

**BOROUGH OF TUCKERTON LAND USE BOARD**  
**February 15, 2018**

In accordance with the provisions of the Open Public Meetings Act, Calvin Morey opened the meeting of the Tuckerton Land Use Board on Thursday, February 15, 2018, at 7:00 p.m. in the Tuckerton Borough Hall.

**FLAG SALUTE:** Calvin Morey led the flag salute.

**SUNSHINE STATEMENT:** Carol Scurman read the provisions of the Open Public Meetings Act.

**ROLL CALL:**

The members of the Land Use Board in attendance were Mayor Susan Marshall, James McAndrew, Keith Vreeland, Joan Rosenberg, Greg Brojack, Tom Hennaut, Robert Rue, Wayne Tonnesen, and Calvin Morey. Peter Gioiello and Rich Brady were absent.

Also in attendance: Robert Shinn and Mark Rohmeyer.

**MINUTES:**

A motion was made by James McAndrew to accept the minutes of the January 18, 2018 meeting as written. Keith Vreeland seconded the motion. On roll call, all voted yes with the exception of Tom Hennaut, Robert Rue, and Wayne Tonnesen who abstained. The motion was carried.

**Woodland, McCoy & Shinn totaling \$1,400.00**

2/6/18	(63670)	Tuckerton Terr. / B 65, L 9.01 / Maj. Subdivision	250.00
2/6/18	(63672)	General Board Representation-January 2018	450.00
2/6/18	(63675)	Yellowbrook Development / B 49, Multi	550.00
2/6/18	(63677)	DePalo / B 74, L 74 a/k/a 239 S. Green St.	150.00

**T & M Associates totaling \$3,993.25**

12/29/17	(SCL337375)	Yellowbrook Development / B 49, Multi	1,436.25
12/29/17	(SCL337376)	Tuckerton Terr. / B 65, L 9.01 / Maj. Subdivision	604.00
1/26/18	(SCL338156)	Tuckerton Terr. / B 65, L 9.01 / Maj. Subdivision	78.00
1/26/18	(SCL338157)	Yellowbrook Development / B 49, Multi	1,521.00
1/26/18	(SCL338158)	DePalo / B 46 / L11.04	354.00

**NEW BUSINESS**

**Discussion of Resolution of Litigation for Sheltered Cove, Block 40, Lots 1 & 2**

Mr. Shinn addressed the Board. This is a "Whispering Woods Hearing," which requires a public hearing, a vote in front of the public with the public given the opportunity to speak. The decision must be published by the applicant. If it is resolved at this hearing, it's done assuming the judge approves the board's decision. If it's not resolved at this meeting, Mr. Shinn prepares his brief and we go back to court. The board has been given all of the documents for the stipulation of settlement and the proposed resolution.

H2 Investments (aka Sheltered Cove) came before this board with an application for a variance which was denied. The applicant filed a complaint on April 19, 2017 against the Tuckerton Land Use Board which Mr. Shinn answered on behalf of this board on May 15, 2017. They went to court June 12, 2017 and the judge gave us a scheduling hearing. Mr. Butensky prepared a brief within the timeframe given. Before Mr. Shinn's brief on behalf of the board was due, Mr. Butensky sent a letter dated December 6, 2017 with a proposal and a site plan to move the structure from the 5.3' encroachment to 7.8'. This is short of the 10' required, however, they are asking to move it a little more than 2' to make it more conforming and still grant the variance. This proposal was presented to the Land Use

Board by Mr. Shinn at an executive session on December 21, 2017, at which time the board informally agreed it was a good idea to resolve the litigation.

Keith Vreeland asked if the applicant would be required to apply for new building permits since they are changing the foundation and structural system. Mr. Shinn said this hearing is just to grant them a variance; they would be required to apply for building permits from the Construction Department and meet all of the standards of any other department that has jurisdiction.

Robert Rue questioned if this is a CAFRA issue. Mr. Butensky said it's a lateral move and not a CAFRA issue. If it was, however, that requirement would be determined upon the application of permits.

