

**STILLWATER TOWNSHIP  
ZONING BOARD OF ADJUSTMENT  
January 27, 2014**

**MEMBERS PRESENT:** Mr. Hammond, Mr. Lippencott, Mr. Stachura, Mrs. Galante, Mrs. Draghi, Mr. Powell  
**MEMBERS ABSENT:** Mr. Sarni

A REORGANIZATION AND REGULAR MEETING OF THE Stillwater Township Zoning Board of Adjustment was held on Monday, January 27, 2014, at 7:30 p.m. at the Municipal Building in Middleville, New Jersey. The meeting was called to order by Mrs. Wunder in accordance with the Open Public Meetings Act. The flag was saluted and roll call taken.

Mr. Powell (term expiring 12/31/17) and Mrs. Draghi (term expiring 12/31/16) were appointed by the Township Committee. Both were sworn in prior to the meeting.

**REORGANIZATION**

**ELECTION OF CHAIRPERSON:** Mr. Hammond made a **motion** to nominate Mr. Powell as Chairperson for 2014, seconded by Mr. Lippencott. There being no further nominations, nominations were closed and roll call was taken.

**Roll Call Vote:** Mr. Hammond, yes, Mr. Lippencott, yes, Mr. Stachura, yes, Mrs. Galante, yes, Mrs. Draghi, yes, Mr. Powell, yes

At this point, the meeting was turned over to Chairman Powell.

**ELECTION OF VICE-CHAIRPERSON:** Mr. Lippencott made a **motion** to nominate Mr. Stachura as Vice-Chairperson for 2014, seconded by Mr. Hammond. There being no further nominations, nominations were closed and roll call was taken.

**Roll Call Vote:** Mr. Hammond, yes, Mr. Lippencott, yes, Mr. Stachura, yes, Mrs. Galante, yes, Mrs. Draghi, yes, Mr. Powell, yes

**APPOINTMENT OF SECRETARY:** Mr. Powell made a **motion** to appoint Mrs. Wunder as Secretary for 2014, seconded by Mr. Stachura.

**Roll Call Vote:** Mr. Hammond, yes, Mr. Lippencott, yes, Mr. Stachura, yes, Mrs. Galante, yes, Mrs. Draghi, yes, Mr. Powell, yes

**APPOINTMENT OF BOARD ATTORNEY:** **Motion** was made by Mr. Hammond to appoint Robert Morgenstern, Esq. of Dolan & Dolan for the calendar year 2014 at a rate of \$158.00 per hour; and \$300.00 per meeting up until 10:30 p.m., \$158.00 per hour after 10:30 p.m., as per the contract, seconded by Mr. Lippencott and unanimously carried that the following Resolution be adopted:

WHEREAS, N.J.S.A. 40A:11-5, "The Local Public Contract Law," permits governing bodies to Contract for Certain Professional Services Without Competitive Bidding,"

NOW THEREFORE BE IT RESOLVED by the Zoning Board of Adjustment of the Township of Stillwater, County of Sussex, State of New Jersey that the following appointment is made for the calendar year 2014 for the statutory term of the respective office:

**Robert Morgenstern, Esq.**

**Dolan & Dolan**

**One Legal Lane**

**53 Spring Street**

**Newton, New Jersey 07860**

**Roll Call Vote:** Mr. Hammond, yes, Mr. Lippencott, yes, Mr. Stachura, yes, Mrs. Galante, yes, Mrs. Draghi, yes, Mr. Powell, yes

**APPOINTMENT OF BOARD ENGINEER:** **Motion** was made by Mr. Hammond to appoint Ted Rodman of Rodman Associates for the calendar year 2014 at a rate of \$115.00 per hour on an as needed basis, as per contract, seconded by Mr. Stachura and unanimously carried that the following Resolution be adopted:

WHEREAS, N.J.S.A. 40A:11-5, "The Local Public Contract Law," permits governing bodies to Contract for Certain Professional Services Without Competitive Bidding,"

