



## MINUTES

### MERCHANTVILLE JOINT LAND USE BOARD

Borough Hall Council Chambers  
1 West Maple Avenue, Merchantville, NJ 08109  
Tuesday, February 12, 2019, 7:30pm

1. **CALL TO ORDER.** The Chairman called the meeting to order at 7:30pm.
2. **OPEN PUBLIC MEETINGS ACT.** The Chairman stated that the meeting is being held in accordance with the Open Public Meetings Act.
3. **PLEDGE OF ALLEGIANCE AND MOMENT OF SILENCE.** All persons present stood for the pledge of allegiance and moment of silence.
4. **ROLL CALL.** The following Board members were present: Ms. Wuebker, Mr. Fitzgerald, Chairman Brennan, Mr. Lammey, Ms. Stewart, Mr. Woods, and Mr. Fiume. The following members were absent: Mr. DiSimone, Mr. Benjamin, Mr. Uricchio, and Mr. Licata. Also, present was Board Solicitor, Matthew Madden, Esq. Mr. Hanson, the Board Engineer, was not in attendance.
5. **OLD BUSINESS.** Approval of January 8, 2019 Meeting Minutes. Mr. Fitzgerald made a motion to approve the minutes as proposed. The motion was seconded by Mr. Woods. All members present voted in favor of adopting the minutes as proposed.
6. **NEW BUSINESS**

Council Resolution R19-23: Request for Board Review of Proposed Amendments to Zoning Ordinance Exhibits: Joint Land Use Board Application and Checklist.

Mr. Madden explained that Borough Council referred Ordinance 19-01 to the Joint Land Use Board for a determination of consistency with Master Plan and any other recommendations as the Board deems appropriate. The proposed amendments involve the Board Application and checklist that were discussed last month in detail.

Ms. Wuebker expressed that it's her opinion that the proposed amendments are consistent with the Master Plan as they help improve the Board review process and there is nothing that is contrary to the Master Plan. The amendments improve the current application and checklist. The current application form is under-inclusive and over-inclusive. On the other hand, the application doesn't ask questions regarding typical matters that the Board does hear, like improvement coverage, yet it asks some questions that are not pertinent to the Borough's ordinance. The checklist is also better organized, with the most basic requests for information before the more atypical requests. As such, the proposed changes will help the Board and the Applicant.

Mr. Lammey made a motion to recommend to Council that the proposed amendments relative to application procedures for the Joint Land Use Board are consistent with the Master Plan. Ms. Stewart seconded the motion. All members present voted in favor of the motion.

JIF Land Use Liability Seminar – Matt Madden, Esq., Board Solicitor

Mr. Madden distributed a land use liability risk management training packet that has been prepared by the Municipal Excess Liability (MEL) Joint Insurance Fund for Board members. Mr. Madden explained that it is particularly important to be aware of the risk as individual Board members are often identified as defendants in lawsuits, as a matter of course. The MEL provides a special policy to land use board members who complete the course. It covers members personally for instances that would otherwise would be excluded from coverage. The MEL will provide up to \$50,000 in defense coverage for 1) criminal acts, 2) willful violations, 3) self-dealing/illegal profit, and 4) condemnation but ONLY if you are acquitted.

Mr. Madden presented the training, and the Board members interactively discussed the slides in the packet. If there are civil rights violations, there is attorney fee-shifting, meaning that the defendant pays the plaintiff's attorney fees/costs and it is often very expensive. The Board discussed cases involving inverse condemnation, the Religious Land Use and Institutionalized Persons act (RLUIPA), voluntary contributions from developers/a.k.a. pay-to-play, application site visits, conflicts of interest, personal liability if actions are taken in bad faith, or in pursuit of personal interest. Towns cannot do selective enforcement that amounts to illegal discrimination. Insurance policies typically won't cover punitive damages, fraudulent, dishonest, knowingly wrongful acts or omissions, willful violations, and malicious conduct.

The Board can limit testimony to issues that are relevant to the decision before the Board. There is no requirement, like council meetings, that the board reserve a portion of its meeting for open comment. The proposed 'judicial proceeding' language will be added to the top of the Board's agendas in the future.

7. **BOARD COMMENTS.** The Chairman discussed that there will be Stormwater Training for Board Members at an upcoming meeting when Mr. Hanson is present.
8. **ADJOURNMENT.** Mr. Lammey made a motion to adjourn the meeting. The motion was seconded by Mr. Woods. The meeting adjourned at approximately 8:22pm.