

**WASHINGTON BOROUGH PLANNING BOARD
MINUTES OF REGULAR MEETING HELD ON
SEPTEMBER 10, 2012**

The regular meeting of the Washington Borough Planning Board was called to order by Vice-Chair Aron at 8:00 P.M. in the second floor Court Room/Council Chambers of the Borough Hall. Chair VanDeursen read the following statement into the record: "The requirements of the "Open Public Meetings Law", P.L. 1975, Chapter 231, have been satisfied in that adequate notice of this meeting has been published in the Star Gazette and posted on the Bulletin Board of the Borough Hall stating the time, place and purpose of the meeting as required by law." Vice-Chair Aron led the Board in the Pledge of Allegiance.

ROLL CALL:

Present:	Valentine, Post, McDonald, Aron, Turner, Pohorely, Monus
Absent:	Fracella, VanDeursen
Also Present:	Stephen Gruenberg, Board Attorney Bill Gleba, Board Engineer Susan Gruel, Board Planner

OATH OF OFFICE: Prior to the start of the meeting, new Board member, Rich Monus, was sworn in by Board Attorney Stephen Gruenberg.

APPROVAL OF MINUTES:

Meeting of July 9, 2012: No comments. Therefore, it was moved by McDonald seconded by Post to approve the minutes.

ROLL CALL: Valentine, Post, McDonald,
Monus, Aron
Ayes: 5; Nays: 0; Abstentions: 0
Motion carried.

Executive Session minutes of June 11, 2012: No comments. Therefore, it was moved by McDonald seconded by Post to approve the minutes.

ROLL CALL: Valentine, Post, McDonald,
Monus, Aron
Ayes: 5; Nays: 0; Abstentions: 0
Motion carried.

RESOLUTION: None

APPLICATIONS:

Washington Square – Amended subdivision and site plan for COAH units:
Attorney Larry Cohen represented the applicant. Letters from Mr. Cohen and also Mr. Gruenberg were distributed to Board members before the meeting each describing the COAH issue and also an unpublished court decision that closely relates to the issue. Mr. Cohen stated that he would first explain the issue and then ask Board Members to read the correspondence that was distributed. The history of the approval and COAH contributions was discussed. The Borough currently has \$429,000 in escrow which includes the COAH contribution and recreation contribution. Does not think that the memo from COAH received in the Fall of 2010 was a decision on the in lieu of payments but rather an opinion. The applicant met with the Board Attorney and Planner after the last meeting they attended (June 2012) to discuss the plans and the COAH issue.

The applicant received a letter from the Borough Attorney stating that no further building permits would be issued due to the COAH units not being built on site. They approached Council and it was agreed that permits would be issued. Mr. Cohen asked the Board members to review the correspondence.

Board member, Gary Pohorely, arrived at 8:15 p.m.

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Attorney Gruenberg stated that it was up to the Board whether or not they wanted to review the correspondence at this time or review later and discuss at the next meeting. Dan Aron asked if it was appropriate to go into executive session. Mr. Gruenberg stated only if litigation or personnel issue. John Valentine stated that it was too much to review plus the Chair and two Board Members were not present. Gary Pohorely and Pat Post agreed. Mayor McDonald suggested that the Board should listen to the presentation and table to next meeting for discussion so Board members have time to review. Dan Aron agreed.

Mr. Cohen gave a brief history of the application. 9/13/10 received approval of age restricted converted to market units. 20% units must be affordable housing by law. Mr. Cohen read the law for the age-restricted conversion. 18 affordable units were proposed that met the 20% requirement. Received sewer capacity for 98 units. Resolution was approved for conversion to market rate.

Andrew Turner arrived at 8:28 p.m.

For each certificate of occupancy \$11,000 was paid to escrow. In April 2012, the applicant wanted to continue with the infrastructure with curb cuts while waiting for a decision from COAH. The footprint would have been the same if COAH units were not built. Memo from DCA in 2010 was not on letterhead and only a decision. The applicant did not see the memo until June 20, 2012. The applicant met with the Board professionals to discuss these issues and also sent a letter to Council.

Courter vs. Absecon decision:

Mr. Cohen discussed this case. Very similar to the current COAH issue for this applicant. The approval was challenged but was upheld by the Superior Court of Atlantic County. Mr. Cohen stated that he does not feel that COAH has the power to make decisions. Feels the resolution should be amended to omit the COAH units on site. The Courter case decision is now in the appellate court. Attorney Gruenberg stated that he spoke with the Planning Board attorney for Absecon and he was expecting the brief anytime. Will send to Mr. Gruenberg when received.

