

TOWNSHIP OF LOPATCONG  
PLANNING BOARD REORGANIZATION AND  
REGULAR MEETING

January 27, 2016

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.”

Roll Call: Members Fischbach, Fox, Frank, Gural, Johnson, Olschewski, Pisello, Woolf, Mayor McKay, Member Pryor, Chairman VanVliet.

Chairman VanVliet asked to have the new members sworn in.

Member Pryor – Mr. Chairman, can I have a Point of Order please. Beth, I have a couple of comments on the swearing and Tony I defer to you on this but Mayor McKay his term runs coincident with his term as Mayor. He was sworn in last year. I don’t think we have to swear him in every year. I’m actually a Class III member. Gary is the Class II member. There were staggered terms for the Class IV members. I don’t think we need it here but Beth we have those documented from the Council meeting.

Secretary Dilts – Yes.

Member Pryor – And how about the alternates; they’re two year terms but they’re staggered so I think the first guy just gets a one year term. The other thing is some of these folks already serve on a board. They can’t serve on two; so technically, they’d have to resign just before they’re sworn in. Anybody on another board.

Member Gural – I’m on Environmental Commission.

Member Pryor – We are allowed one member from the Environmental Commission. Correct?

Secretary Dilts – Correct. That is Mr. Gural.

Member Pryor – You’re good. You are not being sworn in tonight anyway.

Member Johnson – I don’t believe the Recreation Committee qualifies as

Member Pryor – Well, I’ll ask the. Unless, I think any other committee or board but

Attorney Sposaro – I don't know if Recreation Committee does. I just don't know off the top of my head. It's a new question; it's not something I anticipated

Member Pryor – I understand that and just to get this going I would propose we swear Eric in and we'll research that and if it is correct that he can only serve on one, he'll have to resign from one or the other. Fair enough?

Member Fox – I also raise my hand, I'm on Environmental Commission as well.

Member Pryor – We are only allowed one Environmental Commission member I believe.

Mayor McKay – We need to research that.

Attorney Sposaro – I will research that as well.

Member Pryor – We'll research that too. So, we'll do that conditional too? Is that okay Tony?

Attorney Sposaro – I'm okay with that.

Mayor McKay – Now, in the past, we had people that served on more than one.

Member Pryor – The law is the law and whatever it's says, it's going to say.

Member Olschewski – May I ask a question. Mr. Pryor, Joe I'm not sure what you prefer would you please let me know what (inaudible) and what laws, where did you find that so I can research?

Member Pryor – It is right in the Municipal Land Use Law.

Member Olschewski – Okay, thank you very much.

Chairman VanVliet – How would that affect any voting?

Member Pryor – That may be a problem.

Chairman VanVliet – Do you want to table it until you research it, table these appointments until then?

Attorney Sposaro – I think it is important to reconstitute this Board. I think we would, I would prefer if it turns out that Mr. Pryor's understanding of the Land Use Act is confirmed that we have a commitment by the individuals that are involved that they will indeed either resign this position or resign the other position. I think with that we can go forward. I think it is most appropriate. Does anyone have a problem or concern with it?

Mayor McKay – No.

Attorney Sposaro – Do we have that commitment from the two gentlemen that are potentially affected by this?

Member Johnson – Yeah, if that's what's determined.

Member Fox – Yes.

Attorney Sposaro – Okay, thank you. What I will do is, if I am reappointed, I will generate a memo in writing well in advance of, in fact, I will get to it immediately and circulate it for everyone's review so that you can all then decide from a personal level how you wish to proceed.

Chairman VanVliet – Tony, will you swear these members in now?

Attorney Sposaro – Sure be happy to. I think all of you have in front of you an Oath of Office form. If you would just all stand and we will do this in amass.

All new members were sworn in.

Chairman VanVliet – All right and congratulations to all the newly appointed members of the Planning Board and at this point we will move along to election of officers. I'll open the, the first position would be Chairman for the Planning Board. I'll open it to nominations. Do I hear any nominations?

Member Pryor – I'd like to again nominate Gary VanVliet.

Member Olschewski – I'll second that.

Chairman VanVliet – Any further nominations? If not, nominations for Chairman are closed. We'll proceed to the vote. Roll call vote:

AYES: Members Fischbach, Fox, Frank, Gural, Johnson, Olschewski, Pisello, Woolf, Mayor McKay, Pryor, Chairman VanVliet.

