

# ***Borough of Brielle***

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**NOVEMBER 28, 2017**

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April 14 2018

**November 28, 2017**

BRIELLE PLANNING BOARD  
TUESDAY, NOVEMBER 28, 2017

The Brielle Planning Board held a Special Meeting on Tuesday, November 28, 2017 in order to continue the hearing for Waypoint 622, this being held at the Borough Hall, 601 Union Lane. After the Sunshine Statement was read, a moment of silent prayer and a Salute to the Flag, roll call was taken:

Present - Joseph Bonacci, Thomas Condon, Eric Lapham, James Maclearie,  
Stacey Montalto, Charles Sarnasi  
Absent - Mayor Thomas Nicol, Councilman Frank Garruzzo, James  
Langenberger, James Stenson

Also present were Joe Clark, Board Attorney, David Clark, Mr. Clark's law partner and Alan Hilla, Jr., Board Engineer; Board Secretary Karen S. Brisben recorded the Minutes. There were about 20 people in the audience. Let it be on the noted that the Coast Star and Tom Stuhmann, as well as Denise Sweet, a Court Recorder, recorded the Meeting.

Mr. Tim Middleton, one of the objecting attorneys, came forward to continue his cross-examination of Tim Lurie, who was sworn in. Mr. Middleton asked Mr. Lurie to bring out Exhibit A-34, the revised parking plan. He then asked Mr. Lurie if he remembered statements made at previous meetings by himself and Mr. Ray, the Traffic Expert. Mr. Lurie said he would have to look at his notes and did not remember the exact parking requirements Mr. Ray spoke of. Mr. Middleton said that Mr. Ray said, on 8/17, there are 151 spaces required and Mr. Lurie said he would have to find the plan Mr. Ray spoke of and he did, it was Exhibit A-17 and showed they have 137 existing and 85 required spaces. Mr. Jackson voiced an objection at this time and asked if Mr. Middleton was questioning Mr. Lurie or Mr. Ray? Mr. Middleton said he was trying to get at numbers and Mr. Lurie said the warehouse area was not included in the 85 spaces. There was then a brief discussion on using the warehouse spaces and how clear the Ordinance is on this, Mr. Lurie did not feel it was clear. They then got into a discussion on "marina" and "marina facilities" and the standards that should be applied. Mr. Condon then spoke up and said the warehouse is not a retail space and does not count as retail but Mr. Middleton said the Ordinance does not speak of "retail" but of "gross floor area". At this point Mr. Jackson said this has nothing to do with the cross-examination.

Mr. Hilla felt this can be looked in different ways, one space per boat slip is the law and one space for 100 feet of gross floor area may be due to this. There is a parking problem so the higher burden for marinas may be due to help in fishing and marina use. Mr. Jackson felt all this is opinion and he did not think this was appropriate. Mr. Clark did think it is appropriate for Mr. Hilla to speak of this based on his expertise so it is fair. Mr. Condon said this will be up to the Board to decide and Mr. Clark agreed. At this time Mr. Middleton said he was done so the hearing was opened to the public for questions to Mr. Lurie and, hearing none, that portion was closed. Mr. Condon asked if Mr. Collins was going to be present tonight and Mr. Middleton said he is in Sea Bright and then coming here.

At this time Mr. Middleton called Mr. Dave Gamble forward and explained he will give testimony as to bands still using their own sound system at Waypoint, he is an investigator with DLG Investigators. Mr. Jackson objected and said right now there is no problem with the amplification system. Mr. Condon said there have been question on this and he felt the Board should hear the testimony.

Mr. Middleton said the bands are not using their amplifiers so he hired Mr. Gamble to investigate. Mr. Gamble has been an investigator for 5 years, he was a detective with the Monmouth County Prosecutor's Office and retired there as a Sergeant. Mr. Gamble then told the Board he had been hired to go to Waypoint and see if bands were using their amplifiers or Waypoint's. Mr. Jackson spoke up and said they had no knowledge of this coming in tonight and this is a complete surprise, he would like time to review the reports. Mr. Middleton countered with the point that Mr. Kendarian testified without giving them a report. Mr. Condon asked that Mr. Middleton please provide a written report to Mr. Jackson.

