

TOWNSHIP OF LOPATCONG
PLANNING BOARD MEETING

February 25, 2015

The meeting of the Planning Board of the Township of Lopatcong was called to order by Chairman VanVliet at 7:00 pm. A silent prayer was offered followed by the Oath of Allegiance.

Chairman VanVliet stated “adequate notice of this meeting has been provided indicating the time and place of the meeting in accordance with Chapter 231 of the Public Laws of 1975 by advertising a Notice in The Star Gazette and The Express Times and by posting a copy on the bulletin board in the Municipal Building.”

Present: Members Belcaro, Clymer, Degan, France, Hall, Liptak, Mayor McKay, Vice-Chairman Pryor, and Chairman VanVliet. Also present was Attorney Sposaro and Engineer Sterbenz.

Old Business:

Minutes January 28, 2015 – Chairman VanVliet asked if everyone received a copy of the minutes from the last meeting and asked if there were any additions, corrections or comments.

Member Mayor McKay – I have a comment. I noticed looking at the minutes we did not elect a secretary among the officers.

Chairman VanVliet – Yeah.

Member Mayor McKay – Is that we intend to have no secretary?

Chairman VanVliet – No the secretary has a five year contract starting last year.

Member Mayor McKay – Um, I would ask our attorney is that appropriate to have a five year contract, for officers appointed. I thought they had to be one year.

Attorney Sposaro – It is something I haven't researched and I must tell you I'm not really familiar with the question. I understand that boards are this board autonomous from the governing body. The governing body however, provides funding for this board so there's this interplay that's there. I'm not aware of any recorded decision that exists that addresses the issue head on but Mayor I would be happy to look into that and report back to you at the next meeting.

Member Mayor McKay – I went to the course for Planning Board on Saturday and they went over that and that is what they said there, so.

Attorney Sposaro – Did anyone there express an opinion to you?

Member Mayor McKay – The attorneys that were on the board said that that was the case. That you could only have one year appointments for officers. Non-officers you could have like a long appointment. We could do something different but for officers that, you know, sign papers and such the maximum term was a year.

Attorney Sposaro – I don't think there is anything in the land use act that says one way or the other, but I'll be happy to research the question.

Member Mayor McKay – Okay just don't want us to get in litigation problems down the road for something silly like that.

Attorney Sposaro – Understood.

Member Liptak – If I may ask, what is considered an officer because I read minutes and look at things everything says Class I, Class II. What's considered an officer?

Chairman VanVliet – I don't know (inaudible) what the Mayor was referring to as an officer.

Member Mayor McKay – Well in minutes, there's the reorganization section and there is the election of officers and secretary section. So the officers would be in my opinion, and I'm not a lawyer, but they would be a chairman, a vice-chairman, um, and a secretary in this case in an organization such as this. We're the members; we are various levels of members; we're the board and those would be the officers who carry out all this. That's my non-lawyer understanding of it.

Chairman VanVliet – Any further discussion? If not, we'll wait until we get an opinion. Any further discussion on the minutes? No comments? In that case the minutes will stand as published. Moving onto contracts for the year 2015. First one Resolution No. 15-06 to approve contract with Paul Sterbenz, Maser Consulting, for engineer services. Do you want to do these in total or each one individually?

Secretary Dilts – What do you recommend Tony?

Attorney Sposaro – I think you can do them all at once.

Chairman VanVliet – Okay. Motion memorializing the resolution.

Vice-Chairman Pryor – Motion

Chairman VanVliet – Is there a second.

Member France – I'll second it.

Member Mayor McKay – Is there a term on these contracts? I couldn't find it this morning.

Chairman VanVliet – All one year.

Member Mayor McKay – All one year.

Engineer Sterbenz – My contract says one year. It expires December 31, 2015.

Member Mayor McKay – Okay.

Chairman VanVliet – Roll call Beth please.

Vice Chairman Pryor – Oh wait a minute. Is there discussion?

Chairman VanVliet – Oh okay discussion.

Vice Chairman Pryor – When reviewing this, um, I saw Paul offered one rate for escrow work and a different, lower rate for other work. I was under the impression that the Municipal Land Use Law requires that that rate be identical. Again, I'm not an attorney but that's been my impression.

Attorney Sposaro – I think it depends upon the nature of the work. Um, and again, it is not something that, Paul just handed me a section of the land use act 40:55D-53.2. Something highlighted. Paul what is your understanding of this? Just looking at this for the first time, I don't.

Engineer Sterbenz – Seems to address that the billing rate should be uniform across the board. Just to give the board a, when I started many years ago, I was asked to have a lower rate for my general time. Sometimes there's general time. When we go to these meetings, reviewing policies, issue ordinances, master plans and things of the like and I've continued that practice throughout the years keep a slightly lower billing rate for the general work. There isn't a lot of general work quite honestly, (inaudible) be very surprised. So I guess the implications of this are that we follow the statute here. All my work will be \$145 instead of, you know, including the general work which right now I'm indicating should be billed at \$120.00 an hour.

