

ZONING HEARING BOARD MEETING

April 24, 2013

The Zoning Hearing Board Meeting, duly advertised and posted in accordance with law, was called to order by the Chairman at 8:00 P.M., Wednesday, April 24, 2013, in the Community Room of the Upper St. Clair Community and Recreation Center, Boyce Mayview Park, 1551 Mayview Road, Upper St. Clair, PA 15241

PRESENT

BOARD MEMBERS

David E. Tungate, Chairman
Dwight Ferguson, Vice Chairman
Gregg Zegarelli, Member
Robin Weissert, Alternate Member

BOARD ATTORNEY

E.J. Strassburger, Esquire

TOWNSHIP STAFF

Randy Hindman, Chief Building Inspector
Scott Brillhart, Director of Planning & Community Development
Amy Martin, Recording Secretary

TOWNSHIP ATTORNEY

Irving Firman, Township Attorney

COURT REPORTER

Ena Marino - Pittsburgh Reporting Service

PUBLIC

Approximately ten (10) persons

CONSIDERATION OF THE NOVEMBER 14, 2012 MEETING MINUTES

On motion by Mr. Tungate, seconded by Mr. Ferguson, the above minutes were approved and accepted for filing as written.

ELECTION OF CHAIRMAN, VICE CHAIRMAN, HEARING OFFICER AND SECRETARY

Motions were made to keep the Chairman, Vice Chairman, and Zoning Officers as they were last year. This was seconded by Mr. Tungate. On motion by Mr. Tungate, seconded by Mr. Ferguson, Ms. Martin was elected Recording Secretary. Mr. Tungate moved that all members of the Hearing Board including the Alternate present would be Hearing Officers for taking testimony in the event of a lack of quorum.

Mr. Tungate stated that the first issue before the Board is to recuse himself from the proceedings because there is a professional conflict with the Applicant and representation of his law firm.

ADMINISTRATION OF OATH OF TRUTH

The Chairman explained the procedure for testifying and then administered the oath of truth to all those wishing to testify.

Mr. Tungate turned the proceedings over to the Vice Chairman, Dwight Ferguson.

NEW BUSINESS

ZHB13-0001 – MOIRA CAIN-MANNIX, 1913 HIGHGATE ROAD

Asserting a substantive challenge to the validity of Upper St. Clair Ordinance No. 2056, adopted on October 3, 2011, amending the Township Zoning Ordinance.

The Vice Chairman explained the procedures for the hearing.

Upon request of Mr. Ferguson, Mr. Hindman introduced the case and read his memo to the Zoning Hearing Board which included Applicant Exhibits 1-4, Township Exhibits 1-5 and Intervenor Exhibit as well as, Procedural Facts.

Mr. Ferguson asked all counsel and any individuals wishing to be heard to identify themselves. Present for proceedings were Attorney Ayoob for the Applicant, Attorney Firman for the Township and Attorney Parrish for the Intervenor as well as, Township resident Randy Shaffer of 338 Fort Couch Road.

Mr. Ferguson asked if counsel had any objections to Mr. Hindman's exhibits being made part of the record. Those Exhibits were made part of the record as no objections were made.

Mr. Ferguson asked Attorney Ayoob if he would like to present his case at which point, Attorney Firman asked to present two (2) Motions to Quash Appeal. Mr. Ferguson asked if Attorney Ayoob objected to the Motions. Attorney Ayoob objected for lack of time to review those Motions. He also asked for a Continuance to review the Motion so he could have time to respond.

The Board confers with their Attorney.

Mr. Ferguson responds to Attorney Ayoob's objection by asking the Applicant to establish their standing as part of the public hearing and stated that they could still continue the matter to give proper time to submit argument to the Motions presented.

Attorney Ayoob asks that he be able to continue his case if he would only be able to present his case as grounds for standing and further wished to present his case in full or would ask to continue the case to respond to the Motions presented.

Mr. Ferguson asked Attorney Ayoob if the Board was going to hear about the impact on the community or the substance of the Ordinance in the absence of someone who can establish that

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they have the right to be here to raise those arguments.

Attorney Ayooob again stated that he did and wished to present his case in full or would ask to continue the case to respond to the Motions presented.

Mr. Zegarelli suggested that counsel should be able to continue so as to have time to review Motions presented by the Township's Attorney.

Attorney Strassburger asked Attorney Ayooob how he could respond to a Motion to Quash without an evidentiary basis for his argument.

Attorney Ayooob stated that to the extent evidentiary basis is necessary, a Motion to Quash is not appropriate. Further, the Board should hear the case on its merits and totality to determine standing.

