

**Hillsborough Township
Board of Adjustment Meeting
January 18, 2012**

Chairman Leon Krals called the Board of Adjustment Meeting of January 18, 2012 to order at 7:30 p.m. The meeting took place at the Municipal Building in the Courtroom.

Pledge of Allegiance

Notice of Meeting

Chairman Krals announced that the meeting had been duly advertised according to Section 5 of the Open Public Meetings Act, Chapter 231, Public Law 1975.

Roll Call:

Joseph Jaghab - Absent
John Stamler - Present
Helen Haines - Present
Leon Krals - Present
Walter Dietz - Present

Frank Valcheck - Present
John Sheridan – Absent
Frank Herbert (Alt. #1) - Present
Shawn Lipani (Alt. #2) – Present
Curtis Suraci (Alt. #3) - Present
Michael Volpe (Alt. #4) – Present

Also in attendance are Mark Anderson, Esq., Board Attorney, Woolson Sutphen Anderson, P.A; David Kois, Zoning Officer / Assistant Planner; and Lucille Grozinski, CCR.

Board of Adjustment Business

None

Business from the Floor

None

Public Hearing-Applications

John LAZORCHAK – File #BA-11-07 – Block 11, Lot 21 – 687 Amwell Road

Mr. Lipani recused himself from this application.

Chairman Krals indicated that the Board will conduct a Closed Session.

Mr. Anderson noted that the Executive Session will include discussion of Attorney-Client issues involving the Lazorchak application.

A Closed Session was conducted by the Board.

Mr. Anderson noted that there have been a number of issues raised the past few days through correspondence from the parties involved. He explained that the Board discussed questions of procedure and what the details of the ordinance.

Mr. Anderson indicated that the Board wants to discuss the request made by Mr. Afran in his letter dated January 18, 2012 suggesting that the Board remand the case to the Historic Preservation Commission (HPC).

Chairman Krals instructed Mr. Afran and Ms. Lamar of the procedures for the hearing. He emphasized that the topic will be on the question of remanding the case to the HPC.

Mr. Afran shared his views on jurisdiction, powers and procedures of the HPC. He made his arguments in support for the case to be remanded to the HPC to create a verbatim record.

Ms. Lamar responded to Mr. Afran's comments and shared her views and arguments citing several sections of the Municipal Land Use Law (MLUL) and the HPC ordinance regarding demolition.

Ms. Lamar noted that Mr. Afran could have raised the issue of jurisdiction and remand prior to the hearing. She indicated that Mr. Afran made this argument before and the Board voted to have a complete new hearing.

Mr. Dietz noted that Hillsborough's HPC has the right to restrict a demolition. He further indicated that Hillsborough ordinance is unique.

Ms. Lamar disagreed with the argument that the HPC has the power to completely ban a demolition.

Ms. Lamar indicated that the HPC has no statutory powers granted to it by the state and Hillsborough cannot grant powers beyond what exists in the state.

Mr. Afran indicated that Ms. Lamar did not cite any statute that limits the power of a governing body to vest in its HPC with a particular power.

Mr. Afran cited the Hillsborough ordinance regarding the HPC procedures.

Mr. Afran notes that there is no state law that prohibits a governing body from establishing such a process. He commented on jurisdictional remarks by Ms. Lamar.

Ms. Lamar noted that the procedures of appeal don't make any sense.

No public comment.

Mr. Dietz asked Mr. Anderson can members of the Board attend the HPC meeting without breaking the sunshine law.

Mr. Anderson advised the Board that those who choose to attend the HPC meeting may have to consider withdrawing themselves from an appeal.

Mr. Afran indicated that there would be a verbatim record and full transcript when it comes back to the Board for appeal.

Mr. Anderson noted that the Board cannot determine if there will be a verbatim record during the HPC proceedings.

Mr. Afran noted they will make sure there is a verbatim record.

Mr. Herbert asked for clarification regarding the process of remand and if there can be new testimony.

Mr. Afran noted that the parties could offer new testimony.

Ms. Lamar said the issue should be dealt with after the issue of remand has been resolved.

Mr. Anderson indicated that if the Board remands this back to the HPC, then it will be up to the HPC to determine how their proceedings will proceed.

Mr. Herbert asked how the process works for courts when they issue instruction with a remand judgment.

Mr. Anderson acknowledged that courts do that, but he does not believe the Board has that ability.

Mr. Afran noted that witnesses can start over at the HPC.

