

BOROUGH OF BRADLEY BEACH
SPECIAL COUNCIL MEETING MINUTES
APPELLATE HEARING FOR 501 LAKE TERRACE, LLC
JULY 18, 2023 AT 6:30 P.M.

A Special Council Meeting of the Mayor and Council of the Borough of Bradley Beach was held in the Meeting Room at 701 Main Street, Bradley Beach, NJ 07720 on the above date.

CALL TO ORDER

Counselor Cannon opened the meeting with a salute to the flag.

Sunshine Law was read by the Municipal Clerk

The meeting has been noticed publicly according to the Open Public Meetings Act requirement for the “Annual Notice” and published in The Coast Star and the New Coaster on June 29, 2023 and posted to the Borough Website.

ROLL CALL 6:30 P.M.

Present: Council: Councilwoman DeNoble, Councilman Gubitosi, Councilman Weber
Borough Attorney Gregory Cannon
Municipal Clerk Erica Kostyz

Thomas J. Catley, Esq. – Objector’s Attorney
Andrew J. Karas, Esq. - Applicant’s Attorney

Please note Mayor Fox and Council President DeMarco were absent. Counselor Cannon presided over the meeting.

Appellate Hearing for 501 Lake Terrace, LLC

Councilman Gubitosi stated he has reviewed the necessary materials for this hearing over the last several weeks. A few hours ago, it was brought to Mr. Gubitosi’s attention one of the objectors for this hearing made a contribution to his political campaign three years ago in 2020. Mr. Gubitosi stated he did not recall this and contacted the Borough Attorney for advice. Mr. Gubitosi stated Mr. Cannon told him there was no legal conflict issue, however, he feels a conflict is a conflict and while he feels he can proceed this evening impartially, he offered to recuse himself and step down if either party feels there is an appearance of conflict, however this will create an issue of not having a quorum.

Andrew Karas, Esq. of the firm Fox Rothchild on behalf of 501 Lake Terrace LLC stated there is an overriding issue pertaining to State Statute N.J.S.A. 40:55D-17 which requires any action be taken with regard to an appeal of this nature be taken with a full authorized membership of the Governing Body which is not present at this hearing, therefore leaving no jurisdiction to proceed.

A further discussion ensued between Mr. Cannon and Mr. Karas regarding the legality proceeding with this hearing and without the full authorized membership of the Governing Body versus having a quorum which is required under the Municipal Land Use Law for the Board of Adjustment.

Mr. Karas stated he would further object anyway due the appearance of impropriety based on the political contribution made to Councilman Gubitosi.

Thomas Catley, Esq., on behalf of the objectors stated he did not come prepared to argue this particular point and was not aware there would be absentees this evening. Mr. Catley stated in his experience it is not always possible to have the full membership present for special hearings and deferred to Mr. Cannon's interpretation of the statute that three Governing Body votes would be necessary to prevail. Mr. Catley stated it was a lot of work to get to this point and feels the hearing should proceed before the Council with Mr. Gubitosi present.

Mr. Cannon overruled Mr. Karas's objection and stated there are many circumstances that require specific vote counts of this Governing Body, none of them require the full authorized membership including the Redevelopment Law.

Mr. Cannon asked both parties to address Councilman Gubitosi's situation.

Mr. Karas stated he agrees Mr. Gubitosi should recuse himself.

Mr. Catley stated he does not see a reason to delay this hearing and recuse Councilman Gubitosi as he stated he would be impartial during this hearing. Mr. Catley does not feel the political contribution made would have any bearing or an appearance of impropriety.

Mr. Cannon stated that is not a legal ruling he can make and explained it would be up to Councilman Gubitosi if he wishes to participate in his capacity this evening.

Councilman Gubitosi stated his disappointment regarding two Governing Body members not being in attendance this evening and feels he could be impartial however due to the appearance of a conflict, he wished to recuse himself.

Councilman Gubitosi stepped down and left the hearing.

Mr. Cannon stated this meeting will adjourn due to a lack of a Council quorum. The statute leaves it up to the Governing Body to take action in this regard within ten days certified mail notice to both parties. A decision on this matter would need to be made by August 1st. The Governing Body must decide within four days to hold another meeting of this nature to hear the appeal.

Mr. Catley stated the objectors have spent a lot of money to get to this hearing and hopes there is a chance the Governing Body will decide to hold another hearing before August 1st. Mr. Catley feels it would be unfair if the objectors did not have another hearing.

Mr. Cannon stated he will follow up with the Governing Body to see if that is what they wish to do.

Public Comment:

Thomas J. Coan, 612 Third Avenue, spoke about the original application approved from 2021 and feels it was inconsistent.

Mr. Karas stated it is improper to comment on the application and provide additional testimony during this type of hearing. Mr. Karas further stated anyone commenting is providing additional testimony and asked that anyone commenting limit discussion to the hearing this evening only.

Mr. Cannon he explained this to the Governing Body prior to the hearing and also stated given the orders that the Borough is under with regard to public comment.

Mr. Cannon stated the public comment is not to be considered part of the appellate hearing that did not take place this evening, however given some of the orders the Borough is under with regards to the Open Public Meetings Act, it is in the best interest to allow public comments.

Mr. Coan stated he feels a settlement can be made by both parties and brought back to the Land Use Board.

Alan Rapaport, 512 Newark Avenue, stated his frustration the Mayor and Council President were not in attendance for this meeting and feels this is a disrespect to the community and an embarrassment to the Borough.

Councilwoman DeNoble apologized to the audience the hearing did not take place.

ON MOTION by Weber/DeNoble to close public comments and adjourn the Special Council Meeting.

ROLL CALL:

AYES: DeNoble, Weber

NAYS: None

ABSENT: DeMarco, Gubitosi, Mayor Fox

ABSTAIN: None

NO ACTION WAS TAKEN AT THIS MEETING.

THE SPECIAL COUNCIL MEETING ADJOURNED AT 7:00 P.M.


Erica Kostyz, RMC, CMR
Municipal Clerk