Mr. Ferguson stated that Attorney Firman should not have presented Motions to the Board at that time and further the person filing the appeal has to show that there is a direct and immediate impact upon them which gives them the right to challenge the Ordinance in this case. Whether or not Attorney Firman raised that issue in his Motions, the Applicant still needs to prove that she has direct, immediate and pecuniary impact as a threshold issue.

Attorney Ayooob stated that in regard to threshold issues, he needs to point out the fundamental aspect of their challenge to the Ordinance.

Mr. Ferguson stated that they needed to hear how the Ordinance and perhaps the development of that parcel in accordance with that Ordinance would have a direct, immediate and pecuniary impact the Appellant's property.

Attorney Ayooob replied that in order to prove that, he would need to explain what that impact of the Ordinance as it would be used, interpreted and applied and his client is not the one to do that, but to offer testimony in regard to the impact on her property.

Mr. Ferguson stated that they are not limiting who he can call in order to establish those criteria for standing.

Attorney Ayooob stated that if he is deprived of the opportunity to try his case the way he wants to, he will object and note it for the record and will not continue.

Mr. Ferguson asked if Mr. Firman or Mr. Parrish had a response to Attorney Ayooob's position in regard to standing and his case in chief.

Attorney Firman responded that his Motion was present so the Board could follow along with his position during the hearing which, is that procedural challenges should be heard in the Court of Common Pleas and that it has already been decided, by Judge James, that this is a text amendment and not a map amendment. He went on to state that he is comfortable with a

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continuance because the Applicant would still have to prove her standing in this case primarily regardless of when it is heard.

Mr. Parrish added that he conquered that standing is a threshold issue that Attorney Ayoob is trying to argue the same points and issues that went before the Court of Common Pleas. He also added that he does not want to consent to a continuance and that proceeding would be in his client's best interest.

Attorney Strassburger clarified with Attorney Ayoob that he would like to proceed with the hearing. Attorney Ayoob confirmed that he was prepared to proceed. Attorney Ayoob restated to the Board his position on the Motion that were presented by Attorney Firman and that he needed to call his two witnesses to proceed in this hearing as he would like to.

Mr. Ferguson recommends that the Board step out of the room to consult with Attorney Strassburger.

The Board has a five (5) minute recess to confer.

Mr. Ferguson stated that the Board will hear the arguments of all parties and will not be reading and deciding the Motions presented by Attorney Firman at that time. However, Attorney Firman can still raise the arguments found in the Motions while presenting his case. At the end of arguments the Applicant can still move for continuance and will be allowed proper time to reply to the Motions.

Attorney Ayoob moves to enter into the record the entirety of ZHB11-0003.

Mr. Ferguson asked if there was any objection to move the ZHB11-0003 into the record for this case.

Attorney Firman objected based on the fact that Attorney Ayoob did not have specific documents to present relating to this case cited or present.

Attorney Ayoob clarified that he wanted information presented at ZHB11-0003 relating to Ordinance 2056 as well as motions made therein to be admitted.

Mr. Zegarelli asked why the entirety of ZHB11-0003 needed to be admitted and considered it to be overly broad and suggested that exhibits be itemized so as to leave out extraneous material not relevant.

Attorney Strassburger asked if it could be agreed upon that any items from ZHB11-0003 be authenticated before they are admitted into the record.

Attorney Firman asked that any items moved to be admitted into the record be subject to a list of documents for the fact that the file is so voluminous.

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Attorney Ayoob contends that there is already a certified record of authentication in the Court of Common Pleas of Allegheny County of ZHB11-0003.

Attorney Firman replies that it is not proper procedure to not provide copies for the Board and Counsel of material that are to be admitted and then admit them without knowing specifically what those items are.

There is more discussion between Attorneys Strassburger, Firman and Ayoob regarding what items Attorney Ayoob wishes to admit into the record from the entirety of the file for ZHB11-0003 which he does not have in his possession in its entirety at this hearing.

Attorney Ayoob moves to admit the original application from 1800 Washington Road Associates into the record.

Attorney Strassburger asked Attorney Firman if he had any objection to that admission. Attorney Firman replied he does not know what that document is and what it contains.

Attorney Strassburger asked Attorney Ayoob if he had the document. Attorney Ayoob replied he had it in part and that he wanted to thwe Board to take Judicial Notice of it.

Mr. Zegarelli discussed the definition of Judicial Notice.

Mr. Ferguson suggests that when Attorney Ayoob gets to the point in his case where he refers to specific documents he can move to admit that item and they will consider if it is a document that should be properly considered for the record.

