

TOWNSHIP OF LOPATCONG
PLANNING BOARD MEETING

September 23, 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, Gural, Mayor McKay, Vice-Chairman Pryor, Chairman VanVliet.

Old Business:

Minutes - Approve Minutes of August 26, 2015- These will be listed on the October Agenda for approval.

Resolution – Recommendation on proposed Sign Ordinance 15-10. Motion to approve by Vice Chairman Pryor, seconded by Member Belcaro. Roll call vote:

AYES: Members Belcaro, Gural, Mayor McKay, Vice-Chairman Pryor, Chairman VanVliet.

NAYS: None

Revised Zoning History Report – Block 116, Lots 26.01, 27, 27.02 & 28 – Chairman VanVliet said this was discussed at the last meeting and there was a vote to approve it with additions and corrections that were approved in the vote and it is the understanding that it has been forwarded to the Council so there is no further action on it.

Vice-Chairman Pryor – I just have one comment. It is not in the report and maybe for the mayor’s benefit when George quoted the reserve capacity in that report, it was based on an assumption for the Ingersoll-Rand site and we haven’t seen real figures yet.

Mayor McKay – Paul has worked on a couple updates with that.

Vice-Chairman Pryor – Has he?

Mayor McKay – Yeah.

Vice-Chairman Pryor – I think we had 50,000 set aside and we haven’t seen any real figures yet.

Mayor McKay – (Inaudible).

Vice-Chairman Pryor – I don’t think we will either. I just point it out.

Member Belcaro – Are you saying that 50,000 gallons was left?

Vice-Chairman Pryor – Gallons, I think he said 83 but that 83 is based on setting aside 50,000 for Ingersoll-Rand which was an estimate at the time. We haven't seen their projection.

Member Belcaro – I know we haven't seen (inaudible) for Ingersoll-Rand yet.

Member Gural – 50,000 in the 80 or is it in addition?

Vice-Chairman Pryor – No it is in addition. It's pulled out; if that didn't develop at all we'd have whatever we set aside for that.

Mayor McKay – And this thing will take something like depending on how they do it (inaudible)

Members talking over each other.

Member Belcaro – So where does that leave it; what's left?

Mayor McKay – Not much.

Chairman VanVliet – Not much especially if we

Member Belcaro – And I understand that there's some 20,000 in dispute right now. Am I correct in saying that?

Vice-Chairman Pryor – Yeah and that's what he put in the report.

Mayor McKay – For Pohatcong right?

Vice-Chairman Pryor – Yeah it goes back, must to the 80's and when the mall was built, a portion of the malls in Lopatcong and a portion of the mall in Pohat and we agreed at that time to give them 20,000 gallons and they claim that was never done and I don't want to go through it now because I don't have everything in front of me but the next contract that came out was ten years later and you know, it was our position that everything was reconciled by that time. Nobody objected so it has never been litigated, you know, they sent a letter to us, we responded and that's where it sits.

Chairman VanVliet – Was it a developer coming in and it was an inclusionary housing project and they were the ones that instituted the suit for (inaudible) gallons.

Vice-Chairman Pryor – Alpha 519 Associates and it was never resolved so

Mayor McKay – Was that that senior community that you're talking about next to the mall?

Chairman VanVliet – No.

Vice-Chairman Pryor – No, no, no this is something long ago that's long gone.

Member Belcaro – This is something that has to be resolved – 20,000 gallons.

Vice-Chairman Pryor - Lopatcong's position was it has been resolved.

Member Belcaro – We have to know where we stand with that 20,000

Mayor McKay – If this gets approved this

Members talking over each other.

Member Gural – If this gets approved we don't have anything left for even that office building if it wants to come in.

Chairman VanVliet – We're down to about nothing and along with that in conjunction with it there is also the Highlands Municipal Plan Conformance Grant Program. The Highlands is now forcing us to really review all of the areas that are sewered or could be sewered now for capacity and that may affect our housing amount that will be under the Highlands.

Member Gural – What could be sewered? I mean everything could be sewered if you want to spend enough money.

