DECEMBER 17, 2013

The Manasquan Planning Board held a second meeting at 4:00 p.m. on Wednesday, November 19, 2013 in the Council Chambers of the Borough Hall, 201 East Main Street, Manasquan, New Jersey.

Roll Call:

Present: Present Chairman Burke, Board Members Muly, Rabenda, Harriman, Hamilton, Sullivan, Aspostolou, and Ragan.

Absent: Council Member McCarthy, Board Members Love, Price, and Young

Professionals Present: Board Attorney – Geoffrey S. Cramer and Board Engineer Charles Rooney.

Mayor Dempsey arrived at 4:07

Board Attorney Geoffrey Cramer's statement re: Open Public Meetings Act of 1975 and that notice was given to the Coast Star and the Asbury Park Press on December 13, 2012, he also read the rules and time frame for the meeting.

Salute to the Flag.

APPLICATION #36-2013 – Bakanus, Richard – 9 Sims Avenue – Block: 151 – Lot: 17 – Zone: R-3 – applicant is returning after withdrawing without prejudice from the August 20, 2013 Second Meeting. In ground Pool with Variances.
Geoffrey Cramer swore in Richard Bakanus, applicant/owner, Robert Kniffin, Specialized Pools, and Charles Gilligan, Engineer/planner, and Al Yodakis, board Engineer.

Chairman Burke stated that since this was first heard in August he would like Mr. Bakanus to go through this and refresh everyone's memory.

Mr. Bakanus gave his opening statement. He advised that he resides at 9 Sims Avenue and he has been a property owner over 30 years. He advised that his family also resides in Manasquan. He stated that is giving the board this information to show that he cares about this town and would not ask for relief if it would have an adversely affect the neighbors or the community. He stated that he is asking the board for permission to construct a fun pool, which basically is an in ground hot tub. He advised how he came up with the idea and why he would like this approval. He stated that the pool is a free form shape is approximately 4 feet by 6 feet with a depth of 4 feet and that the pool requires a variance since the lowest point is less than 1 foot above seasonal high water. He stated that the design and the construction of the pool gains technology which mitigates the risks which the regulations are intended to avoid. He went over Mr. Yodakis' letter dated December 10, 2013 which requested that the potential ground water impacts be discussed.

Robert Kniffin, Specialized Pools, Inc. went over his credentials and he went over the technology that would be used to keep the pool from lifting out of the ground by using hydrostatic relief valves which are installed on every pool that they install.

Board Member Apostolou asked Mr. Kniffin to describe the hydrostatic relief valve.

Mr. Kniffin stated that it is a vent that goes in the floor of the pool that if the pressure underneath the pool is greater than the water pushing down on it, it will release and let that water come through.

Board Member Apostolou stated that the water from the ground seeps into the pool.

Mr., Kniffin stated that it could and it is there in case somebody drains the pool without knowing there is a foot valve and a dewatering system installed underneath the pool.

Board Member Apostolou asked if this was intended to relieve the ground water problems as it impacts on the adjacent property owners.

Mr. Kniffin stated that this is just to prevent the pool from lifting out of the ground.

Board Member Apsotolou stated that the only purpose of the valve is just to in fact impact upon this pool itself and its destruction.

Mr. Kniffin stated that is correct.

Mr. Charles Gilligan, Engineer/Planner went over his credentials. He went over some background information on the property. He stated that this was before the board a few months ago and this is before the board because the ordinance in Manasquan requires that a pool be 1 foot above the sea level high water table. He stated that in this case it would have to be an above ground pool to be constructed and he is not sure why the ordinance exists. He stated he is not sure whether it is a fear of raising the ground water because the pool would go into the ground water and displaced the storage of it or whether it had to do with just protecting the homeowner from hydrostatic pressure. He stated that in both instances this has been mitigated. He stated that on his schematic cross section on drawing sheet 1 of 1 there is a value of water that will be displaced with the installation of the pool and he stated that he has provided an infiltration system on the outside. He stated that the volume that they would be taking away that might be storage where the pool is going to go is ground water storage and that is being provided with an additional volume of water that is surrounding the property to mitigate that storage that was lost from the installation of the pool. He stated that he is providing 175% more than what is being taken up with the construction of the pool. He advised that in both instances he has taken care of protecting the homeowner with the pool floating and protecting the adjacent owners from any kind of ground water fluctuation do to the volume that is being taken up by the pool installation. He stated that this property is in the flood zone and no basements are permitted in a flood zone so within a few thousand feet of this area there are no basements.

