MINUTES OF REGULAR BOARD OF ADJUSTENT
MEETING HELD ON TUESDAY, JANUARY 12, 2016

Chairman Byrne called to order the regular meeting of the board and announced the meeting was duly advertised in compliance with the Open Public Meetings Act by notice dated January 5th, 2016 sent the Daily Record and Suburban Trends and posted on the bulletin board and website at borough hall.

PRESENT: **BRACCHITTA, BYRNE, ERICKSON, FOREMAN, KUBISKY, ZAPF, DUBOWSKY (ALT. #1) and ZALEWSKI (ALT. #2)**

ALSO PRESENT: **BOORADY, ENGINEER AND LORBER, COUNSEL**

ABSENT: **WOLFSON**

Chairman Byrne mentioned the first order of business is the approval of the minutes from the August 11th, 2015 meeting.

Mr. Zapf mentioned I only have one correction.

Ms. Ward asked where.

Mr. Zapf stated page 10 halfway down, Mr. Zalewski's comment, go to the very last sentence it should be if it is unsafe placard, I think the is fell out.

Mr. Lorber stated that's really picky.

Mr. Zapf mentioned that's the only one I could come up with so I thought it was pretty excellent.

Ms. Ward mentioned I see it.

Mr. Zapf stated that was it.

Ms. Ward mentioned correction noted.

Mr. Zapf moved the minutes with the correction that we accept them.

Mr. Bracchitta seconds.

Ms. Ward mentioned everyone can vote on the minutes.

Roll call:

Yes: Zapf, Bracchitta, Byrne, Erickson, Foreman, Kubisky and Dubowsky (Alt. #1)

No: None

Abstain: None

Ms. Ward mentioned okay they're approved.

Chairman Byrne mentioned the next order of business is the status report on the Bower application.

Mr. Lorber mentioned that should be in closed session. But if there are any members of the public that want to comment, they can say what they have to say, but I don't think any of the board members should discuss it because there is a potential of litigation involved and anything that you say on the record could be utilized. If the public wants to say something on that matter, they have every right to. If we are going to talk about it, we should have a closed session.

Chairman Byrne asked anyone from the public would like to come up and comment.

Ms. Davis mentioned I have a question. My name is Cynthia Davis and I live in Hunting Meadow, 17 Bristol Court. I am very new to this and I'm just beginning to come to the meetings. When it says a status report on Bower, I don't understand on what? I just need a short version.

Mr. Lorber stated there was a resolution passed and it had certain conditions in it including deadlines, and the discussion is whether or not the deadlines have been met that's what that is about.

Ms. Davis stated okay I was just asking.

Chairman Byrne mentioned no problem. Anyone else want to comment?

Mr. McHugh stated Rory McHugh, 125 Ryerson Road. If this was published as a closed session, I wouldn't have come but I'm here. The resolution passed in 2011 and had the stipulation that this resolution was subject to all, it incorporates all provisions approved, sorry I forgot my reading glasses, contained in prior resolutions affecting the property. That is the most recent resolution.

The resolution from 2011 had that if the applicant failed to submit a timely application, the approval granted by the board of adjustment in this resolution shall automatically terminate, it would be null and void and the matter shall be returned to the municipal court for disposition. Without site plan approval the interpretation becomes void and all businesses not permitted in the CR Zone shall cease.

I know you guys can't comment on that but I just wanted to make that point that the original resolution in 2011 (five years ago) did have a stipulation that the application would be timely and I don't know where it is going, I don't think you even have a completed application. I understand you can't comment but I just wanted to remind the board that that was in the resolution then and it still holds according to the second resolution that it was not dismissed or overwritten.

Mr. Lorber stated Mr. McHugh I would like to point something out to you and I'm sure you are aware of it, the board is not the enforcement arm of the municipality. The board can pass or deny resolutions but the enforcement has to come from the zoning officer and generally through the municipal court.

I would also point out that the law is very clear that a private citizen has every right to file a lawsuit against a neighbor that they believe is violating an ordinance, or a board resolution and in fact seek injunctive relief. Now I'm not your lawyer but you have rights as well besides just coming to this board and exercising your freedom of speech as it were.

Mr. McHugh stated I understand that.

Mr. Lorber mentioned I just want you to understand that you do have alternatives and that the board can do as much as it can do up to a point.