NAYS: None

Chairman VanVliet – Next position is Vice-Chairman. I'll entertain

Member Olschewski – I would recommend for the position of Vice-Chairman, Mr. Gural, if I may.

Chairman VanVliet – Mark Gural.

Member Olschewski – Yes please.

Chairman VanVliet – I'll second that. Roll call Beth please.

AYES: Members Fischbach, Fox, Frank, Gural, Johnson, Olschewski, Pisello, Woolf, Mayor McKay, Pryor, Chairman VanVliet.

NAYS: None

Chairman VanVliet – I forgot to ask you Mark; will your accept?

Member Gural – I guess I will.

Chairman VanVliet - Okay, now we'll move on to the appointment of professionals. The first position Resolution 16-02 to appoint an attorney.

Mayor McKay – With respect to that I would suggest that given these are mostly new people and they don't know the professionals, that we table this to the next meeting so the members present can get to know the professionals a little better. So, table it to the next meeting.

Chairman VanVliet – I would be reluctant to do that because of the fact that we have quite a bit of information that is going to have to be available to us and reviewed. You are not appointing anyone? Are we going to use them as a carryover or?

Mayor McKay – Yes, they will be carried over until the next meeting. So, I motion to do that.

Member Johnson – I'll second it.

Secretary Dilts – Is that all the professionals or you just doing the attorney?

Chairman VanVliet – We were just doing the attorney.

Chairman VanVliet- Beth roll call vote please.

AYES: Fox, Frank, Gural, Johnson, Olschewski, Pisello, Mayor McKay

NAYS: Members Fischbach, Woolf, Pryor, Chairman VanVliet

Chairman VanVliet – Now, we'll move along to Resolution 16-03.

Mayor McKay – I'd like to make the same

Chairman VanVliet – Are you going to make the same for all three?

Mayor McKay – Same motion, yeah, for the three because the people don't know you, know these professionals and I think they need to get some time to get the feel and see if that's what they want.

Members talking over each other.

Member Fischbach – They don't know the professionals, so, how are they voting to say yes or no on this motion.

Mayor McKay- They are not familiar with them

Members talking over each other.

Member Pryor – If I may, George isn't even here tonight, so, I don't know what you gain by that. Paul's been here for 15 years so. I'm allowed to comment on a motion, so, I would question the practicality of it and the significance of it but that's my comment.

Mayor McKay – Is there a second.

Member Pryor – Well one other Point of Order, the alternates really shouldn't even be voting on this. Does that affect the outcome Beth?

Secretary Dilts – The outcome is the motion is still carried.

Chairman VanVliet – All right do I hear a second.

Member Olschewski – I'll second it.

Chairman VanVliet – Roll call Beth on the positions of both the Engineer and the Planner.

AYES: Members Fox, Gural, Johnson, Olschewski, Woolf, Mayor McKay

NAYS: Pisello, Pryor, Chairman VanVliet

Secretary Dilts – Motion's carried.

Member Johnson – I have a question on the appointment of professionals. We need to add another one. I think we need to reappoint our Planning Board Secretary. Shouldn't Beth be on the list of professionals as well or is that not

Chairman VanVliet – No that will be up as a separate – is that on the second page. All right

Member Johnson – Maybe it doesn't fall in that category of professional (inaudible).

Chairman VanVliet – Normally, it didn't but you didn't need a resolution to do that so.

Secretary Dilts – I have a five year contract.

Chairman VanVliet – Okay. She doesn't need to be reappointed then.

Member Olschewski – I'm not sure if I'm right or not, but maybe our attorney can weigh in, was there not just something in Pohat with voting of five year contracts?

Attorney Sposaro – Let me address this issue if I can. It is absolutely true that Ms. Dilts has a five year contract with this Board. Beth when was that entered into.

Secretary Dilts – Two years ago.