Mr. Gamble proceeded and said he was there on 3 occasions and saw band speakers in use. The first time was 8/19/17 at 6:15 p.m. when Reverend Funk & The Groove were playing with mounted speakers which he had photos of. Mr. Clark marked them collectively as 0-14 (13 pages), the 1st set was taken 8/19/17 and showed a tripod mounted speaker and speakers on the floor; the 2nd set were two photos together showing

two speakers and the 3rd set was 3 pictures of speakers. Mr. Gamble said that when the band took a break canned music was play but not from these speakers. Going back to the photos, there were more pictures of speakers on both sides of the stage.

Mr. Gamble then went back to Waypoint on 8/25/17 at 6:22 p.m., the band was Enjoy and he presented more of Exhibit 0-14, 2 photos of a pipe speaker with a box on the bottom, music comes out of the top of the pipe from the speaker and Mr. Gamble testified that this is where he heard the music from. Mr. Gamble then had more pictures of the speakers and wiring for them. Then on 9/8/17, at 6:00 p.m. the band Me and Bobby D. played with two tripod speakers that had sound coming out from them, he had several photos of these. Mr. Gamble again said there was canned music coming out from the speakers on the wall, not on the band speakers, when the band took a break.

Mr. Jackson asked Mr. Gamble who retained him and the answer was Mr. Middleton's clients; Mr. Jackson asked who these clients were and Mr. Gamble said he did not know. Mr. Jackson asked if Mr. Gamble knew of any condition that required the bands to play through house speakers and Mr. Gamble was not aware of any. Mr. Jackson then asked him if he was aware the Police were called on 8/19/17 and Mr. Gamble said no. Mr. Jackson said the Police felt the noise complaint came from a nearby party and not Waypoint, he asked Mr. Gamble if he could confirm that the band played through the house speakers as well and Mr. Gamble did not know. Mr. Jackson asked him how many years he was with the Prosecutor's office and was told 22 years. Mr. Jackson asked him about the crowds on the evenings he was there and was told it was a fairly crowded bar; Mr. Jackson referred to one of the Exhibit 0-14 photos and asked if the picture looked like a crowd and Mr. Gamble said no, it did not. Mr. Middleton objected to this as Mr. Gamble was there to look at the speakers and Mr. Condon said he was there to check on the speakers; he asked Mr. Gamble if he did a head count and the answer was no, he was not hired to do that.

Mr. Middleton and Mr. Jackson then got into a discussion on the complaints and Mr. Condon asked if there were any complaints filed that night and Mr. Jackson said no.

At this time the hearing was opened to questions of Mr. Gamble and, seeing no response, that portion of the hearing was closed. Mr. Sarnasi asked if the speakers were loud when Mr. Gamble walked by and the answer was "average". Mr. Bonacci asked how long he was there and Mr. Gamble said he was there from 45 minutes to an hour each night. Mr. Bonacci then noted he was not there after 9:00 p.m. Mr. Condon said the objecting attorneys can bring forth their witnesses at this time and then go forward from there. Mr. Jackson objected to having two attorneys speaking the same time and possible representing the same group. Mr. Collins said that was not true but Mr. Jackson said they have joint exhibits, Mr. Condon did not see the relevance to this and Mr. Clark felt the attorneys can bring up their witnesses.

At this time Mr. Tom Stuhmann from 106 Ocean Avenue came forward and was sworn in, he told the Board he has lived there for 18 years on this one-way street and is a retired Engineer from the Army Research and Development Dept. Mr. Middleton asked where he was in relation to Waypoint and Mr. Stuhmann said he is 650 feet northeast, he can see Hoffman's and can cut through Riverpoint, across the railroad tracks to get to Hoffman's. He had objections to the amplified music, yelling and singing, this started in 2015 and got very loud. Mr. Jackson said this was the condition in 2015 and does not apply to 2017 which is what is under consideration, to go back in history is unnecessary. Mr. Middleton felt this was relevant and there will be proof that the problem persists in 2017. Mr. Jackson still felt this should be about 2017 but Mr. Condon was going to let this continue.