Chairman VanVliet – Well, but the point is, that the Highlands has an overlay of our Master Plan which indicates we have the Center Designation for residential which is basically the existing residential areas in Lopatcong and we have the Industrial Center which encompasses Strykers Road from the railroad to 519 and also Route 22 which is basically Highway/Business there also to be sewered even though it is not there yet – there is no lines running out to that portion. Those are the areas that upon review of what we have to do with that, re-looking at that and re-evaluating what it is, but they probably would not allow an extension of those. In-other-words if we wanted to go or if somebody wanted to go across Strykers Road right now by the golf course or the farm that's out there, build a housing development, sue for the Inclusionary Housing or the Builder's Remedy as they use to refer to it, they could force the courts to have us extend sewer to those areas under the protection of the Highlands and you know, COAH it wouldn't have to do that. We tried to protect the farmland. I believe that's the Klein Farm that butts up against the golf course there and that goes all the way down to 519 and butts up against the Preservation Area of the Highlands where it takes off up from there. So, we thought we'd have to have pretty much encompassed where we wouldn't see twelve more housing developments show up there, so anyway that's what the Center Designations are. That has to be re-reviewed. Also, our housing Fair Share Housing Program has to be reviewed; Module's two, three and five, seven I think.

Members talking over each other.

Chairman VanVliet – so that's all under review. We just got grant money. I believe you got a letter from Mrs. Nordstrom to approve the grant money to be expended in the amounts you had indicated to her would be expended and is scheduled to do that. George indicated to me that he

talked to him this week that they are in pursuit of that and are looking for CD disks that came along with that in order to, they were the models that they can use to submit the information.

Mayor McKay – Beth did you give them the disks yet?

Clerk Dilts – They are being over-nighted tomorrow.

Mayor McKay – Okay.

Chairman VanVliet – So, how that's going to affect whatever we have left over here whether it affected the Piazza Tract that Larken is looking to do, you know, and along with that I understand that the person who is going to develop our number under the program we have and filed suit against the Supreme Court Order – the Declaratory Judgment with the Supreme Court had a stroke. He is no longer able to do the figures and he is working in conjunction with the group at Rutgers to come up with the figures that each township would have. I understand he is returning the money and the Supreme Court has thrown out that whole block that he was working on for the communities he was involved with so we're back at square one figuring out what we are going to do in that Fair Share Housing Module. We have to estimate based on the Round Three numbers that we had and we have to review that and come up with a cursory review of whatever they want as far as information for the Highlands. Where that's going to wind up. Last numbers I remember go back to 2014 and we were required that 57 units in addition to what we already had for that Round Three total build out of the Township. Now, upon re-review of the Fair Share Housing Plan based on where the sewer areas and wooded areas are in the Township, that may reduce that number because when we did that forecast of what the town's build out was, we had to take every open space in the area that they could build on and estimate from that point of view. That may be reduced. I don't know what formula – Round One was the original Mount Laurel decision which I assume is what we are working under now because they are unconstitutional Round Two and Round Three – a court decision. So it kind of leaves us at there's nobody that seems to know how they are going to figure the number now. They were basing it on what municipalities filed the Declaratory Judgment with the Supreme Court to have their housing programs certified that's what we could use since they've been billing us from 2004; it's like who the hell knows where it is going.

Member Belcaro – It's in limbo right now.

Chairman VanVliet – It's in limbo.

Mayor McKay – With all these things in limbo I mean how can we approve some big housing tract to start.

Chairman VanVliet – Well, we've gone through this since 2004. You work up numbers; you do what they want you to do. You try and stay in compliance so we have the protection of somebody coming in and saying well we want six houses per acre. Ours requires no more than four from the building code. Five was the norm for the Builders Remedy before 1/5 of an acre, but now I understand six seems to be some of the

Member Belcaro – Well, the thing is how can the courts if they do make a decision, whenever, how can they hold any township liable if they go ahead and make decisions to go ahead

Chairman VanVliet – because

Member Belcaro - because they themselves are guilty of being irresponsible and not doing anything about this and keeping everybody in suspense and guessing.

Chairman VanVliet – they go to court, they're the ultimate authority.

Member Belcaro – I'm trying to understand. How can they hold any township liable for what if the township goes ahead and moves ahead?

Chairman VanVliet – They can approve, they can come in and force a community to spend the money on building their own affordable housing which would put us in a position we probably would need a housing authority similar to Phillipsburg. To run these units, to maintain these units, they could come in, cut off all of our state aid if they wanted to. You know, there are remedies of the court that they can't come in and put punishment on us. We were looking at their original

Member Belcaro – What does a township do, stand still?