Upon questioning by Attorney Ayoob regarding the Board's ruling against him creating the record he wants to create, Mr. Ferguson explained that the Board is going to abstain from admitting the entire record of ZHB11-0003 and suspend the decision until those parts come up specifically in the substance the case.

Attorney Ayoob again questions if he can admit the Application by 1800 Washington Road.

Attorney Strassbuger further clarified that not until the Board can see a copy of the Application that Attorney Ayoob wishes to admit and Attorney Firman has an opportunity to review it and does not object.

Mr. Ferguson reconfirmed the Board will suspend the decision to rule on that admission.

Attorney Ayoob stated that he did not wish to provide an opening and wanted to proceed with presenting his first witness and reserve the right to make closing statements and to summarize and explain to the Board the nature of the challenge.

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Attorney Ayoob then called his first witness, Joseph Sabino Mistick.

Mr. Ferguson interjects that they are going to hold all final statements until all sides have had a chance to present their cases.

Attorney Parrish asked for an offer of proof as to the witness. Mr. Ferguson confirms that Mr. Mistick was sworn.

Attorney Ayoob then asked Mr. Mistick to present his expert planning and land use law opinion and analysis regarding the land use ordinance in question.

Attorney Parrish stated that it sounded like Attorney Ayoob was calling a witness to present to the Board legal opinions and believed it improper to have a witness give legal conclusions as an Attorney and not as a fact witness.

Mr. Ferguson asked Attorney Ayoob what Mr. Mistick was going to testify to.

Attorney Ayoob responded that Mr. Mistick was going to provide an interpretation and analysis of the Township's ordinance and how it would be applied.

Attorney Parrish again noted that it is inappropriate for the witness to supply legal analysis and that it is the Board's job to interpret and apply the Ordinance under the MPC.

Attorney Ayoob stated that he wanted to submit that the Board is being deprived of its rights to determine the rights in regard to the Ordinance.

Attorney Parrish argued that the Board may not feel that their rights are being deprived according to Attorney Ayoob's interpretation of the Ordinance.

There is a brief consultation among the Board Members and Attorney Strassburger.

Mr. Ferguson stated that the Board agrees with attorney Parrish that Mr. Mistick is not a fact witness.

Attorney Ayoob stated that Mr. Mistick is not at the hearing as an attorney. Moreover, that he is there in his capacity as an educator and expert on good planning and land use.

There is further discussion among Attorney Firman, Attorney Ayoob and the Board regarding the properness of Mr. Mistick's testimony.

Mr. Ferguson suggests that the Board allow Mr. Mistick to testify as to his opinion subject to objections from opposing counsel as they might come up and proceed accordingly.

Attorney Parrish wished to make a continued objection to all Mr. Mistick's legal analysis and

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interpretation for the record.

Mr. Ferguson suggested that they listen to the testimony of Mr. Mistick subject to objections.

Attorney Firman also objects to Mr. Mistick's legal testimony as well as, any testimony regarding procedural deficiencies under the jurisdiction of the Board.

Mr. Ferguson asked that Attorney Firman raise those objections as they arise in the course of the testimony. The Board will rule on those objections as they arise regarding documents requests and statements of the witness.

Attorney Ayoob then presented his witness, Joseph Sabino Mistick.

Attorney Ayoob presented Mr. Mistick's resume to the Board as an exhibit to the testimony.

Attorney Parrish objected to the resume being recorded as an exhibit as well as, that it is not stated that Mr. Mistick is a planner or in any capacity a planning expert and that Mr. Mistick's resume relates only to law.

Attorney Firman also objected that the information in the resume does not qualify Mr. Mistick to testify in particular to the Township's land use ordinances, the Ordinance in question specifically.

Mr. Ferguson asked Attorney Ayoob if he could specify anything on the resume that would address those objections.

Attorney Ayoob stated that he stood by the testimony of Mr. Mistick as an expert.

Mr. Ferguson suggested that the Board listen to the testimony subject to objections and would admit the resume as Applicant's Exhibit #5.

Attorney Ayoob continued to present his witness.

Attorney Firman objected to Mr. Mistick testimony related to procedural issues not relevant to the Board's jurisdiction. Attorney Parrish also objected to the same issue and further objected to the approach of the expert.

Attorney Ayoob replied that there was much more testimony to come.

Mr. Ferguson sustained the objection to the extent that Mr. Mistick's critique of the Ordinance is that he spoke to people who would not have knowledge of the Ordinance in question and is not sure how that part of Mr. Mistick's testimony was relevant.

Attorney Ayoob replied that statement by Mr. Ferguson was mischaracterization of Mr. Mistick's testimony.

