in they didn't do it for one house, it was done for two dwelling units. The way assessments are done, it not surprising that no one got into these houses. From testimony from the two neighbors it sounds like the dwelling unit pre-dates our zoning. Mr. Perry stated he doesn't have a problem from the testimony that was given by the neighbors. Mr. Abuchowski felt there was sufficient testimony given that this dwelling unit has been in existence for more than 35 years and has been improved over the years. Mr. Eberle agrees with the other board members that the dwelling unit has been there a very long time. Chairman Terzuolo asked Attorney Gallina if the application was filed in a timely manner. Attorney Gallina answered yes.

Chairman Terzuolo reviewed for the board the letter from Attorney Gallina regarding the Appeal. Just because the assessors card does not contain the full story, he will not let an assessor into his home. Per Chairman Terzuolo, "there is not an assessor in the world in their BMW who wants to get their hands dirty". Three neighbors and former owners are not going to lie for Mark McConnell and agreed that this is a pre-existing non-conforming use and protecting it. Attorney Gallina stated an appeal can be affirmed, reversed or modify the decision of the Zoning Officer and the board has full powers. Chairman Terzuolo stated if the Zoning Officer is saying that it is not legal then the board will reverse it and say it is by prior existence.

Motion by Mr. MacQueen and seconded by Mr. Perry to reverse the decision of the Zoning Officer due to the evidence presented that this apartment existed.

ROLL CALL	Yes: Mr. Machauer	Mr. Perry	No: None
	Mr. MacQueen	Mr. Abuchowski	
	Mr. Terzuolo	Mr. Eberle	

Attorney Gallina will prepare the Resolution to be placed on the Agenda of November 8, 2006.

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

CHAIRMAN BRUCE TERZUOLO

GAIL W. GLASHOFF, BOARD SECRETARY