Attorney Sposaro – The statute seems to distinguish requires uniformity when these are fees not reimbursed or otherwise imposed by applicants or developers. So that suggests to me that review work could be a separate rate than work that is done for the municipality and it comes out of the budget that is appropriated.

Vice-Chairman Pryor – It suggests it could be a different rate or the same rate?

Attorney Sposaro – It suggests to me that the limit here, it says for other professionals, the charge shall be the same as the rate as all other work of the same nature by the professional for the municipality when fees are not reimbursed or otherwise imposed on applicants or developers. Again, I'll look at this more carefully. It's an issue I've not wrestled with before but I certainly am familiar with the fact that professionals and persons that are on their staff that maybe you feel that different rates for different levels of service and

Vice-Chairman Pryor – But Paul’s contract has a fee schedule and the fee schedule as I understand it is the same except for the principal. Correct?

Engineer Sterbenz – Yeah what would happen is I’m the principal.

Vice-Chairman Pryor – I mean that’s the only rate that’s different.

Engineer Sterbenz – (Inaudible) rate of \$145 and for a general activity I charge \$120.00.

Vice-Chairman Pryor – Yeah.

Engineer Sterbenz – So

Vice-Chairman Pryor – I’ll say at \$145 for a principal is still a bargain.

Attorney Sposaro – Maybe you should all be \$145.

Vice-Chairman Pryor – You know, it is only a few bucks. It is a bargain. I think that puts us in compliance with the law.

Engineer Sterbenz – I have no problem (inaudible) page 2 after it says \$145 per hour, I would eliminate the rest of that paragraph except in cases where general work such as ordinance review, general meeting time, etc., is being funded from a municipal operating account and I said the hourly billing rate for the professional engineer assigned to the Planning Board for general work shall be under \$120.00 per hour. I’ll just take everything out after the \$145 an hour. I don’t think it is going to be any major impact. There is very little general work.

Vice-Chairman Pryor – I mean I would support that the dollars are small and I think that brings us into compliance with my impression of what the law is. If somebody feels differently then.

Attorney Sposaro – I’ll modify the resolution I prepared. I will so, I’ll clean it up so that we have a clean copy and I’ll also modify the agreement for professional engineering services.

Engineer Sterbenz – Well, actually, I prepared this agreement. I’ll just go back and amend that and send page 2 back tomorrow.

Attorney Sposaro – That’s fine.

Chairman VanVliet – Can we act on it tonight or do you want to wait?

Attorney Sposaro – We can adopt the resolution.

Chairman VanVliet – With those proviso’s okay. I’ll ask for a motion for adopting the resolution with the modifications that have been stated as far as the fee schedule is concerned.

Vice Chairman Pryor – I'll make that motion.

Chairman VanVliet – Okay, do I hear a second?

Member France – Second.

Chairman VanVliet – Further discussion? None, roll call Beth.

Secretary Dilts –

AYES: Members Belcaro, Clymer, France, Hall, Liptak, Mayor McKay, Vice-Chairman Pryor, and Chairman VanVliet.

NAYS: None

Resolution No. 15-06 –

R 15-06

**RESOLUTION AUTHORIZING CONTRACT WITH
PAUL STERBENZ, P.E. OF THE FIRM OF MASER CONSULTING, P.A. FOR
PROFESSIONAL ENGINEERING SERVICES**

WHEREAS, there exists a need for the retention of an engineer to render engineering consulting services to the Planning Board relative to Board matters and wherein the Board or its members are parties; and

WHEREAS, the Board shall compensate the Professional on a time and material basis in accordance with his Agreement for Professional Services.

These funds are available to the Planning Board and have been certified by the Local Finance Officers; and

WHEREAS, the Local Public Contract Law, N.J.S.A. 40A:11-5(1)(a)(i) permits the Board to retain the services of professionals without competitive bidding. However, this contract was publically advertised in accordance with the New Jersey Pay-to-Play “fair and open” process, N.J.S.A. 19:44A-20 et seq..

NOW THEREFORE BE IT RESOLVED by the Planning Board of the Township of Lopatcong as follows:

1. The Chairman and Secretary of the Planning Board are hereby authorized and directed to execute the attached agreement with Paul Sterbenz, P.E. of the firm of Maser Consulting, P.A..
2. This contract is awarded without competitive bidding as a “professional service” in accordance with N.J.S.A. 40A:11-5(1)(a)(i) of the Local Public Contracts Law. This contract was publically advertised in accordance with the New Jersey Pay-to-Play “fair and open” process, N.J.S.A. 19:44A-20 et seq. Paul Sterbenz, P.E.. was chosen based upon the proposal submitted and because he has previously served as the Board’s engineer for a number of years and has special knowledge as to the zoning and planning conditions in the Township. This knowledge is particularly valuable to the Planning Board.
3. A notice of this action shall be printed once in the official newspaper of the Township of Lopatcong.

