

NEPTUNE TOWNSHIP RENT LEVELING BOARD

Minutes – DECEMBER 6, 2018

Mrs. Johnson , Chairperson, called the meeting to order at 6:09 pm and requested the Secretary to call the roll. The following members were present: James Manning, Jr; Ruth Johnson, Catherine McAphee, Alternate #1 Jeff Klein; Alternate #2 Jeff Klein; absent: Connie Holmes and Morrel Massicot.

Mrs. Johnson stated adequate notice of this meeting as required by P.L. Chapter 231 has been provided by notice in the Coaster on January 12, 2017, 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 [October's price index was 275.101, area prices down 0.1 percent over the month and up 2.0% over the year].

APPROVAL OF MINUTES

Mrs. Johnson offered a motion, moved and seconded by Mrs. Riley to approve the minutes of the meeting for September 6, 2018; all were in favor. (Manning and McAphee were not eligible)

RESOLUTIONS

The Board had a discussion regarding amendments to the resolution for capital improvements for Jumping Brook Apts. Mr. Anthony read a summary of the amended resolution prior to voting. Mr. Manning offered the following amended resolution, moved and seconded by Mrs. Riley that it be adopted:

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. Isaac 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 September 6, 2018 and ;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 (104 units on the west side and 204 units on the east side) 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 on September 6, 2018 and December 6, 2018 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 \$420,434.00; rather than the original claim of \$423,297.84 are acceptable to the Board.
- b. Upgrading of hot water heaters on the west side of the complex only are considered as Capital Improvements at a cost of \$62,158.00; said improvements of which have been completed. Boilers are Capital

Improvements to be completed and approved by separate application within two years.

- c. Brick pointing and cleaning **are not** considered Capital Improvements at \$11,281.00.
- d. Breezeway upgrades **are** considered a Capital Improvement at \$592,013.75, and are completed.
- 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 \$28,169.71.
- 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 \$35,290.41.
- 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: **\$1,586,049.87**

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 and amortization period is per Page 11 of the clarification document entitled, "Documentation of Costs and Payment for Approved Capital Improvements" dated October 11, 2018, and submitted to the Board for its December 6, 2018 hearing.

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, with regard to installation of boilers on the west side in Phase I and the balance in Phase II, 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, 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 completes installation of boilers on the west side and balconies, 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: James Manning

SECONDED BY BOARD MEMBER: Naomi Riley

AND ADOPTED ON ROLL CALL BY THE FOLLOWING VOTES:

ROLL CALL

Affirmative: Manning, Johnson, McAphee, Klein, Riley

Negative: ...

Abstain: ...

Absent: Constance Holmes, Morrel Massicott

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

The resolution was adopted on the following vote: Manning, aye; Johnson, aye; McAphee, aye; Klein, aye; Riley, aye;

Mr. Manning questioned whether new applicants were given notice that an application for capital improvements was submitted.

Mr. Anthony stated the ordinance really doesn't address it and we cannot be held responsible but stated perhaps we can address it.

Mr. Manning stated he felt it would be a good idea that notices should be given to new applicants.

Mr. Anthony stated he would prepare an amended ordinance to allow for notification to new tenants.

Mr. Manning offered a motion for Mr. Anthony to proceed with an amended ordinance, moved and seconded by Mrs. Riley. All were in favor.

DISCUSSION ITEMS

Elizabeth Byce # 250, building 17, questioned how would the burnt units affect the tenants.

Mr. Schneider stated every tenant would be assigned a share and if no one is in the apartments and it's vacant the landlord cannot collect. He can only collect when someone moves in.

Mr. Manning questioned if the repairs that would be done by the insurance company would offset anything for the tenants.

Mr. Klein stated the board is reimbursing them for monies already paid and the insurance would pay for damages recently incurred.

Ms. Kennedy, # 252 questioned how much would they have to pay in surcharges.

Mr. Anthony stated the owners must come back with a separate hearing saying what they're going to charge.

Tracey Daniels complained that she's called Jumping Brook's answering service and no one ever calls her back. She stated she had an issue with her stove and was afraid her apartment would catch fire.

Mr. Anthony informed her that she could file a complaint with the board and also contact Code Enforcement.

PUBLIC PARTICIPATION

Mr. Anthony stated he could not make next month's meeting and recommended canceling January's meeting and meet in February to which the Board agreed.

Mr. Klein recommended that for next year the Chairperson and Vice - Chairperson should be Mr. Manning and Mrs. Riley. He felt that Mr. Massicott should become an alternate member.

Mr. Anthony stated he sent a letter to Mr. Massicott and he expressed an interest to stay.

Mr. Manning offered a motion to adjourn the meeting @ 7:43pm, moved and seconded by Mrs. Johnson. All were in favor.

Pamela D. Howard

Secretary