

NEPTUNE TOWNSHIP RENT LEVELING BOARD - AGENDA DECEMBER 6, 2018 - 6pm

Ruth Johnson calls the meeting to order and requests the Secretary to call the roll:

ROLL CALL:

Connie Holmes _____ James Manning, Jr. _____ Morrel Massicot _____

Ruth Johnson _____ Catherine McAphee _____ Alternate #I Jeff Klein _____

Alternate #II Naomi Riley _____

Flag Salute

Chairperson Johnson announces that the notice requirements of R.S. 10:4-18 have been satisfied by the publication of the required advertisement in The Coaster, posting the notice on the Board in the Municipal Complex, and filing a copy of the said notice with the Municipal Clerk.

Consumer Price Index [October's price index was 275.101, area prices down 0.1 percent over the month and up 2.0 percent over the year.

Action Items:

1. Approval of Minutes – September 6, 2018.

Offered by: _____ Seconded by: _____

Vote:

Holmes _____; Manning _____; Massicot _____; Johnson _____; McAphee _____;

Klein _____ Riley _____ (HIGHLIGHTED IN YELLOW INDICATES THE MEMBER WAS NOT IN ATTENDANCE AT THE MEETING, INELIGIBLE TO VOTE)

2. Resolution of Landlord/Applicant Jumping Brook Apartments
3633 Highway 33 and 3805 Highway 33, Neptune Township, New Jersey seeking
Capital Improvement

Offered by: _____ Seconded by: _____

Vote:

Holmes _____; Manning _____; Massicot _____; Johnson _____; McAphee _____;

Klein _____ Riley _____

DISCUSSION ITEMS:

HEARING -JUMPING BROOK APTS. - CAPITAL IMPROVEMENTS

PUBLIC PARTICIPATION:

ADJOURNMENT (Time): _____

Offered by: _____ Seconded by: _____

Vote:

Holmes _____; Manning _____; Massicot _____; Johnson _____; McAphee _____;

Klein _____ Riley _____

NEPTUNE TOWNSHIP RENT LEVELING BOARD

Minutes – September 6, 2018

Mrs. Johnson called the meeting to order at 6:15 pm and requested the Secretary to call the roll. The following members were present: Ruth Johnson, Connie Holmes, Naomi Riley and Jeff Klein. Absent: James Manning, Catherine McAphee and Morrell Massicot.

Mrs. Johnson stated adequate notice of this meeting as required by P.L. Chapter 231 has been provided by notice in the Coaster, which was posted on the bulletin board of the Municipal Complex and filing a said notice with the Municipal Clerk.

Mrs. Johnson announced that the Consumer Price Index [July's price index was 274.073, area prices unchanged over the month and up 2.2% over the year].

APPROVAL OF MINUTES

Mr. Klein offered a motion, moved and seconded by Mrs. Riley to approve the minutes of the meeting for August 9, 2018; all that were eligible to vote were in favor.

DISCUSSION ITEMS

Mr. Anthony stated at the last meeting they completed testimony of the applicant and public comments with regards to this application. The Board made a series of motions that he put together in the form of a resolution of what this Board considers capital improvements and what it doesn't. There were outstanding conditions they are going to have a resolution on capital improvement first. Figures are based on figures given to us in testimony and that were in the application itself which may have to be adjusted. The applicant was suppose to provide documentation for roofs in terms of showing direct correlation between checks written out for the roofs and the spread sheet that was provided to them. He stated they were hoping to get it earlier but they have it now. He asked the Board if they felt they had sufficient time to review the documentation presented this evening in order to go forward. Mrs. Holmes and Mrs. Johnson both said they needed more time to review. Mr. Klein stated the document provided did not make any sense. He stated for example there were 25 permits that were taken out but they asked for a reimbursement which was only 17. He questioned whether the 8 remaining ones they did not do the work for. He stated he has copies of checks and now he has to try an figure out where it goes. He also stated there's \$2000 for an amenities building and they already have a fitness center for \$2000 on it. He stated they do not have a corresponding bill to go with it.