Mr. Ferguson sustained the objection and instructed Attorney Ayoob to proceed.

Attorney Ayoob continued his presentation of his witness, Mr. Mistick.

Attorney Firman objected that the SB district is not newly created and that the map is the same now as it was before the Ordinance.

Mr. Ferguson stated to Attorney Firman that not agreeing with the witness is not a reason for objection.

Attorney Firman replied that Attorney Ayoob was referencing facts that they don't have here.

Attorney Strassburger stated that because it is not a court of law Attorney Ayoob is going to present all sorts of stuff that were not in the report or offer of proof. He further suggested they proceed under objection and they will have to figure out what weight to give it at the end.

Mr. Ferguson asked that Attorney Ayoob not have the witness testify as to an explanation of what a PRD is, as the Board is already well aware of what it is. He asked Attorney Ayoob to Proceed.

Attorney Ayoob continued to present his witness, Mr. Mistick.

Attorney Parrish objected that the Court has already ruled on the text change issue and it is inappropriate to address it before the Board.

Attorney Ayoob replied that he asked the witness "how it was adopted".

Mr. Ferguson stated that Attorney Ayoob did not ask that, but that he asked "was this a map change" Attorney Ayoob disputed that accusation and asked the Court reporter to read back the record to clarify

The Court reporter read: "this ordinance, to the best of your knowledge, is it a map change or a text amendment?"

Mr. Ferguson asked what the relevance was of the question and asked Attorney Ayoob to respond to the objection made. Attorney Ayoob replied that the witness gets to offer what the significant is as to the text amendment.

Attorney Parrish stated to the Board that that was not the question being asked of the witness.

Attorney Ayoob stated that the witness's testimony was being mischaracterized and he didn't have a chance to ask the question he wanted to ask.

Attorney Parrish clarified that his objection was that the witness shouldn't be allowed to testify about a matter before the Court of Common Pleas.

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Mr. Ferguson suggested that the Ordinance speaks for itself as to what it is.

Attorney Ayoob rephrased the question to his witness and continue his questioning of Mr. Mistick.

Attorney Firman again objected to the question on the issue of a procedural nature and the ruling of the Court of Common Pleas and wanted to note his running objection on that matter to the Board.

Mr. Ferguson asked Attorney Ayoob to speak to the relevance of that line of questioning. Attorney Ayoob clarified at length where he intended to go with his question regarding the adoption of the Ordinance. Mr. Ferguson reminded Attorney Ayoob that the Board is not the proper place to make arguments about the subject that the Ordinance was not properly enacted. Attorney Ayoob stated he wished to prove how that testimony related to his client's rights being violated. Mr. Ferguson again restated that it was improper to raise the procedure that was used to enact the Ordinance before the Board at that time and further that they did not have the jurisdiction to hear it. Attorney Ayoob asked to restated his question. Mr. Ferguson responded in the affirmative.

Attorney Ayoob continued questioning the witness, Mr. Mistick

Attorneys Firman and Parrish objected.

Mr. Ferguson again stated that it is improper for Attorney Ayoob to present a case regarding the procedure used for adopting the Ordinance is improper because the Board doesn't have jurisdiction to hear it. Further, that if he continues in that line of questioning he will be going outside the ruling.

Attorney Ayoob stated that he wanted the record to reflect that he was being denied the opportunity to let his witness provide his testimony. Further that the Board has mischaracterize the purpose of the question asked to the witness and if the Board was going to deny him that right to ask the question he would move forward with that objection.

Attorney Ayoob continued to question his witness, Mr. Mistick.

Attorney Parrish objected that Mr. Mistick was making a legal argument in his testimony.

Mr. Ferguson noted Attorney Parrish's objection and stated that his concern was that he is still searching for the meaning in Mr. Mistick's testimony but for Attorney Ayoob to proceed with his questioning.

Attorney Ayoob continued to question his witness.

Attorney Parrish objected to the relevance of how Mr. Mistick perceived the reading of the

Ordinance.

Mr. Ferguson stated that it may not be relevant but the Board would allow it.

Attorney Ayoob continued his questioning of the witness, Mr. Mistick.

Attorney Parrish objected that if Attorney Ayoob was going to present a certain kind of testimony that he present the Board with code sections of the MPC.

Mr. Ferguson concurred that the Board would like to have specific references to the Code but Attorney Ayoob was under no obligation to do so.

Attorney Ayoob pointed to Section 130.24.4.2.12 Page 9 and continued to question his witness.

Upon the Attorney Ayoob's completion of questioning of Mr. Mistick, Mr. Ferguson turned the questioning of the Applicant's witness over to Attorney Firman.