Mr. Yodakis gave an overview of the ordinance. He stated that there were a couple of cases, one on Virginia where there was movement of underground water and a pool was put in place and it diverted that water and caused flooding in a basement of an adjacent home so the pool is acting as a dam. He stated that this has happened in two cases and he is not sure of the exact

subsurface reason for that if it was do to the clay layers that are encountered in this area or what. He stated that he understands what Mr. Gilligan is trying to do with the volume and he has no problem with the hydrostat vents that are being put in. He stated that he knows that 2 pools were approved in 2012 and both of those were next to each other and there were no concerns as one house had a basement so there was some hard and fast information of why they were approved. He stated that he does not know if there are any basements in this area or if anyone could be affected and moving forward in the future it might be something that the borough wants to consider with the new BFEs. He stated that he can not state that there will be no problem with what is being requested.

Mr. Gilligan stated that there is an 8 inch perforated pipe surrounded in stone and it basically circles the entire property which would flow out to Sims Avenue.

Mayor Demspey stated that there is a Storm Water Ordinance which he believes stated that water can not be put onto the street.

Mr. Yodakis stated that this is correct that it can not be punched through the curb.

Mr. Gilligan stated that there is an open grate that the water will automatically pop up with the pressure.

There was discussion on two other properties that have had this done.

Mr. Hamilton explained why the ordinance was put into place.

There was discussion on the 2 properties that had pools put in and the water was displaced and flooded a neighbor's basement.

Mr. Hamilton stated that his concern with this application is that there is almost zero perk level in there as it is so wet in that area and he has noticed in the last 2 days just looking at the properties around Sims Avenue and in a vacant lot there is water laying there may be from the tides and it won't event perk. He stated that the concern is pushing any amount of water away and he thinks that the board with the help of Mr. Yodakis should take another look at this and try and understand the scope of it and see why the ordinance is in place, is it still functional, and can there be any amendments or adjustments to it.

Mr. Gilligan stated that the board needs to look into the water displacement when pilings are being put in as the ground water would be displaced. He stated that they are not obligated to do any mitigation and he believes that this pool would not nearly impact the ground water as pilings would. He stated that he did do a bore down to 4.4 feet which is a coarse sand, gray and then after that there is a heavy clay and the coarse sand which would let the water percolate laterally.

There was discussion on the pipe and where it would be located and how long it would take to pump the area out while putting the pool in.

Mr. Kniffin stated that they would pump for 2 weeks from the day the pool is dug until the day they stop pumping water. He went over the process and inspections.

Mr. Gilligan stated that this would be a C2 variance where a departure from the zoning ordinance would actually advance the purpose of the municipal land use act. He stated that there are things that have to be proved and one is that the variance can be granted without substantial detriment to the public good. The benefits out weigh the detriment, the variance will not impair the intent of the zoned land or the zoning ordinance. He stated that the negative aspect of it is potential drainage problems, potentially the pool rising up due to hydrostatic pressure but that has been mitigated and have gotten rid of this negative aspect by putting in a perforated pipe and also putting in the hydrostatic valve that will pop up. He stated that they have mitigated 173% more than what is necessary. He stated the positive aspect is a desirable visual environment.

Chairman Burke asked what else is going to be done to the area besides the pool.

Mr. Gilligan stated that there will be pavers around the perimeter, there is a shed there now and that shed will be sized down and the perforated pipe. He stated that it is like creating a deck area in the rear yard. He stated that it is fully fenced in with a 6 foot high fence.

Chairman Burke asked if there is any chance the pavers could be some of the new pavers that are much better on allowing water through them.

Mr. Gilligan stated that the pavers will be in sand.

There was discussion on sand and concert sand and which one would be used.