Ray Rice was sworn in. He stated that he was not aware of the 10/10 memo from COAH until this year. They have units sold but will need building permits. Building affordable units on site does not benefit the Borough but the payment in lieu does.

Susan Gruel noted that the site is in the adopted affordable housing plans with 12 units. The plan shows a surplus of units. The Borough has submitted their spending plan to COAH.

Andy Turner voiced his concerns with repercussions. Mr. Cohen feels that there would be no repercussions. Dan Aron asked what would happen if the Board agrees and the case is then overturned. Attorney Gruenberg stated that the current status of the project is approval for 72 market units, 18 affordable units and \$50,000 to recreation fund. The contribution in lieu is a contingency plan. The difference between Absecon and Washington Borough is that Absecon is not a COAH town. This is an area of unsettled law. The Absecon case is unpublished and a Warren County judge could disagree. The case is not binding on this Board but could take a look at it. There are four options listed in his letter of 9/10/12.

1. rely on the Absecon case
2. remove COAH approval of in lieu and use same wording as Absecon Planning Board
3. keep prior approval conditions but get definitive answer from COAH
4. remove all conditions of in lieu and require the 20% affordable housing and return funds

The possible risk is that COAH can reject the housing plan and spending plan

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Andy Turner stated that the in lieu of payments is the best option for the Borough. Rich Monus asked how long before ramifications are felt if the Board agrees with the applicant. Mr. Gruenberg stated that there is 45 days to appeal the resolution and the spending plan could be rejected. The public should get a chance to ask questions of Mr. Rice or make comments. Mr. Rice stated that Ryan Homes could pull out of project if no building permits can be obtained. No questions of Mr. Rice from the public.

Rick Feldman, Prosper Way, was sworn in. He asked how the \$11,000 per unit was determined. Mr. Rice discussed how the amount was determined.

Susan Sloan, Grand Avenue, was sworn in. She stated that she has the impression that a lower socio-economic group is being moved to a different location.

Edna Detlas, Fisher Avenue, was sworn in. Wants to make sure the COAH units are not being put in one spot.

Penny Shaul, School Street, was sworn in. She asked where the in lieu of payments of \$700,000 and \$300,000 were going to go. Andy Turner stated that the \$700,000 goes into a rehabilitation program that is administered by the County for residential rehab. Mayor McDonald stated that the \$300,000 would be dedicated for recreation use.

Rick Feldman asked about the PNC property being used for affordable housing and possibly creating a ghetto downtown. Andy Turner stated that this is not the same property being discussed and that there is nothing proposed before the Board regarding this.

No further comments from the public.

Therefore, it was moved by McDonald, seconded by Valentine to continue the discussion to Oct. meeting. A special meeting date was discussed and determined that 9/24/12 would be acceptable to all. Therefore, it was moved by McDonald, seconded by Valentine to amend the motion to continue discussion at a special meeting to be held on September 24, 2012.

ROLL CALL: Valentine, Post, Aron, McDonald,
Turner, Pohorely, Monus
Ayes: 7; Nays: 0; Abstentions: 0
Motion carried.

OLD BUSINESS: None

NEW BUSINESS:

2013 Budget: no changes to the budget. Same amounts as 2012 budget.

Therefore, it was moved by Turner, seconded by McDonald to use 2012 budget figures for the 2013 budget.

ROLL CALL: Valentine, Post, Aron, McDonald,
Turner, Pohorely, Monus
Ayes: 7; Nays: 0; Abstentions: 0
Motion carried.

2013 Professional Appointments: No changes

Therefore, it was moved by McDonald, seconded by Post to make no changes to professional appointments but proposals are to be submitted.

ROLL CALL: Valentine, Post, Aron, McDonald,
Turner, Pohorely, Monus
Ayes: 7; Nays: 0; Abstentions: 0
Motion carried.

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REPORTS OF OFFICERS AND COMMITTEES: None

UNAGENDIZED STATEMENTS:

Public portion closed. All in favor.

COMMUNICATIONS:

Pat Post asked about the water treatment approval application received. Bill Gleba stated that it is a special approval from DEP. Must send copies of application.

Motion by McDonald, seconded by Post to receive and file. All in favor.

ADJOURNMENT:

Motion by McDonald, seconded by Valentine to adjourn. All in favor.

The meeting was adjourned at 10:48 p.m.

Respectfully submitted by Patricia L. Titus, Planning Board Clerk