CERTIFICATION

I, M. Beth Dilts do hereby certify the above to be a true correct copy of a Resolution regularly and duly adopted by the Planning Board of the Township of Lopatcong at a duly called meeting of the Planning Board held on February 25, 2015.

M. Beth Dilts

Chairman VanVliet – Moving on to the next Resolution for adoption. Approve contract with George Ritter to provide planning advice to the Planning Board. Do I hear a motion to adopt the resolution.

Member Hall – So moved.

Chairman VanVliet – Do I hear a second?

Member Belcaro – Second

Chairman VanVliet – Discussion. Hearing none, roll call Beth.

Secretary Dilts –

AYES: Members Belcaro, Clymer, France, Hall, Liptak, Mayor McKay, Vice-Chairman Pryor, Chairman VanVliet.

NAYS: None

Resolution No. 15-07 –

R 15-07

**RESOLUTION AUTHORIZING CONTRACT WITH
GEORGE RITTER, P.P. OF THE FIRM OF RUGGIERO PLANTE LAND DESIGN,
LLC FOR PROFESSIONAL PLANNING SERVICES**

WHEREAS, there exists a need for the retention of an engineer to render engineering consulting services to the Planning Board relative to Board matters and wherein the Board or its members are parties; and

WHEREAS, the Board shall compensate the Professional on a time and material basis in accordance with paragraph two of his Agreement for Professional Services.

These funds are available to the Planning Board and have been certified by the Local Finance Officers; and

WHEREAS, the Local Public Contracts Law (N.J.S.A. 40:11-1 et seq.) requires that a resolution authorizing the award of contracts for “professional services” without competitive bids on the contract itself must be available for public inspection.

NOW THEREFORE BE IT RESOLVED by the Planning Board of the Township of Lopatcong as follows:

1. The Chairman and Secretary of the Planning Board are hereby authorized and

directed to execute the attached agreement with George Ritter, P.P. of the firm of Ruggiero Plante Land Design, LLC.

2. This contract is awarded without competitive bidding as a “professional service” in accordance with N.J.S.A. 40A:11-5(a)(a) of the Local Public Contracts Law because George Ritter, P.P. has served as the Board’s planner for a number of years and has special knowledge, which knowledge is particularly valuable to the Planning Board.
3. A notice of this action shall be printed once in the official newspaper of the Township of Lopatcong.

CERTIFICATION

I, M. Beth Dilts do hereby certify the above to be a true correct copy of a Resolution regularly and duly adopted by the Planning Board of the Township of Lopatcong at a duly called meeting of the Planning Board held on February 25, 2015.

M. Beth Dilts

Chairman VanVliet – Next Resolution No. 15-08 approve contract with Anthony Sposaro to provide legal advice to the Planning Board. Do I hear a motion for adoption of the resolution.

Member Belcaro- Motion.

Member Hall – Second.

Chairman VanVliet – Discussion. Hearing none, roll call Beth please.

Secretary Dilts –

AYES: Member Belcaro, Clymer, France, Hall, Liptak, Mayor McKay, Vice-Chairman Pryor, Chairman VanVliet.

NAYS: None

Chairman VanVliet – Resolution 15-09. This is to grant the Phillipsburg Mall an extension of

time of 190 days. Has everyone received a copy of that resolution? Are there any questions, comments, discussion?

Member Liptak – (Inaudible)

Attorney Sposaro – It is the last one.

Chairman VanVliet – Block and Lot (inaudible).

Attorney Sposaro – The last two pages at least in my pile.

Chairman VanVliet – Do you have it.

Member Liptak – Yes.

Member France – 190 days is correct versus 180 or?

Engineer Sterbenz – It's what the statute says.

Attorney Sposaro – An odd number but I didn't pick it.

Chairman VanVliet – This concerns Friendly's Restaurant over by the Phillipsburg Mall if you are wondering where it is.

Member Liptak – What is the ultimate goal of the resolution?

Chairman VanVliet – The mall is sold and all the peripheral properties fall in Pohat/Lopat district. Mainly concerned with just the Friendly's, they are all instead of being one giant block for the Phillipsburg Mall, they are all sold off to the individual property owners as separate lots. Why they wanted to do it, I don't know if it was just to generate something for the new owners of the mall or what it was. There was some controversy with the Friendly's, in the fact that we had a kind of, hate to say a property line dispute but it was a meet and bound dispute by a foot or so.