NOW THEREFORE BE IT RESOLVED by the Zoning Board of Adjustment of the Township of Stillwater, County of Sussex, State of New Jersey that the following appointment is made for the calendar year 2013 for the statutory term of the respective office:

**Ted Rodman**  
**Rodman Associates**  
**19 Main Street**  
**P.O. Box 647**  
**Blairstown, New Jersey 07825**

**Roll Call Vote:** Mr. Hammond, yes, Mr. Lippencott, yes, Mr. Stachura, yes, Mrs. Galante, yes, Mrs. Draghi, yes, Mr. Powell, yes

**MEETING DATES:** Mrs. Galante made a **motion** to approve the following meeting dates for 2014, seconded by Mr. Stachura and read into the record by the Secretary:

January 27, 2014 (Reorganization/Regular)  
February 24, 2014  
March 24, 2014  
April 28, 2014  
May 29, 2014 (Fifth Thursday)  
June 23, 2014  
July 28, 2014  
August 25, 2014  
September 22, 2014  
October 27, 2014  
November 24, 2014  
December 15, 2014 (Third Monday)  
January 26, 2015 Reorganization/Regular

Meeting dates cont'd:

**Roll Call Vote:** Mr. Hammond, yes, Mr. Lippencott, yes, Mr. Stachura, yes, Mrs. Galante, yes, Mrs. Draghi, yes, Mr. Powell, yes

**OFFICIAL NEWSPAPER:** Mr. Galante made a **motion** to designate the daily New Jersey Herald and the New Jersey Sunday Herald as the official newspapers of the Stillwater Township Zoning Board of Adjustment for 2014, seconded by Mr. Stachura.

**Roll Call Vote:** Mr. Hammond, yes, Mr. Lippencott, yes, Mr. Stachura, yes, Mrs. Galante, yes, Mrs. Draghi, yes, Mr. Powell, yes

#### MINUTES

Mr. Hammond made a **motion** to approve the minutes of December 30, 2013, seconded by Mr. Lippencott.

**Roll Call Vote:** Mr. Hammond, yes, Mr. Lippencott, yes, Mr. Stachura, yes, Mrs. Galante, abstain, Mrs. Draghi, abstain, Mr. Powell, yes

#### Other Business: Annual Summary 2013

Mr. Morgenstern reviewed the Annual Summary and recommendations for 2013. Mr. Lippencott made a **motion** to approve the 2013 Annual Summary to be forwarded to the Township Committee and Planning Board; a discussion followed.

The Board discussed the current 100 foot setback requirement from a lake and the lakeside being considered the front yard. They felt many of the properties needing relief are located in lake communities on small lots and cannot come close to complying. Mr. Powell suggested having Mr. Morgenstern research ordinances from other municipalities and how the lakeside setback and accessory structures located in the front yard area are addressed. Mrs. Draghi recommended reviewing Hampton and Branchville as they are similar to Stillwater and have such lake communities. Mr. Stachura noted the NJDEP regulations also have to be taken into consideration for C-1 waters to make sure Stillwater is consistent with those requirements.

Mrs. Draghi questioned #8 of the Annual Summary regarding outdoor wood furnaces and whether or not they have been banned in the township. Mr. Morgenstern indicated they are not banned and an ordinance was passed including strict regulations.

Mr. Hammond expressed concern with the ordinance requirement that municipal property is a first priority for location of a cell tower. He noted there were two locations where cell towers were approved on residential properties in the township with no objections. He felt remote properties are more suitable for such placement. Mr. Powell noted most municipal

properties are not located in residential areas, as well as it being a revenue source benefitting all taxpayers rather than one individual. The Board felt this was an issue that could be reviewed in the future.

Mr. Morgenstern noted the Planning Board is currently reviewing solar ordinances from other municipalities and Ms. Chamblings indicated they had narrowed it to two choices at this point.