Mr. Gilligan stated that on the perimeter there is a 2 or 3 foot strip that will be a landscape strip that will be between the patio pavers and the fence. He stated the water will go into that landscape strip where there are drains that will take the water into the perforated pipe that is surrounding the property.

Board Member Harriman asked that if water runs across the pavers it will go into this system and not onto the neighbor's property.

Mr. Gilligan stated that this is correct as there are drains to pick up the water and take it into the compression system.

Mr. Cramer asked Mr. Gilligan if the applicants considered an above ground pool for this rear yard location.

Mr. Gilligan stated that he believes that the applicant did consider an above ground pool and he believes that it is an undesirable feature that the applicant does not want.

Board Member Sullivan asked if someone next door has a 3 or 4 foot crawl space they will not get water from this pool pushing water away.

Mr. Gilligan stated that the water is being taken out to Sims Avenue through the described drainage system with a perforated pipe surrounded in stone.

Board Member Sullivan asked if the neighbors would be hard hurt by this based on water even if it is just a crawl space.

Mr. Gilligan stated that this is true and next store is a vacant lot that is being prepared to be built on. He went over crawl spaces and what he believes is allowed and how far down they can be.

Board Member Sullivan asked if there are any current neighbors that will be affected by this at all.

Mr. Gilligan stated that there is one neighbor to the west and he does not believe that they would be affected by it as they are taking care of the drainage in the back yard and taking it out front.

Mayor Dempsey stated that he is not sold on the grade; it doesn't mean that the water will not end up in the street.

Mr. Gilligan went over the system presented to be installed and how it will work and that the water would bubble out through an open break

Board Member Harriman asked how close to the street the water would bubble up.

Mr. Gilligan stated that it is about 2 feet from the property line which would probably put it at 12 feet from the street.

Board Member Apostolou asked if all Mr. Gilligan's presumption based upon the fact that the pipe that is bearing is going to be above the high water mark at all times. He asked if the high water mark rises above that pipe then the pipe is meaningless.

Mr. Gilligan stated that it is meaningful because if the high water is above that pipe that means everyone in the area has a high water.

Board Member Apostolou stated that he understands that but Mr. Gilligan's statements made to the board were only conditioned upon those times when that pipe is going to in fact above whatever the water table may be. He stated for all those periods of time that the water table exceeds that level that pipe is meaningless.

Mr. Gilligan stated that is not correct. He stated that it might not be 100% efficient and that he tested the area in October and he found water at elevation of 1.97 and he has added a seasonal high water safety into that but he put the bottom of dry stone is where he found water that day. He stated that it might rise a little bit but for most of the time it will be dry.

There was discussion on high water table and icing issues if the water goes into the street.

Mr. Gilligan stated that the water would be in the pipe and there is some porous sand down to elevation 4.4.

There was discussion on where the bubbling would take place, where it is located, and what type of ground is in the area of the pop up. There was also discussion if the water is tidal. There was discussion on the storm water ordinance and what is allowed and not allowed.

Mr. Gilligan stated that this is what he does with new homes also and he believes that this is a preferable solution then having everybody build up retaining walls, building up their properties so they get a positive pitch to the front.

Chairman Burke stated that he would like to find out what the board thinks about this as there are a lot of things going on.

Board Member Sullivan stated that he is not in favor of this because it's basically above ground approval and the water needs to go somewhere.

Board Member Hamilton stated that the ordinance was put into place for a solid purpose and probably deterred a lot of pools being installed. He stated that if maybe the applicant was asking for a foot to go in the ground maybe he would give some secondary thought. He stated until the board gets a resolve to this thing and really understand where the board is going he believes the board should not approve any pool that is in violation of this ordinance until we get a handle on it or get an amendment on it.

Board Member Rabenda stated that he is worried about the run off and the impervious nature of the pavers.

Board Member Muly echoed what Member Hamilton said and that this should be held until there is some resolution to the ordinance changes but right now he would say no.

Board Member Ragan stated that he has a problem with the intent behind what the ordinance is and if it is to prohibit or prevent unintended consequences of underground water movement how anyone would be able to request a variance around this ordinance unless some type of very detailed boring or underground water analysis. He stated that he would have to concur with everyone else and that he would be apt to decline the request at least until there was more detail of the background of what the ordinance is.