Mr. Schneider explained that the first page of the spread sheet says they are requesting reimbursement for 17 permits and permits weren't needed for some of the items. If they did the roof they got permits. Permits are not required for gutters.

Mr. Klein questioned where was the bill for \$2000 for the amenities building.

Mr. Schneider stated he did not have an answer for it.

Mr. Anthony stated if it was the gym it was not approved.

Mr. Klein stated it was his recollection that it was a no for the interior of the gym.

Mr. Klein also questioned the total amount paid for the roof.

Mr. Klein stated it was \$420,434 for the amount of checks written for the roof. Our records according to Mr. Anthony's resolution is \$417,924 of an original \$423,000.

Mr. Schneider stated that was the number in the spreadsheet the last time and then you said you wanted documentation they went back and got the documentation and that's how they came up with \$424,000.

Mr. Anthony stated he was a little confused by this as well. He stated these documents are \$7,000 more.

Mr. Klein stated this doesn't work because they only have checks for \$420,000 which is even \$4,000 less than everything else.

Mrs. Riley asked if they are allowed to charge for the permits in this total.

Mr. Anthony stated you have to allow them a credit for what's necessary to put on a roof.

Mr. Schneider stated the reason he put the blue sheet there was because permits tended to be aggregated and invoices are at the end.

Mr. Anthony stated they need to get all of this information together and determine the amounts.

Mr. Schneider said you have questions about the amenities building.

Mr. Klein stated what is it? and where is it.

Mr. Schneider as far as the invoices what do you need

Mr. Klein stated the invoices did not match the checks. He stated they also need the IRS depreciation schedules for the items approved as capital improvement.

Mr. Anthony suggested having their accountant present at the next meeting and questioned if there were any questions on the other capital improvements. He stated the amounts he's gotten on the boiler and hot water system on west side only is \$62, 371.75 which he got from the application. Mr. Anthony discussed the content of the resolution and the application.

Mr. Schneider stated he would get additional information on the breezeway and questioned if they needed more information on the hot water systems.

Mr. Klein stated there were two separate items boilers and hot water heaters and one was completed and one wasn't.

Mr. Schneider said the hot water heaters are finished but the boilers are not.

Mr. Klein questioned whether the bill for \$62, 371 is for the hot water heaters.

Mr. Schneider stated that was correct.

Mr. Klein do we know what the dollar amount is and is it going to be for the boilers and would it be in Phase II.

Mr. Anthony stated he would move it to Phase II.

Mr. Klein stated the boiler would be put in Phase II and everything in Phase II must be done within two years or else they are no longer approved.

Mr. Anthony confirmed that was correct.

Mr. Klein also stated as far as the breezeway and invoices he wanted to see checks and a correlation.

Mr. Anthony stated for confirmation that the hot water was Phase I and would be only for the Westside instead of both complexes. He also stated as far as the breezeway the management office was not considered a capital improvement nor was the gym, pool and furnishings. Exterior lighting upgrades are considered capital improvements. He stated he put in the resolution that it was completed. He asked that it be corrected if it wasn't correct.

Mr. Schneider stated he was not sure if it was complete or not.

Mr. Klein stated during their testimony it was stated that it was complete. He stated he would need to see evidence of it being completed. He questioned whether it would have to go into Phase II.

Mr. Schneider stated it was in the original application for everything that was paid and questioned if they wanted it again.

Mr. Klein stated the roof break down shows them that anything that was in the original documentation was not correct anyway.

Mr. Anthony stated he was looking at the items submitted with the application and when it comes to electrical there's a bill for \$12,863.

Mr. Schneider stated he would provide documentation specific to the lighting.

Ms. Riley asked if they could have copies of checks and invoices even for items that have been approved.

Mr. Schneider stated the last time he remembered the Board only asking for roof and gutters.

Mrs. Holmes stated she asked for everything.