Member Hall – It also had to do with the, uh, the maps that were presented showed a boundary line. However, the map indicated that it would subdivide it but the subdivision was never filed with the county. So, they came back in to have it subdivided.

Member Liptak – So, like a Friendly Restaurant and all that, they're not owned by the Mall owners.

Member Hall – Right.

Member Liptak – They're their own separate plots, their own (inaudible).

Chairman VanVliet – They are now, yes.

Member Liptak – Okay.

Chairman VanVliet – Before I guess they were just renting the property or I don't know how they, I don't know what the arrangements were if it was landlord tenant association or anything like that. It was just that they cast off the lots as each individual Panera's, you know, Sonic when it was there or whatever it is now.

Member Hall – Empty.

Chairman VanVliet – Sorry about that.

Member Belcaro – If I remember correctly, the plan was to sell off those lots individually to use the monies to invest back into the Mall. That was the plan.

Member Mayor McKay – They haven't stayed with the plan though.

Member Belcaro – Well

Member Liptak – But the lots; Friendly's, Sonic, Panera, all those are town plots?

Chairman VanVliet – No. They are now individual owners.

Member Liptak – They're all individual owned.

Chairman VanVliet – Right they're all private entities. Did everyone have a chance to read the resolution? I'll entertain a motion to adopt the resolution.

Member Clymer – So moved.

Member Hall – Second.

Chairman VanVliet – Further discussion on it? Hearing none roll call Beth please.

Secretary Dilts –

AYES: Members Belcaro, Clymer, France, Hall, Liptak, Mayor McKay, Vice-Chairman Pryor, Chairman VanVliet.

NAYS: None

Chairman VanVliet – That's about it. Move onto Public Comment.

Orchefski – Highlands Way – I was looking over Planning Board Minutes on the website and the last minutes are from 2013 I believe.

Chairman VanVliet – Could be.

Orchefski – Should not be right?

Chairman VanVliet – I'm not.

Orchefski – Because the minutes should be accurately reflected on the website. Last one is posted from July 2013.

Chairman VanVliet – Possibility. That's the last one we approved.

Orchefski – You have no minutes approved after July 2013?

Secretary Dilts – 14 you did.

Chairman VanVliet – 14.

Orchefski – Yeah but the last minutes on the website are from July 2013. There no minutes posted.

Chairman VanVliet – Okay.

Orchefski – They need to be posted.

Member Hall – (Inaudible) official.

Orchefski – It just stopped in 2013?

Mayor McKay – I have a question for the attorney.

Orchefski – The reason for my question really was and I don't know how much the attorney can answer that. I noticed the last time that the alternates are voting. They're included in the vote of the board. Is that actually a legal thing to do? I was under the impression that alternates are not supposed to vote. Maybe you can clarify that. Thank you.

Attorney Sposaro - This is a nine member board and if apart from voting, alternates are permitted by law to participate in the hearing process, ask questions, make comments. When it comes to voting and it's time to vote, if there are nine regular members of the board present the alternates do not vote. However, if there are less than nine and an alternate is here and they are otherwise qualified to vote because they've been here and they've heard all the testimony, than that person can vote. If, so, if there were eight regular members here and an alternate, alternate number one would have the right to vote. If there were two members, regular members absent and two alternates are present, then are otherwise permitted to vote, both alternates are allowed to vote. That's what the status of the law is. So, they do get to participate but they only vote in the absence of members who are regularly appointed and they participate in the order of alternate number one and then alternate number two.

Member Hall – If they did vote (inaudible) In other words if it was a unanimous vote like say

and they voted.

Attorney Sposaro – Their vote really is a nullity. It doesn't mean anything. It doesn't change anything. If it was a four to four vote or a five to four vote and they voted say in favor and passed five to four, um, since there were nine votes and they were allowed to participate it would matter. Uh, well, say it wouldn't matter, their vote would count but they can only participate if the regular members are not present otherwise, their vote just does not matter; doesn't count.

Orchefski – (Inaudible).

Attorney Sposaro – Well there are minutes but I'm not aware of any requirement that they be posted on the website. I'm certain that you could make an OPRA request and secure copies of the minutes and you could review them to determine whether or not you find any inconsistencies or problems with them. You're welcome. Mayor you said you had a question.

Member Mayor McKay – Yes, I questioned wouldn't it be best if we put the minutes up on the website so it wouldn't give the impression that we are not hiding anything. It's full disclosure, there they are, there's the minutes. You know, I'm talking about constructive notice. People don't, you know, know to come and look at those minutes but they do know the website so.

Attorney Sposaro – I think transparency in government is important and I see no harm in posting them. I don't know what the mechanics are in posting them. How difficult or easy it is and Beth I'll ask you that question. What's involved in posting them?

Secretary Dilts – Nothing. I just send them to our Council President who handles that, our website and she can post them. I think we ran into problems though when we had very voluminous, I don't know what kind of space they take up and if it could cost additional.