Board Member Apostolou stated that he thinks the legislative intent of the ordinance was exact that to preclude ground water invasion to other properties. He stated although Mr. Gilligan has done an excellent job in designing a hydrostatic relief area it does not solve the problem of water going to where it wants to go. He does not believe that there is any positive attribute that is shown by the contemplation of granting of this variance and he does believe that it is a detriment and that the potential negative impact in violation of the legislative intent would lead him to vote no.

Board Member Harriman stated that she has listened to the engineer and if she knew it was title it would be different but it could be an underground stream. She stated that she does not know where the water is coming from or where it would go. She stated that she does agree that it would help the property value and it does make for a nicer environment in place. She stated that the ordinance needs to be looked into again.

Mayor Dempsey stated that he agrees with what everyone has been saying and he is concerned with all the pavers although impervious the water will be moved and the icing conditions that might happen in the street.

Chairman Burkes stated that he agrees with everyone also but he thinks the Borough has to look at this because he knows for a fact that all new construction post Sandy is being required to put in exactly the same system that Mr. Gilligan is putting in here. He stated that this is being required by the Borough ordinances and the ordinance does need to be looked into and the board needs to decide where they are going with this.

Chairman Burke stated that there are two choices for the applicant one is to allow the board to vote or the application can be withdrawn without prejudice. He stated that if the applicant does come back before the board they will have to go through the full process of noticing and so on.

Board Member Harriman made a motion to open the hearing to the public, seconded by Board Member Apostolou. Motion carried unanimously.

Deb Colligan, 9 Sims Avenue inquired about the pilings that are being put into the ground all around the house.

Chairman Burke stopped Ms. Colligan and advised her that the portion of the audience participation is only about this specific application and that there will be audience participation on any subject towards the end of the meeting.

Ms. Colligan stated that this is in direct relation to it as far as she is concerned. She stated that what Mr. Gilligan has done is to mitigate all of the concerns about the drainage. She asked if no one is concerned about all the other displacement from these pilings and it seems that is everyone is focused on this one area. She voiced her opinion on the pilings that are being put in and she is only trying to put in a system that will address what they are asking for and this has been presented very well to the board. She made her point to the board to allow for this plunge pool to be installed.

Mayor Dempsey made a motion to close the public portion, seconded by Board Member Sullivan. Motion carried unanimously.

Chairman Burke reiterated letting the board vote or withdrawing the application without prejudice at this time. He advised that if the board votes and they vote no you can not bring the same application back before the board.

Mr. Bukunas stated that he is not in favor of the board's decision but he is forced to withdraw the application without prejudice.

Chairman Burke stated that the applicant is requesting to withdraw this application without prejudice.

Board Member Hamilton asked Mr. Cramer if the applicant has any option give him a couple of months leeway until the board finally discuss this and bring all the facts into play and make a positive statement on how the board wants to deal with all these things. It will give him the option to sit out in the wings until we do that rather than withdraw and go through another expensive process to come back to the board. The applicant can be called back at a later date.

Mr. Cramer stated that decision is premised upon the Borough council changing the law as it currently exists or they can make some modification to it to allow for this type of plunge pool as the applicant describes it to be acceptable. He stated with what was said by the board that this is not really consistent with what the current law encourages to place in back yards that affected in the flood zone. He stated that there needs to be more engineering examination of this type of use.

Mr. Hamilton stated that he agrees and they do not want to go against the ordinance. He stated the ordinance would have to be held fast or amended by the council but his point is would it give the applicant the opportunity to sit back rather and rather than take a vote on it look at the ordinance and decide if there will be any changes and let the applicant know at a later date.

Mr. Cramer stated that the board can not work as a conduit of information to previous applicants and notify them when changes are made and that they can re-apply. That should not be a burden of the board or the board secretary.

There was discussion on the ordinance, what the council has for drainage post Sandy and what the board's position is in changing such matters.

Mr. Gilligan asked if the application can be carried for 6 months.