Mr. Schneider referred to page 13 of the Resolution so the first things are the roof and gutters he understands what is needed and next is the boiler and hot water system and they've agreed they are separate and need documentation. C. is irrelevant but Mr. Anthony stated it might be relevant if you appeal it. Mr. Anthony stated the Breezeway was relevant because it is

a capital improvement, management office, gym and pool renovation is out and then there's exterior lighting upgrades that we need clarification on.

Mrs. Holmes stated for everything that is considered a capital improvements she wanted to see checks and invoices.

Mr. Klein questioned who did the security camera's and requested clarification as to where they were installed and how much for the items

Mr. Anthony stated he had concerns about exterior lighting upgrades which he see invoices for electrical and there are also electrical service upgrades that were not approved. He's not sure what the invoices will cover. He needs clarification. He then stated the next thing that was not approved was landscaping, mold prevention not approved, parking lot repavement was approved. You had a budget for \$500,000 and a contract for \$447,984 and you said it was in progress and paid and that's what he put in the amount.

Mr. Klein stated they were satisfied with the \$447, 984 but if they were asking for more money they would have to prove it.

Mr. Anthony discussed the security lighting and Mr. Schneider said that he would provide documentation.

Mr. Anthony reminded everyone that he was not available for the October 11th meeting so they would have to meet on November 1, 2018

Mr. Klein asked if the documents requested be sent by October along with the depreciation schedule.

PUBLIC DISCUSSION

Tracey Daniels, Apt 235 questioned whether paving was considered a capital improvement.

Mrs. Johnson confirmed that it was.

Ms. Daniels stated three weeks ago an inspection was done and some areas needed to be repaved and as of today it is not completed. She questioned whether they were the ones who did the original paving.

Mr. Anthony stated he would have the landlord get back in touch with her. He stated they were not looking for the tenants to pay for what they are suppose to do.

Elizabeth Kennedy #252 stated when they put in for lighting they were going to look into JCPL doing the lighting.

Mr. Schneider stated it hasn't been done yet because they cannot reach a human being.

Ms. Daniels stated other than the lighting being done what else needs to be done.

Mr. Schneider stated Phase II it's something they would have to pay for it's not JCP&L.

Mrs. Holmes offered a motion to carry the resolution on Capital Improvements to November 1st meeting, seconded by Mrs. Johnson; all were in favor.

Mrs. Holmes also announced that September 15th would be Neptune Day and urged everyone to come out between 12-4pm.

PUBLIC COMMENTS

None

Mrs. Johnson offered a motion to adjourn the meeting, moved and seconded by Mrs. Riley. All were in favor.

Pamela D. Howard

Secretary

RESOLUTIONS

RESOLUTION OF LANDLORD/APPLICANT JUMPING BROOK APARTMENTS 3633 HIGHWAY 33 AND 3805 HIGHWAY 33, NEPTUNE TOWNSHIP, NEW JERSEY SEEKING CAPITAL IMPROVEMENT SURCHARGE

WHEREAS, Jumping Brook Apartments, legally known as JB Neptune Holdings, LLC, presented an application through their attorney, Paul H. Schneider, Esq., of the Law Firm of Giordano, Halleran and Ciesla, for a Capital Improvement Surcharge encompassing a two phase plan of upgrades and improvements associated therein. The aforesaid application was dated January 10, 2018 and filed January 25, 2018, with the Neptune Township Rent Leveling Board and the Rent Board Attorney, Gene J. Anthony, Esq.; and