Mr. Butensky addressed the board. This is hearing for the board to consider the resolution of the pending litigation. What led to the request for front yard variance was a conflict on site between access to the repair building and the tent. When the variance was denied, the applicant determined what he could do without impairing the access to the property, resulting in the proposed request to move the structure approximately 2 ½ feet. To go beyond that would cut off circulation that is required for the repair function and would undermine the entire operation.

In addition, Mr. Butensky wanted to bring a new issue to the attention of the board. The applicant made a mistake with the structure; it is not high enough to service the boats. He is going to be making an application to the Building Department to raise the height another six feet which would be within the permitted height. The footprint would remain the same.

Calvin Morey asked if the height change would affect the business before us tonight. Mr. Shinn advised it would not.

Jim McAndrew said the structure in question has been called both a tent (temporary structure) and a permanent structure. By ordinance, there is a specific timeframe that a temporary structure can remain. Mr. Shinn advised we all acknowledge this is a permanent structure which must comply with the ordinance of such.

Keith Vreeland asked Mr. Butensky if he could confirm a CAFRA permit is not required. Mr. Butensky testified the business probably predates CAFRA and they are not proposing an addition. This question is being raised for the first time so no thought has been given to it, however, Mr. Butensky said he is comfortable with his feeling it is not required. Calvin Morey added, they have not applied for a building permit in the past, so when they do apply, that will be definitely determined. Mr. Shinn also advised, the proposed resolution includes language that requires the applicant to obtain any other governmental approvals that are necessary.

Michael DeAndrea, service manager of the Sheltered Cove Marina, was sworn in by Robert Shinn. Exhibit A, the proposed CME relocation, was marked into evidence. Mr. DeAndrea described the operation and necessity for the relocation of the structure. Many boats are serviced on a day to day basis. They use this area for bringing boats in and out of the shop and is also access to their showroom. There is a turning radius issue. The door is the only garage door they have to accommodate boats. If the structure was moved any more than the 7.8' proposed, this door would prohibit boats to enter the service area as well at the showroom. They have two forklifts that operate on the property. They need a swinging area to put the boats in.

Wayne Tonnesen asked if they are moving the structure even with the door. Mr. DeAndrea said yes.

Robert Rue asked if it was his testimony that if they complied with ordinance, the street side of the structure would be in the middle of the doorway impeding the use of the doorway. Mr. DeAndrea agreed.

Public Portion was opened.

John Zubriski, 707 S. Green Street, was sworn in by Robert Shinn. He asked how we got to this point after the structure was put up a year and a half ago, why they didn't they get permits as he was required to when he built his house in Tuckerton, and to consider the neighbors whose views are obstructed. Mr. McAndrew, Code Enforcement

Officer, assured Mr. Zubriski all of his neighbors and all of the houses in the beach were considered. His argument from the beginning was there are over 600 homes in the beach area that needed to comply with the setback, why would we allow one not to. The structure was put up on a weekend. They did confront the applicant the beginning of that week. The delay is called "litigation" and that takes time. Mr. Vreeland said the variance is required because it's too close to the street. If it was ten feet from the property line, a variance would not be required. Mr. Shinn said the applicant did come before the board in April for a variance, which was denied. We have been in litigation since. This is a compromise and a resolution of litigation. If this board does not approve, the case goes back to court and the judge will make the call which could be leave it where it is, move it the 8.7', or move it the ten feet and compromise the business.

A member of the public said he has an issue with the lights from this business shining in his house all of the time. Mr. DeAndrea said he would be happy to take down his information after the meeting.

Mr. Shinn said we have now done all the criteria required for a public hearing. If it's approved tonight, Mr. Shinn has a proposed form of order to be signed by Mr. Butensky and himself to file with the judge. The judge will have the final say. It is doubtful he will want to keep it in litigation. If it is denied, it also goes back to the judge and our decision could be overturned. He could send it back the this board to have a new hearing with more testimony and discussion on the decision-making process.