Attorney Sposaro – Okay. On the face of it, the contract is a valid enforceable contract. However, to be fair to everyone, I should advise you that I am the Land Use Board Attorney in

Pohatcong as well and the governing body in Pohatcong last year challenged in court a multi-year contract with its board secretary. The case was transferred out of this county because Judge Purcell had a conflict because he had previously represented the governing body in Pohatcong. It was transferred to Judge Miller in Somerset County. Judge issued a written opinion, a copy of which I have in my possession and concluded that the multi-year contract was void and unenforceable because it usurped the authority of boards on an annual basis and tonight is a perfect example. You are reconstituted; you have new members on the board that usurp the board's authority to choose its professionals and to choose its secretary. Is that decision binding on this board? Not necessarily. It is not a published decision. A different judge might rule differently. I know of no other case law but it certainly suggests what the outcome might be. I think it would be ill-advised to appoint another secretary at this point in time. You then would have in effect two secretaries, it could create chaos. My recommendation is if anyone if the Board wants to challenge the contract it's free to do so. If the Board is satisfied with Ms. Dilts' services that challenge would be academic but it is really up to what the Board wants to do at this point. I hope I have answered your question. I don't know if I have.

Chairman VanVliet – Eric are you making a motion to appoint?

Member Johnson – I guess is it then can I make a motion to renew Beth's contract for a one year term and get her into a new contract that doesn't put us into litigation potentially?

Attorney Sposaro – I don't see why not.

Member Pryor – She would have to agree to, what do you want to say, vacate her existing contract?

Attorney Sposaro – Not necessarily. I don't think she, she's not voting on this. She may take the position that regardless of the vote she is entitled to remain under the multi-year contract.

Vice-Chairman Gural – Contract supersedes the ordinance?

Attorney Sposaro – The contract is the contract. It's legally enforceable until a judge says that it is not. Here's the problem the Land Use Act says that the Board shall have the authority to appoint its professionals and staff members. It is silent on the issue of when, it's not silent on the issue of when it's done but it's silent on the issue of multi-year contracts and the case out of Pohatcong addressed the issue of multi-year contracts but it is this Board's appointment. It is not the governing body's appointment; it is this Board's appointment. I don't think it would hurt to find out if the majority of this Board wants Ms. Dilts to remain. If they do, then any litigation would be superfluous and academic but if the Board feels otherwise then the Board has to decide whether it wants to challenge that contract or not. I think we need to find out.

Member Johnson – I was willing to put a motion out there that we renew Beth's contract for a one year term and that the contract be revised to say the pay is per meeting and not on an annual basis and if we need to keep the pay the same, then that would be \$1,000 per meeting but I think we should tackle this all at once. So, I'm making a motion to keep Beth as the Planning Board Secretary and change the contract to \$1,000 per meeting instead of \$12,000 per year.

Resident – (Inaudible)

Mayor McKay – Mr. Chairman, he's speaking out of order.

Chairman VanVliet – Table that, so, and it's not public comment right now, so.

Member Johnson – (Inaudible) so does the motion happen first or can I ask Beth if she'd be interested in doing that as our Secretary. What comes first?

Chairman VanVliet – It would be, I have no objection appointing her for the one year. As far as revising the contract, the contract, now we may be changing her actual contract she signed with the Board and we'd have to void that contract and I don't want to get into that until we get further legal opinion on which way this would go. So, I would be perfectly happy to offer her the one year contract here at the current salary that she is making for the year and go with that as opposed to changing the contract.

Member Johnson – Okay.

Attorney Sposaro – I don't think the Board can unilaterally change the contract because there's two parts to the contract.

Chairman VanVliet – That's what I meant. She would have to agree to that. I mean if she accepts the one year appointment under the current conditions of the contract. It's really not changing any money as far as that's concerned.

Member Johnson – Then we reword it. I make a motion to reappoint Beth and the contract would be negotiated at a future date.

Member Olschewski - Does it make more sense before we vote on anything and discuss anything further to ask our counsel for our options and to see what the options are and I like Beth to remain as the Planning Board Secretary.

Chairman VanVliet – That's what we're trying to do as opposed to saying just unilaterally changing the contract.

Member Olschewski – However, I have to tell you Gary that I think the last year we had a total of six meetings. You guys had a total of six meetings and we really did pay for twelve. Now,

Chairman VanVliet – I understand that your, your position but I don't think that \$1,000 a meeting just covers her being at a meeting.

Member Olschewski – I was trying to Beth, and excuse me for being, I don't mean to be, I've been told that besides the Planning Board you sitting here and taping meetings, Lori told me once there is a lot of other stuff which goes with what you do and I have to tell you that I really don't know what else you do. So, if you would be so kind and let the public and us know what

other duties you have maybe that makes it easier for people to understand and it makes it clear what you actually do and I believe you are doing what you have to do.