Mr. Stuhmann said he could feel the bass sounds all over his home, even with air conditioning on, it could be felt; on weekends he would just leave and during the week there was live music every day but Monday – the weekends were crazy. Mr. Middleton then asked about 2016 and Mr. Stuhmann said it started out quiet and the music stopped at 10:00 p.m. Then, in early July, you could start to hear it and as the weeks went on you could hear the words to the songs; there was no live music on the weekdays and it was better than 2015. Then in August of 2016 it got a little worse and then one night in September, on 9/4/16, it was as loud as in 2015. Mr. Middleton then asked about 2017 and Mr. Stuhmann felt this year was louder than 2016 and did not start out quiet, some days were quiet and some days were loud. If he was on his front lawn it was loud, mostly on the weekends. He was also disturbed on 7/27/17 by the house music, he got out of bed it was so loud and it was coming from Waypoint; he went there and it was still loud, he was at the dead end of Union Lane and disco music was coming out of the ceiling speaker.

Mr. Middleton asked about music coming from the Riverhouse which is about 350 feet from Mr. Stuhmann home, closer than Waypoint. Mr. Stuhmann said Riverhouse has outdoor music and it is no problem and there is no impact from them; he noted there are 3 houses between him and Riverhouse. Mr. Middleton then asked about hearing music from the Wharfside and Mr. Stuhmann said he has never heard music from Wharfside, on Crescent Drive one can hear it. Mr. Middleton then asked him if he lived near the railroad tracks and the answer was yes, Mr. Stuhmann said he filed a complaint once with NJ Transit about the train horn

being blown too long and that problem was solved. He was also familiar with Union Landing and went there, as well as all the restaurants in this area.

Mr. Stuhrmann then presented a notebook with photos of Waypoint and this was marked as Exhibit 0-15. Mr. Jackson looked at the notebook and complained about Waypoint being referred to as a nightclub. Some of the photos had scenes from Waypoint dock on October 2015, with comments, Mr. Jackson said these should not be submitted, the pictures are okay but the comments are not. Mr. Clark said that Mr. Jackson had a valid point, these photos are from Facebook and social media, but Mr. Condon felt that, since this is social media, anyone could have seen them. Mr. Jackson still felt this was not admissible and Mr. Condon agreed the wording here is offensive; Mr. Clark said the Board can give it the weight it deserves. The next photo is Exhibit 0-5, the lower deck of Union Landing. Mr. Condon said this testimony has already been given and asked that Mr. Stuhrmann & Mr. Middleton move on. They had more pictures of Union Landing and Mr. Jackson asked the dates of the pictures and Mr. Clark agreed. Mr. Stuhrmann said the website Marina.com is where he got the pictures from and dates can be gotten here, he said these dates were 2005-2006. Mr. Collins spoke up and noted there is writing on each photo and that may help, these are just photos of Union Landing. Mr. Condon told Mr. Collins that all the members are familiar with what Union Landing looked like and for all attorneys to "play nice in the sandbox". He said that if dates cannot be given then he didn't want to see them – Mr. Collins objected and said dates don't matter and Mr. Jackson told Mr. Collins he was the one to make that ruling in the past.

They then proceeded to show more pictures of Union Landing and Mr. Jackson protested as these show a vacant restaurant, pictures after it was closed. The next photos were of the raw bar at Union Landing taken on 6/23/12. Mr. Condon again said that all the Board members were familiar with Union Landing and Mr. Stuhrmann said he just wanted to show the different areas of Union Landing and noted the photo of the lower area that had 14 tables; Mr. Condon did not feel the photo could show the exact number of tables. More pictures were shown, lower seating area, along with a picture of the Union Landing 15 seat bar and the Waypoint 40 seat bar. Mr. Jackson and Mr. Middleton then went back and forth on showing dates again. Other pictures were shown of the bar, canopy area and deck of Waypoint, the bar is 900 square feet the awning is bigger than what Union Landing had. He had a picture of the canopy area for both Union Landing and Waypoint but Mr. Condon and Mr. Jackson both felt the pictures were not taken from the same dimensions and Mr. Condon noted the Waypoint photo was taken before the sound wall was put in. Mr. Stuhrmann then showed photos of the Waypoint band area and Mr. Jackson again objected to these as they obviously were taken off the internet. Mr. Middleton said they have a band schedule for Waypoint for 2017 and can match the photos with the band that is playing, it was commented that a photo on Facebook can be one from another time.

