

TOWNSHIP OF LOPATCONG  
PLANNING BOARD MEETING

March 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, Fischbach, Goral, Hall, Liptak, Mayor McKay, Vice-Chairman Pryor, Chairman VanVliet. Also present were Attorney Sposaro, Engineer Sterbenz and Planner Ritter.

**Old Business:**

Gary VanVliet – Has everyone received a copy of the minutes of the February 25<sup>th</sup>, 2015 meeting? Are there any corrections, additions or comments on those?

Mayor McKay – I have a comment. The minutes seem to be more of a, um, uh, they’re not minutes, there kind of like a transcript. Is that what the committee wants, they want a transcript of the proceedings or they want verbatim minutes of the proceedings. I think this is something we have to talk about a little bit.

Vice-Chairman Pryor – It is my understanding that we are required to have a transcript, not a transcript but a recording available but the minutes themselves are typically a summary.

Mayor McKay – These are very long.

Vice-Chairman Pryor – Yeah, a summary of, they’re not verbatim, they don't have to be verbatim. That is my understanding.

Mayor McKay – That's mine too.

Secretary Dilts – They have to be verbatim for a hearing. That is required by law.

Mayor McKay – A hearing but not a meeting correct?

Chairman VanVliet – That's our understanding, yes.

Mayor McKay – I understand we say were going to follow Robert's Rules but verbatim minutes aren't really Robert's Rules; Robert's Rules call for concise minutes. Just something to bring up to the committees attention.

Member Liptak – I would like to just say that, I think that the minutes should be concise. Minutes are

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usually, brevity; it's a high level kind of overview of what's happened. Here's the thing, we don't need a transcript of what's happened through the whole thing and I think it makes it easier for, for our secretary, for Beth, uh, we don't need the whole transcript because as you get that you try to read, it's a very long document. You try to read through everyone's comments and everything that happens through the meeting, so, the minutes should be more of a concise high level type of a document. If there's a hearing, that's different. I mean in terms of minutes, it should be more concise.

Chairman VanVliet – Putting terms out here, high level, concise, how do we actually define that?

Member Liptak – We don't need, in terms of what we received in this packet for this month. We don't need the whole transcript of what happened for February. We don't need that. I mean this could have been this could have been consolidated to one page. That's really what were the issues, what we talked about; it could be much more efficient and concise. We don't need to know what everybody said.

Mayor McKay – Yeah and it would be nice if the pages were numbered because if you drop your package you're in big trouble; you can't put it back together then and when you do it this way, you have a lot of situations where the word inaudible is, um, is used and I don't know what that means. I mean I guess it means that the secretary couldn't understand the tape but it, it's some people it's used very, very frequently with some names and almost never with others and, you know, it just lends itself towards misinterpretation down the line about what the intent was there.

Chairman VanVliet – Any further comment.

Member Hall – Yeah, Beth, you, uh, we have a recording correct?

Secretary Dilts – Yes, we do.

Member Hall – So, if anybody needs to OPRA what was said, and what have you, what would you have to do?

Secretary Dilts – Oh, I could just make a disc.

Member Hall – On that. All right. Uh, we, this is the way we've always been doing it, so, I mean, I don't see

Chairman VanVliet – I would rather err on the side of having a little bit more than not enough.

Member Hall – Yeah, that's because we've been

Chairman VanVliet – We've been

Member Hall – chastised

Chairman VanVliet - in the past for not having enough.

Member Hall – Yeah, but

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Chairman VanVliet – so, I think they're perfectly fine the way they stand here, so, I mean the reading is easy, it goes through, covers everything we did. As far as the inaudible, I mean you find that on a regular transcript that a court reporter if they can't understand what someone has said somewhere along the line you can't

Secretary Dilts – Yeah, if you don't talk directly into the microphone, you turn your face, you know, it's sometimes very hard to hear.

Chairman VanVliet – so, I think this is clear, concise, exactly what was happening at that meeting and I don't see anything wrong with the way she's doing it now.

Member Liptak – I understand, I hear you.

Chairman VanVliet – So

Member Liptak – Change is good. People don't like change but I think the minutes need to change to be shorter, brevity concise, let them, what the content is.

Member Clymer – Who makes

Member Liptak – We all don't need

Member Clymer – Who makes the decision what's important and what isn't?

Member Liptak – yeah, but we all don't need to receive a 20 page document, a transcript of the meeting. It doesn't make sense.

Member Clymer – If you don't care to read it, don't read it. I mean it's what happened.

Member Liptak – Yes, but that's not what a document, that's not the minutes. Minutes are about the brevity of the meeting. They're not about the whole entire meeting.

Mayor McKay – Well, you have the tape to back it up, so, if you have concise minutes of a few pages, then one has the option to go back and look at the tape. If one wants more details right, I mean before we didn't have the tape, but now a days you have the tape.

Chairman VanVliet – We've always had the tapes.

Mayor McKay – Okay.

Member Liptak- So, you always had the tape, so, I'm not going to beat the issue but it's just my opinion.

Chairman VanVliet – Any further comments?

Vice-Chairman Pryor – Well, I don't feel strongly about it if everybody's comfortable with minutes the way they are I don't have a problem with that. I don't know how much work it is, uh, but it is my

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understanding the minutes don't have to be a transcript of the meeting.

Chairman VanVliet – I agree it doesn't have to be a transcript but it pretty much told us what we had going here, so.

Member Liptak – So, just to make it, to give an example we discussed a Resolution No. 15-08, so, what you would do there you just sink all that and say discussion took place on resolution and that's it.

Mayor McKay – You would hit highlights.

Member Liptak – You would hit the highlights of the discussion. We don't need to know what everyone's interjection was.

Member Clymer – Who decides what the highlights were?

Member (Inaudible) - it's too subjective.

Member Liptak – Our chairman.

Chairman VanVliet – Why would I have to make up the minutes?

Member Clymer – He doesn't take minutes, the secretary does.

Member Liptak – Come on guys you are being ridiculous.

Member (Inaudible).

Member Clymer – Well, what do you want?

Member (Inaudible).

Member Liptak – You do not need, I don't, I don't care for a public forum, I don't care there is a corporate forum, I don't care where you are, you don't need every single interjection, every single minute, word of what everyone says, you do no need that. You have a backup. You're, you're going above and beyond, way above and beyond. That's all I'm saying. What you would do is you would have a discussion took place on that resolution, the synopsis of what the basic end result was and then the motions, the people who made the motions to accept or reject.

Mayor McKay – Well, the motions go in verbatim.

Member Fischbach – Right, no I'm just, I'm making, I'm just trying to clarify the, I do minutes, I do minutes that are subject to the Department of Labor. So we have

Mayor McKay- Do, when you do minutes, do you do verbatim minutes?

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Member Fischbach – I do discussion took place and then I put down the subject and the motions but again, you know, I'm not dealing with the public. Nobody's OPRAing me.

Mayor McKay – Mmhhh, no I understand.

Member Fischbach – You know, I'm just, but that's what I'm saying So, that's what you're looking for, you know, discussion on the topic, the end result of the topic and how the notes went to adopt that topic. That, is that what we're looking for to press this

Member Liptak – To me something simple, a topic, a summary, one or two sentences and you vote. You don't need all the added garbage.

Member Fischbach – then, I think the board needs to give the secretary the forum for, of what you guys are looking for. In other words, you know, topic, synopsis of the end result, and again, motions and you know, votes, so, that the secretary knows how to navigate through the minutes.

Mayor McKay – Maybe next time we'll bring Robert's Rules with us and we'll take a look at that. I'm just trying to save work and I, when you have stuff like this to weigh through and there is a lot of misspelled names and things like, that I don't know if, if that's a problem for everybody here but one person's name I see continually misspelled by a lot.

Member Fischbach – Well, that would come under corrections or (inaudible) to the minutes.

Mayor McKay - Mmhhh.

Member Liptak – What becomes a legal document at the end of the day? Like an (inaudible). Is it the written document or is it recording?

Attorney Sposaro – The answer is both.

Member Liptak – Both.

Attorney Sposaro – Because the minutes are adopted for a reason they become part of the official record and memorialize in effect what the board has done. Someone wants to order a transcript; they can do that as well. I've sat back and I've tried to keep my mouth shut, but now I'll just put my two cents in. I think the minutes need to be as complete as they can be to apprise the public of what transpired at meetings. If they are cryptic, as one of our members has suggested, I don't think they fairly apprise the board, the public of what's happened. I think the board needs, the public needs to be at least, have at least the opportunity to read the minutes if they want and to see what the arguments were, see what the discussion points were, see who said what and then see what action the board took. Short of that, the minutes are not going to be of much value to anyone and I guess the response could be someone could order the transcript but that's sort of self-defeating. Are these minutes and are they made available to the public, are they put on the website.