Secretary Dilts – I thank you. I do believe that this is an Executive Session matter. I have not been Rice Noticed as an employee of the town so I wouldn't mind speaking about it further but I don't think we should be talking about this in public session, currently.

Member Pryor – May I talk. I have one other comment, I mean no matter whether you like it or not she has a contract until it's overturned, I respect Tony's opinion. He can research it, he can offer an opinion but that was still a decision at the trial court and it is unpublished you would really have to litigate it here before you could void that contract, so, there is no sense of awarding a second contract with different conditions.

Chairman VanVliet – That's why (inaudible).

Member Pryor –I suppose you could offer a one year with identical conditions but I don't know the other contract would govern since it's in place. So, my own feeling is she has a contract if you feel you want to litigate it, that's your right.

Member Johnson – If there is no other comments, I'll put a motion on the floor and it's just to renew Beth at a one year term, so we're giving Beth a one year contract. That's all. There's no stipulations. It's just get it into the one year renewal rate which will be consistent with what is happening in Pohat.

Member Pryor – Forgive me Pohat has no bearing here. She has a five year contract.

Vice-Chairman Gural – I think you have to understand she has a five year contract already (inaudible).

Members talking over each other.

Member Fox –(Inaudible) to say okay I break the contract so (inaudible) to figure out how to legally change the contract to coincide with the ordinance of having secretary to the board (inaudible) so how do we end the contract to coincide

Member Pryor – My suggestion is one of two ways; you can litigate it or you can renegotiate the contract with Beth that's mutually agreeable.

Member Fox – Does that happen here?

Chairman VanVliet – We would definitely renegotiate the contract from this Board, yes.

Member Pryor – And if she, if she's inclined not to renegotiate then you would have to either honor the contract or litigate it.

Member Olschewski – I would assume that the contract that you currently have is a legally binding.

Member Pryor – No you are not listening to me. It's legal until it is litigated.

Chairman VanVliet – The Pohat contract is case law but not published case law. It's, right now, she has a five year contract with us. The salary was negotiated under that contract and we really don't have to do anything as far as (inaudible) now she's just continuing as the Planning Board Secretary under that contract. If we want to try to renegotiate that contract or we want to litigate the contract it is our prerogative to do that.

Member Pryor – But I say again, why you renegotiate or while you litigate, you have a contract in place until it is litigated.

Member Johnson – Well, I guess then we vote there's a motion on the floor, it's already been seconded and that's okay if it is voted down, and that's the majority, I'm fine with that.

Member Pisello – Can we say the motion one more time, so we know exactly what it is?

Members talking over each other.

Chairman VanVliet – You offering her a one year contract.

Member Johnson – Motion is to give Beth a one year contract.

Chairman VanVliet – As opposed to just we wouldn't have to do anything and she would still be the Planning Board Secretary.

Member Pryor – Recognize at the end of the year you'd have to litigate again. This whole proposal makes no sense to me.

Attorney Sposaro – I think the short answer is we need to know what the Board wants to do. If the Board wants to challenge the enforceability of that contract, then it does. If it is content to not challenge the contract, but to indicate that it wants you to serve for this calendar year, I think the Board can do that as well. I don't know if it supersedes the contract. I'm a lawyer not a judge, but I think it would maintain the status quo for this year. No more no less.

Member Pryor – At a point of verification, a one year extension, is it the same compensation in terms and conditions of the existing contract?

Member Johnson – Yeah, I would believe it would have to be that's what I'm hearing. So, it's just basically bringing it down to a one year term, but if our attorney believes that this is not a good move for us, it sounds like it's kind of up in the air, we're not really sure but

Member Pryor – I don't know, and I don't know what you are looking for from the attorney. There is a contract in place. It's in place until a court says otherwise. He just said he's an attorney not a judge. You can pass it, I don't know, they run in parallel I guess.

Member Pisello – We have a five-year binding contract with three years left on it and we're willing to go one more year at the existing that she's getting now, it just seems like it is pointless litigation.

Chairman VanVliet – Would you be willing to withdraw your motion?