Board Member Apostolou stated that in order to satisfy his questions of the legislative intend of the like he believes what would be beneficial for him would be a survey by an applicant as to the number of crawl spaces, the number of cellars that are within a certain distance. He stated that he will leave it up to Mr. Yodakis to give him that differentiation and the other issue that he would propose to Mr. Yodakis is there another method by which an applicant or an engineer can present to use the dispersion of ground water other than a pop up valve at a street that would solve the issue of icing or the like.

Board Member Ragan stated that he is not aware if there are any tests that will allow boring from left to right to determine if there is any ground water moving but the intent of the ordinance the way it was discussed here tonight was to prevent that underground stream affect and he does not know of any type of testing.

Mr. Gilligan stated that he believes that there is just a pervasive grey clay layer about 4 feet down that rain water does go below that.

There was discussion on the storm water ordinance and what would be allowed or not allowed and how an ordinance change would be completed. There was also discussion on the surrounding properties and if they have crawl spaces or not.

Board Member Muly inquired about the amount of pavers indicated for the backyard and if that amount was reduced would that have any impact on the water being percolated into the ground if there was grass.

Mr. Gilligan stated that it probably would and he stated that Manasquan's ordinance allows pavers and sand to actually follow zero impervious which he does not believe is true as there will be run off and that is why along the perimeter between the fence and the pavers is drains that will actually take the water and put it into the infiltration system.

There was discussion on different options for the property and what the ordinance reads.

Chairman Burke asked Mr. Cramer if the board can allow the applicant to continue this application for 6 months per Mr. Gilligan's suggested.

Mr. Cramer stated that he believes that is an inordinate amount of time because the statue requires you to give notice to properties owners with 200 feet of an application that comes before the board to allow for that type of adjournment he thinks that it would have to be accompanied by a re-notification to the property owners, a new publications and notice in the paper. He stated that this is too long a period of time.

Chairman Burke stated that it is still a continuance rather than a withdrawal with a continuance knowing that he is going to re-notice.

Mr. Cramer stated that it is a continuance without a date certain but he does not believe that you can not preclude the requirements.

Chairman Burke stated that there should not be a preclude and he is just looking at the two terms continuance or withdrawal.

Mr. Cramer went over the burden on the board to hear application and there are two meetings a month now because there are a lot of applications to be heard. He stated that he does not believe that the board's administrative staff should not be at a disadvantage here. He stated that if the applicant withdraws his application without prejudice that means that he selects the time to return to the board knowing that if he does come back to the board he has to go through the same process over again. He advised that he does not think it fair to burden the board with an over long continuance.

Mayor Dempsey made a motion allowing the applicant to withdraw without prejudice, seconded by Board Member Apostolou. Motion carried unanimously.

APPLICATION #53-2013 – McCarthy, Rob and Brooke – 12 S. Potter Avenue – Block: 147 – Lot: 105 – Zone: R-2 – Demo and rebuild – Bulk Variances

Geoffrey Cramer swore in Robert McCarthy, owner/applicant, Brendan McHugh, architect, and Albert Yodakis, board engineer.

Mr. McCarthy stated that he resides at 12 S. Potter Avenue and he is requesting a rear yard set back variance. He stated that the home was destroyed by Sandy and he is looking to raise his family here and he is looking to re-build.

Brendan McHugh, architect gave his credentials to the board. He stated that they are seeking a variance for the rear yard based on the R-2 property as to a conforming lot and the back of it has more than 50 foot frontage and more than 5,000 square foot for the overall lot. He stated that they are having difficulty with is the depth of the lot. He stated at 63.8 if they went to the front set back at 25 feet and the rear yard of 20 foot they would have a depth of 18.3 feet to build something and that would include a front porch also. He stated that the existing rear of the house is actually at 10.5 from the rear and the existing garage is at 2.8 so what they decided to do was to make the front yard and the side yard much more useable for family, entertaining, and community use. He also stated along with creating a front porch they pushed it into the house to get the community feel out on the front porch and to sort of be in between. He went over the concept of the home.

Chairman Burke inquired about the ac platform in the rear of the house and how high it will be.