Joan Rosenberg asked if the "bones" of the structure needs to be redone when raising it six feet. Mr. Butensky said he thought so. She asked if the size could be lessened to make it conform with the ordinance. She was told the legs of the structure are pedestals placed on concrete block. The entire structure will just be lifted and moved. Mr. Morey asked how the bottom is going to be enclosed after raising the structure six feet. Mr. DeAndrea said he did not know. Mr. Butensky said the applicant is not asking for approval to raise the structure. If this proposed settlement is approved, the property owner will apply for a permit to raise the structure. Mr. Morey's concern is the appearance of the structure when raised six feet. He was advised the issue tonight is the setback and his plans to raise the structure need to be approved by the Building Department.

Mr. Hennaut said that after hearing all the testimony, agreeing on this compromise is in the best interest of the Borough of Tuckerton as well as the property owner.

A motion was made by Mayor Marshall and seconded by Greg Brojack to close Public Portion. All were in agreement; the motion was carried.

Mr. Butensky addressed the board. The structure is permitted; the location is the issue. After the variance was denied, they appealed and are proposing to move it back as far as possible without hampering the operation of the business. He pointed out there is a fence buffer on the street and boats are permitted to be stored in the front yard. He believes the fact that a bigger and larger structure is permitted over-rides the impact of the variance. He regrets the critical comments made regarding enforcement as he is personally familiar with their diligence. The applicant stands ready to honor the terms of the settlement.

Tom Hennaut made a motion to approve the proposed resolution because blocking his access to the building will show a hardship and the judgement may be allowing it to stay where it is or to move to the 7.8' setback. Robert Rue seconded the motion because the applicant can legally build that same structure in that general location, impeding the neighbor's views. He agrees to this compromise because, "it's better to get half of a loaf than no loaf," rather than depending on what the judge decides. He will still be required to go through the permit process to ensure all further work is according to code.

On roll call vote:

Mayor Marshall voted yes.

James McAndrew voted yes for reasons stated.

Keith Vreeland voted yes for reasons stated, making sure he applies for all permits include CAFRA.

Joan Rosenberg voted no because she feels this condones something erected illegally in the first place.

Greg Brojack voted yes for reasons stated.

Tom Hennaut voted yes for reasons stated.

Robert Rue voted yes for the reasons he stated.

Calvin Morey voted yes for the reasons stated; it needs to be done.

The motion was carried.

Robert Shinn advised he submitted a proposed resolution. If everyone is comfortable with it as drafted, it can be voted upon at this meeting and submitted to the judge; the applicant will publish the resolution. If it needs to be changed, he can modify it and bring it back next month. Jim McAndrew questioned Item #5 that specifies the number of days the structure needs to be moved. Mr. Shinn said he had put sixty (60); Mr. Butensky said that would interfere with his business and asked for 180.

A motion was made by Mr. McAndrew and seconded by Mr. Vreeland to accept this resolution, with the number of days the structure must be moved to be 180.

On roll call vote:

Mayor Marshall voted yes.

James McAndrew voted yes.

Keith Vreeland voted yes.

Greg Brojack voted yes.

Tom Hennaut voted yes.

Robert Rue voted yes.

Calvin Morey voted yes.

The motion was carried.

### ***INFORMAL DISCUSSION***

There is nothing to report on the Master Plan.

Mr. Morey asked if there was anything to report regarding the Joint Meeting held in January. Mr. Vreeland reported he had the legislation formulated for Landmarks to be transferred to the Tuckerton Historic Commission, giving it the ability to apply for grants. It will come before Land Use next month for review and then go to Borough Council.

Mr. McAndrew said he wanted to say something in response to Mr. Zubriski's accusation that we were not doing our job; we did do our job by the book. On the first Monday the structure was up they immediately started the process. Mr. Hennaut said people just don't understand how the system works. Mr. Morey asked if there's a way the municipality can just order the structure be removed if it's in violation. Mr. Vreeland said the problem is they were told by the people erecting what they call a tent, a permit is not required. Discussion followed regarding their plans on raising the structure and permits this structure may require.

Bob Shinn said Yellowbrook is finally at the point where the plans are getting ready to be signed.

**ADJOURN**

There being no further business, a motion was made by Joan Rosenberg, seconded by Jim McAndrew and unanimously agreed to adjourn the meeting.

Respectfully submitted,

Carol Scurman

Land Use Board Secretary