

**City of Cape May
Planning Board Meeting
Minutes – Tuesday – June 25, 2013**

Opening: The meeting of the City of Cape May Planning Board was called to order by Chairman William Bezaire, at 7:00 PM. In compliance with the Open Public Meetings Act, adequate notice was provided.

Roll Call:	Mr. Bezaire,	Chairperson	Present
	Mr. Shuler,	Vice Chairperson	Present
	Mayor Dr. Mahaney		Present
	Mr. Elwell		Present
	Mrs. Nelson		Present
	Mr. Jones		Present
	Ms. Weeks		Present
	Mr. Murray		Present
	Mr. Winkworth		Present
	Dr. France, 1 st Alternate		Absent - excused
	Mr. VanDeVaarst, 2 nd Alternate		Present

Also Present: George Neidig, Esquire – Board Solicitor
Craig Hurless, PE, PP, CME Associate - Polistina & Associates
Mary L. Rothwell, Board Assistant/Zoning Officer
Edie Kopsitz, Recording Secretary

Applications:

**DiDonato, 1105 Pittsburg Avenue, Block 1172 Lot 4
Preliminary Major Subdivision with Variance Relief**

Craig Hurless, Board Engineer was sworn in and clarified his credentials for the record.

George Neidig requested all the attorneys present come forward and state for the record who they represented. Raymond Wendt, Esquire of Hankin, Sandman & Palladino, he is representing the Cape May Harbor Village and Yacht Club Association. Sal Perillo, Esquire representing himself and his spouse who resides at 29 Harbor Cove and Louis Dwyer, Esquire representing the applicant.

George Neidig clarified that there are two (2) issues the first (1st) is advertisement of the application. He informed the Board of correspondence/documents from Mr. Wendt stating he opposes this noticing process and the response correspondence/documents from Mr. Dwyer stating noticing processing was correct. Mr. Neidig announced that the advertising of this evening's meeting was sufficient and advised they can move forward. Second (2nd) Jurisdictional (ownership of streets) pursuant §40:55D 60C can be heard but the

determination is to be decided by Council along with the various Attorneys. The determination of jurisdiction to hear the application is a Board decision after hearing all testimony put forth this evening.

Mr. Perillo, Esquire proceeded with a history of the Cape Harbor Cove application starting in December 2010, January 2011 (before he resided) for Preliminary and Final Major Subdivision approval. He stated the plan submitted of the property around Harbor Cove being extracted from the Associations ownership and a right of way being established for the City with regard to not only Harbor Cove but areas adjacent to the cart way. Expounding on how the Association has to maintain the property, constantly referred to the EDA site plan June 18, 2010, the discussion of parking issues prior to subdivision being finalized, how it does not comply with current RSIS, referred to minutes of November 10, 2010 referring to Mayor Mahaney concerns regarding Emergency/Fire Department access, 2011 EDA Plan to coincide with the Agreement between the Association and the City, his definition of street dedication and clarification of the City and Harbor Cove public right of way, widening of the street by four (4) feet (per Agreement of the westerly side of Harbor Cove parallel & nearest to Pittsburg Avenue), final approval on August 2011 with EDA On Street Parking Plan and concluded that the application in its present form cannot proceed.

Raymond Wendt, Esquire concurred with all Mr. Perillo presented. He referred to a specific citation NJ 40:55D-4 Developer and indicated that the parcel of land in question (a 4 foot strip) that the applicant is requesting that the street be expanded, create a curbs and curb cuts on land that is currently owned by the Association. He submitted past approvals into evidence and were marked **O-1** Planning Board Resolution 1-11-2011, **O-2** Agreement dated June 14, 2011 pages 1, 2 and signature page and **O-3** Planning Board Final 8-9-2011 indicating that the DiDonato application is not entitled to present the application. He stated that in the future this could change but this evening there is no jurisdiction. Mr. Wendt wanted it noted for the record that he is challenging the inadequacies of the notices both in the newspaper and to the neighbors referring to his letter dated June 19, 2013 to Mr. Neidig and the Board. He stated that the State confers powers to the Board through the Municipal Land Use Law and wants to reiterate there is no jurisdiction to hear this application. He explained in detail the Association concern of the DiDonato development and how it was filed six (6) months after their application was finalized with negotiations between the City and Harbor Cove of the 24 foot road to expanded an additional 4 feet and that they had the right at all times to dictate the road to 28 feet. He continued explaining the basis of their jurisdictional argument and why this application should not proceed.