Mr. Hammond questioned proper procedure when visiting application properties. Mr. Morgenstern indicated that comments made by neighbors or others cannot be taken into consideration as they must attend the meeting and provide sworn testimony. He also indicated that board members could visit properties together, however could not have a quorum present.

The **motion** to approve the 2013 Annual Report was seconded by Mr. Hammond and roll call was taken.

### **2013 Annual Report**

The Board heard a number of applications which are detailed in the Annual Summary 2013 annexed hereto as Exhibit A and as follows:

Use Variances. The Board granted the following use variances:

Nextel of New York, Inc. and Jersey Central Power and Jersey Central Power and Light Company, Block 1703, Lot 21 application to construct a cell tower on property owned by the Swartswood Fire Department in the Neighborhood Commercial Zone. Variance was required because the application was for a conditional use and violated the following conditions: setback requirements; size of the equipment cabinet; height of the equipment cabinet, and location priorities set forth in the zoning ordinance. The Board adopted a Resolution granting the variances and site plan approval on January 28, 2013. The approval was mandated by Court Order. By Resolution dated May 30, 2013 the Board granted an amendment to the site plan approval to reduce the size of the fenced-in compound to eliminate any possible contention that any part of the proposed project is located within Hampton Township.

David and Hillary Manser, Block 2401, Lot 19.06. The Board granted an extension of the use variance approval previously granted for a landscaping and lawn service business on Stillwater Road in the R-7.5 Residential Zone District to allow the Applicant time to obtain a waiver from the NJEP to construct a pole barn. The Resolution was adopted February 5, 2013.

Peter Tanis, Block 1703, Lot 2.01. The Board granted a use variance to permit the operation of an existing 8-unit building constructed in the style of a motel on Route 521 to allow the property to be utilized for long term residential use or occupancy for person qualifying for low and moderate-income housing in accordance with the regulations of the Council on Affordable Housing. The Board also granted various bulk variances. The use was existing. The Township will receive credit for the units (8 units) of affordable housing toward its quota of affordable housing units. These units were included in the Township's Affordable Housing Plan which has been approved by COAH.

Mark and Sally Dropchinski, Block 2401, Lot 19.04 variance to permit a deviation from the conditions in the Ordinance establishing outdoor wood-burning furnaces as conditional uses. The property is located on Stillwater Road in the R-7.5 Residential Zone District. The Zoning Ordinance, Section 240-114P requires that outdoor wood burning furnaces be set back a minimum of 200 feet from each sideline of the lot. The subject wood-burning furnace is set back 72.2 feet from the sideline. Therefore the variance is required. The Board granted the variance because existing residence on the adjacent lot is located a considerable distance from the proposed wood-burning furnace, and there were no objectors to the application. Approvals were granted September 23, 2013 by Resolution.

Variances for the Construction of Accessory Structures. The Zoning Board granted the following bulk variances pursuant to N.J.S.A. 40:55D-70(c).

Edward Mueller, Block 1102, Lot 25. The Board granted variance to permit the Applicant to maintain an existing wooden deck on the house and to construct two (2) balconies on the existing dwelling on Upper Plymouth Lake Drive in the R-7.5 Residential Zone District. Variances from the minimum setback requirements from the lake and from the front yard setback were granted by Resolution dated June 24, 2013.

Robert Poust, Block 4004, Lot 13. The Board granted the variance application to construct a wooden deck on an existing dwelling at Paulinskill Lake on East End Road in the R-30 Residential Zone District. The variance was to construct the deck within 100 feet of a lake and was approved by Resolution dated July 22, 2013.

Theresa Martin, Block 3305, Lot 6. The Board granted variances to construct an addition to an existing garage and a retaining wall in the front yard of the residential lot on Cedar Ridge Road in the R-5 Residential Zone District. The variance was to construct an accessory structure in the front yard and the variance from minimum setback requirements were also granted under N.J.S.A. 40: 55D-70c. The variance was also granted from the requirement for the maximum size of an accessory structure and a variance from the requirement for maximum lot coverage of the garage addition. The applications were approved by Resolutions adopted December 30, 2013.

