

**BOROUGH OF WEST CAPE MAY  
PLANNING-ZONING BOARD  
REGULAR MEETING – July 26, 2016**

The Regular Meeting of the Borough of West Cape May Planning-Zoning Board, held at the Municipal Building, 732 Broadway, was called to order by Chairman Mulligan at 7:39 PM. After reading the Open Public Meetings Act of 1975 he led all present in the flag salute.

**ROLL CALL:**

Members:

|                |         |                    |         |
|----------------|---------|--------------------|---------|
| Doris Jacobsen | present | Kevin O’Neill      | present |
| Art Joblin     | present | Diane Rea          | absent  |
| Pam Kaithern   | present | Carol Sabo         | present |
| Mark Kulkowitz | absent  | <u>Alternates:</u> |         |
| Barbara Lamb   | absent  | TJ Belasco         | absent  |
| Paul Mulligan  | present | Lisa Roselli       | present |

Also Present: Brock Russell, Esq., Board Solicitor  
Ray Roberts, Board Engineer  
Theresa Enteadó, Board Secretary

**ORDINANCES:**

None

**MINUTES:**

**For clarity - this meeting on July 26, 2016 was to discuss and approve minutes from June 14, 2016 which were tabled at the July 12<sup>th</sup> meeting.**

Solicitor Russell advised the Board that anyone who was present for the meeting of June 14<sup>th</sup> could vote to approve the minutes. Board member Kaithern asked the Board secretary to name the individuals who could vote to approve the minutes. The Board Secretary, Theresa Enteadó, stated that Art Joblin, Pam Kaithern, Paul Mulligan, and Lisa Roselli were in attendance on June 14<sup>th</sup>. Board member Kaithern asked if anyone could make a motion and Solicitor Russell advised that yes anyone could. Chairman Mulligan said he believed the meeting left off last time with some of the members thinking the minutes were a bit incomplete. Board member Joblin said he believed that the last paragraph on page three was an incorrect recitation of the mechanics surrounding the vote. Board member Kaithern asked Solicitor Russell to explain to the Board what minutes are meant to be. She wanted to know if they were meant to be a verbatim transaction of what happened. Solicitor Russell stated that minutes are not meant to be verbatim but the Board could motion to amend them anyway they wanted and vote to approve the amendment. He advised the Board that what they needed to understand was that the Municipal Land Use Law was very clear in that, if there was an appeal it wouldn’t matter what the minutes said. The judge would look at the transcript which would be a verbatim transaction of the recording. He said the judge would not see the minutes. Board Member Kaithern asked Member Joblin if he wanted to add items to the minutes. Board member Joblin replied that the words were the words and that they were not an accurate description of what happened that