Chairman VanVliet – The only thing I think you can do, if you want to be, some townships, you know, like 50% of the townships in New Jersey did take that stance where they didn't do anything once COAH but those townships were totally built out anyway. A lot of the shore communities and, you know, the eastern half of New Jersey, some of those communities didn't have a half an acre left to build anything but we had a lot of farmland out there. You saw what happened with Greenwich Township when Toll Brothers came in and built Wyndham Farms, Greenwich Chase they were all court decisions forcing them to build those type of communities and then we saw what happened with the low-income housing with the Chase all along 519 there where like row houses came up; not the most attractive part of anything and they were isolated in one section. That really didn't look as, you try to intermingle them, in between the sections, so it didn't look to obvious of what it was and when they saw that that was happening here, a lot of people were very upset about that but that's the way it works and it totally changed that community upside down.

Mayor McKay – I brought up before and I think the answer came back, I'm not sure kind of wishy washy. Clymer village where we have, we only get some of the units. Supposedly, with some agreement back some time

Chairman VanVliet – Back some time. I never say

Mayor McKay – I never saw, I keep trying to get the agreement but nobody has it. Would we have to honor that? It's just somebodies memory, it is not a document. Nothings recorded that I can find.

Member Gural – Who was the attorney back then?

Mayor McKay – Perrucci, Michael Perrucci. He wasn't the town's attorney but he was the attorney for that. He worked on that matter because that was a pilot project.

Secretary Dilts – Wasn't somebody going to check with Harmony to see if they had the agreement. George was going to do that.

Mayor McKay – I think so. Nobody ever got back to me. I tried to even get to National Church Properties they say they'll call back and they don't. They said they had no record of it. They didn't send me anything so that would solve our problem cause there is like 50 or 40 units in there that somebody else thinks they have credit there.

Chairman VanVliet – I think a lot has to do with since they do not pay taxes; they pay a fee in lieu of taxes. I'm not sure of any deed restrictions. I guess we get about half the units

Mayor McKay – Maybe a little more than that.

Chairman VanVliet – and I, at that point, I don't remember that would have been under Round One and I'm not sure whether we got credit for all the units or we

Mayor McKay – We got credit for some. Some of them are in there (inaudible) some of them.

Chairman VanVliet – But if I remember, and I'm only guessing at this one Tom, I've haven't had anything to where I can go back and look into and I wasn't on any boards or involved in any of it at that time just following it in the newspapers. I think that in order to be qualified for low income housing you have to be deed restricted. I'm not sure that the National Church Council ever had a deed restriction. They were providing HUD Housing.

Mayor McKay – Yeah, it was a HUD Project.

Chairman VanVliet – based on income and stuff like that but I don't know if they ever deed restricted the deed for that property (inaudible) and I think that was

Mayor McKay – Well, we did count half of them.

Chairman VanVliet – we do, we had that agreement that we do count that and COAH accepts it but I don't know if we're gonna open a can of worms going back into a deed restriction and losing those also so

Mayor McKay – That's ashame.

Chairman VanVliet – I mean and when you look at all of the qualifications for Brakeley Gardens, they qualify, all except for the deed restriction. We were approached at one time to see if the management group wanted to set a certain number of units on buildings, other deed restrictions (inaudible) it is a 30-year deed restrictions to whoever owns it but they will maintain those

properties that an affordable housing, an affordable rate dictated on what region you are in from the state of affording housing and at the end of 30 years that goes away and the landlord is capable of doing anything he wants but in the meantime if they sell a unit or get rid of the unit that has to transfer on the deed to the next owner just to maintain that for property as an inclusionary housing because over the years there's been

Mayor McKay – because that would otherwise, you know, be perfect.

Chairman VanVliet – That would give us, that would give us

Members talking over each other

Mayor McKay – Probably no more than you are swallowing already. There's new ones coming on now (inaudible) 35%.

Vice-Chairman Pryor – I have something I'd like to say. Last meeting I had what I describe as an unpleasant experience with a fellow in the audience. I told him to be quiet and I don't apologize for that but I apologize to Gary and the Board; I should have given him a chance to handle that but I had a short fuse for that situation. Maybe it's good that everybody knows that. He said Point of Order is a residents right to interrupt the meeting and then he went on and he said to the attorney you don't know what you're doing and so on. I just want to clarify a couple of things. The Board adopts Roberts Rules of Order. We could adopt something else. We happen to adopt Roberts Rules. That is a guideline for conducting meetings and they define right in there, a meeting or a definition of a meeting as an assembling of members of the deliberative body. We are the members. The audience is not members. They have Roberts Rules of Order confers no rights upon a member of the audience to jump up and interrupt. Secondly, even if you argue against that, that Roberts Rules falls fairly low in the hierarchy. State law comes first, your charter, bylaws and so on. The Open Public Meetings Act excludes Planning Boards from having to offer public comment at all. We do it, we do it as a courtesy but we don't have to. So, they're all given an opportunity to speak and I think that's behavior that shouldn't be tolerated on this Board. I'm sure Gary would have stopped it but I got mad so quick, I jumped up and I apologize for that but I've had my say on that and I hope this Board will accept that.