Residential Dwellings. There were no new applications for residential dwellings heard by the Zoning Board in the year 2013.

### **STILLWATER BOARD OF ADJUSTMENT ANNUAL REPORT OBSERVATIONS AND RECOMMENDATIONS**

Based on the applications decided by the Stillwater Township Zoning Board of Adjustment in 2013 the Board makes the following observations and recommendations:

There were no new applications for the construction of new single-family residential dwellings.

There were no applications for the construction of commercial buildings.

There were no applications to construct additions to residential dwellings.

There were no applications to construct additions on existing commercial buildings.

The Board approved an application from Peter Tanis for a use variance for the use of an existing building originally constructed as an 8-unit motel for a long term residential use by low and moderate-income housing persons. The Township and Peter Tanis executed an Affordable Housing Agreement, and the 8 units were approved as part of the Stillwater Township Affordable Housing Plan by COAH. Cellular telephone facilities. The Board approved the application of Nextel of New York and Jersey Central Power and Light Company for a cellular telephone tower on the Swartswood Road. The Board initially denied the application. However, the Court ordered the Board to grant the variances and site plan approval because of existing New Jersey Case Law and the Federal Telephone Communications Act.

The Board has not received any applications for the installation of solar facilities although adjoining municipalities have received such applications. Such an application could be received. The Zoning Board received an application for a wind turbine or wind tower to generate electricity in 2007. The application was withdrawn. An amendment to the Municipal Land Use Law makes renewable energy facilities inherently beneficial uses. This includes both solar facilities and wind turbines or wind towers. Accordingly, it appears that the State of New Jersey is taking over home rule in the field of renewable energy facilities. The Township Committee and Planning could consider adopting amendments to the Land Development Ordinance to regulate these uses.

The Board notes that the standards for wood-burning furnaces contained in the Zoning Ordinance of Stillwater Township, Section 240-114P could be made clearer. However, the Board does note that N.J.A.C. 7:27-3.1 does have standards with respect to the construction of wood-burning furnaces. The Township Committee could consider amending the Ordinance to include additional standards.

The economy, both locally and nationally, was slow in 2013, although improving slightly since 2012. The economy appears to be improving slowly. However, because of the slow economy the Zoning Board does not anticipate a large number of applications for 2014.

**Roll Call Vote:** Mr. Hammond, yes, Mr. Lippencott, yes, Mr. Stachura, yes, Mrs. Galante, yes, Mrs. Draghi, yes, Mr. Powell, yes

### **BILLS**

Mr. Powell made a **motion** to pay the following bills, seconded by Mr. Lippencott:

<u>Dolan &amp; Dolan:</u>	General November/December 2013	\$440.00
	Escrow – Nextel of NY/JCP&L	\$192.20
	Escrow – Martin	\$787.40
<u>Rodman Associates:</u>	General December 2013	\$ 56.50
	Escrow – Martin	\$ 56.50
	Escrow – Nextel of NY/JCP&L	\$226.00
<u>New Jersey Herald:</u>	Resolution – Martin	\$ 15.90
	Meeting Date Change Notice	\$ 6.30

**Roll Call Vote:** Mr. Hammond, yes, Mr. Lippencott, yes, Mr. Stachura, yes, Mrs. Galante, yes, Mrs. Draghi, yes, Mr. Powell, yes

### **Correspondence:**

**NJPO Planner:** November/December 2013

**At this point, this portion of the meeting was opened to the public at 8:25 p.m.**

**There being no members of the public wishing to speak, this portion of the meeting was closed at 8:25 p.m.**

### **Committee Liaison Report:**

Committeeman Gross was not in attendance due to illness. Committeewoman Chamblings attended and had no report.

There being no further business, Mr. Stachura made a **motion** to adjourn the meeting at 8:25 p.m., seconded by Mrs. Draghi. In a voice vote, all were in favor.

Respectfully submitted,

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Kathy Wunder, Board Secretary

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Eric Powell, Chairman