WHEREAS, Chapter IV, §4-30, entitled “Rent Control” of the Revised General Ordinances of the Township of Neptune, Volume I, and in particular, §4-30.4, entitled, “Appeal by Landlord” provides that, “Landlord may seek additional surcharges for Major Capital Improvements or services. To qualify for a major improvement surcharge, claimant must show a benefit to the Tenant, in the form of improved lifestyle, convenience, ease and/or security, and compliance with the definition of Capital Improvements found in the Internal Revenue Code. The landlord must notify each Tenant of the total costs of the completed Capital Improvement or service, the number of years of useful life of the improvement as claimed by the landlord for purposes of depreciation for income tax purposes, the cost of the improvement, the total number of square feet to the dwelling or garden apartment complex, the total square feet occupied by the Tenant and the capital improvement surcharge he is seeking from each Tenant. The landlord seeking the Capital Improvement or service surcharge shall appeal for the surcharge to the Rent Leveling Board who shall determine if the improvement is a major improvement, and if so, may

permit such increase to take place and may direct that the increase shall be collected in equal monthly payments spread over the useful life of the Capital Improvement. If the increase is granted it shall not be considered rental and calculated in the cost of living increases. In any event, no increase authorized by this section shall exceed 15% of the Tenant's rent"; and

WHEREAS, the hearing before the Neptune Township Rent Leveling Board was originally scheduled for April 5, 2018, but due to a request by the applicant, was adjourned to May 3, 2018 and continued to June 14, 2018 and to August 9, 2018, with a confirmation of background documents on December 6, 2018; and

WHEREAS, present at the hearings for the applicant throughout the proceedings was the attorney for the applicant, Paul H. Schneider, Esq. of the Law Firm of Giordano, Halleran and Ciesla; and testifying on behalf of the Landlord/Applicant were Mr. Jack Adler; Mr. Adam Gluck and Mr. Biegeleisen, all of whom testified as to the general improvements and background of the intended improvements; invoices and contracts entered into and paid for by the applicant and improvements yet to be completed, and participated in public comments and questions from the Board throughout the proceedings, including May 3, 2018; June 14, 2018 and August 9, 2018, with comments and questions posed to the applicant's attorney on supporting documentation on December 6, 2018; and

WHEREAS, the Rent Leveling Board attorney found that appropriate notice was provided to all parties pursuant to local ordinance and Rules and Regulations; that pre-certification from the Housing and Construction Department of Neptune Township that the buildings and grounds are in substantial compliance with the Municipal Property Maintenance Ordinance, Uniform Construction Code, and Multiple Dwelling Law, and that the same was

satisfied and that all pre-hearing requirements were satisfied allowing the hearing to proceed; and

WHEREAS, the Landlord/Applicant presented its application seeking surcharges in a 100 percent residential development containing 308 rental units; seeking a surcharge of \$1,998,283.52 in Capital Improvements which had either been completed and fully paid for, or, in a few instances, near final completion and payment, and in addition, a Phase 2 project of Capital Improvements yet to be started, which would provide for additional surcharges to cover the renovation of the gymnasium, balcony renovations and unit upgrades; and

WHEREAS, as a result of all hearings and concluded testimony of the Landlord/Applicant and its witnesses with regard to proposed and existing Capital Improvements, issues were raised concerning whether all of the improvements undertaken or proposed in the future were Major Capital Improvements and actually satisfied the definition of Capital Improvements under the Municipal Ordinance, and what the future intention of the Landlord/Applicant was in seeking the Capital Improvements, and ultimately under a separate hearing in the future, what the calculation of the surcharge would be for those Capital Improvements that were approved by the Board, if any.

NOW, THEREFORE, BE IT RESOLVED, by the Neptune Township Rent Leveling Board that the Neptune Township Rent Leveling Board has found the following facts:

- A. That the Rent Leveling Board had jurisdiction to hear the application of the Landlord/Applicant, Jumping Brook Apartments, also known as JB Neptune Holdings, LLC, that all notice requirements were satisfied as well as conditions concerning construction and maintenance code compliance.
- B. That exhibits were submitted into evidence and accepted by the Board as follows:

1. A-1 – Application by the Landlord/Applicant for Capital Improvements in a package form, which included notice to Tenants posted in the building; notice mailed to Tenants regarding the hearing before the Neptune Township Rent Leveling Board; current resident directory and roommates at Jumping Brook Apartments and original receipts of certified mail to all current Tenants at Jumping Brook Apartments.
 2. A-2 – Invoices and documentation from Roofing Master concerning roofing, gutter and soffit/fascia improvements, along with spreadsheet concerning the same.
 3. A-3 – Spreadsheet concerning hot water system and boiler schedule, and letter from Gluck Plumbing concerning boiler rooms 2, 5, 8 and 9.
 4. A-4 – Documents concerning pool opening and Rules and Regulations and pictures concerning outdoor lighting.
 5. A-5 – Invoice from Chinchilla Projects concerning pressure washing at 29 building’s siding.
 6. A-6 – Documents from “Above and Beyond” concerning inspection and condition of mold and fungal growth in the buildings.
 7. A-7 - Site improvements and renovations before and after pictures.
 8. A-8 – Work order spreadsheet.
- C. After hearing testimony on May 3, 2018 and public comments, and further public comments on June 14, 2018 and questions from the Board, the Board began deliberations on June 14, 2018 and August 9, 2018 over the question of what proposed Capital Improvements were either to be Capital Improvements subject to a

surcharge under the Municipal Ordinance, or not, pursuant to the decision of Green Acres of Verona v. Borough of Verona, 146 N.J. Super. 468 (App. Div. 1977) and as further defined by Tenant's Association v. Georgian Gardens 249 N.J. Super. 475 (1991), and pursuant to the Board's reading of the Municipal Ordinance's definition of Major Capital Improvements, and the Board raised issues concerning supporting documentation for amounts of capital expenditures at the August 9, 2018 hearing, with further documentation submitted at the December 6, 2018 meeting by the Applicant.

PHASE 1

- a. Roofs and gutters and soffit/fascia **are** classified as substantial Capital Improvements; and documents showing a correlation between actual bills and spreadsheet at a cost of \$417,924.00; rather than the original claim of \$423,297.84 are acceptable to the Board.
- b. Upgrading of boiler and hot water systems on the west side of the complex only **are** considered as Capital Improvements; subject to completion of said installation within two years at a present cost of \$62,371.75 of that which has been completed and the balance sought under separate application.
- c. Brick pointing and cleaning **are not** considered Capital Improvements at \$11,281.00.
- d. Breezeway upgrades **are** considered a Capital Improvement at \$165,000.00, paid and completed of a total contract of \$550,000.00.
- e. Management office renovation **is not** considered a Capital Improvement at \$3,500.00.
- f. Gym renovation **is not** considered a Capital Improvement at a budgeted amount of \$30,000.00.
- g. Pool renovations and furnishings **are not** considered Capital Improvements at \$11,700.00.
- h. Exterior lighting upgrades **are** considered a Capital Improvement at \$25,524.47.
- i. Landscaping, tree removal and grading **are not** considered Capital Improvements at \$315,823.50.
- j. Mold prevention and remediation **are not** considered Capital Improvements at \$184,097.55.
- k. Parking lot repaving **is** considered a Capital Improvement at \$447,984.00.
- l. Security cameras and their installation **are** considered a Capital Improvement at \$33,434.15.

- m. Property and building signage upgrades are not considered a Capital Improvement at \$24,254.88.
- n. Electric service upgrades (exterior) are not considered a Capital Improvement at \$30,117.00.

Total items in Phase 1 **classified as Capital Improvements** total: **\$1,152,283.37**

Total items in Phase 1 **not classified as Capital Improvements** total: **\$610,773.93**

PHASE 2

- a. Renovation of gymnasium is not considered a Capital Improvement.
- b. Balcony renovations are considered a Capital Improvement.
- c. Unit upgrades were withdrawn by the Landlord/Applicant.

Total items in Phase 2 classified as Capital Improvements shall be approved based on calculations and surcharge in second application under Phase 2 once completed by the Landlord/Applicant.