Secretary Dilts – Well, we talked about that last time.

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Attorney Sposaro – Right.

Secretary Dilts – You know, yeah, they're certainly made available to the public.

Attorney Sposaro – It is a whole lot easier, especially, if they're going to be posted on the website if the board is going to be criticized; it's going to be criticized because it's not transparent and doesn't provide enough information to the public. I'd rather see more in the minutes, then less. From a public policy standpoint, I think you are on safer ground. Does it create, Beth might welcome the opportunity for shorter minutes, it's less that she's got to transcribe and deal with, but I think for the benefit of the public they should be longer than shorter and if it takes us longer to read them, I guess that's one of the prices you pay for the big bucks you get when you get (inaudible) to the sport.

Member Liptak – I agree with you, unequivocally, we should do that, but I don't think the public wants to read a transcript. So, I think that there needs to be a happy medium to what we're really putting out there. Again, come on, the public is going to go on to a website and the public is going to receive a link or whatever it is. There not going to read 18, 20 pages of minutes of what is, essentially, a transcript. They're not going to read that, they're not going to care about it. You need something that's more of a higher level that people will receive, will understand, will get the gist of it; they don't need to know what our communications are among each other. They don't need the transcript and, and with that, they think of the general population, you have people here representing the Township of Lopatcong. There's not many people interested in the minutes of the Planning Board for Lopatcong Township.

Chairman VanVliet – I don't think that's a reason that we shouldn't have a complete set of minutes.

Member Liptak – But what defines a complete set of minutes? Do you want minutes where things are transcribed or do you just want a copy of a transcript of the recording of what happens? So, that's where I leave you. I leave it to the board. Whatever the decision

Attorney Sposaro – I hear you.

Member Liptak – is of the chairman and our attorney. Whatever you think is best.

Attorney Sposaro - My only response is it may be easier said than done. If you are the person that's preparing those minutes and you want them to be a bit more than cryptic and provide the public with some indication of what transpired at the meeting you're going to have to play Solomon; what gets included, what doesn't get included and that is subject to criticism because you may have left something out that some third party might think is very relevant. There is no easy answer here; there's just no easy answer. It's up to the board.

Chairman VanVliet – Any further comment?

Mayor McKay – Um, well, you know, about the minutes, um, being on-line, on the computer and transparency, they haven't been put on the computer since the summer of 2013, on the website so, you know, nobody sees this stuff anyhow. It sits in a drawer somewhere and it would be, I think, very much appropriate that those minutes be posted to the website and I think we should, um; make a resolution that that occur.

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Chairman VanVliet – As we don't have a webmaster within the Planning Board. Beth, have all the minutes been made available to the public?

Secretary Dilts - Always.

Chairman VanVliet – So, they've always been available to the public. Uh, I think you should be taking that matter up with whoever the webmaster is. They're here, they've been available, they shouldn't be posted until after they've been approved but were not in the business of posting them on the website. Our secretary has them, they are there. I'll ask the question; why aren't they on the website?

Mayor McKay – Then we should ask that of the secretary.

Mayor McKay – No, we should ask that of the web person.

Member Hall – Beth, you've done all the minutes correct, since August, I know we've approved them all.

Secretary Dilts – Mmhmm.

Member Hall – What happened in between, there's somebody that comes and says you have minutes and we'll put them on the web or are you responsible for putting them on the web?

Secretary Dilts – If the board wants them on the web, I'll be glad to send them off to be put on the web.

Chairman VanVliet – But you are not the person that actually puts them on the web.

Secretary Dilts – No. No.

Chairman VanVliet – So, they're available. Why are they not on the web then? I don't think it is a question we ask her, who's the webmaster?

Mayor McKay – Lori Ciesla. Lori Ciesla is the webmaster. She's the one who puts them up there.

Member Liptak – I'm sorry; we're venturing off the whole thing. I mean all my discussion and point was that I think we need to shorten what we are putting out. I don't know who is responsible for putting them out there. I don't know between a webmaster or if it is through our town, I'm not sure and I really don't care who is responsible to put the minutes out there. All's I'm saying is I would like to look for something as a little shorter. I don't need to know how many people or how many times I said um in the minutes and there are many line items that say, um, hello or you know, very short, just being (inaudible) of what's out there. We don't need to see that and I'm not going to belabor the point anymore. We need to move on, there are much more significant issues to talk about, but I'm just saying that I hope that the board and everyone can really reevaluate what we're putting out there in terms of the minutes.

Mayor McKay – The one thing I would like to see is that the minutes, the pages be numbered and dated,

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so, that one can find something on the minutes with some degree of ease. Does anyone object to that?

Chairman VanVliet – Any problem with numbering the pages?

Secretary Dilts – No, I can do that.

Chairman VanVliet – Okay.

Mayor McKay – And dating them, so we know what date, when it was prepared. I looked at the minutes of some of the largest institutions and they never looked like this.

Chairman VanVliet – We'll date them now.

Mayor McKay – That's because somebody typed it.

Chairman VanVliet – You want each page dated?

Mayor McKay - Yeah. The machine, the computer does it.

Chairman VanVliet – We'll date them now.

Mayor McKay – That's somebody typed that there. The software will easily date everything. Word does it.

Member Fischbach – I believe that'll give the date when it's printed out.

Vice-Chairman Pryor – Put it in the header or the footer and it will repeat each page.

Chairman VanVliet – Any further comments? No corrections.

Mayor McKay – There is corrections to spellings of names and such do you want to go through that? It'll be kind of hard to do since the pages aren't numbered but forget it.

Chairman VanVliet – Hearing no further objections, the minutes will stand as published. Okay, let's move on to, uh, George do you have a report on the COAH situation we're in?

Planner Ritter – Yes, I have a bit of an update. As many of you are probably aware, the Supreme Court on March, well, actually, March 10<sup>th</sup> came down with a decision on COAH. Essentially, what the courts have found, is that COAH in failing to adopt the rules for Round 3 it, basically, failed the basic test of providing affordable housing in the state and the courts have, for all intense and purposes, suggested that they're going to take over the management and running of affordable housing program in the State of New Jersey. Uh, what they've said is that for the next 90 days their orders are on stay. So, there is a 90 day period in here where the courts are going to set up some judicial panels that will be given the authority to, essentially, review various applications pending before COAH, uh, for certification, decide if they meet the criteria on the certification and then certify them or not certify them. If they find it does not meet the constitutional obligation of providing affordable housing. Uh,

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that's what they're going to try to get organized over the 90 days and that's starting from the date of the order which is March 10<sup>th</sup>. Thirty days after that period, all the communities that are, uh, currently either have certification before COAH under Round 3 or have pending certifications in front of COAH which Lopatcong Township does. We filed back in 2010 and that's where it stopped because the court says they have a 30-day period if they wish to file with the courts to obtain certification through the court system. If they, they don't have to do that, it is a voluntary program. If you choose not to do that, that's fine, except that then the courts have decided that you will no longer be covered under what is called Protection from the Builder's Remedy which means those suits, that those towns that are not involved with the courts, either having their certification or in the process of getting their certification through the courts, they then become available for suit by private developers to do what is traditionally called in the housing circle as the Builders Remedy and what that is, is, essentially, a builder can come into a community show that the community has not met its obligation to provide affordable housing and seek to have the courts impose upon you a plan to provide that housing and that might be apartments at 10 or 12 to the acre, uh, it might be all different kinds of housing combinations that involve an affordable housing component, uh, that the courts will then review and possibly find in favor of the private developer to essentially, order the town to accept or approve those situations. The one thing I did say is, after you, and in, and in front of the court, you also, once you submit, either the court finds that there should be changes in your plan, they give you another five months to do that so there's different time windows in that but the most significant thing is that after this 90-day period runs from March 10<sup>th</sup>, the communities only have 30 days to file. So, that's something that Lopatcong or any town that has an application pending in front of COAH should be thinking about whether or not they want to proceed with the court to help maintain and keep their protection from the Builders Remedy. So, that's sort of what's going on. Now as everything goes, it's never quite that clean. The courts have also said that sometime during this 90-day period, if COAH chooses to act, in another words, adopt a third round set of rules or if the state legislature chooses to get involved and actually does something to set up new rules, then the jurisdiction will revert back to COAH and we will go forward from there. So, it is not a 100% guarantee that at the end of this whole process, that COAH won't vote to approve it on day 29 and the new process will start again, but the, I think the most significant thing to decide is, do you want to risk losing your protection from the Builders Remedy that's really what's up here and whether or not you feel it is appropriate to file. Um, the other thing that should be sort of kept in the back of the mind is that because the town is in the Highlands, there was an agreement between COAH and the Highlands that helped reduce the overall obligations to many of the communities in our situation and it is important as it affects Lopatcong. There's probably close to an 80-unit difference in terms of whether you file the Highlands rules or whether you just are subject to COAH rules in general. Now, those I don't want them to be looked at as absolute numbers because the Supreme Court has also said that they found and I know this gets confusing, but they found that the gross portion of all the calculations that COAH did in the past were unconstitutional. They did not follow the law properly, so, the courts have left open the adjustments of all the plans to make them legal and somehow account for removing the gross share as part of the calculations. What that is, I'm not sure yet, but it and the other thing that is still up in the air is right at the time that the Highlands and COAH came to an understanding of how they treat towns in the Highlands, they were all, then there was a suit brought by the affordable advocates against that settlement and I have the paperwork that was filed with the courts I don't know the outcome of that, so it's something that Mr. Sposaro may want to look into. I can give him the court cases to see if it was finally resolved. Whether that's going forward or whether that's getting struck but I think it's very important that the town think about what they do and we should think about it fairly quickly because it not only involves getting our little plan

