

Appeal Hearing was heard before the Mayor and Council on Monday, November 13, 2017 in the Borough Hall and was called to order by Mayor O'Brien at 6:00 pm followed by a salute to the flag.

Meeting notice had been satisfied in accordance with Open Public Meetings Act Chapter 231, P.L. 1975 by advertising in the Home News Tribune, notifying the Sentinel Publishing Co. and the Star Ledger, posting on the bulletin board and filing with the Municipal Clerk.

Roll Call: Councilpersons Buchanan, Grillo, Kilpatrick, Lembo, Melendez and Novak.

Absent: Councilman Grillo.

Others Present: Mayor O'Brien, Municipal Clerk Theresa A. Farbaniec, and Borough Attorney Michael DuPont, Rent Leveling Board Attorney Jim Nolan.

Others Present - John Krenzel, Esq., Attorney representing 429 Washington Road, LLC

Mayor O'Brien stated that they would with a discussion on the Appeal received from 429 Washington Road, LLC. He called upon the attorney representing the Rent Leveling Board, Mr. Jim Nolan.

For the record Jim Nolan identified himself as the attorney representing the Rent Leveling Board. He opened by stating that he would briefly explain the Rent Leveling Ordinance then he would let Mr. Krenzel make his argument, followed by his response.

For the record and disclosure purposes Mr. Nolan informed the Council that he is the Borough Attorney in South River where Mr. Krenzel is the Mayor. He noted that he was not appointed by Mr. Krenzel or his party, but he was appointed by the opposite party. Mr. Krenzel was given an opportunity to object to his participating in this hearing and Mr. Krenzel did not, so we moved forward with the hearing.

Mr. Nolan explained the Rent Leveling Board Ordinance as it applies to tax increases/surcharges which allows for the Landlord to request the Rent Leveling Board to allow an increase to the tenant which is referred to as a surcharge in the ordinance which says "Payment of permitted tax surcharge. Landlords that have been permitted surcharges in accordance with the proceeding sections, shall bill the tenants for payment for such surcharges in twelve equal monthly installments." So the problem is what happens after that that twelve month period when the tax increase is still there and becomes a burden on the landlord. The Ordinance is only calculated on a twelve month basis, it no longer continues after the twelfth month.

The Borough Attorney stated for the record of the following records were received:

From Mr. Nolan:  
Memo dated Oct. 5, 2017;

From Mr. Krenzel:  
Correspondence dated Sept. 21, 2017; Sept. 12, 2017  
Exhibits dated July 26, 2017; e-mail dated Aug 15, 2017

From 429 Washington Road LLC:  
Correspondence dated July 25, 2017

Rent Leveling Board Ordinance 12-6

Next appearance:

Mr. Krenzel, appearing on behalf of the landlord 429 Washington Road, LLC  
Mr. Krenzel explained his client's objection and appeal was outlined in the packet the council received with regards to what happens to the increase in month 13 and that it falls back on the landlord.

There were no questions for Mr. Krenzel.

Mr. Nolan said that his research revealed that there was no case law that he could find that could give them any guidance on this matter. He also indicated that this is how it has been handled in Sayreville for years. He said that he also found that there are many towns like Sayreville and there are some that have ordinances that address going beyond the 12 months. Sayreville's Ordinance specifically does not go beyond the twelve months.

Mayor asked what Mr. Nolan's recommendation was.

Mr. Nolan stated that the Rent Leveling Board has denied Mr. Krenzel's request and that he upholds the Board's findings that the appeal should be denied based on the fact that the Ordinance does not grant relief beyond the twelve month period. He said that going forward the council can address this issue and amend the ordinance.

Mayor commented that there are a number of small landlords in Sayreville creating a financial hardship.

Mr. Nolan warned the governing body that they also have landlords with very large tenant base so they need to be careful.

Mayor asked if there could be an ordinance structured so that it would not be retroactive it would only start on a specific date and go forward. Mr. Nolan said it could be drafted that way. The Mayor also addressed the impact the ordinance has on the small landlord as opposed to the large landlord.

Councilwoman Novak addressed the regular 2% rental increase the landlords are allowed and said she felt like they are not losing money. Mr. Nolan responded that the other charges are to specifically address a tax increase.

Mr. Krenzel said that the portion of the ordinance that allows for the 2% based on the CPI which the CPI takes into account a variety of different things such as gas, electric and water. This is a situation of Real Estate Tax Increases. He addressed the other two letters included in the packet and how it does hurt the smaller landlord.

Mayor asked if there were any questions or comments. There were none.

The Borough Attorney expressed the need to retreat into closed session to discuss this matter and read the Executive Session into record.

#### **RESOLUTION FOR CLOSED SESSION**

**WHEREAS**, Section 8 of the Open Public Meetings Act, Chapter 231, P.L. 1975 permits the exclusion of the public from a meeting in certain circumstances, and

**WHEREAS**, this public body is of the opinion that such circumstances presently exist;

**NOW, THEREFORE, BE IT RESOLVED** by the Mayor and Borough Council of the Borough of Sayreville, County of Middlesex, State of New Jersey, as follows:

1. The public portion of this meeting is hereby adjourned in order that the Governing Body may meet in a closed, private session for approximately 10 minutes to discuss the following matters:

#### **Litigation/Appeal**

2. Following the conclusion of said closed session, the Governing body shall reconvene the open portion of this meeting to consider any other matters which may be properly brought before it at this time.

3. The nature and content of discussion which occurs during closed session shall be made public at the time the need for non-disclosure no longer exists.

**NOW, THEREFORE BE IT RESOLVED** that the public be excluded and this resolution shall take effect immediately.

/s/ Daniel Buchanan, Councilman

APPROVED:

/s/ Kennedy O'Brien, Mayor

Council President Buchanan moved the Executive Session Resolution be adopted on Roll Call Vote. Motion seconded by Councilwoman Novak.

Roll Call: Councilpersons Buchanan, Kilpatrick, Lembo, Melendez, Novak, All ayes.

Carried. Time: 6:16 PM

- **RECONVENE – 6:31 PM**

Council President Buchanan made a motion to reconvene. Motion seconded by Councilwoman Novak.

Roll Call: Voice Vote, all Ayes.

Roll Call for who is still present:

Councilpersons Buchanan, Kilpatrick, Lembo, Melendez, Novak.

Absent: Co. Grillo

At this time the Mayor turned the meeting over to the Borough Attorney.

Mr. DuPont said that based upon the discussions during closed session. He asked if there was a motion to support the decision of the Rent Leveling Board as outlined in the documents presented by Mr. Nolan.

Councilwoman Kilpatrick made a motion to support the Rent Leveling Boards decision. Motion was seconded by Council President Buchanan.

Roll Call: Ayes: Councilpersons Kilpatrick, Buchanan, Lembo-with the understanding that the Rent Leveling Board have a look at the ordinance and make the change, Melendez, Novak.

Nays: None.

Mayor stated that they will be asking the Rent Leveling Board to review this portion of the Ordinance for a possible amendment.

The Borough Attorney said that he will be speaking with Mr. Nolan following the conclusion of this meeting.

- **PUBLIC PORTION**

At this time Mayor O'Brien opened the meeting to the public on this or any other issue.

There being none Councilman Buchanan made a motion to close the Public Portion. Motion was seconded by Councilwoman Kilpatrick.

Roll Call: Voice Vote, all Ayes.

Motion to adjourn made by Councilwoman Mary Novak and seconded by Council President Dan Buchanan.

Adjourn Time: 6:33 PM

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Theresa A. Farbaniec, RMC  
Municipal Clerk

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Date Approved

