

**TOWNSHIP OF PEQUANNOCK  
BOARD OF ADJUSTMENT**

**MARCH 1, 2012**

**REGULAR MEETING**

Meeting Convened: 7:33 PM

Members Present: Bruno, Cielusniak, Dolengo, Hebert, Imfeld, Melleno, Skvarca and Way. Also present Anthony Wahl, Board Attorney and Jill Hartmann, Board Planner.

Members Absent: Vitcavitch

Notice: Chairman Bruno stated that the Sunshine Law had been complied with by posting the notice of date, time and proposed meeting on the bulletin board of the Municipal Building on February 24, 2012 and sending it to the six area newspapers, including the legal paper on February 24, 2012.

**MINUTES:**

**January 19, 2012 - Regular**

Motion by Way, second by Hebert to approve the minutes as amended. All in favor. **Motion Carried.**

**February 2, 2012 – Regular**

Motion by Imfeld, second by Dolengo to approve the minutes as submitted. All in favor. **Motion Carried.**

**February 2, 2012 – Executive**

Motion by Dolengo, second by Cielusniak to approve the minutes as amended. All in favor. Motion Carried.

Certificates of Appreciation were presented to Mr. Finley, Mr. Aikey and Mr. Herforth commemorating their years of service to the Board.

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Mr. Wahl had a discussion with the Board regarding Team Equipment and their appearance before the Board. Mr. Wahl stated that during the course of litigation approximately a year and a half ago the Board made an offer to Team Equipment to settle the pending litigation and at that time no agreement was reached between the Board and Team Equipment. Mr. Wahl stated that at last month's public hearing the Board attempted to resurrect the settlement discussions to see if the Board could resolve the entire matter and again a settlement was not reached at that time. Mr. Wahl read from Judge Weisenbeck's opinion as follows: "Under the circumstances, the Court finds that the Board's failure to (one) provide reasonable advanced access to Ms. Hartmann's report and (2) swear in Ms. Hartmann and offer her statements as formal testimony subject to cross examination duly prejudiced plaintiff and potentially impacted the outcome of the hearing warranting a remand of this matter to the Board for further hearing with a full opportunity for the plaintiff to cross examine Ms. Hartmann under oath and offer any rebuttal testimony and/or evidence."

Mr. Wahl stated that Ms. Hartmann will be sworn in and will be questioned by Mr. Wahl with respect to the testimony that she gave initially at the original hearing and then the applicant will have the opportunity to cross examine Ms. Hartmann and state his rebuttal. Mr. Wahl stated that after Ms. Hartmann's testimony and the applicant's cross examination and rebuttal the Board would be presented with the question originally before the Board nearly two years ago, which was whether the denial of the zoning permit by Ms. Hartmann is to be affirmed or denied.

**Matthew Rankin, Esquire** on behalf of the applicant Team Equipment along with **William Morrissey**, a principal of Team Equipment, appeared before the Board.

Mr. Rankin disagreed with everything that Mr. Wahl discussed with the Board. There was discussion by Mr. Rankin regarding Executive Session and the Municipal Land Use Law. Mr. Wahl asked the applicant what he wanted to do assuming there would be no settlement at the meeting. Mr. Rankin suggested that the Board and the applicant have a closed session to discuss the settlement. Mr. Wahl stated that if there was an executive session it would be between the Board only. Mr. Bruno suggested that the Board would make a determination as to whether they decide to go into Executive Session following what the applicant has to present to the Board. Mr. Rankin objected to the suggestion and stated the applicant appeared before the Board to try to reach a settlement.

Mr. Rankin stated that he agreed with 95 percent of the settlement agreement presented to him by Mr. Wahl. Mr. Rankin read into the record the Municipal Land Use Law concerning Executive Session. Mr. Wahl suggested to the Board that they go into

Executive Session to determine what it is that the Board wants to do in terms of resolving the entire matter.

Motion by Imfeld, second by Hebert to close the public hearing portion of the meeting and to go into Executive Session. Yes votes from Cielusniak, Dolengo, Imfeld, Hebert, Melleno, Skvarca, Way and Bruno. Motion Carried.

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The Board went into Executive Session.

Motion to open the meeting to the public. All in favor. Motion Carried.

Mr. Wahl went over the proposed terms of the stipulation of dismissal, which had a date of December 7, 2010. Mr. Wahl stated the first item of the stipulation is a matter of importance to the Board and the Board is not willing to alter the substance of the stipulation which states that the proposed use is not a permitted use and requires a use variance. Mr. Rankin stated that the applicant could get past that. Mr. Wahl stated that paragraph 3 of the stipulation inserts a date with which all of the required applications would be filed and what is required is a variance application including use and dimensional variances, a site plan approval and flood plain approval. Mr. Wahl stated the Board is requesting a June 1 filing date for all applications with all fees and escrows to be paid in full. Mr. Wahl stated the hearing date could be scheduled for July 19<sup>th</sup>. Mr. Wahl stated that failure to timely file will withdraw all rights under the stipulation of dismissal. Mr. Wahl wants schedule A to be completed showing all items identified on the outside of the building.

Mr. Morrissey had issue with paragraph 1 of the stipulation because he maintained that the principal use of rental business is an allowed use in the C-3 zone but in the pursuit of a solution they would proceed with an application for outdoor storage. Mr. Wahl stated that the rental part of the business was not the issue but rather that they are in a Commercial 3 zone which does not permit contractor equipment to be stored in that zone. There was discussion as to whether there would be enough time to get the engineering part of the application ready for June. Mr. Rankin and Mr. Morrissey agreed to have all their application paperwork, site plans and escrows fees submitted to the Planning Department by July 1, 2012. The Board agreed to have the public hearing on the use variance, site plan and flood application in August or September of 2012.

The application will be carried to the April 5<sup>th</sup> meeting with either a signed stipulation of dismissal or to be scheduled for the May meeting to be remanded back to the Court if the stipulation of dismissal is not signed. Mr. Morrissey stated he had a problem with paragraph 1. Mr. Wahl stated that paragraph 1 will not change.

There being no further business, motion by Imfeld, second by Cielusniak to adjourn the meeting at 9:01 PM.

Respectfully submitted,



Linda Zacharenko  
Board of Adjustment Secretary