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available and in the proper form but it also requires the Township, their solicitor, actually begin to investigate what type of filings he must do to actually get us in during the 30-day period that it becomes open. So, it's something we have to start thinking about. I will say that under the plans that we have currently pending in front of COAH, we were able to, uh; basically, provide plans that show that we can provide the affordable housing that's being required. We're really at the 162 level or even at the lower level of 89, so, we can meet our obligation going forward with credits and that type of thing. We're all expecting that the courts will tend to use the same procedure that COAH uses because they are not going to reinvent the wheel in 90 days on how we're going to go ahead. So, we think, truthfully, the simplest thing to do, is take the plans we have in front of COAH and simply clean them up a little bit and refile and then if the courts come back and say no this isn't quite what we want, we still have five months to get it straightened out. So, again, it is just something to think about, but the clocks running and there should be some decision, shouldn't go one way or the other, made fairly quickly, so, the township attorneys can start thinking about their role in it and we can start thinking about pulling stuff together because in reality the last time this was seriously worked on was 2010. It's been laying on the shelf ever since then because of various lawsuits. I will point out that the one person that will be an objector at every hearing, will be the affordable housing; I keep forgetting their name,

Engineer Sterbenz - Fair Housing Center.

Planner Ritter – Fair Housing Center is an invited participant on every hearing. So, they will be there and they advocate for housing and I expect they'll be looking at the packages and trying to figure out if the numbers are close but they will be there. Uh, truthfully as part of the Supreme Court order they're there. So, that's sort of where we are and the next step is really for the town to think about, is do they want to file, and if they do, then we should start thinking about that process and getting it under way cause there is not a lot of work that has to be done on our part but we do have to resurrect the plan and we do have to come up with a new spending plan which is now outdated because of things that have happened over the years, so, we have to generate a new spending plan. That's where we are and I'll try to answer any questions right now but the main thing is to decide where we want to remain part of the process.

Member Hall – So, if we file, that would lend us protection against Builders Remedy

Planner Ritter – Well, yes, go ahead, I 'm sorry.

Member Hall – and then, but is there any conflict what we're doing with the Highlands?

Planner Ritter – Well, that has to be part of what's going to be resolved by the courts because, uh, we've gotten two numbers. We originally got what COAH came up with as the obligations; all the towns got that. Then COAH and the Highlands negotiated an agreement as to what various, what the buildable area, buildable, uh, how much buildable land was in communities and how much they had to supply. They came up with an agreement as to what that number would be which is considerably lower than what COAH had come up with initially. If that number has been upheld, and some of the correspondence I have seen, seems to imply it has been, uh, if that number has been upheld then that's the number we start with the lower number. If it hasn't, then we've got to go back and look at a larger number and go from there.

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Member Hall – All right, so, there is no contradiction (inaudible) no liability and going ahead an filing, trying to conform to what the courts are asking for, uh, the courts are going to make a decision at that point, uh, then at that point, it is between Highlands and COAH to figure out what needs to be done if the numbers change.

Planner Ritter – Yes, except that our approach would be to use, unless we're told the court case failed, we're going to use the Highlands numbers. That's what we're going to go to the court with.

Member Hall – Right and they, they in their infinite wisdom, could do what they, basically, want and turn it on its ears, but we're doing what we can do to protect ourselves if it's the court, COAH and the Highlands, it's their battle then to fight it out. We're just saying based on what we're told right now; here is what we'll plan to do. If you guys come up with a different plan, we'll come back to the drawing board and figure out what we need to do then to meet the letter of the law.

Planner Ritter – Yes, and like many court cases, once, and I'll defer to the attorneys on this, once the court takes jurisdiction of what COAH thinks and believes probably isn't all that important. The courts can do what they want to do on this. They can ask, I guess, for COAH's advice, but theoretically, the Supreme Court decision here has pretty much taken them right out of the loop and said it's going to go over to us.

Member Hall – Pretty much said you guys (inaudible) we're going to do it for you.

Planner Ritter – We're going to do it for you. They're, basically, going back to an old model they had 20 years ago when they first, the courts were heavily involved in making these decisions. Um, I think there's more positive aspects to going then not going, uh, because I think it is very important to keep your protection as long as you can and I think we have a plan that should be approved it's just that it's never been acted on because COAH has (inaudible).

Member Hall – And reviewed by a lot of people.

Planner Ritter – It's been reviewed. It's been sitting on a shelf for a long time. Um, so that's my sense of it, but again, as I said, there is nothing mandatory in the order that says the town must and I think there's now around 250/300 towns that have chosen not to go into COAH and the courts are not going to, if you haven't filed with COAH, they don't want to hear from them. So, the bottom line is, this period, this 30-day period for filing this, for those people who file, who want to try to comply and, uh, that's who the court wants to hear from first. The people who have never bothered with this process, they are going to be left out period. At least for a while. They will probably take them in at some point.

Member Hall – They will be subject to, uh, Builders Remedy?

Planner Ritter – Well, they are now. All the towns that have not filed are not part of the COAH process are subject to Builders Remedy right now.

Member Liptak – So, again, myself being new to the board, what is the ultimate goal of COAH? What is it that they are trying to do, capture?

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Planner Ritter – Well, the ultimate goal of COAH and I'm not saying just within Lopatcong Township, is to provide affordable housing in the State of New Jersey as the courts have decided is mandated by your constitution. In other words, the courts, and I might get the years wrong, but this goes back what, 20 years now, yeah, that 30 years, the courts decided that the New Jersey Constitution mandates the provision of affordable housing. That's where it started from, uh, COAH was the outgrowth of that, a process to help communities in the state keep it out of the courts. That was the original goal, was to get it out of the courts and get it more administratively functioning. Over the last 10/12 years, that's sort of fallen and hasn't gone anywhere and the courts have now taken back the jurisdiction, but the real goal is to produce affordable housing.

Member Liptak – So, where we are right now in that, today, 2015, we do not have that, we would have to create that housing?

Planner Ritter – No. The township over the years has produced, actually, quite a bit of affordable housing either through rentals, though, truthfully, some of the builders coming in that, actually, building some of it, and the town has provided a share of that but to protect yourself from lawsuit, protect yourself from the Builders Remedy, what they call a certified plan, that has to have COAH's stamp of approval on it. We have submitted plans that show that we complied with, their regulations, they have not approved it because they have not, over the last couple of years, been able to approve what they call it, third round set of regulations. So, everybody, there's a lot of towns that their applications laying at COAH, that can't get a decision.

Member Liptak – Mr. Sposaro, may I ask, is it possible through this that we can, and, and for lack of better terminology, is there a way that Lopatcong Township can request the cease and desist to that because of the financial condition of the community?

Attorney Sposaro – I'm not aware of any exemption because of our financial condition. I'm guessing maybe the other towns that aren't in a much more difficult position, I've read that court decision and there is no exceptions to it, we need to comply.