Mr. McHugh stated that it has to be high enough to be out of the flood zone and that it would be 6 to 7 feet above the ground. He stated that Mr. Furey the Zoning office advised him that currently that you can put the air condensers in the rear yard setback. He stated that with the 7 foot it is still less than the 10.5 was but there was a garage there at 2.5.

Board Member Apostolou asked Mr. McHugh if he read the tech review analysis.

Mr. McHugh stated that he did.

Board Member Apostolou asked if the applicant would be willing to move forward on the lot to create a deeper rear yard to satisfy the tech review's analysis.

Mr. McHugh stated that they did discuss this and the applicant is willing to do that.

Board Member Apostolou asked if there is still a contiguous property at 14.

Mr. McHugh stated that as to the front yard it was an average front yard set back completed and it was 18 foot and when we spoke to the applicant they wanted to see if they could maintain that 25.5 foot for the bulk zoning requirement so that there was a bigger playing area. He stated that if it was pushed from 7 to 10 or 7 to 11 or 7 to 14 how much space would be used in the back between fence and a two story house.

Board Member Apostolou stated that he is not aware of what the tech committee's view was as to how far to move it up.

Board Member Muly stated that the primary concern was that the back yard was so narrow because of the shape of the lot but to give a little more space back there to keep garbage cans or whatever else they want back there and still be somewhat inline with the neighboring houses so you will not be coming out in front of where they are and there will still be room for parking in the driveway without hanging over the street.

Board Member Apostolou asked what the depth that the tech review was looking at was approximately what.

Chairman Burke responded the rear yard would be at 10 feet.

Board Member Apostolou asked if the applicant would willing to make the change to 10 feet.

Mr. McHugh stated that it would be up to the applicant and they are agreeable with the tech review analysis.

There was discussion on plantings around the air condenser units and storage in the backyard.

Mr. McHugh stated that there is a full garage on the floor plan and there will be a considerable amount of crawl space with an access panel underneath.

Board Member Apostolou stated that it is his understanding that the applicant is offering an amendment to move the house forward by 3 feet so the rear yard would be 10 feet.

Mr. McHugh stated that is accurate.

Mr. Yodakis went over his report and advised that there is an encroachment on the south side by the neighbor's fence.

Chairman Burke stated that there is an encroachment of a fence of two tenths of a foot.

Board Member Apostolou asked the applicant if they just bought the house and if the encroachment was on the title policy.

Mr. McCarthy stated that the home was purchased 2 years ago and there was no encroachment of the fence. He stated that the fence is new from the neighbor.

Board Member Apostolou stated that the neighbor might be on this property.

Mr. Cramer asked if there was going to be provided an elevation certificate when the house is completed.

Mr. McHugh stated yes.

Board Member Harriman asked about the trees out front and if they are staying or going.

Mr. McHugh stated that the trees in the front yard will be staying.

Board Member Rabenda inquired about the third floor and he wanted it to be clear of what unfinished means. He stated as an inspector the board approves one thing and when the house is inspected it is something different.

Mr. McHugh stated that as of right now it will be maintained as unfinished but they are within the 5 foot requirements for the zoning and the 7 foot requirements for the building. He stated that right now it will be un-sheet rocked, sub flooring will be plywood, and it will be insulated afterward.

There was discussion on the third floor and if it can become a finished third floor later on.

Board Member Apostolou made a motion to open the hearing to public, seconded by Mayor Dempsey. Motion carried unanimously.

There being no comment Board Member Apostolou made a motion to open the hearing to the public, seconded by Mayor Dempsey. Motion carried unanimously.

Board Member Apostolou made a motion to approve the application with the stipulation of the 10 foot rear yard set back and subject to meeting all the board engineer's requirements, seconded by Mayor Dempsey. Motion carried by the following vote: "yes" Mayor Dempsey, Chairman Burke, Board Members Muly, Rabenda, Harriman, Hamilton, Sullivan, Apostolou, and Ragan. "No" none.

Chairman Burke advised the applicant that the resolution will be read at the January 7, 2014 meeting and after that a notice will have to be published in the Coast Star and there is a 45 day appeal process from that time. He also advised that any work that is done during that appeal period is at your own risk in case someone appeals the board's decision.