Member Mayor McKay – Yeah that could happen. If it is two voluminous plans and things. Then you can say something in there, come to the office if you want to see the plans.

Secretary Dilts – Because some of our minutes have been like two hundred and some pages you know and you start adding all them. Then it, I think it could cost us more money. I'm not saying that's a problem just saying that's what we would be looking at really.

Attorney Sposaro – I'd ask you to investigate it. I suggest that you investigate it and unless there is a cost or other labor problem that makes it onerous, I think it

Chairman VanVliet – Well I think it's getting to the point with from what I can see with Council there seems to be an ongoing problem with them with having things posted on our website that we have a volunteer doing a website. It's getting to the point where do we have to create a position, a web person for the Township in order to get.

Member Mayor McKay – Other towns do have that.

Chairman VanVliet – Who does it? They do have a paid person.

Orchefski – (Inaudible).

Member Mayor McKay – Yeah, they have a person that comes in part-time usually ten hours a week.

Chairman VanVliet – Oh, I'm not saying that it is but to make that a volunteer does it. So and we all know where to go with what if's so.

Orchefski – (Inaudible). Can still understand what happened at the meeting. That was one of the reasons why and we just had that (inaudible) verbatim minutes and I was under the impression that minutes are presented to public so people who are unable to attend are still able to.

Chairman VanVliet – That was Council.

Orchefski – Any minutes (inaudible).

Chairman VanVliet – I have no objection to doing it. It's just what method are we going to use. Are we going to keep depending on a volunteer to do it?

Member Mayor McKay – No I think I'm going to be introducing something were going (inaudible) we need some help.

Chairman VanVliet – And this is getting to the point where, you know, it's nice if you can just scan them on but if they have to be typed up.

Orchefski – Minutes are typed up in any case I believe and so since that's my business, I'm in business doing that and posting the minutes is not anything (inaudible). You guys make the decision. I was just wondering whether (inaudible).

Chairman VanVliet – I have no idea why it was stopped. I could probably give you a reason for 2014 we didn't meet so okay. Any further comments from the public? Hearing none, I'll entertain a motion to adjourn.

Member Hall- I got a question with the request that we gave the attorney, um, regarding the secretary. As far as the membership and looking at our ordinance uh, you know, the nine members are Class I, II, III or IV members and makes up the nine. If you want to entertain membership of officers, what have you; there is no mention of secretary there. However under the organization, uh, that the Planning Board shall elect and Chairman, a Vice Chairman from the members of the Class IV and select a secretary who may or may not be a member of the Planning Board or municipal employee. It may employ or contract for and fix the compensation of legal counsel other than the Township attorney, a planning legal counsel, sorry a planning legal consultant, a civil engineer and other staff and services as it may deem necessary not exceeding the (inaudible) appropriated by the Township. I guess my question, while you research this, is other staff and services does the secretary fall under that and if so, then I, you know, I feel the Board had its right to write a contract for that.

Attorney Sposaro – I don't think the question is whether it had the right to enter a contract. The question is whether it can be so in excess of one year. I think that is the question and am I correct Mayor? Is that the question you are posing?

Member Mayor McKay – Yeah that is what they said at this conference. One year for any of the contracts. That's why other professionals have one year contracts.

Engineer Sterbenz – Let me further expand upon what the Mayor just said. I happened to be a panelist Saturday for NJPO and I was sitting next to the two attorneys and the two attorneys took the position that it was really two positions. Uh, there is a secretary who really is responsible for just signing documents when plans have been approved they sign the plans, the deeds, whatever. Then you have a clerk or administrator that really provides the administrative duties for the board and these two particular attorneys took the position that the clerk or administrator is actually very similar to or the same as the boards professionals; the attorney, myself and the planner so and they felt that with board work, all those professionals only get one year contracts so given the fact that the administrator/clerk is also a professional, they should only be entitled to a one year contract. So that was their legal opinion that they were um, indicating to the crowd on Saturday just to expand upon it a little bit further. So that's something that Tony has to take a look at.

Member Hall –Yeah if there's statutory language that says (inaudible).

Attorney Sposaro- It may be the practice of boards to make one year appointments. I just don't know if there is anything that prohibits an appointment for an excess of one year. I'm not aware of any authority that says that you are limited to one year appointments.

Member Hall – Is there a statutory limit on professionals like lawyers and engineers?

Attorney Sposaro – I'm not aware of any in the land use act but the practice is.

Member Hall- The practice is but if we want to give Paul two year or three year contract, we have the right to do so?

Attorney Sposaro – That is what I have to look at.

Member Mayor McKay – I'm not sure that's true Bruce. I don't think it is in the land use act.

Attorney Sposaro – I don't think it is either.