Chairman Bezair questioned whether Zoning setbacks apply according to the City of Cape May Zoning Ordinance referring to the original subdivision. Mr. Wendt responded on his views regarding a creation of a public right of way according to Municipal Land Use Law and it depends (lawyers terminology) on the agreed upon sub division map. Mr. Hurless interjected stating that this application will be conditioned that the road must be accepted by the City and the setbacks were designed to comply. Mayor Mahaney explained the original Harbor Cove application in detail and the ordinance was designed specifically to re zone that area to allow for that development. He expounded on issues of Harbor Cove regarding persons parking on both sides of the street and the meeting he had with the Association

regarding if emergency vehicle had to have access. He explained how Mr. Hurless did his review with Mr. Orlando on what it would take to bring the street to City standards to be accepted as a public street and the response was that the Home Owners would have to widen the street in order to have parking on one (1) side. Discussion ensued regarding the 45 day appeal period.

Mayor Dr. Mahaney wanted clarification on who was in physical possession of the Plot Plan that needs to be filed and shared his disappointment for the record. Mr. Perillo stated he had the plan and explained for the record that Mr. DiDonato applied for DEP approval before Harbor Cove was finalized.

Louis Dwyer clarified that streets are either public or private. The agreement that the City has with the developer has to do with some of improvements to the right of way, not involving a street, if the City decides the street should be wider and once it dedicated it can do so. He stated there is nothing in the agreement that stops the City from expansion of the street and he believes the language in the Harbor Cove/City agreement and the Planning Board Resolution was designed to allow the owners the option (if they could raise the money) to widen the street. He clarified that Mr. DiDonato agreed to Mr. Hurless's suggestion, a binding agreement from the City, a Planning Board Resolution calling for a dedication of the street, mylarized final sub division plans (represented by the President of the Association), a letter from the City threatening legal action if they (Harbor Cove) does not comply with the agreement and Mr. Perillo stating he has possession of the sign plans. It is his understanding that the City has been treating the street as an improved street (surfaces & lighting) and a lot of reason why the street should not be private. All indications are that the residents (Association Members) agreed to have the street dedicated and have heard nothing from either counsel that changes that philosophy that they don't want the dedication. He stated the application is being held up and his client is being threatened with litigation because a plat plan was not filed. Mayor Mahaney stated for the record that the City is not providing any services on that street because a plat plan has not been filed. Mr. Dwyer clarified for the record that Mr. DiDonato has spent a year getting approval from the DEP before coming before the Board and stated it was public knowledge that the street was going to be dedicated. Mr. Perillo and Mr. Dwyer debated at length on several levels. Several Board Members requesting a copy of the Agreement dated June 14, 2013 between the City of Cape May and the Cape May Harbor Village & Yacht Club Homeowners Association, Inc. Mr. Neidig stated that exhibit O-2 presented by Mr. Wendt is not in its entirety (omission of page three 3) and is requesting a completed copy for evidence. Mr. Wendt questioned whether any member of the public can speak on this issue. Chairman Bezaire and Mr. Neidig stated it is a jurisdictional issue and will not be opened for public comment.

Mayor Mahaney made a recommendation that as Mr. Wendt the legal representation of the Homeowners Association should have a letter that should represent the official position of the Association and individual homeowners of Harbor Cove and should be sent to the City Clerk stating what conditions in that resolution and agreement are not acceptable at this point that is holding up the filing of the plat. He stated that this would quickly resolve exactly what the problem is and moves on with closure and as far as the City is concern it is an enforceable agreement and tonight is the first time they are hearing what the concerns are. He

will make sure it is resolved at the City Council level and inform Mr. Neidig so he can inform the Planning Board so that the Board can determine if they wish to proceed. A full copy of the executed agreement is on file at the City Clerk's office and will be copied and dispersed (including a copy to Mr. Wendt and Mr. Dwyer). A time frame of 30 days for the application to return to the Board was discussed. Mr. Perillo indicated they will be able to meet after the 4th of July weekend.

Mr. Dwyer clarified that his client has several ways this development can be built with access from Missouri or Pittsburg Avenue and will be oriented differently if they are not permitted access to Harbor Cove. He is requesting a meeting with Mr. Hurless to review with a sub-committee all were in agreement. Mary Rothwell informed Mr. Dwyer that he has another case before the Planning Board on the July 23, 2013.

Motion made by Mayor Dr. Mahaney to table the application to July 23, 2013 at 7:00pm without further notice. Seconded by Mr. Murray and **carried 9-0.** Those in favor: Mr. Elwell, Mrs. Nelson, Ms. Weeks, Mr. Murray, Dr. Mahaney, Mr. Jones, Mr. Winkworth, Mr. Shuler and Mr. Bezaire. Those opposed: None. Those abstaining: None.

Motion made by Mrs. Nelson, Seconded by Mr. Jones to adjourn the meeting at 8:50 PM with all in favor.

A verbatim recording of said meeting is on file at the Construction/Zoning Office.

Respectfully submitted: Edie Kopsitz, Recording Secretary