The next photo was the Waypoint increase in the waiting area, as well as the original Union Landing deck and a 2017 revised site plan, he said these were part of an exhibit and shows 35% more coverage. Mr. Jackson objected as Mr. Stuhrmann is not an expert witness and can't testify on this; Mr. Condon asked him where he got this information and Mr. Stuhrmann said from an OPRA request through the Planning Board Secretary. Mr. Condon felt he was not testifying as an expert but Mr. Jackson did not understand this as Mr. Stuhrmann is making comments as to percentages; if this information was taken from a record it should be shown. Mr. Stuhrmann said there are two site plans and he put them side by side, this is from Exhibit 0-7. Mr. Clark told Mr. Jackson he will be able to cross-examine Mr. Stuhrmann when he is done. Mr. Jackson felt this was prejudicial but Mr. Clark said the Board will give it the weight it deserves.

Mr. Stuhrmann then addressed the seating and showed a picture of a seating area for Union Lande, 1,100 square feet and he again said Waypoint has 35% more here. Waypoint has added 380 square feet which is an increase of 35% and this has been testified to. He then showed some more pictures of different areas, along with one side by side of Union Landing and Waypoint. Mr. Jackson asked him if they were the same scale and Mr. Condon had the same question, it looks like the picture on the right, of Waypoint, is done on a larger scale. Mr. Stuhrmann did admit they were taken at different angles and is not scaled exactly. Mr. Condon said in one picture the canopy stops in the middle and in the other it goes straight across, it can't be seen which is more.

At this time the Board took a recess as it was 9:15 p.m. and they resumed at 9:20 p.m. Mr. Jackson still had a problem with not dating the pictures and not having them to scale. He had Exhibit A-19 and said there was another canopy that covered the whole area. Mr. Condon said the entrance to Union Landing was not covered and he wanted to see where it was covered; there were two sets of stairs to the lower level and two canopies. He agreed that the pictures submitted by Mr. Stuhrmann were not to scale. Mr. Middleton commented that Mr. Jackson had said, in August, that 380 square feet was made as additional square footage.

Mr. Stuhrmann presented another picture from 2015 of dance crowds and then one that shows of rows of crowds, this in an area that was not used before and is being used now. He then had pictures of a band in

July (Mr. Condon noted it was from Facebook and it could be any date), and more pictures of crowds at Waypoint.

Mr. Stuhrmann then said he had videos from 2017, 6/24/17 & 7/28/17 which were taken off the musicians' website. Mr. Clark asked if he had seen them play and the answer was no. Mr. Middleton said this is to show their case, they want to prove that Waypoint is not operating as a sit-down restaurant. Mr. Jackson asked where the Ordinance says that and Mr. Middleton said they are operating as a night club and not a sit-down restaurant and the videos will show this, it would be prejudicial if they can't as this is critical to their case. Mr. Clark asked if this is what Waypoint is like every night and Mr. Collins answered and said no and again stated the dates are only relevant to the proceedings and the fact that this does not happen every night is irrelevant. The videos contradict sworn testimony and show the conditions, a dance floor, concerts, etc. This is not a permitted use in this town and common sense should be applied, this is not in front of a jury. This activity needs to stop and the Board is being asked to stop it.

Mr. Jackson said Mr. Stuhrmann was not there and this cannot be authenticated, their investigator could have taken videos and did not, the Zoning Officer never said it is prohibitive to have a band here, other places have bands and it is not a variance approval need. Mr. Clark felt the dates were important and the dates given were weekend dates; Mr. Condon said the Board has the right to put conditions on whatever they want. Mr. Jackson said variances are different than conditions.

At this time videos were played, the first one was 6/24/17 and the band was Nicole & Denise, Mr. Stuhrmann did not have a time but said it was dark. The next video was on 7/8/17 and was Reverend Groove & the Funk and Mr. Stuhrmann said this will show the music noise and crowd noise. The last video was again on 6/24/17 with the band Nicole & Denise.