Chairman VanVliet – Does anyone have a comment on that situation?

Mayor McKay – Maybe we should have a copy of Roberts Rules up here cause no one knows them.

Vice-Chairman Pryor – It is a book.

Mayor McKay – I know what it is yeah. I've looked through them but

Vice-chairman Pryor – but I mean I know what it does and it governs the membership. There is no right for somebody to jump up and interrupt the meeting and start telling the attorney that he doesn't know what he is doing and the Robert's Rules doesn't provide for that and the Open Public Meetings Act doesn't provide for that. You'll never get anything done if you allow that to

happen.

Member Belcaro – I think next time if that is to happen, it needs to be explained that it is an issue of using the term Point of Order I think some people are just in a lot of cases they really don't know what they are talking about

Chairman VanVliet – I agree with you.

Member Belcaro – for whatever reason

Mayor McKay – That's why I said we should get a copy of it and keep it up here.

Member Belcaro – What I'm saying is if someone is standing up in the audience

Mayor McKay – Well people go to the internet and research it and they come up with something

Member Belcaro – and they proceed to use that Point of Order when in fact they really don't have their facts, you know, what that, how it is used, when it's used and who can use it but that needs to be clarified.

Vice-Chairman Pryor – So, I feel I personally was on sound ground telling him to be quiet but I really should have let the chair handle that and I apologize but that's why I did it. I have a short fuse for that sort of thing. I don't put up with it.

Chairman VanVliet – I think there was another person in the audience that wanted to know why we didn't have public comment on agenda items before the meeting

Vice-Chairman Pryor – that's why yeah.

Chairman VanVliet – and it's been my experience that we are a little bit different then council meetings are where you have a full agenda out there, different property resolutions and stuff like that and you are fully vetted before you have the knowledge of what's going to be contained in those agenda items. We don't have that luxury. Many of the like, the church coming in last time, I mean that was an agenda item but if they would have asked questions, I would have no idea what that church was coming in to do at that meeting. I felt that in all fairness through the years that in order for us to have an intelligent discussion we would really have to know what we are facing before the meeting. So, let them make the presentation of what they have and we allow for a public comment at the end of the meeting when all of us know the facts of what they are trying to present to our Board when they come in especially when we have formal meeting on a site plan. The experts haven't testified yet. I mean most of the questions would involve in a large development say Ingersoll and you can see that in the presentation you had at the council meeting. How many trucks are coming in, where is the water going to go, how is it going to affect us with what hours are you going to operate. We don't even know that until we've had a chance to let their experts when they would tell us so, I always felt that allow questions at the end was a better way to proceed then it was in the beginning when nobody knew what the presentation was going to be and I didn't want to cut anybody off because it was an agenda item

and as you know with the Council you don't discuss agenda items at the audience participation begins. They've already have their chance to ask their questions on the agenda items so I mean that's my reasoning behind the way we did it. We have been doing it here as I said as Joe indicated before we are under no obligation to allow any public comment here. This was just, you know, I wanted fully vent what was going out here.

Mayor McKay – Well, I think what they're worried about, a lot of people, is that actions are taken before they have a chance to say something.

Chairman VanVliet – I mean the actual rules state they would get no chance to ask questions on it and I don't think that's fair either so, I mean, you allow them to make the comments at the end when the presentation (inaudible) We even go as far as to allow them to question the experts as they have so it is relevant in everybody's mind what they're talking about when they are here.

Vice-Chairman Pryor – The hearing process is a very structured process in itself for a reason. They have an opportunity to question each witness; they have an opportunity to comment in the end.

Chairman VanVliet – Absolutely.

Vice-Chairman Pryor – Present their own testimony so comment before we even start the meeting is just going to delay the meeting.

Chairman VanVliet asked for a motion to adjourn the meeting. Motion by Vice-Chairman Pryor, seconded by Member Gural. All in favor.

Respectfully submitted,

Margaret B. Dilts
Planning Board Secretary