Member Mayor McKay – (Inaudible) because if it's I don't want to (inaudible) you'll find it.

Chairman VanVliet – Well just from the Board's standpoint when we granted the contract, our legal advice was that we could do it. That there was nothing prohibiting it. That was from our board attorney at that point so.

Member Mayor McKay – Well mistakes are made best to make sure we have everything correct.

Chairman VanVliet – Any further comment?

Member Hall – Do we enter a bet in case it is that we, we appoint the secretary or do we wait for a decision?

Chairman VanVliet – We wait for a decision.

Vice-Chairman Pryor – I think that would be prudent.

Attorney Sposaro – I think we should wait until; give me a chance to research the issue and depending upon what my research yields we can then decide how you're going to act but right now there, unless someone challenges it or if someone says it is invalid, there's an existing contract and we do have a secretary and life goes on.

Member Hall – Will we have to have another meeting or can you just inform us?

Attorney Sposaro – I can generate a memo but for the board to take any action, we have to have a meeting and there has to be a quorum and there has to be notice of the meeting so.

Member Hall – All right so depending on what you find out.

Attorney Sposaro – I will prepare a written memo. I will get it to Beth well in advance of next month's regularly scheduled meeting and then I'll defer to the Chair on whether were going to have a meeting if there is no other business to conduct. Is that acceptable?

Chairman VanVliet – That's acceptable. I want to go back to one point also before we adjourn. The situation of voting for the alternates, it has been a practice here for long before I was here that the alternates were allowed to vote but the vote, even though it was recorded so we knew which way they went didn't count. In the case that we did have a close vote, um, or one of the members was disqualified in voting afterwards on an appeal or whatever it would be, instead of having to have to rehear everything we already had the vote recorded as long as they were here and heard all of, you know, the testimony and presentations. Is that legal or I mean that was the understanding of what we did?

Member Clymer – (Inaudible) disqualifying later but you would have the vote on record.

Chairman VanVliet – And was gone to the first alternate as the designee or the second alternate. If we had two members absent or two members disqualified for something, you would already have that, we wouldn't have to go back and do the entire hearing over again.

Attorney Sposaro- There's the statute which says alternate members may participate in all matters but may not vote except in the absence or disqualification of a regular member of any class. So, uh, but the way I read this, I don't think you can allow them to vote in anticipation that someone in the future may be disqualified. I think that at the time of the vote they're either

entitled to vote or not. So, respectfully Chair

Chairman VanVliet – Should we change our longstanding.

Attorney Sposaro – I don't think they should be I do not think they should be voting unless at the time of the vote, a regular member has been disqualified.

Chairman VanVliet – Okay.

Member Hall – So, we want nine votes. If there's, if there's not enough Class, you know, non-alternates,

Attorney Sposaro – Regular members.

Member Hall – we could always go to them, to the alternates.

Attorney Sposaro – Exactly and that's what you are supposed to do.

Member Hall – Okay. So we have a hierarchy of votes; we go down through the Class I through IV and we don't have nine votes, we then go to the alternates.

Attorney Sposaro- Alternate No.1 and then

Member Hall – Alternate No. 2.

Vice-Chairman Pryor – I have one other question councilor – would an alternate be entitled to make a motion?

Attorney Sposaro – If they are not entitled to vote, I don't think they can make a motion.

Member Liptak – I would like to add that I being an alternate, um, find problems with that. Um, not with the motion end but the voting end. Um, and I would like to talk to the chairman as a side bar maybe to that but my, my concern, my issue with that is I am allowed and permitted to vote but as an alternate and particularly myself coming in, where I am only two months into the position, I don't know all the background and the history of everything that's going on, yet I'm expected to make a vote if something were to come up. So, I don't, I don't know particularly the history of certain things, where they stand, where they lie, you know, with the parameters with where certain things are. I don't know really what is, what so as an alternate and I know our other alternate is not here this evening and I don't know where he stands on this but we don't necessarily have all the background have all the knowledge but we can vote if there is not nine people but if we're voting then we're supposed to know what all (inaudible).

Member Hall – Well no, there is testimony that is given that night.

Vice-Chairman Pryor – Or you had to be present for the testimony or you had to read all the transcripts. So you will, the law says, you can, you must be knowledgeable to vote and you can

become knowledgeable either by attending all the hearings or spending an evening and reviewing all the testimony and then you are allowed, you know, you're allowed but believe it or not most of this stuff is covered in the law. Laws are ambiguous sometimes.

Member Liptak – Things are covered in the law I understand that but when you are talking about specific things within the Township so something is, uh, let's just say, uh, house abc, you know, something is going on. If I don't know the history of that and I just come in and here I am two months into this position as an alternate, I don't know the history. I can't read the history because there is no minutes. I can't back anything up. I don't know anything about it.