Attorney Firman replied that he would like to take a moment to review if he had any questions for Mr. Mistick.

The Board took a ten (10) minute recess.

At the return from the recess, Attorney Firman stated that he did not have any questions for the Applicant's witness, Mr. Mistick.

Mr. Ferguson asked if Attorney Parrish had any questions for the Applicant's witness, Mr. Mistick. Attorney Parrish stated he did not.

Mr. Mistick was dismissed.

Attorney Ayoob then called the Applicant, Moira Cain-Mannix of 1913 Highgate Road as a witness.

Mr. Ferguson interjected upon question by Attorney Ayoob to Ms. Cain-Mannix as to whether the Ordinance in question was properly adopted stating that there had already been a ruling on that line of questioning and to confine his questions to his witness to those that have not already been ruled on by the Board.

Attorney Ayoob continued his questioning of his witness, Ms. Cain-Mannix.

Upon the completion of questioning by Attorney Ayoob, Mr. Ferguson asked Attorney Firman if he had any questions for Ms. Cain-Mannix.

Attorney Firman began questioning the witness, Ms. Cain-Mannix.

Attorney Firman asked to admit pictures of Ms. Cain-Mannix's property as Township Exhibit # 6 which he used in his questioning of the Applicant.

Attorney Ayooob objected to Attorney Firman characterizing the Ordinance as a text amendment. Mr. Ferguson notes the objection for the record and allows Attorney Firman to continue questioning the witness, Ms. Cain-Mannix. Attorney Firman continued his questioning of the witness, Ms. Cain-Mannix.

Upon Attorney Firman's completion of questioning the Applicant, Ms. Cain-Mannix, Attorney Parrish began his questioning of Ms. Cain-Mannix.

Attorney Ayooob objected to Attorney Parrish's question regarding a third party involvement in the case.

Mr. Ferguson asked Attorney Parrish to lay a foundation for his question.

Attorney sited the Pennsylvania rule against chaperty as a reason for his line of questioning.

Attorney Ayooob further objected that the question was not relevant to this case.

Mr. Ferguson stated that the Board was overruling the objection.

Attorney Parrish repeated his question upon the request of the witness, Ms. Cain-Mannix.

Attorney Ayooob again objected and instructed his client not to answer.

Mr. Ferguson again stated that the Board over ruled Attorney Ayooob's objection.

Attorney Ayooob instructed his client not to answer the question.

Attorney Parrish asked if the Board was going to instruction Ms. Cain-Mannix to answer the question.

Mr. Ferguson stated that the Board does not have the power to compel the Applicant to answer the question but would like her to do so.

Attorney Ayooob again stated that he instructed his client not to answer the question on the grounds of relevancy.

Mr. Ferguson reminded Attorney Parrish that the Board overruled Attorney Ayooob's objection.

Attorney Parrish continued his questioning of Ms. Cain-Mannix.

Attorney Ayoob objected to Attorney Parrish's question regarding who was paying Ms. Cain-Mannix's legal fees.

Attorney Parrish stated that the question again related to the chaperty issue.

Mr. Ferguson stated that the rules of civil procedure do not apply to the Zoning Hearing Board and the Board was again going to overrule the objection.

Attorney Ayoob again instructed his client not to answer the question because of relevance and he considered it harassment of his client.

Attorney Parrish again stated that his argument was a chaperty issue.

Mr. Ferguson again stated that the Board had overruled the objection.

Attorney Parrish continued questioning the witness, Ms. Cain-Mannix.

Attorney Parrish asked to have various Google maps entered into the record as Intervenor's Exhibit #2.

Upon Attorney Parrish's completing his questioning of the witness, Ms. Cain-Mannix, Mr. Ferguson redirected the witness, Ms. Cain-Mannix to Attorney Parrish. Attorney Ayoob then began his redirect of the witness, Ms. Cain-Mannix.

Upon Attorney Ayoob stating that he had no further questions for Ms. Cain-Mannix, Mr. Ferguson asked if anyone wanted to re-cross the witness.

With the Board's permission Attorney Parrish began his re-cross of Ms. Cain-Mannix.

Attorney Ayoob objected to Attorney Parrish's question to the Applicant regarding whether the witness was expressing her concerns or the concerns of the person who asked her to be involved in this matter.

Ms. Cain-Mannix stated that she would answer the question and proceed to do so.

Attorney Parrish continued his re-cross of the witness, Ms. Cain-Mannix.