Phase 1 items classified as Capital Improvements shall be approved based on calculations on completed and paid amounts. Additional costs for incomplete items would be subject to an additional application.

D. The Board also finds that the useful life, depreciation per year and rental amount included in the formula for determining the calculated surcharge needs to be corrected and resubmitted based on the conclusions of the Board as to what is considered a Capital Improvement; to that extent, it shall be the responsibility of the Landlord/Applicant to revise the proposed rent surcharges in light of those Capital Improvements approved by the Board and resubmit the same to the Board for approval by separate Resolution. This applies to Capital Improvements not completed under Phase 1 and Phase 2.

E. It is recognized by the Board that although the Landlord/Applicant has submitted the cost amounts for Capital Improvements and proof of invoices and contracts for performing said improvements, and has stated in testimony that the costs set forth in exhibits and testimony is highly accurate, said figures do not represent actual receipts or invoices for Capital

Improvements not already completed, but merely those projected to be completed under the project, or in some cases completed but not approved by the Board, and the Board retains jurisdiction to rehear and approve any deviation from those costs set forth in testimony and exhibits that may change when the project undergoes actual construction and completion on Phase 2, and that part of Phase 1 that has not been completed, and in turn, further retains jurisdiction to make necessary adjustments to the proposed and actual approved rent surcharges to reflect any changes in actual costs, as well as adjustments made for those proposed improvements that were not found to be Capital Improvements by the Board.

BE IT FURTHER RESOLVED, that the Municipal Board Attorney, Gene J. Anthony, Esq., is hereby authorized to provide the Landlord/Applicant through its attorney, Paul H. Schneider, of Giordano, Halleran and Ciesla, with offices located at 125 Half Mile Road, Suite 300, Red Bank, New Jersey, 07701 with a written notice of this decision, a copy of the Resolution effective the date of execution of this Resolution, and the Landlord/Applicant may implement all actions necessary with regard to the Resolution, including removing for consideration all proposed improvements which were classified as Non-Capital Improvements, and resubmitting to the Board proposed rent surcharges based on those adjustments, and returning to the Board by subsequent application for Phase 2 when completed as to any new calculations of cost which deviate from those proposed and approved by this Board under this Resolution for subsequent Board review and approval or adjustments.

BE IT FURTHER RESOLVED, that all Tenants shall receive a copy of this Resolution submitted by regular mail by the Landlord/Applicant, and will eventually receive a subsequent Resolution as to the approved surcharges with regard to Phase 1, and additional Resolutions after all work has been completed in Phase 2 and that portion of Phase 1 yet to be completed with

final costs and calculated surcharges as reviewed and approved by the Board, and written notice is provided by the Landlord/Applicant to each existing Tenant with proof that the Board had approved the final calculations, work is completed, and costs along with proposed rent surcharges by further submitting copies of any subsequent resolutions.

BE IT FURTHER RESOLVED, that future Tenants shall be put on written notice of the surcharge to be imposed upon Tenant prior to or at the time of execution of a written lease or commencement of tenancy.

BE IT FURTHER RESOLVED, that pursuant to §4-30.7 of the Rent Control Ordinance of the Township of Neptune, both the Landlord/Applicant and any Tenant may appeal in writing the finding of the Board to the governing body within twenty (20) days from the date of receipt of the determination pursuant to the Rules and Regulations set forth for the Rent Leveling Board and the Municipal Ordinance for such appeals.

OFFERED BY BOARD MEMBER:

SECONDED BY BOARD MEMBER:

AND ADOPTED ON ROLL CALL BY THE FOLLOWING VOTES:

ROLL CALL

Affirmative:

Negative:

Abstain:

Absent:

Dated: December 6, 2018

RUTH JOHNSON, Chairwoman

ATTEST:

PAM HOWARD, Secretary

I hereby certify the foregoing to be a true copy of the Resolution adopted by the Neptune Township Rent Leveling Board at a meeting held on December 6, 2018.

ATTEST:

PAM HOWARD, Secretary