Member Liptak – So, there is no case law or anything that would represent a town or anything to say that we can't comply to what the government or whatever the state regulation is, there is nothing that we can do?

Attorney Sposaro – To my knowledge, no.

Member Liptak – Do we need any further building to accommodate what the requirement is?

Attorney Sposaro – I'll defer to George on that as to where we were with COAH when this whole process sort of grinded to a halt. We have an affordable obligation; I don't know where we stand with it. George maybe you can (inaudible).

Member Liptak – Well, just to interject with that, so, you can answer, is there an ending or is there a date that we are supposed to be adhering to it? Is there a date that we're supposed to have X number of people in affordable housing?

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Planner Ritter – Well, there are, that's what's called the different rounds; there was Round 1, Round 2 and this is supposedly Round 3. There have been goals set in each of those rounds with the obligations reviewed, and what you've done has been reviewed and then they updated it and tell you what your new round is going forward. Uh, there isn't, I guess if your question is, is there ever going to be an end, that they say that you've met your obligation, meaning period we're not going to reevaluate it, were not going, to recalculate it, um, the answers no. It is supposed to be reviewed and updated on a regular basis, every six years or something like that. They do these reviews and then they look at what you've done, what you haven't done and said okay going forward, you have to provide X houses or you've provided it. The plan that we currently have on file up there, shows that we have met our obligation for this round but it's just never been approved. Uh, and going forward, I would be careful to say that as new development comes into the town, it would behoove the town to make sure that it gets affordable housing in it because, going forward, the odds are unless COAH disappears, unless the Supreme Court disappears, um, there is always going to be some obligation out there for new development and, so, I would think that is an ongoing process that the town would be looking at as they go forward.

Member Liptak – What is the downside or what is the negative affect if the township does not meet that obligation?

Planner Ritter – You're just, as I said earlier this is voluntary. You don't have to do anything, quite frankly, um, but you leave the town open to, is a Builders Remedy and what that means is, an individual, a private individual, can come in here and say that you haven't met your constitutional obligation to provide affordable housing and I'm going to do it for you. I'm going to do it on that site and I'd like 12 to the acre, 15 to the acre, whatever, pick a number and I'm going to set aside 15/20% of units for low income housing and I'm going to do what you refuse to do and then you are going to go to court, most times you are going to spend a year or two fighting over it and trying to figure out whether you are going to go along with it or not and finally, the courts going to make up their mind whether or not they're going to approve what he is doing and that's the risk you run, that you end up with a project that you have very little control over, that you end up having to accept, you know, and you run the risk of having to defend yourself in court, fight over it and these things usually drag out for years. That's all I'll say and you have, and that's what the risk you run and then also the builder can come in, as an example, and ask for the courts to order that they have special consideration on utilities. They could come in and say, I'm going to build 500 units and while this suit is going on, because it's a scarce resource in this town, I'm going to ask the judge to freeze your sewerage gallonage so I have at least enough gallons to serve my 500 units if I win. That's fine, if he wins, he gets it, if he doesn't though, the number of years you are fighting, nobody gets it. So, you have that kind of game. There is a downside to not complying.

Member Liptak – Thank you sir. Just bizarre. How much open land is there in this community that people can build on within Lopatcong Township?

Attorney Sposaro – I have no idea.

Member Hall – George?

Planner Ritter – Well, there is a fair amount of open land that's out there because.

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Member Liptak – Buildable land.

Planner Ritter – Uh, quite buildable.

Member Liptak – Where you could put residential?

Planner Ritter – Quite buildable and the thing you have to realize is a developer coming into a town doesn't have to follow your zone. They could go out in the middle of your industrial park and pick 90 acres out of that and declare that (inaudible). They could find, and the other thing is, that the densities they're looking for, they don't need big tracks. To have a fairly good impact, they could go out and buy 50 acres at 18 to the acre, 12 to the acre; I can produce a lot of units. Your town does not have a large amount of the area in the Preservation Area. The biggest chunk of it is in the Planning Area and there is vacant ground out there. That's all I can say and it's to the tune of a fair amount. You're talking 20, 50 a 100 acres is floating around out there.

Member Hall – Do we have a copy of the Highlands Report? Doug, you might be interested in reading it. It's going to answer pretty much all of your questions. The Highlands has a build out plan and based on our Master Plan and what we've done with the restrictions that we put in for like steep slopes and what have you, they take that into consideration, they do a build out and they say here is what project you are going to build. Based on that then, they come up with an affordable housing number saying so, here's the number you got to meet based on the build out. So, then, as people come in, developers come in and want to build, we have to make sure that we're allocating that, a proportion of that, so, that, we don't get short when the property gets eaten up and there's very little, and somebody says you got to build all that affordable housing because you didn't, you didn't kind of weave it in as time went on.

Member Liptak – Can I ask, is that something, that plan, is that something we want to build out or would we rather prefer not to build?

Member Hall – Well

Member Liptak – And this is a voluntary program. Why do we want to continue to build when we have enough economic strife and the issues within this township, why do we want (inaudible).

Member Hall – Your thinking you can stop building. No you can't stop the building.

Member Liptak – Sure you can.

Member Hall – No.

Member Liptak – Sure you can.

Member Hall – Okay.

Member Liptak – You can stop building.

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Chairman VanVliet – Only if you own the property.

Member Hall – Yeah. You, you, we cannot stop the building and that's the whole thing. People out there think that we control what gets built. All that we can do,

Member Liptak – No we don't but you can stop the building.

Member Hall – No you can't. The courts have learned, the courts, over the years, have picked out every trick in the book and they've put in legislation to make sure that they'll stop it. So, I'm going to put in a development but guess what, I'm going to put in a requirement that every street out there be 90 feet wide. So, now, your density can't be as much as you want. They say no, sorry, you got to be realistic; you got to stick to 60 feet and in some cases, you got to go down 35 feet and what have you.

Member Liptak – So, I understand that and I can appreciate that but how much buildable land do we have in Lopatcong?

Member Hall – Quite a bit.

Chairman VanVliet – Anything that doesn't have a building on it now.

Member Hall – Well, that's what I'm saying.

Member Liptak – We need to know how much.

Member Hall – We have that. If you read the Highlands Report, it's all in the Highlands Report.

Member Liptak – Well, it's in the report and what, what can we as a township take over. We, we, what can we minimize in

Member Hall – Oh, you want the town to buy the property?

Member Liptak – Possibly. Can it happen? I don't know.

Member Hall – If somebody willed us what, 700 million dollars.

Vice-Chairman Pryor – We considered buying a parcel one time and we, the impact on the tax rate was too great. If you look at the whole thing, it is an unfeasible idea.

Member Liptak – Look I'm coming into this, I come into this green so I don't know.

Member Hall – Well, that's what I'm saying if, if, we got to get you a copy of that report.

Member Liptak – But how do you (inaudible).

Attorney Sposaro – You really need to go to the governing body. This board considers application for

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development based upon zoning that exists. It can consider requests for zoning changes. We're going to have an informal presentation on that this evening but our jurisdiction is limited by the Land Use Act of what we can do. We are not in the business of acquiring property, trying to prevent development. It is beyond the scope of what we do.

Member Hall – And, we don't want to give the impression that that's what we do is prevent development. We're here to build it and build it as smart as possible.

Engineer Sterbenz – Yeah, just a few points, um, the reason why George is bringing this to your attention is part of putting together an affordable housing plan is preparing a Housing Element which is part of the Master Plan and we're required to have one and it's under the Planning Board's domain. The second part of it, is the Affordable Housing Plan, that petition to COAH, and in this to court, is really a governing body issue. So, I think a lot of things George talked about tonight is probably more relevant to the governing body. I know the mayor's here tonight, so, he is going to be dealing with this eventually, at the governing body level, but in the eventuality we do go to the court to file a declaration, and some work to the housing element is required, I think he's giving you some background as to why that may happen and what the responsibilities would be. I think the second point I'd like to make is, I think the town is actually in a very favorable position right now to put together a responsible plan and was deemed complete by COAH, it was never acted upon and I don't think this town would ever want to expose itself to a Builders Remedy. It's going to render your zoning at least on select parcels, uh, useless at this point, and really where a builder is going to attack, is going to be in the sewer service area which even more developed areas of town where we have water and sewer facilities and there is sewer capacity right now, so, we wouldn't want to all of sudden lose your sewer capacity to an unwanted project at this point. You know, right now it's, basically, being directed in a Wastewater Management Plan. There's certain properties like the Ingersoll-Rand Redevelopment, for example, and we wouldn't want some of that steered away to some other unwanted affordable housing project that the court dictates on us, so, you know, if you are looking for my two cents, is I don't think we expose ourselves to that and I think if I'm at a governing body meeting, you know, I would emphasize my opinion on that, I don't think we ever expose ourselves; we keep ourselves clean here and try to get approval.