night. Board member Kaithern asked if he had a recommendation of what the words should have been. Mr. Joblin replied that in his mind it was very complicated and everyone that was there that night knew in their heart of hearts what was said and what happened. He reminded everyone that he had no personal agenda, in fact he voted in favor of the application. He also said the complication goes beyond the minutes. Board Member Carol Sabo pointed out that for that moment, the minutes were all that was being discussed. Board member Joblin offered that the minutes should show that Board member Kulkowitz asked the higher level how an abstention would count and the higher level informed him that abstentions count in the negative. Mr. Joblin said the vote was taken after using that guidance from the higher level and everyone left the meeting thinking the motion had failed. He said the following day there were communications between the applicant attorney and the board attorney, fully outside the vision of the board and then a message was sent from the board attorney that the motion was now deemed to have carried. He said that concept that the motion passed came about from the board attorney and he said he was very taken aback by this because it was not advice from the attorney it was a directive. He said he didn't know how all of that could be integrated into the minutes or a motion by the board. Mr. Joblin also stated that he didn't care if the minutes were worthless he felt very strongly that they must reflect the real history of the night. Board Member Kaithern reminded everyone that when the last meeting ended all members of the board were invited to come in and listen to the recording. She said she listed and so did board member Lisa Roselli and asked if anyone else did. Solicitor Russell replied that he listened to the tape as well. No one else replied. Board member Kaithern said she heard Solicitor Russell say he believed the motion failed but it was couched and it took looking at the books for guidance because it was a very unusual case and a very unusual vote. Mr. Joblin stated that he knew what he heard but he didn't want to get into naming names. Solicitor Russell said if he didn't answer Mr. Kulkowitz's question, he most likely agreed with Mayor Kaithern who did answer, because at that time he did think that abstentions would count as a no. He also said that he has an obligation to read the law when he drafts the resolutions which he said he did before he received any letter from anyone. Board member Lisa Roselli wished to point out that she did not know in her heart of hearts that the motion failed, she left not knowing what happened because she heard Mr. Russell say he thought it failed but he had to review. Solicitor Russell admitted he thought it failed but said he did point out the Cox book to the Chairman but thought no one would have heard that because he whispered to him. Chairman Mulligan wished to make it very clear that any yes he may have said was in answer to what Mr. Russell showed him and he did not reply to Mr. Kulkowitz's questions about abstentions. Member Roselli pointed out that Solicitor Russell was not on the tape answering Mark's question either. After further discussion about the law and the minutes not being a reflection of the law, but a reflection of the activity of the meeting, it was again suggested for those opposed to offer an amendment. Board member Sabo said this meeting reinforced, for her, the need for ongoing training. Solicitor Russell admitted that in his 26 years as a board attorney he never had a case where members abstained without cause. He said if the issue would ever come up again he would advise the board that they could not abstain if they heard the case, they would have to vote yes or no. Mr. Joblin asked for some clarification and once given, he agreed with Mr. Russell. Chairman Mulligan asked if Mr. Russell meant shouldn't abstain, not couldn't abstain. Mr. Russell explained that members could not abstain and discussed various cases. Chairman Mulligan said the thing that started all of this was that he emailed the Board Secretary about items he thought were missing from the minutes and said her reply combined with the original minutes would more accurately reflect what happened that

night. Board member Kaithern stated that she would make the motion to amend the minutes to correctly reflect that when the meeting was opened to the privilege of the floor that Ms. Creenan of 635 Fourth Avenue in West Cape May, spoke and asked the outcome of the vote and Solicitor Russell announced that he thought it did not carry but that we could not further discuss it without the applicant present. Mr. Joblin asked Mrs. Kaithern if she was saying she felt that should be added. Mrs. Kaithern said yes because clearly it was missed, and Mr. Joblin agreed. Board member Kaithern asked the other members to do the same as she did, offer an amendment that can be agreed on so the minutes could be approved and the meeting could move on. Mr. Joblin felt this addition to the privilege of the floor would resonate with what happened that night and he also wanted to have added, before the wording of the votes, that Mr. Kulkowitz inquired as to how an abstention counted, that he was advised, by who didn't matter to Mr. Joblin, that abstentions would count as a negative vote, because that is what happened. After some discussion, it was agreed that before the wording of the votes the minutes would read that Board member Kulkowitz inquired how an abstention would count towards the vote and numerous comments were made on the board that an abstention would count as a no vote. The board also agreed that the minutes should not say the aforementioned application was approved, it should only say roll call votes as follows and give the votes because there was no announcement as to how the vote was resolved at that point. Chairman Mulligan admitted that this was very awkward and he didn't really know what to say because no one knew what happened. Board member Joblin said he felt all those corrections would capture the essence of the meeting and asked if the Chairman agreed. Chairman Mulligan said he did agree. On motion of Pam Kaithern, seconded by Lisa Roselli, the minutes of June 14, 2016 Regular Meeting were approved, as amended, on roll call vote as follows: Art Joblin, Pam Kaithern, Paul Mulligan, and Lisa Roselli all voting in the affirmative. The remaining members did not attend the meeting of June 14, 2016 and were not able to vote to approve the minutes.