Attorney Ayoob objected to Attorney Parrish's question which asked if Ms. Cain-Mannix would like to answer his previous question regarding Ms. Cain-Mannix being approached by any third party to become an appellant in this case. Attorney Ayoob objected that he had already instructed his client not to answer the question.

Mr. Ferguson stated that Ms. Cain-Mannix had already disregarded the advice of counsel regarding not answering the question asked by Attorney Parrish regard her concerns and was wondering if she was going to disregard her counsel's advice on this question as well.

Ms. Cain-Mannix answered, "No."

Attorney Parrish asked Ms. Cain-Mannix if she was answering "no" to disregarding Attorney Ayooob's instructions. Attorney Ayooob stated that his client was not going to answer the question and that attorney Parish was harassing the witness. Mr. Ferguson stated that Attorney Ayooob's objection was overruled.

Attorney Parrish stated that they were waiting for an answer.

Attorney Ayooob stated that he instructed his client not to answer.

Attorney Parrish then continued his re-cross of the witness, Ms. Cain-Mannix.

Upon Attorney Parrish's completion of his re-cross, Mr. Ferguson offered the re-cross of the witness to Attorney Firman. Attorney Firman then began his re-cross of the witness.

Attorney Ayooob objected to a question from Attorney Firman to the Applicant stating that it was legal conclusion.

Mr. Ferguson asked Attorney Firman to rephrase his question. Attorney Firman did so and continued his re-cross of the witness.

Upon Attorney Firman completing of his re-cross of the witness, Ms. Cain-Mannix, Mr. Ferguson asked if Attorney Parrish was officially entering Intervenor's Exhibit #2 into the record and Attorney Parrish answered in the affirmative. Mr. Ferguson asked if there was any objection to entering the Google maps into the record as Intervenor's Exhibit #2. There were no objections. Mr. Ferguson then asked Attorney Ayooob if he had any re-direct or any other witnesses. Attorney Ayooob stated that he did not and that he would rest until his closing comments.

Mr. Ferguson stated that they had others there that would be afforded the chance to speak but that they were going to let those represented by counsel proceed first. He asked if Attorney Parrish or Attorney Firman would like to go next.

Attorney Firman asked to confer with Attorney Parrish as to how to proceed.

There was a brief recess.

Upon return, Mr. Ferguson asked Attorney Firman who was going to proceed. Attorney Firman stated that he would proceed and wanted to officially enter into the record the large map used to question Ms. Cain-Mannix as Township Exhibit #7. Mr. Ferguson asked if there were any

objections. There were none.

Attorney Firman then called Mark Magalotti as his first witness.

Upon the completion of Mr. Magalotti's questioning by Attorney Firman, Mr. Ferguson asked Attorney Ayoob and Attorney Parrish if they had any questions for Mr. Magalotti. Attorney Ayoob replied that he did not. Mr. Ferguson asked if Mr. Shaffer had any questions for Mr. Magalotti.

Mr. Shaffer then began his questioning of the Township's witness, Mr. Magalotti. Mr. Shaffer wanted to state that notes about his comments from the planning committee and commissioner meetings are in the record.

Mr. Ferguson stated that Mr. Shaffer would have a chance to present.

Mr. Shaffer continued to state his case.

Mr. Ferguson asked if Attorney Firman or Attorney Parrish had any redirect of Mr. Magalotti. They did not. Mr. Ferguson asked if there were any other witnesses. Mr. Ferguson then asked if Mr. Shaffer has anything further he would like to share with the board. Mr. Shaffer then voiced his concerns for the record.

Upon the summation of Mr. Shaffer's comments, Mr. Ferguson asked if Attorney Ayoob had any questions for Mr. Shaffer. Attorney Ayoob answered in the affirmative and questioned Mr. Shaffer.

Upon completion of Attorney Ayoob's questioning of Mr. Shaffer, Mr. Ferguson asked if Attorney Firman or Attorney Parrish had any questions for Mr. Shaffer. Both Attorneys stated they did not.

Mr. Ferguson asked if there was anyone else present that would like to speak. There was not. Mr. Ferguson then asked for Counsel to make their closing arguments.

Attorney Ayoob then began his closing remarks.

Upon completion of Attorney Ayoob's closing remarks, Mr. Ferguson asked if Attorney Firman would like to make his closing statement.

Attorney Firman then began his closing remarks.

Attorney Ayoob stated that he had a subsequent submission of use categories for the developer that he would laundry list. Mr. Ferguson stated that the Board was anticipating that submission.

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Attorney Strassburger stated that Judge James held the Ordinance that Attorney Ayoob references in his closing remarks, as a text change and not a map change.