Planner Ritter – You know, and the only other thing I'd add, is that it is better for us to plan for it then let an outside source come in and tell us what we're going to do. Uh, it tends to be much smoother to plan for it. It may still be distasteful in some ways, but it is much better to actually think about it and plan for it in the long run particularly when you have numbers that it look like we can actually meet and comply with. You know, if all of a sudden our numbers were 700 and we could only figure out how to do 100, well, maybe that's an issue but those kinds of separations also get you sued if you have that big of a gap. So, I just think it is better that we try to keep control over it all these years. I just think it is much better to plan these activities then let it happen to us. That's just my general opinion.

Chairman VanVliet – That's always been what we've been doing since COAH's been around.

Planner Ritter – Since COAH's been around, I will also say that many of the towns that have chosen not to do it are like the shore towns that have zero open ground that somebody have to go in and buy five blocks of one of the shore towns, knock all the homes down and build it. The ones that have chosen to not have any part of this are ones that truly have virtually no open ground or you know

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builders would like to get in there but they can't figure out where, um, to get into the process. Almost all the communities that have open ground are at risk and they're the ones that try to (inaudible).

Vice-Chairman Pryor – George what's, what's the next step? I mean it's the governing body's to decide.

Planner Ritter – I think it's the governing body. They got to make a decision whether we participate or not. Then it comes down to us pulling the plan together. The attorneys working on what has to be filed, um, if there are amendments to the Housing Element or the plan, obviously, that would be discussed with the board and with council because in the end, council has to recommend the plan. They got to vote on it, and say here, we agree to this plan, before it goes to the courts. So, in the end, it's a council decision.

Vice-Chairman Pryor – We submitted a plan for certification to COAH and that didn't go anyplace, so, now we have to submit to the court.

Planner Ritter – Yes.

Vice-Chairman Pryor – All right. How, how much change is there between what we're going to submit to the court, versus what we submitted to COAH?

Planner Ritter – Uh, probably not a lot in, in volume. The only thing that we are still struggling with a little bit is what number we start with.

Vice-Chairman Pryor – And, it's not a huge number right?

Planner Ritter – No.

Vice-Chairman Pryor – It just seems to me, and I'm new to COAH, but if we took the effort to apply to COAH, to Round 3, and all we have to do is tweak it and submit it, again, to a different entity, and protect ourselves, to me it is a no-brainer.

Planner Ritter – Oh, I agree. That's the way I see it and also, if it goes into the courts, and as I've said, the courts look at it and well, yeah, it's sort of good but we don't agree with this, they give you another, there is a five month time period in there to make corrections.

Member Hall – What's the harm in just taking what we have, our last submittal and use that?

Planner Ritter – Well, we will. We'll have to update it, like the Spending Plan and a few other things. They have to be updated.

Vice-Chairman Pryor – But do you have to take this proposal to the governing body now or does the Planning Board make a recommendation or

Planner Ritter – Well, we would take, first of all, I got to resurrect something, it's been laying around since 2010. Uh, we'll see what's all it. We'll clean it up. The spending is something that council has to approve cause they're going to come into what, how we outline the money's to be spent or how we're

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going to meet our obligation. It might not all involve spending money, but I mean, the answer has got to show that and they in the end will have to endorse the plan and recommend it. They'll have to, basically, endorse it and say that we're going to stand behind this and that's what's going to go. I think it's going to be, essentially, be our plan with the numbers tweaked to match what the current thinking is in terms of the, uh, what do I want to say here, I just developed a mental block. The courts have found the part of the old plan illegal. We're going to have to figure out how to tweak those numbers out because they basically said; they don't want to see them. So, we have to do that but, generally, it is going to be the same plan.

Member Hall – And, what's the deadline?

Planner Ritter – Well, there's 90 days from March 10<sup>th</sup>. There's 90 days before the court order takes effect and then we have 30 days to submit.

Engineer Sterbenz – You have between June 8<sup>th</sup> and July 8<sup>th</sup>.

Vice-Chairman Pryor- Who has to tell you to take it up there – the governing body?

Planner Ritter – Well, sure they should decide. It's not my decision to submit. They can choose to do it; they can still decide if they don't want it, if they want to take the chance.

Member Hall – If they can't make a decision before they submit those numbers, the Spending Plan

Planner Ritter – The answer is yes, but what I'm saying is, I guess what they should consider is, authorizing, pulling all this stuff together because that will take a little bit of time. Uh, and then we can, obviously, review it with them. I'll be honest, in my other town with, we are holding a meeting tomorrow to do exactly that – discuss where we're at, what we're going to do, and how we're going to file.

Chairman VanVliet – What will be helpful for us to do, have you put that plan together now, then recommend that going up to the council or do you want this to originate at the council level?

Planner Ritter – Well, I suspect it can come from either. I don't mind if this board recommends, we pull it together.

Vice-Chairman Pryor – My view is the Master Plan is under the jurisdiction of the Planning Board and it has the element as part of the Planning Board, so, assuming we have the budget, it would be proper for us to tell you to pull this together.

Planner Ritter – Which we can resurrect and pull back out.

Vice-Chairman Pryor – Do you have a feel for how much effort is involved?

Planner Ritter – It is not going to be a large effort but I don't know. I haven't dug the file out.

Vice-Chairman Pryor – My next question is do we have the budget to do this and then, assuming we do,

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would we want you to pull it together?

Planner Ritter – Well, let me see what we got buried. I'll get back to Gary on that. I'll see what we got.

Vice-Chairman Pryor – Well, I don't mean to get ahead of myself but it seems to me that a certain amount of work has to happen and then we would say yes, we agree with it, and then you can take that up to council.

Member Hall – But, being time is of the essence, you'll need, were kind of stuck between a rock and a hard place. We should do this. We got to do the work, so, do we want to authorize it, get you going on this at least and get everything ready so that council can make the decision in a timely matter?

Planner Ritter – Well, I'll be honest with you, some of this can come right out of the COAH funds cause it is being mandated, so, part of this can be drawn out of that. Uh, the funds that are on hand for affordable housing in town, so, it's not like it is a budget item that totally has to come out of the general budget in town. It could come out of the Affordable Trust Fund. I say that without (inaudible).

Vice-Chairman Pryor – And, who controls that the town or the Planning Board? I would like to get ours started and do it properly and there are funds to pay you. Being new, I don't know what the answer is.

Mayor McKay - That's an appropriate way to go. That the Planning Board should start the ball rolling and get a package up to the governing body.

Chairman VanVliet – I really think we should look into doing it because of the fact that if we don't, the cost could be a lot higher than what we're looking at right now, just in legal fees. So, I would like to, at this point, to entertain a motion to authorize George to go ahead and put the package together, come back to the board and review it. Like I say, whatever funds we have to draw from we draw from.

Attorney Sposaro – Gary, I think this is a governing body call, historically, it's been governing body that has taken the lead with this and, um, they're the ones in control of the purse strings. The budget we have is not designed to deal with this. It does not come out of our budget. I think we can and should make a recommendation to the governing body to move forward with this, but I don't think we can or should authorize George to pick up the ball and necessarily run with it.

Member Hall – All right, what we could do though is

Chairman VanVliet – Let's leave it at that.

Member Hall – No, no, we recommend that council, that the governing body votes on it, but we're, if they approve it; he has authorization to go ahead from the board.

Engineer Sterbenz– I think what the board should do is authorize Tony to write a letter to the governing body indicating that we feel the governing body should authorize George to move ahead with modifying the Housing Element Fair Share Plan.

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Member Hall – Okay, so, there is no problem with council authorizing work with

Engineer Sterbenz – municipal attorney on its' declaratory judgment that will be filed between June 8<sup>th</sup> and July 8<sup>th</sup> and the council has a meeting next Wednesday, right here, April 1st, and they'll get, they'll certainly get Tony's letter in the next couple of days and Beth can put it on the agenda and they can take the action. We don't control the Affordable Housing Trust Fund that's really something that I think is under the governing body's purview.

