

MUNICIPAL LAND USE BOARD MINUTES

**BOROUGH OF EMERSON
OCTOBER 18, 2018**

This meeting of the Emerson Land Use Board was held in the Municipal Building. Chairman Gary Schwinder opened the meeting at 8:13 PM. In compliance with the Open Public Meeting Act, the Clerk has notified The Record and The Ridgewood News of this meeting and notice has been posted in the Municipal Building.

Pledge of Allegiance

Roll Call:

Robert Adams	Present
Alban Bresa	Present
Mike Cimino	Present
Tom Carlos	Absent
Michael DeOrio	Present
Gary Goursky	Absent
Louis Lamatina, Mayor	Absent
Evan Kutzin	Absent
Steven Malone	Present
Doug McKendry	Present
Norman Rieger	Absent
Thomas Sudano	Present
Gerry Falotico, Councilman	Absent
Gary Schwinder, Chairman	Present
Christopher Martin, LUB Attorney	Present
Gary Ascolese, LUB Engineer	Present
Bridgette Bogart, Borough Planner	Present
Michael Sartori, CCO/Zoning	Not Requested
Perry Solimando, DPW Interim Super.	Not Requested
Robert Hoffmann, Borough Admin.	Not Requested
Marie Shust, Secretary	Present

Chairman Schwinder made a statment that the Mayor and Councilman were recused from the application by Wenesco due to the 'D' variance. He then asked the Board if there were any comments or corrections on the minutes of the meeting of October 4, hearing none he asked for a motion to accept the minutes, which was made by Mr. Malone, second was made by Mr. Sudano, all were in favor. The minutes were accepted.

Chairman Schwinder asked Ms. Shust to read the vouchers.

Vouchers 18-Oct-18

10/2/18		New Jersey Planning Officials	Dues 2019	\$	325.00
10/10/2018	18-015832	Brigette Bogart Planning	161 Kinderkamack Rd.	\$	412.50
10/10/2018	18-01548	Brigette Bogart Planning	Planning /Services	\$	750.00
6/4/2018	18-00877-02	Morrison Mahoney	3rd Quarter Retainer	\$	1,000.00
10/12/2018	18-01553	Boswell Eng.	161 Kinderkamack Rd.	\$	79.00
				\$	2,566.50

Chairman Schwinder asked if there were any comments or questions about the vouchers. Hearing none he asked for a motion to approve the vouchers, which was made by Mr. DeOrio, second was offered by Mr. Bresa, all were in favor. The vouchers were approved for payment.

RESOLUTIONS:

Giunta/Crago Residence 166 Palisade Ave, Block 715, Lot 4, fence application and side yard variance.

Chairman Schwinder made note that there were two corrections that needed to be made: 1) Ms. Crago's name was incorrectly spelled in the first paragraph; 2) Andrew Giunta is also named in the application. Mr. Adams made a motion to accept the Resolution with the noted changes, which was seconded by Mr. Bresa. Mr. Adams, Mr. Bresa, Mr. Cimino, Mr. Malone & Chairman Schwinder were in favor. The Resolution with the changes was approved.

Chairman Schwinder explained that he was taking the liberty of changing the order of the Agenda so the discussion of the new sign ordinance will follow the Wendy's application hearing.

Application:

Wenesco, application to construction a Wendy's restaurant at 411 Old Hook Rd, Block 1301, Lot 1.01 & 1.02 Drive In restaurant, Parking variance, setback variance, front sign, sign variances due to size, location and quantity.

Mr. Martin invited the attorney for Wendy's and attorneys for objectors to be seated at the front table. He stated that the Mayor and Councilman were not present since there is a 'D' variance involved which would later involve the Governing Body. He asked the Attorneys to introduce themselves. Mr. Carmine Alampi introduced himself as representing the applicant, Mr. Ira Weiner, of Beattie Padovano, LLC, introduced himself as representing the Concerned Citizens of Main St., LLC, and Mr. Russell Huntington, of Huntington Bailey Law Offices, representing the Governing Body of Westwood.

Mr. Martin advised Mr. Alampi, the Board and the public that Mr. Weiner had submitted a letter challenging the completeness of the notices (on behalf of Wendy's) that were sent to the neighbors and published in the papers, as well as the permitted and conditional use statement. He asked Mr. Alampi to respond.