Vice-Chairman Pryor – Well I,

Member Hall – What do you mean by history because well you don't have, we don't make decisions based on history. We make decisions based on the evidence that

Member Liptak – Well you're bringing people into a position say this evening.

Member Hall – Right.

Member Liptak – Where here I am two months into this position and you're saying okay here's the resolution on Friendly's. I don't really know much about it. I don't really know anything about it.

Member Hall – He should have made a motion to abstain from that.

Chairman VanVliet – He should recuse himself from that.

Member Liptak – So, if you're an alternate, you really should throw, um, because you really don't know.

Member Hall – No, no that's not true.

Chairman VanVliet – (Inaudible).

Member Hall – Keep in mind there's a lot of stuff that comes before the Planning Board we hear in one night. So, everything you need to know you're hearing that night. Very seldom does something carry over to another meeting.

Chairman VanVliet - (Inaudible).

Member Liptak – How could you hear things for one night and vote on it?

Vice-Chairman Pryor – Well it may be a small issue. Maybe I can give an example of something that is more in line with what you're thinking of. I mean one of the charges of the Planning Board is adopting a master plan. You may work on that for eight, nine months. You show up at the end of nine months obviously if that were me, I wouldn't feel comfortable wanting to adopt

or reject the master plan. So, you know, you have to abstain at that point I feel but, you know, somebody comes in and they have a little site plan, it's one night and you want to sit down and review the minutes, look at the plans, if your vote is called upon give you ahead benefit of what everybody else saw.

Member France – Most of the time, you know, when there is a new applicant that comes which is most of the stuff we do, it usually there's a hearing one night and sometimes if it is a small thing, you vote on it then, if not it is carried over to a second month. So the most you would typically miss, if you are at the second meeting, maybe you missed the first one you weren't at. You could always go back and read the minutes and be prepared to vote the second time. But most of the time, it's like that, you know, the situation tonight with Friendly's that was talked about a long time ago, that's not the norm. You know, the norm is more you got a new application coming in, you hear it for first time, you know, let's say you're there and it carries over to the second meeting, you hear it there, so your qualified just like everybody else to vote. That's kind of the norm for the board.

Engineer Sterbenz – I just want to jump in. One of the things that will happen is if it is an application and there's going to be reports prepared by myself and Mr. Ritter, our Planner, and we're going to give you a lot of background information on the property and the case and if there is a history to that property where there are prior applications, we are going to outline that as well. So you are going to get a lot of background information from us on a particular property and application for review before you even get into a hearing setting here where you will get more information through the testimony that's going to take place before the board.

Member Liptak – Okay.

Member Hall – Getting back to the voting and all that. Um, trying to think back, we took (inaudible) he's a Class III member I believe.

Member Mayor McKay – Two. Employee number two.

Member Hall - Employee since he's not here by default doesn't one alternate should be able to vote?

Attorney Sposaro – Correct.

Member Belcaro – He makes the ninth member.

Member Hall – Yes he makes the ninth member. So, and like I said, I don't think he was, I can count on one hand how many times in the past several years.

Member Belcaro – Tonight we have two members that are not here.

Member Hall – Yeah then both alternates can vote. Like he can vote tonight.

Member Belcaro – He can vote tonight correct?

Member Hall – We're two members short.

Secretary Dilts – No you're three.

Member Belcaro – Yeah two members and one alternate.

Member Hall – If we look back at the minutes and everything. I think you're going to be hard-pressed to find a situation where we found an alternate that voted and shouldn't have because there at least one or two members now present.

Member Mayor McKay – Just something we want to avoid in the future.

Member Hall – Oh yeah. But I always

Member Mayor McKay – You're probably correct.

Member Belcaro – How would someone, a member be disqualified? What are some of the grounds for that?

Chairman VanVliet – If it becomes known after a while that there was a conflict of interest or something like that. I only have one scenario and with the mayor, he has the authority to appoint someone to fill in for him. How would that, I mean does that, would that have to be like a term appointment be would be coming into or could he do it for one evening for him to come in and how would that affect the alternates.

Attorney Sposaro- I will hand it to this board to ask some of the most obscure questions put to me as a board attorney. I don't know the answer off the top of my head. I have to look at the statute. I don't think that, uh, I don't want to speculate. Paul do you know off the top of your head.

Engineer Sterbenz – Actually, the two attorneys, the two land use attorneys that were on the panel Saturday with us opined that it was really the mayor's call. If the mayor wasn't available for a meeting, he could designate somebody for a meeting and then he could be back the next meeting. The statute is really silent on it but we did go on and discuss and actually I entered into discussions on this because I've been in a number of municipalities where mayors have made designations for the Planning Board and really my experience has been that mayor's decide to call it quits they don't want to be involved in it up front and they designate somebody and that person just handles it for the rest of their term. I've seen it in Hackettstown. Actually, um, we've seen it in this town. I've seen it in White Township. They make a decision up front that they are not going to be involved for X, Y and Z reasons and the have the designee, you know, acting in place for all these board meetings.