RESOLUTION #50-2013 – American Timber – 579 Brielle Road – Block: 182.01 – Lot: 22 – Zone: R-5

Mr. Cramer stated that this resolution was memorialized as approval given at the previous meeting of this board with respect to American Timber Company's request for variances associated with construction of a new 2 story single family dwelling at 579 Brielle Road.

There was discussion on the resolution number and it was confirmed that the resolution number is 50-2013

Board Member Apostolou made a motion to memorialize this resolution, seconded by Mayor Dempsey. Motion carried by the following vote: "yes" Mayor Dempsey, Board Members Muly, Rabenda, Harriman, Hamilton, and Apostolou. "No" none.

OLD/NEW BUSINES:

APPROVAL OF MINUTES – September 20, 2013 – Regular Meeting

Board Member Apostolou made a motion to approve the minutes, seconded by Mayor Dempsey. Motion carried unanimously.

APPROVAL OF VOUCHERS

Board Member Apostolou made a motion to approve the vouchers, seconded by Mayor Dempsey. Motion carried unanimously.

2014 Meeting dates proposal

Mayor Dempsey made a motion to approve the 2014 meeting dates and January 6, 2015, seconded by Board Member Harriman. Motion carried unanimously.

Nominations for 2014

Board Member Hamilton stated that he requested a letter from both T&M Associates and Geoffrey Cramer to see if they were interested in returning to the board and checking on the rate schedule would be. He stated that he did receive a letter from both professionals and that the rates will not change for 2014.

Board Member Sullivan made a motion to approve Albert Yodakis from T&M Associates as the board engineer for 2014 and Geoffrey Cramer as board attorney for 2014, seconded by Board Member Muly. Motion carried unanimously.

Board Member Hamilton made a motion to appoint Mary Salerno as board secretary for 2014, seconded by Board Member Apostolou. Motion carried unanimously.

Mr. Hamilton stated that he received an e-mail from Mr. Burke and Mr. Muly for chairman and vice-chair indicating that they have an interest in continuing their positions for 2014.

Mayor Dempsey stated that he would like to nominate Neil Hamilton for chairman for the 2014 year.

Mr. Cramer advised that the nominating committee has made a recommendation for the appointment of John Burke to be chairman, John Muly to be vice chairman and other nominations can be put into place. He advised that Neil Hamilton has been nominated by the Mayor for chairman therefore there are 2 nominees for the chairmanship. He stated that the vote would normally be done at the reorganization meeting in January.

Chairman Burke asked if there would be 2 resolutions ready for January and only one would be used.

Mr. Cramer stated that there would be a resolution for the chairman which would not have a name until the vote is taken at the reorganization meeting.

Board Member Apostolou asked if there is a requirement under the bylaws that we wait until January or would it confuse things if we wait until January.

There was discussion on the reorganization meeting and when the resolutions for the nominees would be done and who votes for the chairman and vice chairman. There was also discussion on the process that needs to be followed for the appointment of the chairman and vice chairman. There was also discussion on the bylaws and what the process is for voting.

Chairman Burke stated that the bylaws clearly state that the voting of the officers will be in January.

Board Member Apostolou stated that he would like to take this opportunity to say that it has been his privilege to serve with this board during the past year and he knows it has been a trying year and we have tried to use all due diligence in meeting the needs of the town but he would like to recommend accolades to each one of the board members for their unselfishness and he has been very proud to serve with each and everyone of them and wish everyone a merry Christmas.

Board Member Ragan agreed with everything that Board Member Apostolou stated.

Board Member Apostolou made a motion to open the meeting to the public, seconded by Board Member Rabenda. Motion carried unanimously.