Member Hall – So, do we need a motion for that or

Chairman VanVliet- Would you be inclined to do that as Mayor?

Mayor McKay – Yes.

Chairman VanVliet – Okay. I'll just authorize Tony to send a letter. We need a motion on that?

Attorney Sposaro- Yes.

Chairman VanVliet – Okay, do I hear a motion?

Member Degan - Motion.

Chairman VanVliet – Do I hear a second.

Member Hall – Second.

Chairman VanVliet - Roll call Beth, please.

AYES: Members Clymer, Degan, Fischbach, Gural, Hall, Liptak, Mayor McKay, Vice-Chairman Pryor and Chairman VanVliet.

NAYS: None

Member Hall – Point of Order. Are we still allowing the Alternates to vote? Cause I know there was an issue about this.

Chairman VanVliet - I think we have the ruling that they cannot vote- is that correct?

Member Hall – So, strike the Alternates.

Chairman VanVliet – Strike the Alternates unless

Member Liptak – Strike my vote.

Chairman VanVliet – Hold on. We don't have a full complement of people.

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Secretary Dilts – We don't have a full board.

Mayor McKay – How many missing board members?

Member Hall – One, two, three, four, five, six – we got six.

Chairman VanVliet – We need nine.

Mayor McKay – It's the full membership not the quorum. Lou's not here.

Chairman VanVliet – We don't have to eliminate any of them. So, we're eating up time here and we're moving on, um, no further questions of George, hopefully. Okay, let's move on to the next order of business and that will be Larken Associates, LP Block 116, Lot 26.01, 27, 27.02 and 28 – An informal presentation concerning zoning.

Michael O'Grodnick - Good evening members of the board, my name is Michael O'grodnick I'm an attorney at Mauro, Savo, Camerino, Grant and Schalk and I represent Larken Associates. We are here on; I have Mr. Robert Heibell from VanCleeve Engineering Associates as our professional engineer. We also have Lawrence Gardner who is the principal and managing member of Larken Associates who is the informal applicant in the zoning request change. Uh, we've also submitted an informal site plan, um, which details kind of a board overview of the site. Uh, so, unless there's any legal questions, I will defer to Mr. Heibell to explain the application but just to note that Mr. Gardner is the developer for Warren Heights which is on the north, east and west of the approximate 16 acres that Mr. Gardner and Larken Associates is under contract to purchase contingent, of course, on a zoning change.

Vice-Chairman Pryor – With the board's permission, in the interest of full disclosure, I understand we are not taking any action tonight, but, um, I have in the past worked for Larken 12 years ago, so, um, that relationship is over. I bought a house from Larken 5 years ago. I don't feel it is a conflict but (inaudible).

Chairman VanVliet – I'll defer to our attorney.

Attorney Sposaro – As long as you are comfortable and feel you can disclose your duties impartially, there is no legal conflict here. You are not disqualified as a matter of law, so if you're comfortable with it.

Vice-Chairman Pryor – I am comfortable, if the board is.

Mr. Heibell – Good evening.

Chairman VanVliet – Good evening Mr. Heibell.

Mr. Heibell – This is going to be a fairly short presentation. Uh, 16 acres that Larken Associates, 16.6 acres is currently owned by the Piazza family. There is actually 4 lots involved. The 4 lots are on Baltimore Street and also on Rt. 57. To the north of that is Warren Heights owned by Larken Associates and to the west of it is also Warren Heights. That's Warren Heights south and this is Warren

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Heights north. Currently, the property is in the HB Zone. Which is the Highway Business Zone? The request would be to put the property in the same zones that Warren Heights is in which would be RMF Zone. In doing so, would allow a similar type of what was constructed in Warren Heights. Warren Heights south and this particular 16.6 acres has power lines and a stream corridor and, actually, both of those impede a portion of Lot 28 which is 5.8 acres that can still be part of that zone request part of the RMF requirements is that you have a certain percentage of your land as open space. Um, based on the density that's allowed within the RMF, is 12 units per acre on 16.6 which equals a maximum density of 212 units.

Vice-Chairman Pryor - 200 and

Mr. Heibell – 200 it's actually 199 I rounded it up. It could be two bedroom apartments. That's the intent of Mr. Gardner to construct that. So, it is our request to have the Planning Board review this request and if they think it is favorable, recommend a rezoning to the township.

Chairman VanVliet – Are you considering in light of what you heard with COAH and our numbers here, are you going to make this an inclusionary housing area?

Mr. Heibell – Yes, we would.

Secretary Dilts – Mr. Heibell, could you come up to the microphone if you are done with the plan?

Mr. Heibell – In fact, Mr. O'gradnick and I were discussing this in the back. In the last round of COAH, I don't know where COAH's going in every round, but apartments you actually got a two for one benefit so.

Planner Ritter – That's something that's up for grabs.

Mr. Heibell – That's something that's up for grabs. If I turn the clock back to what it was, if you had an apartment unit and you gave 15% as an example, it would come out to 30%. It would be double, so, once again, that's why I'm stressing these will be two-bedroom apartments. These will not be townhouse condominiums.

Chairman VanVliet – Okay. The last go around we went, they also were requiring three-bedroom units wasn't it with COAH there would be

Planner Ritter – Yes, there would some to meet their housing mix. There would be a few. I would assume whatever we work, if we could come to some understanding, the units that would be provided for affordable housing, whatever that might be, we get the bedroom mix and we use those units to comply with COAH.

Mr. Heibell- There's a percentage, or there was a percentage you had to provide a certain percentage maximum of one, certain percentage maximum of two, and a minimum of three. So, assuming that that's the case, these affordable housing units would comply with that also. So, it may turn out there maybe a couple based on this I will say probably in the last round, maybe seven or eight I would think, somewhere in that neighborhood might have to be three-bedroom.

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Planner Ritter – Have you, in your thoughts about this, have you thought about the Rt. 57 frontage whether or not some commercial development along there might be worth retaining?

Mr. Heibell – Uh, we talked about it and probability would be that it would not be retained for this purpose that we would utilize the entire 16.6 acres. Have residential on this

Planner Ritter – So, at this time, you are not thinking of any retail, any type of activity on that front?

Mr. Heibell – No.

Engineer Sterbenz – But if the board wanted to see a strip along Rt. 57 retained as Highway Business at 250/275 feet wide, um, is that going to be negative to your client and no longer would want the board to consider the zoning request?

Mr. Heibell – Well, as I was informed, at 12 units per acre let's say the board wants say, I'll throw out a number that's easy math, 2 acres of the land along 57, that would be 2 acres less, so, obviously, the proposed density would go from 199 and get reduced by 24 to 175. So, if that was the board's pleasure and the township pleasure, I'm sure I'd have a discussion and he'd still be open-minded to it.

Engineer Sterbenz – Thank you.

Chairman VanVliet – Were you considering combining this all into one lot?

Mr. Heibell – Yes.

Chairman VanVliet – Okay. I'm just looking at it from the aspect of what you impervious cover would be required and the open space acts on that.

Mr. Heibell – Yeah, we would take out all the internal lot lines. There is a little 3-acre piece right next to Strykers Plaza. Once again, I'd probably not put in units in that little bit that would be part of the 16.6 acres.

Attorney Sposaro - I know we are getting way ahead of ourselves but would you be providing access off Baltimore Street and Rt. 57?

Mr. Heibell – Well, Tony, I actually discussed that and my client said well we need access off of Baltimore and we would absolutely provide access off of Baltimore. I'm not ruling out that there may be an access off 57. Once again, if the township rezones this, we would have to come in for an actual conceptual site plan, um, and at that point, we would have further discussion of that. So, there may or may not be an access off of 57.

Attorney Sposaro – Thank you.

Planner Ritter – One question, I think, um, and correct me if I'm wrong here, but, uh, two of the existing shopping centers that are already out there, is that also controlled by Mr. Larken's group?

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Mr. Heibell – The one is at the intersection.

Planner Ritter – I guess the question I had is whether or not, if this were to go ahead, that we could integrate, you know, like some of the driveways, so, if people want to shop, they don't have to necessarily run back out on all the interior roads.

Mr. Heibell – It would certainly be a benefit to have an internal driveway into that retail center.

Planner Ritter – Yeah.

Mr. Heibell – Yes.

Planner Ritter – Okay.

Engineer Sterbenz – I thought he also owned the property at the corner of Baltimore and Strykers.