At this time Suzanne Herszsdorfer of Staten Island came forward and was sworn in, she is the girlfriend of Mr. Stuhrmann. She took a video as she heard loud music and Mr. Jackson said this was the night they had their testing that they already testified to. She said she went to Waypoint and saw a 6-piece band and recorded it and she then showed the video taken on 9/4/16. Then there was another video on 9/4/16 taken by Mr. Stuhrmann from the Sand Bar and a video taken from a band website, the band was the Counterfeiters. At this time the video with all these bands playing was submitted to the Board Secretary as Exhibit 0-16.

Mr. Stuhrmann then said he had tried to investigate the sound system wattage, there are 3 sets of speakers and all this had been marked as previous exhibits. He then had a picture of the noise source of the speakers and this was marked as Exhibit 0-17. Mr. Jackson objected as Mr. Stuhrmann was giving his impression of the case, this is not testimony. Mr. Condon wanted to hear what was being said so he let Mr. Stuhrmann continue. Mr. Stuhrmann explained the noise source/volume control, he said this is like a Governor on a car. Mr. Jackson questioned his expertise and Mr. Stuhrmann said he worked with advanced weaponry in his job and this was not hard for him to understand the sound system. He then presented another sound wall speaker which is about 10 off the ground. Mr. Clark marked this as Exhibit 0-18, another picture of the speakers was marked as Exhibit 0-19. Mr. Stuhrmann then had another picture of the company that makes these speakers, he took this with a zoom lens on 9/12/17 from across the street; this was marked Exhibit 0-20. Mr. Stuhrmann said the features can be seen and he found this to be a EON615, the largest one and has a wattage of over 1,000 watts with a 90 degree spread with 127 decibels. This was marked as Exhibit 0-21.

His next picture if the catalog page for the EON615 and its' description, this is two pages and was marked as Exhibit 0-22. He commented that there is nowhere in Brielle that has speakers this high. The 3rd page of the catalog, which was marked as Exhibit 0-23, shows Bluetooth Integration. The next picture was the height information at 14 feet from the foundation, plans for Union Landing done 12/29/14 by DW Smith.

Mr. Middleton asked Mr. Stuhrmann what he would like to see the Board approve as to conditions; the answer was no outside amplified music at all, he had no objection to the restaurant; no music from speakers and no live bands, there is a lot of yelling and whistling. He was not sure about an acoustic guitar or drums. Mr. Middleton asked him if he did an OPRA search on the other restaurants in the area and Mr. Jackson said each case stands on its own merit, this Board knows what it can and can't do. Mr. Collins did not agree with Mr. Jackson and felt there are criteria here and they have to prove it this is not a detriment to the Zone Plan, it can't be said this property stands on its own and the Board can look to see how other restaurants operate; this relates to the zone scheme.

Mr. Jackson said all those cases were different and Mr. Condon said the Board wasn't privy to all this and felt the Board should hear it, Mr. Jackson said then all that will have to be addressed. There was then more of a discussion on what the Board should hear, then Mr. Jackson said again that Mr. Stuhrmann was not an expert witness and he requested copies of what Mr. Stuhrmann had to present on the other restaurants and Mr. Condon and Mr. Clark agreed and asked Mr. Stuhrmann to submit just the Resolutions he had gotten through his OPRA request. Mr. Jackson did not feel it was fair to submit something he had not been able to see and

Mr. Condon felt the Board should also have copies submitted to them, Mr. Stuhrmann was instructed to give the Resolution copies to Mrs. Brisben for distribution for the December 12th meeting.

There was then a brief discussion on having another special meeting, perhaps on December 5th but not all could attend that evening so it was decided this hearing will be carried to Tuesday, December 12th on the night of the Board's regular meeting which begins at 7:30 p.m.

As there was no other business to come before the Board a motion to adjourn was made by Mr. Bonacci, seconded by Ms. Montalto and unanimously approved by all. The meeting was adjourned at 10:32 p.m.

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Approved: December 12, 2017