Vice-Chairman Pryor – In my experience, you had situations where an application came in and it was (inaudible) visibility. Maybe the mayor would participate in that one and then when that was decided they would disappear and you'd see their representative for the balance.

Attorney Sposaro – Or just the opposite.

Vice -Chairman Pryor – Depending on, you know political astuteness.

Mayor McKay – Here' a tough one for you, the mayor has a conflict of interest and sends his designee in. Does that designee have that conflict of interest as well?

Attorney Sposaro – If that question was put to me, not hypothetically, but in a live situation, I'd say err on the side of caution and have that person not participate because if the mayor is conflicted out the argument is going to be that someone is trying to upend the board and overturn what they do, that the board just that the mayor put someone in his or her place to act on their behalf and they were just a mouth piece for the board for the mayor and he had about the same conflict and you can't avoid it, I would avoid that like the plague. I think if you are conflicted out you're conflicted out.

Member Hall – For example, like Mayor Steinhardt. His partner is a land developer so right from the onset he recused himself and said I'm not going to participate in the board. I'm appointing somebody to take my place. Not that he had a known conflict of interest; he just said the opportunity for conflict of interest is going to come up so I'm just not going to be bothered with it, I'm appointing this person to fill.

Attorney Sposaro – I think that is a different situation.

Member Mayor McKay – It be if he never involved himself (inaudible) but if you pick and choose every time (inaudible).

Member Hall – Oh yeah.

Chairman VanVliet – That conflict, I was just wondering if you get sick, can you appoint somebody to come in and fill your position. How does that affect the alternate situation?

Member Mayor McKay – The alternate would not be needed I believe.

Chairman VanVliet – Okay.

Member Belcaro – But the designee that you appoint for that evening would have to be sworn that evening?

Attorney Sposaro – They don't have to be sworn in

Vice Chairman Pryor – Usually in, in my, I don't know but I mean the alternate serves at the pleasure of the mayor. Mayor's term is coincident with his term as mayor. He appoints a mayor's representative who serves at the pleasure of the mayor. Mayor wants to replace him in the middle of the mayor's term, he does it but it's not like this, you know, this guy at this meeting and this guy at that meeting. You appoint the mayor's representative and he serves until

the mayor doesn't want him to serve any more.

Member Liptak – So in terms of what you are saying, if the mayor falls ill one evening and he can't attend the meeting. The structure of Council, Planning Board, whatever, whatever you want does not defer if you were out it does not defer to the chairman. Is that not how it works is,

Member Hall – If he falls ill, he just doesn't show and the board composition takes

Chairman VanVliet – Yes but he could appoint someone to come if it was an important vote to him

Member Hall – But see, to me, that would, like you said, that would cause a situation (inaudible) why is he appointing somebody but if you get sick and don't show

Vice-Chairman Pryor – Because that's what the statute says. It's written right into the statute and it says, you know, how the mayor serves, it discusses the mayor representative and it says he serves at the pleasure of the mayor.

Member Liptak – So I don't know where we are really going and I don't know how we got off on this thing but (inaudible). So my apologies to the board.

Chairman VanVliet – Don't apologize but these are the scenario's you start coming up with after a while.

Member Mayor McKay – It's good to talk like this.

Chairman VanVliet – Where do I defer to? If he comes in one evening and he's primed to vote a certain way, no reflection believe me, just as a hypothetical, who do I go with?

(Inaudible)

Vice-Chairman Pryor – Why he serves at the pleasure of the mayor so that will be his last meeting.

Member Liptak – The mayor's out, the mayor' sick so you are deferring to the chairman but the chairman (inaudible)

Vice-Chairman Pryor – The seat is either filled or it isn't. The mayor's either sitting there or he's arranged for his representative to come here that night. If it is an empty seat, the first alternate participates.

Member Hall – If it is a multi-meeting issue, his alternate has to abstain because he wasn't present so.

Vice-Chairman Pryor – Well again, I defer to Tony on that one. I'm assuming any alternate would be prepared to read the minutes if he thought he was going to vote.

Member Liptak – The alternate meaning

Engineer Sterbenz – The mayor’s designee is not an alternate. The mayor’s designee is a Class I member of the board.

Vice-Chairman Pryor – Even a Class I member can’t vote if he missed the meeting.

Engineer Sterbenz – Correct, correct.

Chairman VanVliet – Motion to adjourn

Member Hall – Motion to adjourn.

Chairman VanVliet – Second

Member France – Second

Chairman VanVliet – All in favor.

Meeting adjourned.

Respectfully submitted,

Margaret B. Dilts
Secretary