Attorney Ayoob stated that the Judge's opinion has some dicta in it, but he did not specifically address that issue.

Attorney Strassburger asked that Attorney Ayoob address in his written submission what he is arguing regarding a new argument for the Ordinance being a text or map change.

Attorney Ayoob stated that he didn't believe that was the case and argued his point further.

Mr. Ferguson stated that the Board has entered a ruling on that argument and Judge James sustained their decision. Mr. Ferguson further suggested that the Board could handle that argument in Attorney Ayoob's written brief.

Attorney Ayoob continued his closing remarks.

Mr. Ferguson asked Attorney Ayoob if it had been testified to that three (3) sides of the property are residential. Attorney Ayoob answered in the affirmative.

Mr. Ferguson stated that this spot zoning is to treat property which is indistinguishable from the property around it differently than the property around it and that he was just wondering if Attorney Ayoob would make the argument that the former Consol property is identical to the residential property on three sides of it. He further stated that in order for the Board to find that it is spot zoned, they should be able to not make a distinction between the Consol site and the residential areas on the three sides around it.

Attorney Ayoob indicated that he did not understand the question.

Mr. Ferguson further clarified his question by explaining how he understood the definition of spot zoning and again questioned how the former Consol site was both indistinguishable from and yet treated differently from the residential properties on three sides. Mr. Ferguson also asked Attorney Ayoob to address that matter in his finding of facts.

Attorney Ayoob stated that he would do so. He then went on to finish his remarks.

Mr. Ayoob ended his remarks by stating that he felt the Ordinance should be struck down as being unlawful for a number of reasons and that he would address any other issues he wanted to raise in his submission.

Mr. Ferguson stated to Mr. Firman that he had the right to make submission in writing.

Attorney Firman stated that he was not going to address the legal argument. He further stated that he understood that there was going to be submissions allowed. He wanted to affirm that his

Motion to Quash the Appeal as it relates to procedural matters was admitted formally as a submission, as well as the Petition to Quash based on lack of standing. He continued to state that he did not think the Board heard anything from the witness testimony that would suggest standing to bring that Appeal. He went on to say that he understood that Attorney Ayoob was going to file some kind of response to his Motions. Attorney Firman asked that he have the opportunity to respond in writing to whatever Mr. Ayoob submitted. Finally, he wanted to make sure that the board was clear on the record that he didn't believe that Attorney Ayoob's references to the "global blob of exhibits", the reference of records, were ever admitted into the record.

Mr. Ferguson stated that he did not recall a subsequent request to move all or any part of ZHB11-0003 into the record and at this point they are not admitted. Mr. Ayoob stated that he requested to admit them and they were denied. Mr. Ferguson stated that they were not denied.

Attorney Ayoob wanted to let the record show that he requested that they be admitted and the Board would not allow it because they were denied. He further stated that the Appellate Court could look at it.

Mr. Ferguson stated that the Board did not deny Attorney Ayoob's request to move the exhibit into the record but suspended their decision until Attorney Ayoob made an offer to each of those exhibits later in the case where he thought they were relevant.

Attorney Ayoob formally asked that the record be reopened so that he could request that certain documents that he believed he already asked to be placed in the record be placed in the record.

Mr. Ferguson restated that the ruling was/is that Attorney Ayoob could introduce the exhibits at the portion of his case that he felt they were relevant to support the case.

Attorney Ayoob asked Mr. Ferguson if he was denying his request "right now."

Mr. Ferguson asked Attorney Ayoob which documents he was talking about and what part of the case did they relate to. He further stated that the Board asked him to do so the first time they suspended their decision.

Attorney Ayoob replied that he had the right to try his case the way he thought best for his client. He stated that he was going to again request to move into the record all documents associated with Zoning Hearing Board Case No.11-0003, all records associated with the procedures dealing with the adoption of Ordinance No. 2056, all application materials--the application only, not subsequent submissions--of the Conditional Use Land Development Application submitted by 1800 Washington Road Associates.

Attorney Strassburger interjected to Attorney Ayoob that when asking for evidence to be admitted, it is customary to give the other side a copy of what you want to introduce so they

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know whether they are consenting to something that may be relevant or may not be so they can object to it. He further stated that opposing counsel did not want to admit everything in the record from the previous case and therefore, it was Attorney Ayoob responsibility to specify what exactly were the documents to be admitted. Attorney Strassburger suggested that was the Board's reasoning for not admitting the entire record en masse as was requested. Attorney Strassburger again asked Attorney Ayoob to give the Board specific document requests when it is appropriate if he wanted them to be admitted.