Mr. Alampi stated that the original application had been filed in late June with a request for a special meeting, which took place on August 15; the application was continued to the meeting of September 6, with no additional notice or prejudice. He stated he not only notified the neighbors within 200 ft. of the corner lot, where the proposed Wendy's is to be constructed, but within 200 feet of the entire Plaza. The entry and ramps to the Plaza, with the permission of the owners, Urstadt Biddle, would be changed. After the previous meeting with the Land Use Board, the applicant decided to eliminate the outdoor seating area, and decrease the indoor seating, which led to a decrease in parking spaces required and an increase in available spaces, therefore creating a shortage of only 2 parking spaces instead of the original 13. The applicant addressed the signage quantity and the height of the corner sign. The applicant stated the monument sign would not work on that particular corner, however they did reduce the height of the pole sign to 66% of the original height. The number of "Wendy's" signs was reduced as were some of the directional signs. In regard to the letter dated October 15th from Beattie Padovano, a restaurant is a permitted use. As to the two lane drive thru, there are two lanes on the approach, which merge into one at the pay/pick up station. There are not two drive thru lanes. There is a bypass lane for anyone who would want to get out of the line and perhaps go inside. In regard to the location of plans to be reviewed, Mr. Alampi stated the applicant followed the instructions on the Borough form, which does not indicate a location inside the Borough Hall. The size of the Borough Hall in Emerson does not leave much room for error, as in the case of larger municipalities such as Perth Amboy, North Bergen and Hackensack, where the Building Dept. would be located in an entirely separate building. On that basis he rejects Mr. Weiner's claim that a location was not indicated.

Mr. Martin asked Mr. Weiner to respond. Mr. Adams interrupted to state he did not have a copy of the letter and asked if a copy was available. Mr. Weiner continued that by not having a designated area indicated on the notice, the applicant was in violation of the MLUL law. He also stated the RZ zone does allow restaurants, but a drive in would be a conditional use. which would make the entire development a conditional use. He stated that the Emerson application, by not having a specific location where plans can be seen, is not in compliance with MLUL.

Mr. Weiner stated further that if the Board accepted the applicant's notice, Mr. Martin would have to defend their actions due to lack of information. He stated it would only be right that the applicant re-notice with the correct information.

Mr. Martin asked Mr. Weiner about the 120 day rule and would it restart with the date of the new notice.

Mr. Huntington stated that having had this situation occur, his client waiting 4 years for his application to be approved, where had he re-noticed with the proper wording, it would have been a delay of 3 to 4 weeks.

Mr. Alampi stated his client would re-notice with the correct information, which would be presented to all counsel for approval before publication. He also stated his client would extend the 120 day hearing to the 8th of December. The next hearing would be on November 8th, but he was allowing for any contingency.

Mr. Martin stated he agreed with some of the information both attorneys presented, and was happy to see the applicant err on the side of caution to eliminate loss of time and money.

Ms. Bogart was asked if the documents were complete. She mentioned that she did not have an Engineering page in her set of plans. Mr. Ascolese stated they were the last page in the package, and the Engineering issues were covered. Ms. Bogart was provided with a copy.

Mr. Ascolese asked for clarification of the MLUL designated site, as he was not aware of it. Mr. Weiner said that normally plans are located in either the Administrator's Office or with the Borough Clerk. Whichever must be indicated in the notice.

The application is carried to the meeting of November 8th,

At 9:15, Chairman Schwinder announced a five minute recess while the Chambers were cleared of those who were not staying for the balance of the meeting. At 9:20 the meeting was resumed.

DISCUSSION OF NEW SIGN ORDINANCE

Chairman Schwinder then asked Ms. Bogart if the recommended changes to the Signage Ordinance were complete to present to the Mayor and Council. She confirmed that 85% of the recommendations were new. That Mr. Adams had made one comment which should be included. Mr. Martin asked if she would make that one change, provide a copy to Chairman Schwinder and Mr. Martin. Ms. Shust was directed to write a letter of recommendation for Chairman Schwinder to present to the Mayor and Council. Once that was done and the Mayor and Council voted to accept the recommendations, then Mr. Martin would create a formal Resolution and Ordinance to be voted on.

Chairman Schwinder asked for a motion to open the floor to the public which was offered by Mr. Malone, second by Mr. Mc Kendry, all were in favor. Seeing no hands from the public, Mr. Sudano made a motion to close the floor which was seconded by Mr. DeOrio, all were in favor.

Chairman Schwinder asked if there was any Board business. Seeing no hands, he stated that a settlement had been reached with the property owners. Mr. Martin told the Board there would be formal information to follow. Chairman Schwinder then advised the Board they should expect that special meetings would be required.

Chairman Schwinder stated that at the moment the Chow Wow application was off the table.

Chairman Schwinder then asked for a motion to adjourn the meeting, which was made by Mr. Cimino, second by Mr. McKendry, all were in favor. The meeting was adjourned at 9:35 pm.

Respectfully submitted,
Marie Shust
Board Secretary