## **RESOLUTIONS:**

### **Resolution 0007-16, Kubiak/Mitchell, Block 50, Lots 1.01, 1.02, & 2, Fourth & Fifth Avenue and Bayshore Rd:**

Board member Joblin pointed out that there was an issue to discuss prior to the Resolution. He felt that things that happened after the meeting, happened outside the prevue of the Board and since they did he wondered how the members were supposed to absorb and embrace those things. Solicitor Russell discussed his Opinion letter, Attorney Hillegass's letter, and the letter submitted by a resident who opposed the application. Solicitor Russell advised the Board that the vote was made and the question about what the vote meant remained. He stated that he conducted a proper review of the law and it was his opinion that the motion carried. Solicitor Russell also advised the board members that they had to adopt a resolution that night. The Board further discussed the fact that if a resolution was not passed and went through by default that none of the conditions they fought for would be included. Board member Joblin was still concerned as to how the members would go from thinking the motion failed that night to approving it. Solicitor Russell explained Statute 40:55D-10 of the Municipal Land Use Law which details the timeline for memorializing a resolution. He noted to the board that the 45 days would be up on July 30<sup>th</sup>. Solicitor Russell also advised the board that only those who voted for the action taken could vote. After some discussion and clarification, Solicitor Russell advised that the only members who could vote on the resolution were, Art Joblin, Pam Kaithern, and Lisa

Roselli. Board member Joblin asked the Solicitor if, independent of what the minutes said, it was his legal opinion that the motion carried and Solicitor Russell replied that it was. At this point Chairman Mulligan asked if he was able to comment on the resolution and he was advised that he could express his view but he just couldn't vote. Board member Kaithern started with corrections, she said on the second page, item eight, the fourth line from the bottom the words lot and depth should just read lot depth. Solicitor Russell agreed that the word "and" should be stricken from the resolution. She also suggested to change the word Coastal to Copes when referring to the tree frog. It was agreed to make that change as well. Chairman Mulligan wished to express his objections to the resolution. First, he felt the resolution was written too much like a glowing endorsement of the applicant. Second, he felt that in paragraph 36, on page 7 the mention of the lot being irregular was not accurate. Chairman Mulligan also objected to the wording that Bayshore Road and State Street narrows. Solicitor Russell explained those things are a finding of fact in conclusion of law that he is required to write. Chairman Mulligan felt this was the Board Solicitors opinion not fact. Solicitor Russell explained substantial utilization to the board members and possible legal outcomes if the resolution was not memorialized. Chairman Mulligan wanted to know if his name could be removed from the resolution so he wouldn't have to sign it. He was advised by Solicitor Russell that unless he wanted to resign as Chair, it was his duty to sign all resolutions. Solicitor Russell said it was a process, and a duty no matter how he voted. Chairman Mulligan wanted to know how the fact that he opposed this resolution could be made part of the resolution. He felt his opposition was only made evident in the minutes. Solicitor Russell suggested that the resolution be amended to show the vote. The Board Secretary was advised to make the few changes discussed previously and to also include on page 8, after the "hereby granted" the words: with three affirmative votes, two abstentions, and one negative vote made by the Board Chairman. There being no further comments or questions and on motion of Pam Kaithern, seconded by Lisa Roselli, the aforementioned resolution was approved on roll call vote as follows: Art Joblin, Pam Kaithern, and Lisa Roselli voting in the affirmative.

**APPLICATIONS:**

None

**PRIVILEGE OF THE FLOOR:**

Chairman Mulligan said he had materials, from his previous position on a board elsewhere, that he could share with board members. He also asked that perhaps meetings in the future could start with a reminder from the Solicitor that if you hear the case you have to vote yes or no, abstentions are not permitted. There was also a suggestion for everyone to try not to talk over others during these proceedings.

When no one else wished else to speak, the meeting was adjourned at 9:01 PM on motion of Art Joblin, seconded by Doris Jacobsen, and carried by unanimous voice vote.

Respectfully submitted,

Theresa Enteadó  
Board Secretary