Mr. Anderson noted that this Board has to decide what is definite and what is not.

Mr. Anderson advised the Board that he believes Mr. Afran's position on jurisdiction is correct, thus the Board does not have any jurisdiction and the issue of jurisdiction can be raised at anytime.

Mr. Anderson commented on the question raised by Ms. Lamar whether the authority granted to the HPC is one that is entitled. Further he indicated that the Board has to accept and follow the ordinance and does not get to decide whether it is right or not.

Mr. Dietz made a motion to remand the case back to the HPC with a recommendation that there be a transcript of the proceedings, which was seconded by Vice Chairperson Haines.

Ms. Lamar requested to ask a question and was denied because a motion was already made.

Votes in Favor: Mr. Valchek, Mr. Dietz, Mr. Suraci, Mr. Herbert, Mr. Stamler, Mr. Volpe, Vice Chairperson Haines and Chairman Krals.

Votes Against: None.

Ms. Lamar asked if the Board is thereby vacating the prior decision of the HPC.

Mr. Anderson indicated that the Board does not have the power to decide whether it is vacated or not.

Acceptance of Minutes

Vice Chairperson Haines made a motion to approve the regular session minutes of December 7, 2011, which was seconded by Mr. Stamler. This was approved unanimously by all eligible members.

Vice Chairperson Haines made a motion to approve the executive session minutes of December 7, 2011, which was seconded by Mr. Dietz. This was approved unanimously by all eligible members.

Acceptance of Resolutions

Mr. Valcheck made a motion to approve the resolution for Lara and Evangelos MINAKAS (BA-11-13), which was seconded by Mr. Stamler.

Votes in Favor: Mr. Valchek, Mr. Stamler, Mr. Herbert, Mr. Dietz, Vice Chairperson Haines and Chairman Krals.

Votes Against: None.

Mr. Dietz made a motion to approve the resolution for Christopher and Erin Fricke (BA-11-15), which was seconded by Mr. Stamler.

Votes in Favor: Mr. Valchek, Mr. Stamler, Mr. Herbert, Mr. Dietz, Vice Chairperson Haines and Chairman Krals.

Votes Against: None.

Mr. Dietz made a motion to approve the resolution for Board Attorney, which was seconded by Mr. Stamler.

Votes in Favor: Mr. Valchek, Mr. Dietz, Mr. Suraci, Mr. Herbert, Mr. Stamler, Mr. Volpe, Vice Chairperson Haines and Chairman Krals.

Votes Against: None.

Mr. Dietz made a motion to approve the resolution for Board Engineer, which was seconded by Mr. Stamler.

Votes in Favor: Mr. Valchek, Mr. Dietz, Mr. Suraci, Mr. Herbert, Mr. Stamler, Mr. Volpe, Vice Chairperson Haines and Chairman Krals.

Votes Against: None.

Mr. Dietz made a motion to approve the resolution for Alternate Board Engineer, which was seconded by Mr. Stamler.

Votes in Favor: Mr. Valchek, Mr. Dietz, Mr. Suraci, Mr. Herbert, Mr. Stamler, Mr. Volpe, Vice Chairperson Haines and Chairman Krals.

Votes Against: None.

Mr. Dietz made a motion to approve the resolution for Court Reporter, which was seconded by Mr. Stamler.

Votes in Favor: Mr. Valchek, Mr. Dietz, Mr. Suraci, Mr. Herbert, Mr. Stamler, Mr. Volpe, Vice Chairperson Haines and Chairman Krals.

Votes Against: None.

Chairman Krals indicated he is very pleased that the Annual Report was finished by January.

Vice Chairperson Haines made a motion to approve the Board of Adjustment Annual Report - 2011, which was seconded by Mr. Stamler.

Votes in Favor: Mr. Valchek, Mr. Dietz, Mr. Suraci, Mr. Herbert, Mr. Stamler, Mr. Volpe, Vice Chairperson Haines and Chairman Krals.

Votes Against: None.

Chairman Krals indicated he would like to setup a sub-committee of volunteers to review the Bylaws and make recommendations to the Board.

Volunteers: Mr. Herbert, Mr. Lipani and Vice Chairperson Haines.

Report Date: March 7, 2012

Correspondence

None

Adjournment

The meeting adjourned at 8:46 p.m.

Submitted by:

David Kois

Zoning Officer / Assistant Planner

Board of Adjustment Secretary

Approved