Mr. Heibell – It is an office. It was a daycare center. No, I meant the childcare center, the daycare.

Vice-Chairman Pryor – No, I think they moved.

Mr. Heibell – Yes.

Engineer Sterbenz– My main point is he owns both of those properties.

Mr. Heibell – Yes, he owns both those properties; one's retail and one's office/childcare, daycare.

Mr. O'Grodnick - And just a comment, as I do handle Mr. Gardner's landlord/tenant, the leasing at that one corner unit hasn't been that great, so that's why we are not looking at more strip mall type retail along 57. As the economy has recovered, we are at a very high rental rate in Warren Heights right now; it is somewhere around or above 90%. The goal is to continue with residential.

Chairman VanVliet – I don't know if you've gotten this far yet, as far as architectural, how many stories would you be

Mr. Heibell – Uh, these would be a maximum of three and probably three.

Chairman VanVliet – Similar to what you have in the condominium units across the street and throughout that area then.

Mr. Heibell – Yes. The product might be slightly different as time goes on, they don't keep trying to build exactly the same product.

Member Degan – Are these all going to be rental units? All of them?

Attorney O'Grodnick - Yes, I believe.

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Mr. Heibell – Larry, all rental units

Mr. Gardner – (Inaudible).

Mr. Heibell – The answer is yes. I just wanted you to say that, not me.

Chairman VanVliet – Any further questions?

Attorney Sposaro – Anything else Bob, you want to add?

Mr. Heibell – No.

Attorney Sposaro – Thank you.

Chairman VanVliet – No further business, I'll entertain public comment. Anyone from the public have any questions or – hearing none I'll entertain a motion to adjourn?

Member Hall – Uh, before we do, board comment, um, I believe the lawsuit regarding 189 Strykers Road is pretty much all that finally (inaudible).

Chairman VanVliet – No.

Member Hall – No. Has the appeal been appealed?

Chairman VanVliet – I think the appeal has been appealed.

Member Hall – Okay.

Chairman VanVliet – I don't know where it stands. Whether our attorney that is handling that indicated the parties involved missed the deadline for an appeal. However, it is not clear whether a re-appeal or repetition the court

Attorney Sposaro – They file a motion.

Member Hall – Right. Yeah, I got a copy of the letter. They miscounted the days and they filed an appeal.

Attorney Sposaro – Then they missed it by one day, so, they made application to the Appellate Division for relief to file an appeal out of time.

Member Hall – Okay.

Attorney Sposaro – Whether they'll grant it or not, I don't know, but if I was a betting man, I'd say yes. I don't think the court will deny them for the one day. There is significant public interest in the development. I think the Appellate Division would hear it. In a matter of time, we'll know how long they will take, I don't know.

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Chairman VanVliet – Any further comments? Hearing none, I'll entertain a motion to adjourn.

Attorney Sposaro – Do we want to discuss this presentation at all?

Vice-Chairman Pryor – I, I didn't

Attorney Sposaro – I said do we want to discuss, um, the presentation by Larken? They made an informal presentation, in fairness to them; I think they are looking for some feedback from this board. Ultimately, this board would, uh, consider their request and make a recommendation to the governing body or not, as the case may be, but I think they deserve, they came in seeking some input and I think they are entitled to it.

Member Hall – Okay, I'll throw this out there. Based on what we were just apprised of regarding the COAH issue, and this whole situation of being thrown back into the courts and everything, based on our Master Plan and everything, based on the way we have our town currently zoned, to go in and start changing that, at this time, I don't think will be prudent. I think that they just, it opens us up to more liability in terms of what you're doing and if you're doing this and you can do this, it's, we got a Master Plan and over 30 years we've been tweaking it as we go along, it's been holding fast and I think given the current timing of the courts, I don't think now is the time to be making changes.

Attorney Sposaro – George, do you want to address that from the vantage point of its impact, if any, on where we stand with COAH?

Planner Ritter – Well, if, if, if council and the board would decide that this has some merit, okay, and you want to go ahead with it, the one thing that we would hope as a board and as a council would insist that this applicant provide his fair share of affordable housing. Which means that that would cover, going forward, in other words, it wouldn't put us out of balance in the sense of COAH or that aspect of it and it would take and plan a piece of property for affordable housing which I don't think can hurt our case in front of the court to say we are providing it, uh, cause probably what they hear from the advocates for affordable housing is these towns aren't (inaudible). So, obviously, having a plan in the works (inaudible) I don't think it could hurt our case in front of the judge and don't think it would hurt us in the long term, as far as we insist that the applicant, which he's indicated a willingness to do, is provide affordable housing in the project. I don't see it as a risk in that sense, but it, obviously, has to be evaluated as to whether you think it is the right number, the right density, the right place, do you want retail and that kind of thing is something you have to think about. I don't think it would jeopardize our COAH.

Member Hall – One of the issues that you come up with right now is, they're going to say it's two-bedrooms, however, we have to get COAH, who is going to say you got three-bedrooms and I just think that opens us up again to getting a higher density in there than what's in the surrounding area, you know, adjacent property.

Planner Ritter – Well, what I will say and the density is up to us to evaluate and decide whether we want it, but the point being, is that if we have a willing developer who agrees to a density, to provide a certain percentage of housing, that's fine. In other words, it doesn't open it up to further negotiation it is really something that the gentleman in the backs going to have to sit here with board and say, oh yes,

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I'll give you 20% or whatever and I would provide the housing mix that COAH needs in the affordable apartments and everything else will be two-bedrooms. You've met the letter and the intention of the law in that case. You shouldn't leave yourself open for anything as it relates to this development.

Attorney Sposaro – I would also add that it may afford us the opportunity to better meet our COAH obligation because of the number of units that are being built there. The density and what the mix is going to be will certainly be subject to some negotiation. I think it gives us some leeway, some wiggle room, in lieu of trying to find a parcel if we had to to build units ourselves to comply with COAH requirements. It may be an opportunity for this municipality as well. I'm looking at the surrounding properties and I don't know where they, to the north, the area is pretty densely developed and to the west you find the same thing. I don't think it is out of character with what's out there but that, ultimately, is for the board's determination.

Vice-Chairman Pryor – You know, um, I didn't mean to interrupt but we're commenting here. If we were the Board of Adjustment and they were coming to us for a Use Variance, they'd be presenting testimony on the positive and negative criteria and, so on, and we are all sitting here, conducting an auction among ourselves of what's positive, what's negative, what's good, what's bad, um, and I recognize we are only making a recommendation and I don't think it is unfair to ask more from the applicant over what's the benefit to the township with this proposal and why it's not a negative and I've heard some good things, you know, I've heard COAH, I've heard connecting, you know, connection to the Strykers and so on, but I'd like to see a little more from the applicant before we're expected to make an evaluation and a recommendation.

Engineer Sterbenz – I think what would happen here is, uh, you will need to do a supplement to the Master Plan and there will be a public hearing that this Board will conduct. We've done this on some properties all ready and that would outline the benefits and planning reasons why this board would make this recommendation. So, that would be something that we would want Mr. Gardner to fund if the board wants to move in that direction.

Vice-Chairman Pryor – Well, I'm getting at that whether he does it or he funds it, I think there is more work to be done here and it's proper work before we can even make a recommendation.

Planner Ritter – In comparison to what you say, if you went in front of the Board of Adjustment, one of the things I think might be useful for the board to look in addition to what we've talked about here, is that if they have an idea of how they want to develop the site, they could prepare a sketch that would show how this density gets on the site as they envision it. So, the board could see how it fits. I mean a sketch. I'm not talking about engineered. I'm not talking about

Vice-Chairman Pryor – I, I'm agreeing with you.

Planner Ritter – So, the board could get a feel for what 12-D per acre looks like on this site and how it is interconnected with the road systems and that sort of thing.

Engineer Sterbenz – I think what you would do is, uh, I think another positive here is you would have a bigger pool of residents and, you know, the business community isn't increasing right now, so, you have more residents to use the local businesses here which some of the businesses right now are struggling

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right now, so, I think that could be, you know, positive. I think, um, probably should be a comparison between if this site was developed as a HB District development, there's going to be a certain amount of traffic and a certain amount of wastewater generation, a certain amount of water usage and compare that to what the residential traffic generation in water usage and wastewater generation would be. There maybe some pluses with respect to residential versus commercial. Maybe some negatives too but, uh, there should be a comparison in that regard.

Chairman VanVliet – Eventually, the ultimate authority would be the council as far as a zoning change correct?

