

NEPTUNE TOWNSHIP RENT LEVELING BOARD - AGENDA SEPTEMBER 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 [July's price index was 274.073, area prices unchanged over the month and up 2.2 percent over the year.

Action Items:

1. Approval of Minutes – August 9, 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 – AUGUST 9, 2018

Mrs. Johnson called the meeting to order at 6:08 pm and requested the Secretary to call the roll. The following members were present: Ruth Johnson, Connie Holmes, James Manning, Jeff Klein and Naomi Riley. Absent: Morrell Massicot, Catherine McAphee

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 [June's price index was 274.170, area prices up 0.1 percent over the month and 2.0 percent over the year].

APPROVAL OF MINUTES

Mr. Manning offered a motion, moved and seconded by Mrs. Riley to approve the minutes of the meeting for June 24, 2018; all that were eligible to vote were in favor.

RESOLUTIONS

There were none

DISCUSSION ITEMS – HEARING – JUMPING BROOK APTS- CAPITAL IMPROVEMENTS – P3

Paul Schneider of the law firm of Giordano, Halleran & Ciesla was present on behalf of JB Neptune Holding's, LLC; also present was Adam Gluck, operations manager and partner.

Mr. Anthony stated we were continuing with the application for Jumping Brook that started on May 3, 2018 for capital improvements. He discussed the procedures that would take place to establish capital improvements and surcharges and what has transpired thus far.

Mr. Anthony stated he wanted to discuss more in detail items that were either conditional or put on hold. He stated the roof and gutter replacements were put on hold because they needed an engineer's report on the useful life of the roofs. They also needed a list of open permits on roofs that weren't completed and those that were replaced. The concern was some did not have to be replaced.

Mr. Klein stated there were six roofs that needed to be replaced and tenants brought up that roofs were not replaced that long ago and he needed to verify what the bills say.

Mr. Gluck presented a spreadsheet indicating what was done by them and what was done by the previous owner. He stated a total of 12 roofs were replaced previously but the gutters and fascia were not touched.

Mr. Klein questioned out of 29 roofs did he do 17.

Mr. Gluck confirmed that he did and that the gutters were addressed as well.

Mr. Klein stated there were grey areas because there are no third party invoices. He stated they would have to cross reference the bills. He questioned the permit process.

Mr. Anthony stated he thought there was a recent change as far as the permit process.

Mr. Manning stated he did not think that you need a permit to replace gutters.

Mr. Gluck stated their contractors are obligated to facilitate all permits necessary for any job. They paid for the permits but they are not involved in the process.

Mr. Klein stated he was a little taken back with the fascia number. He questioned whether it was all fascia as strictly related to the gutters or whether some of the fascia was part of the signage or cosmetics.

Mr. Gluck confirmed that it was just for the gutters.

Mr. Anthony stated he was looking at the bill from Roofing Masters who did the fascia and he read the figures from the bill. He stated if they have proof of the cost and there was no fraud and they paid and the price is legitimate the Board cannot challenge it even if it seems as though they paid too much for the fascia. He stated the question in his mind was three fold, was the work done, was it a capital improvement and was it a legitimate cost.

Mr. Manning stated based on documents received he felt they covered everything and they indicated they did not replace every single roof.

Mrs. Holmes stated the exhibit did not tell her much.

Mr. Schneider stated it tells you where the plywood was used.

Ms. Holmes questioned the size of the roofs.

Mr. Gluck stated they were large roofs.

Mrs. Holmes stated details were very important

Mrs. Johnson questioned whether everything was uniform and correct. Therefore the price would be the same per board. All of this was done from the time that they took over and not by the prior owner

Mr. Gluck confirmed that it was done by them.

Mr. Klein questioned whether everything on the spread sheet was completed because he only found bills for eight of them.

Mrs. Johnson stated she needed documentation to correlate the bills to the work that has been done.

Mr. Gluck stated the work was finished over a year ago.

Mr. Manning stated he thought the Board had enough proof.

Mr. Anthony stated he felt like he had all of the documents.

Mr. Schneider asked if the Board could vote on it pending proof of a correlation which would include the spread sheet and actual bills.

Mr. Anthony suggested approving subject to the applicant proving a correlation between spread sheet and actual bill for each item on the spread sheet. He stated he would consider this as a conditional approval.

Mr. Manning offered to approve the roofing and associated work as a capital improvement pending correlation of spread sheet and matching invoices, moved and seconded by Mr. Klein. All were in favor.

Upgrade of Boilers/Hot water System

Mr. Anthony stated according to his notes the upgrade of the boilers & hot water system was a conditional approval subject to a report pertaining to the hot water heaters.

Mr. Klein stated there were residents who testified that the old unit was better than the new one and the lack of individual control was a problem.

Mr. Gluck stated it was the hot water and the heat. He stated he had a detail sheet of what was replaced. He had a letter from the plumber stating the hot water heaters were not efficient. He stated there were three original boilers and one was replaced.

Mrs. Riley questioned prior to their purchase were the tenants able to control their own heat.

Mr. Gluck stated no.

Mr. Klein stated if it's a capital improvement to the benefit of the tenant they should be able to control their own temperature in their unit because everyone has different needs.