Mr. Zegarelli wanted to clarify for the record that Attorney Ayoob's request for records was asked to be submitted en masse.

Attorney Firman wanted to note that none of the documents requested to be admitted were present in the room.

Attorney Ayoob asked that to the extent he references anything in his written submission and gives the other side an opportunity to object to its relevance, would the Board consider that as an approach. He further stated that much of what he wanted to submit or reference were dates ordinances were adopted and proceedings that occurred.

Mr. Ferguson stated that, "It was probably so. It's the other stuff we don't know about."

Attorney Ayoob replied that if the Board wanted him to submit a written submission that he could address specifically the items he wanted to reference in other records of the Township that he is asking you to take notice of. He further stated that if the other side wanted to submit a request, after him, for the Board to consider the relevancy or to challenge those documents, he would not oppose that.

Mr. Zegarelli stated that, he personally did not have a problem with items of proper judicial notice, for example a reference to the ordinance that was passed on a certain day, it is all the other things he does not feel fair to move to admission.

Attorney Parrish asked if the Board was ready for closing arguments. With no objections, Attorney Parrish made his closing remarks. In summation Attorney Parrish stated that the applicant did not satisfy the burden to prove their case and that he would join the motion of the Township that the particular Appellant does not have standing and further does not have direct, immediate impact to this particular site in question. He further stated that he would address the chaperty issue in his brief.

Mr. Ferguson suggested a recess be taken. Upon return, Mr. Ferguson asked Attorney Ayoob if he wished to submit memoranda of law and assumed he wanted a copy of the transcript. Attorney Ayoob answered in the affirmative. Mr. Ferguson stated that in order to accommodate, they would need to wait for the transcript to be done and afford him reasonable time to draft what he wanted to submit. Mr. Ferguson further stated that because of the waiting period, the Board

would go beyond their decision date and asked that Attorney Ayoob ask for an extension of time to accommodate his post-hearing submissions.

Attorney Ayoob stated that he would put on the record that he consents to the extension of time to review the transcript and make it part of his submission.

Attorney Strassburger asked if the Township objected to the extension of time. Neither Attorney Firman nor Attorney Parrish objected.

Mr. Ferguson suggested that the applicant be given twenty (20) days from the receipt of transcript to prepare legal memoranda and finding and conclusion. Attorney Ayoob asked for thirty (30) days to respond. Mr. Ferguson asked if there was any objection to giving Attorney Ayoob Thirty (30) days to respond. There were no objections.

Mr. Ferguson further stated that after discussion with the Board's counsel, they would propose to give attorney Ayoob thirty (30) days. He also proposed that the Township and Attorney Parrish's client, the Intervenor, have a twenty (20) day period after that in which to respond, and then Attorney Ayoob would have an additional fifteen (15) days after Attorney Firman and Attorney Parrish make their submissions to file a reply to any matters not previously briefed but which are raised in their response to your submission.

Attorney Parrish asked if the Township and the Intervenor could have thirty (30) days in which to respond because of the summer schedule. Mr. Ferguson stated the Board would grant that thirty (30) day request if there was no objection from Attorney Ayoob. There was no objection made.

Mr. Ferguson restated the time table of responses for clarity to all parties.

Attorney Firman asked if the Township's thirty (30) day response ran from the receipt of Attorney Ayoob's brief. Mr. Ferguson replied in the affirmative. Mr. Ferguson then asked how they would memorialize the receipt. The Court reporter stated that they have a ten day turn around policy for transcripts.

Attorney Strassburger asked if it was agreed that the Board's decision would be issued forty-five (45) days from the receipt of reply. Attorney Ayoob agreed. Mr. Ferguson asked that if Attorney Ayoob feels they have adequately addressed everything and do not wish to file a brief to send notice of that fact. Attorney Ayoob agreed to do so.

Mr. Ferguson asked if there was anything further before they adjourned.

Mr. Strassburger asked if Attorney Firman's two motions were officially part of the record.

Attorney Firman stated that when he did his closing arguments that he reentered them.

Mr. Ferguson suggested that they would acknowledge that the Township made a Motion to

Quash for lack of standing.

Attorney Firman clarified that the motion was for procedural relevance.

Mr. Ferguson replied that while the Board acknowledges that the Township made those motions in their oral arguments, it would be best if the paper documents were resubmitted as part of their submission after adjournment.

After some discussion between all sides it was decided that Attorney Firman would not formally submit the motions into the record but rather submit them as part of his response to Attorney Ayoob's submissions.

ADJOURNMENT

There being no further business, the meeting was adjourned at approximately 11:30 PM.

Respectfully submitted,
Amy Martin
Recording Secretary