Mr. McHugh stated right. But with regard to enforcement, you do communicate with the zoning officer, the police force and to the prosecuting attorney in some cases, and I understand this is going to be closed and all of that, so if this board points out to them that you know this would come from you that we had this stipulation you're the only persons who could tell them that that's in effect. I think that has to come from this board.

Mr. Lorber mentioned I'm sure you are aware that Tom and Sal walked the site after the 9th, on/or about the 9th of December which was the deadline, so they are aware of what was done and what wasn't done and they are going to proceed the way they are going to proceed. The board really can't discuss that because however they proceed it becomes a litigation issue.

Mr. McHugh stated okay. I guess my suggestion freedom of speech would go back to the old one and void the decision. I know you can't comment on it but that was clearly put in there to avoid a situation in my opinion from having sat through all of the meetings that that was put in there to avoid this exact situation where you are five years later and nothing has been done.

Mr. Lorber stated as I'm sure you are aware, the December 9th deadline has come and past and that's in the second resolution and there were certain conditions placed in that resolution. If Mr. Bower hasn't met those condition, he is in violation of both resolutions is what you are saying correct?

Mr. McHugh stated yes. But the CR would be more of a (inaudible) the original summons or notice of violations from Sal because it was a business operating in the CR Zone. The CR Zone has a very specific longstanding set of uses none of which are going on on that property, so when it comes to writing the violation/summons or whatever, my opinion would be anything that is not in the CR because that preceded

the second resolution. Okay that's all I have. Thank you for the opportunity to speak.

Chairman Byrne stated no problem.

Mr. McHugh mentioned I'll get out of your way.

Chairman Byrne stated take care Rory. Anyone else who would like to come up?

Mr. Avena stated Pietro Avena, I live right next to the Bowers and because of the resolution Mr. Bower was asked to keep the tractors (inaudible). Right now he has them (inaudible) over there.

Mr. Lorber mentioned Mr. Avena before you say anything further you have to put your name on the record and I don't know whether everybody is able to understand you?

Chairman Byrne stated I understand most of it.

Mr. Lorber mentioned if anybody has any problems just say so.

Chairman Byrne stated but the answer is going to be the same as we told Mr. McHugh, there is not really much that we can say about it we are not the enforcement arm.

Mr. Avena stated I understand. But can you send me whether the new tenants over there are allowed to move heavy equipment (inaudible)? To be allowed over there with equipment (inaudible) you see the big trucks (inaudible).

Chairman Byrne stated okay. Yeah it is not going to come back to us as far as I know so we really couldn't notify you of anything. If anything should happen, it would be with enforcement which would be Sal.

Mr. Lorber mentioned Tom or Sal can make sure that you all get noticed.

Mr. Boorady stated yeah between Joan, Sal and myself you know you can send us emails and if there is anything you'd like to know, or if there are any updates we would be happy to tell you.

Mr. Avena stated alright thank you very much. I'm sorry I was not understandable.

Chairman Byrne stated I understood you. Thank you. Anyone?

Mr. Boorady stated if an application ever did come back here everybody would be noticed.

Mr. Lorber stated correct.

Mr. Boorady mentioned if he ever had to come back here, everyone would be noticed just so you know but right now it is a court matter.

Chairman Byrne asked anyone with anything no. Then I will close the public portion of the meeting and we are going to go into a closed session.

RESOLUTION OF THE LINCOLN PARK
ZONING BOARD OF ADJUSTMENT
RE: BOWER & DE FALCO MATTER TO BE
DISCUSSED IN CLOSED SESSION

WHEREAS, the Zoning Board of Adjustment of the Borough of Lincoln Park (the "Board") deems it necessary to discuss a certain matter in closed session, with the public excluded, as permitted by *N.J.S.A.* 10:4-12.b.; and

WHEREAS, the subject matter to be discussed in closed session comes within a specific

exception (under *N.J.S.A.* 10:4-12.b.) to the requirement under *N.J.S.A.* 10:4-12.a. that all Board meetings be open to the public; and

WHEREAS, the Board desires to adopt this resolution prior to entering the closed session, as required by *N.J.S.A.* 10:4-13.

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Borough of Lincoln Park as follows:

1. That the Board's discussion of the matter covered by the attorney-client privilege shall be conducted in closed session, with the public excluded.
2. That the matter discussed in closed session can be disclosed to the public at a future time to be determined by the Board.

Mr. Zapf moved it.

Mr. Foreman seconds.

Board Aye.

***Closed session.**

Chairman Byrne announced the board is back in open session. Is there any other business that we need to discuss?