Engineer Sterbenz – Correct, yeah, I mean.

Vice-Chairman Pryor – But they're looking for a recommendation from us and I don't think we have enough to make a recommendation yet.

Member Liptak- I would also like to ask that if, what is the percentage when you say COAH and you look at the township, what is the percentage of the township that you are supposed to have? Are you talking the number of people that live there or number of dwellings?

Planner Ritter – The normal set aside was 20%, it was considered to be reduced to 15, uh, I would say that if someone comes in and is asking for zoning request be changed in density, that's open for discussion, but those are the ranges 15 to 20%.

Member Liptak – Where do we stand today with Lopatcong?

Planner Ritter – Well, this is a new development. I'm not talking about 20% of the whole town. What was built prior to COAH and everything else is, basically, grandfathered, that's not the issue. It is new construction going forward you'd be looking at the 15 to 20% range as set aside.

Member Liptak – I think we've all learned over time that if you bring in, I don't care if it's a town home or an apartment, whatever these magical numbers are 2.3 people per home or dwelling whatever, are never realistic. It's going to be a huge impact on sewer, you know, your water usage and there'll be a significant impact, so, I would just ask that there needs to be a little more done before (inaudible) could be made.

Chairman VanVliet – That's what we're asking for and I'd also like to have the presentation put before the council because they are the ultimate authority on zoning changes and we can make the recommendation but if they're not going to be on board from the beginning, why go through the exercise.

Member Hall – How do we feel about giving up the Highway Business along 57?

Chairman VanVliet – There's, uh, something we would have to look at. I mean, what would the rateable be on a set rental apartments as opposed to be

Member Hall – If we were to grant the subdivision but take that property bordering 57 and keep that

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Highway Business?

Chairman VanVliet – Again, I don't know how the numbers work for them for doing that whether it now becomes a liable situation.

Member Hall – I guess it's kind of like the different scenarios that they're looking, they're looking to come and give us a full fledge presentation we, need to see some options there and I think that would be one of them to say multifamily for the whole tract or take this portion and leave that 57 frontage leave that Highway Business. Uh, show various access points, that little jut out, the couple of acres there next to, uh, in between the two facilities there that might be an access point out to Strykers Road. It will give you three ways into that place 57, Baltimore and Strykers Road. You know, I guess these are the things that

Chairman VanVliet – We also have to run this through the Highlands also.

Member Hall – That's the other thing too.

Chairman VanVliet – I mean it's a Regional Master Plan Reexamination but they're going to examine or reexamination and they are in the midst now of reexamining their own master plan, so, I mean.

Member Hall – We're in a state of flux here

Chairman VanVliet – Six ways from Sunday. I mean and I'm sure the applicant wants the zoning change before he commits to all the engineering that he's going to go through to do this. So, I mean, I don't want to hang you out there but

Attorney O'Grodnick – Yeah, if I may I, you know, I think that's the point. I think the point we're here is, is this something the towns wants, if yes, we'll get an economist, we'll look at how it will affect the rateables, which is really why, which is really why we want to, this is why we're not seeking a Use Variance. We're trying to see at the inception whether that, economically it makes sense. I can tell you, again, you know, retail is not working there. It's just not leasing out and, um, that's why I don't care, you know, you can build more retail but I don't think it is going to lease out and that's and, and residential is working. So, from an economic standpoint, a developer has to, you know, they develop all types of mixed use from office, to and every type of use they would develop if it is economically feasible but office and retail are not particularly in demand kind of outside of town.

Vice-Chairman Pryor – You know, I understand that retail but, you know, we have Warren Hospital right here and the medical support industry seems to do very well in town. Village Medical seems to be busting at the seams. I, you know, I don't know, I think there's things here to discuss and I also understand you don't want to commit to the engineering. I've been in towns where they bifurcated variances, you know, you deal with the use first but you can't deal with use in a vacuum you have to have concept, um, and I think that's what we're looking for. A little more of a concept and a better handle on the advantages and perhaps disadvantages.

Attorney O'Grodnick - Well, may I suggest, um, perhaps coming back with a planner and perhaps an economist to discuss those issues. If you are more concerned about site layout, that's another issue as

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well.

Vice-Chairman Pryor – What's the a difference between a concept and a site plan and I don't think anybody's looking for a finished site plan but

Attorney O'Grodnick - Well, I think if you look at Warren Heights, it's going to be, basically, an updated version of that. I mean, I don't think it's gonna not be a great variance but certainly we're always welcoming architectural comments and that's not an issue. That's never been an issue with this developer. Um, but we want to know, we really want to know if the town wants it or they don't and

Chairman VanVliet – I agree with you, that's why I wanted to council to see if they would go with it. Also, I don't want to go through the exercise and find out they didn't want to do it to begin with.

Member Liptak – I also think that you're absolutely right, retail, retail has been sluggish, if not very down in that area but you would have to do an awful lot to convince me that bringing 200 plus people into that area is going to do something that's going to better not just the economy in the area but how's that gonna better the people of Lopatcong and, you know, what we live with in the daily life. Meaning taxes, our schools, how is that better with what we're seeing?

Chairman VanVliet – Yeah.

Attorney Sposaro – Knowing Mr. Heibell and Mr. Gardner, I suspect that probably in Bob's back pocket he's got a little sketch somewhere because I don't think they would have gone to contract and come to this board with a request for a zoning change unless they had some idea of what the layout would be and what this would yield. That's my suspicion anyway. Um, and I think at some point it would help your client to share that with us, so, we have some basic idea of what your proposing here.

Attorney O'Grodnick – Yeah, I don't think we would have a problem with doing any other conceptual review. But again, I mean to Warren Heights, it's going to very much be continued with that type of density, that type of architecture again maybe updated with some better quality detail.

Attorney Sposaro – One of the questions that I raised was access and I think if you've got more than one idea or just have one idea how do you intend to get in and out and what are the options here for this property. So, Mr. Heibell was I wrong in my assumption.

Mr. Heibell – You're not totally wrong. I thought about it though, um, I haven't put it to paper. As far as the density, I'm pretty sure that at the end of the day, if I told you it's 12 units per acre. That's what it's going to yield. That's my marching orders, I might change the architecture a little and if we have 16.5, it would be 200/199. As an example two acres along Rt. 57, then it would be 175. At the end of the day I can almost guarantee that would be it.

Attorney Sposaro – Thank you.

Engineer Sterbenz – I think it would be helpful if there was some sort of narrative provided and you would have, um, HB District development and you would come up with a theoretical floor area based on our ordinance theoretical amount of impervious coverage, and a theoretical amount of traffic 24

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hour apartment traffic, theoretical wastewater generation, water usage, things like that, and then compare it to your development, you know, under an RMF scenario. Also, there will be zero school kids under the commercial; there will be some school kids under residential. So, there will be some school kids, I mean, the two-bedroom is going to be a limiting factor, so, you're not going to have that many school kids, but there will be school kids that's the difference between the two developments. So, that should be put into the narrative. So, I think that will be helpful to the board to have that comparison.

Mr. Heibell – Without doing the actual layout of the HB Zone (inaudible).

Engineer Sterbenz – Ironically, actually, I was just looking at the ordinance and this is, uh, something I wouldn't expect to see actually the imperious coverage in the HB District is lower in our ordinance than it is for the RMF. It's, actually, 50% for HB District with 60% in RMF. So, you, actually, have more coverage with the residential.

Attorney Sposaro – I suspect that's why they want to rezone.

Mr. Heibell – What I would do, and I don't know the answer; it's always dangerous when I don't know the answer, but what I'd do is, go back to Warren Heights and north and south and even though you may have 60% in the ordinance, my prediction is we didn't utilize the 60% we developed it at 12 units per acre. So, I would also make that comparison.

Attorney Sposaro – Thank you.

Mr. Heibell – So, in the end, the question is, do you want us to do that and come back and make a presentation, a further presentation to this board?

Chairman VanVliet - I think that would be very helpful to do that, yes.

Vice-Chairman – I feel I got to be stubborn on this I, I mean, I want, I'm pretty certain I can see how this is a benefit to Larken. I want to hear your reason why this is a benefit to the township.

Mr. Heibell – Fair enough. Okay.

Chairman VanVliet – Any further discussion? Seeing none, I'll entertain a motion to adjourn. Motion by Member Gural, seconded by Member Hall.

Respectfully submitted,

Margaret B. Dilts, Secretary