Lee Esposito stated that his son owns a house at 46 Second Avenue and as the Mayor knows he was before the council members last night and he advised that there is an issue with the neighbor next door. He stated that he sent out an e-mail to Mr. McCarthy and spoke to him briefly last night and he knows that Mr. McCarthy is investigating the issues with the neighbor. He advised that there is a law and code issue as well as they have questions for the planning board. He stated that the neighbor next store on 2 occasions took out his son's boundary marker and because of that they had to bring the surveyor out twice so as part of that process and subsequently they ended up putting up a fence. He stated that they had an opportunity how close the shed/garage that was approved by the planning board encroaches now that there is a very firm line. He stated that viewing the board tonight the board is extremely caring and careful in the decisions but he is looking at the minutes and it might just be the how the minutes are printed out but the minutes from the approval of Mr. Bostell's project that there seems to be some discrepancies as to the set backs.

Board Member Apostolou asked about the board's minutes that there are discrepancies.

Mayor Dempsey asked if it is the minutes or the resolution that Mr. Esposito is speaking about.

Mr. Esposito stated that the minutes of the resolution.

Chairman Burke stated that it is either the minutes or the resolution they are two different documents. He stated that it is either the board minutes which are not official or the resolution which is official.

Mr. Esposito stated that application 22-2012 and at the end says the application is approved.

Board Member Apostolou stated that the resolution would be binding and that it is the resolution that is controlling, the minutes are not controlling the resolution is.

Chairman Burke asked to see what Mr. Esposito is referring to.

Board Member Sullivan asked Mr. Esposito what this has to do with the Board.

Chairman Burke stated that these are the minutes and they are not a binding document to the board the actual resolution and what it states in that resolution is the binding document to the property. He advised that Mr. Esposito should get a copy of the resolution.

Mr. Esposito stated that from the minutes themselves it says that a shed/garage was approved and per the square footage the shed has to be under 100 feet and a garage could be up to 600 feet and the existing building is 12 x 10 which makes it 120 so even though there is not a garage door on it that would qualify it to be a garage under the board's ordinances. He stated that he is confused as to how this all got approved and there was in the minutes there was a lot of attention being placed by the Bostell's on how much quite enjoyment that they would have in their backyard as opposed to set backs and similar discussions that happened tonight about air conditioning compressors and things of that nature, but known really as to what affect this is going to have on the neighboring property.

Mayor Dempsey stated that the minutes are not verbatim minutes but they are a synopsis so there could have been other discussion about quite and this and that that you are saying is not happening.

Mr. Esposito stated that this is why he is approaching the process. He stated that he believes it doesn't look like what the board approved meets the ordinances.

Chairman Burke stated that the only problem that we have right now is that Mr. Esposito does not know what was approved and we don't have the resolution in front of him to review. He suggested that Mr. Esposito get a copy of the resolution which can be obtained at the office and go over the resolution and talk to dick Furey and then if he still feels the same way then come back at the end of the January meeting and they will go over this again.

Mr. Esposito stated that this is all he was looking for was guidance as the minutes are confusing.

Mr. Cramer asked if the real problem here is the neighbor's removal of the boundary spikes.

Mr. Esposito stated that the problem goes way beyond the boundary markers.

Board Member Apostolou stated that he was at the meeting last night and heard Mr. Esposito's issues with the neighbor which includes littering, destruction by subcontractors and the like. He stated that the proper recourse if Mr. Esposito feels that there should police action by the board that would be the code enforcement. He stated that the board has no police powers once approval has been approved that would go to the code enforcement officer. He stated that Mr. Esposito has private citizen rights in the municipal court system and he has the right to bring a complaint for trespass for any thing that is non indictable. He went over the process that Mr. Esposito would follow to file a complaint with the municipal court and any other process that can be filed on his behalf.

Mr. Esposito stated that they are at a point where they are not getting anywhere and the code department can not do anything else.

Mayor Dempsey advised Mr. Esposito to get a copy of the resolution and if he feels that he is going to come back to the board just give the secretary a heads up so the board can have the resolution in front of them.

Board Member Apostolou made a motion to close the audience participation, seconded by Board Member Rabenda. Motion carried unanimously.

Board Member Hamilton made a motion to adjourn the meeting at 5:52, seconded by Board Member Sullivan. Motion carried unanimously.

Respectfully submitted,

B Ilaria

Barbara Ilaria, RMC
Acting Planning Board Secretary

DATE APPROVED 5-6-14