Mr. Gluck stated the building was originally built without that capability. He stated 75% of the people do not have the authority to control their own heat. They are looking into replacing the three remaining boilers.

Mr. Anthony stated a capital improvement is more of an objective analysis. He looks at it as, "did you need to replace the boilers and does it provide enough heat to meet the legal requirements and that should be enough to establish if it is a capital improvement.

Mr. Manning stated he would like to control his own heat but the landlord has the right to decide.

Mrs. Riley questioned whether this would affect all of the units because some sides pay their own electric and some don't.

Mr. Gluck stated it would only affect the west side which had 104 units.

Mr. Manning stated this needed to be discussed further.

Mr. Schneider went over the exhibits for the hot water heaters and boilers. He stated he was seeking approval to replace the boilers in buildings 2, 5, and 9.

Mr. Klein stated he was starting to wonder if this was the definition of a capital improvement.

Mr. Anthony stated the problem is not that it's a capital improvement but how to apportion it out.

Mr. Schneider submitted a letter regarding replacement of the water heater after 7 years.

Mr. Anthony stated when we get to surcharge we must ask who it applies to. He also stated we can approve a conditional improvement until the work is completed then they would have to come back to us to approve the surcharge. We can say there's a special surcharge on one side and not the other.

Mr. Manning questioned what happened to the old boilers.

Mr. Gluck stated the vendor took them and he had no idea what he did with them.

Mr. Anthony stated a motion that the boilers are a capital improvement without conditions would have to be done and they would have to determine who the surcharge would apply to whether it's only a portion of the complex or the entire complex.

Mrs. Holmes questioned whether you could have more than one surcharge in a year.

Mr. Klein stated approval was good for two years and they have two years to complete.

Mr. Anthony stated he needed two motions, one would be the hot water heaters would be approved as a capital improvement as complete and the only question is whether the surcharge will apply to the entire complex or only to the west side and the boilers are that they

are approved subject to completion and the question is whether they apply to the west side or the entire complex. Mr. Klein stated he felt that both should only apply to the west side.

Mr. Klein offered a motion, moved and seconded by Mrs. Johnson that the hot water heater is a capital improvement and the surcharges would be applied to the west side only. Mrs. Holmes aye, Manning, aye, Johnson, aye; Klein aye; Riley, aye.

Mrs. Riley offered a motion, moved and seconded by Mrs. Johnson that the boiler is a capital improvement subject to completion and the surcharges would be applied to the west side only. Mrs. Holmes aye, Manning, aye, Johnson, aye; Klein aye; Riley, aye.

Mr. Anthony stated only capital improvements that have not been completed are the boilers and balconies. He recapped the actions for the other capital improvements.

Brick Cleaning – not a capital improvement

Breezing Upgrade – this is a capital improvement

Management Office – not a capital improvement

Pool Area, Decorations, Furniture –not a capital improvement

Exterior Lighting Upgrade – this is a capital improvement

Landscaping – not a capital improvement

Mold Prevention and Remediation – not a capital improvement

Parking lot – this is a capital improvement

Security Cameras - this is a capital improvement

Signage – not a capital improvement

Electrical Service Upgrade – not a capital improvement

Phase II Renovations to Gym – not a capital improvement

Balcony Renovations this is a capital improvement

PUBLIC COMMENTS

Elza Inna, Apt 53, stated when she was looking into moving into Jumping Brook she was given an option as to which side she wanted to live on and she chose the west side because she would not have to pay for the gas. She stated they cannot control the heat in the apartment.

Mr. Manning stated she would not have to pay for the gas only the surcharge.

Mr. Klein questioned whether they were going to have sensors indicating the temperature and will it be according to the state level.

Mr. Gluck stated they've never had an issue.

Mr. Klein again asked if there was a way that the tenant will know what the temperature is in the apartment and to know that it is working.

Mrs. Riley stated according to her notes the only way to tell if it's temperature regulated is through them.

Mr. Klein suggested he have something that has checks and balances.

Mr. Anthony stated it would be to his benefit to make sure the heat is at the legal temperature of 68 degrees.

Mrs. Inna (mother) stated it's going to be a problem because some people will be hot and some will be cold and you may have a fire.

Mr. Anthony stated he would prepare a formalized resolution and they will have to provide correlation of bills and spreadsheet for roofing.

Mr. Manning requested an up to date spread sheet.

Mr. Gluck asked if he could discuss the landscaping.

Mr. Anthony stated he could appeal that with the Township Committee.

Ms. Inna asked if the Board could explain how the surcharge would work.

Mr. Anthony stated it would be a monthly charge spread over a certain amount of time.

Mr. Klein questioned the percentage.

Mr. Schneider stated base rent and surcharge could not go over 15%

Mr. Anthony stated he would not be available for the October 11th meeting.

Mrs. Johnson offered a motion to adjourn the meeting at 7:55pm, 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

WHERAS, 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 again to August 9, 2018; and

WHERAS, 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; and

WHERAS, 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 the three 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 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:

PHASE 1

- a. Roofs and gutters and soffit/fascia **are** classified as substantial Capital Improvements; subject to 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.
- 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: September 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 September 6, 2018.

ATTEST:

PAM HOWARD, Secretary