Ms. Ward mentioned we will probably be cancelling next month's meeting because we have no new cases.

Chairman Byrne asked anything on the planning board meeting about that development over there.

Ms. Ward mentioned it is scheduled for a conceptual presentation on January 21st.

Chairman Byrne mentioned it is planning board but not for us.

Ms. Ward mentioned right.

Mr. Lorber mentioned I won't be here in March.

Ms. Ward stated okay.

Mr. Erickson stated I don't know if it is appropriate or not, I don't know if you saw the email today but they got approval for a Class 5 rating from FEMA for Lincoln Park.

Mr. Zapf stated flood breaks.

Unidentified board member stated that was huge.

Mr. Boorady stated I got a call from my office and Special Consultant Nick Agnoli went through all the borough's records and Class 5 is huge.

Mr. Zapf mentioned there are 2 non-shore towns in the state that got it.

Mr. Boorady mentioned I'm a certified flood plain manager so we get an additional discount for that too. The borough did a lot of great record keeping in the past so you guys should congratulate yourselves and the people that came before you for doing proper planning.

Chairman Byrne stated Joan. Was there anyone before you Joan?

Ms. Ward mentioned Marilyn Heslop.

Mr. Boorady stated Joan does a great job. All this great record keeping that is done in this building and all the great land use planning on the planning board and this board really set the borough up for a discount because the better job the borough does of enforcing your ordinances the bigger discount you get. It adds up to a 25% discount insurance rate because of the Biggert-Waters Act. They said FEMA has to be solvent and everybody is getting these 18% increases in the flood zone every year. These 25% decreases are huge. It may not be in effect until May.

Mr. Erickson mentioned he also said we are ranked amongst the best ranked communities in the northeast that's really saying something.

Chairman Byrne mentioned let's wrap this meeting up.

Mr. Zapf made the motion to adjourn.

Chairman Byrne seconds.

Meeting adjourned 7:46 P.M.

Respectfully submitted:

_____ _____

Joan Ward, Secretary Patrick Byrne, Chairman

***Closed Session – Bower/DeFalco**

Mr. Lorber mentioned I know we didn't publish that there would be closed meeting but it was published that there would be an update/status report.

There was a meeting yesterday with the municipal attorney, Sal and myself and they wanted input from me as to what went on.

A site inspection was conducted by Sal and Tom and there were about 27/29 conditions of the resolution that had not been met at this point and time.

The town attorney suggested rewriting the old summonses and go back before the court.

There is an alternative process and that's an order to show cause in Superior Court to have him cease and desist operating on that site and ask the Superior Court to fine him on a daily basis. The town is considering that but that is up to the governing body and the town that's not even Sal's call.

A private citizen can go to Superior Court but they would have to pay for it.

Everything is out of our hands and the town has to decide how they want to proceed with this. I think they are going back to municipal court and prosecute him and ask the judge for a daily fine. I think the fine can be up to $1,200 a day. That should get Bower's attention if they fine him.

Mr. Zapf mentioned the neighbors have been grousing that he was using a pile driver on Sunday to break up tree stumps.

Mr. Lorber mentioned he allegedly has two new tenants there and never notified anybody. He has really done nothing on the site from what I understand.

Ms. Ward mentioned some of the neighbors on Patania Court are complaining about the equipment being started up in the early morning hours. I spoke with Russ Ruggiero, Traffic Bureau, about this. He was given the resolution for the hours of operation. He thought it was probably the milk or bread truck making the delivery to the school.

I told the residents to contact the police department that they are supposed to enforce the hours of operation.

Chairman Byrne mentioned in the first resolution if you don't comply, then the grandfathering of the zoning is no longer in effect.

Mr. Zapf mentioned he was only issued one summons.

Mr. Lorber stated we didn't talk about the first resolution yesterday but that's a good point. If they fine him, then he has a right to fix it and comply. If they say the initial resolution is null and void, then he is done.

Mr. Boorady mentioned if they go the Superior Court route make sure Chris DiLorenzo is aware of the first resolution.

Mr. Lorber stated I'll call him tomorrow.

Mr. Boorady mentioned Rory did make a good point.

Mr. Zapf stated that means our vote for acknowledging a pre-existing nonconforming use that went back prior to the ordinance passing is now done and the pre-existing nonconforming use goes away.

Mr. Foreman stated the only way to get this guy's attention is to go right after the business. They fined him before and he didn't care.

The board felt it should go before the Superior Court not municipal court.