Member Johnson – I can withdraw if the attorney can tell me one more time this five year and again, it lies in the example but this is not, if you just tell me, this is not an illegal contract, then I can withdrawal the motion and that's what I want to hear it's not an illegal contract.

Attorney Sposaro – It is an enforceable contract until a judge declares otherwise. I don't know how else to answer your question. I'm not avoiding it, it's just that's the best way for me to answer.

Member Johnson- I can withdrawal and if nothing else, we had a good discussion on the topic. So, thank you for that.

Chairman VanVliet – Okay, if you feel more comfortable if we have a stipulation under her contract for this year.

Attorney Sposaro – I'm not encouraging the Board to litigate this issue. I think it would be a waste of taxpayer dollars and really counterproductive and I think it was very much so in Pohatcong, but I think it is important for the Board to decide whether it wants Beth to continue to serve as its secretary this year. I don't think it could hurt for someone to just make that motion.

Chairman VanVliet – Would you like to make that motion and place it?

Member Johnson- Based on the discussions and the motion is withdrawn.

Chairman VanVliet – Yes your motion is withdrawn. Would you like to make a new motion that we continue Beth under the existing contract?

Member Johnson – I don't think I have to. It's a five year contract and we're saying that it is legal. It is a non-issue at this point.

Chairman VanVliet – Okay, and we're not looking to litigate it or anything like that under it.

Member Johnson – No.

Chairman VanVliet – Okay, in that case, congratulations Beth you will continue under the contract and that contract locks your salary in for that five years also. There are no increases in that salary correct?

Secretary Dilts – Correct.

Member Gural - Three more years.

Chairman VanVliet – Three more years on it, yes. Okay. We have, the next Resolution is No. 16-01 approving the Annual Meeting Calendar, Official Newspaper; The Star Gazette and The Express Times. May I have a motion?

R 16-01

### PLANNING BOARD MEETING CALENDAR

NOTICE IS HEREBY GIVEN that the regular meetings of the Lopatcong Township Planning Board will be held the Fourth Wednesday of each month at 7:00 pm, except where otherwise noted below, at the Municipal Building located at 232 S. Third Street, Lopatcong, New Jersey. The dates of the meetings are as follows:

#### January 27, 2016 (Reorganization Meeting)

February 24, 2016  
March 23, 2016  
April 27, 2016  
May 25, 2016  
June 24, 2016  
July 22, 2016

August 24, 2016  
September 28, 2016  
October 26, 2016  
November 23, 2016  
December 28, 2016

#### January 25, 2017 (Reorganization Meeting)

The Township Clerk through 2016 will prominently post a copy of this Resolution in the Municipal Building located at 232 S. Third Street, Phillipsburg, New Jersey on the bulletin board and a copy shall be mailed to The Express-Times and The Star-Gazette, which are designated as the official newspapers for publication of legal notices for the Lopatcong Township Planning Board pursuant to Section 3 (d) of the Open Public Meetings Act Chapter 231 P.L. 1975.

### CERTIFICATION

I, Margaret B. Dilts, Planning Board Secretary, do hereby certify the foregoing to be a true and correct copy of a Resolution adopted by Council at a meeting held on Wednesday, January 27, 2016.

Margaret B. Dilts  
Planning Board Secretary

Mayor McKay – Motion. Member Gural – Second  
Chairman VanVliet – Roll call vote:

AYES: Members Fox, Vice Chairman Gural, Johnson, Olschewski, Pisello, Woolf, Mayor McKay, Pryor, Chairman VanVliet.

NAYS: None

Chairman VanVliet – Resolution No. 16-05 to adopt Roberts’ Rules of Order.

R 16-05

RESOLUTION OF THE TOWNSHIP OF LOPATCONG, COUNTY OF WARREN AND  
STATE OF NEW JERSEY ADOPTING ROBERT’S RULES OF ORDER AS A BASIC  
GUIDE FOR FAIR AND ORDERLY PROCEDURE IN MEETINGS

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Township of Lopatcong, County of Warren and State of New Jersey that Robert’s Rules of Order Newly Revised 11<sup>th</sup> Edition is hereby adopted as a parliamentary authority for the procedure in meetings.

CERTIFICATION

I, Margaret B. Dilts, Planning Board Secretary, in the Township of Lopatcong, County of Warren and State of New Jersey do hereby certify the foregoing to be a true and correct copy of a Resolution adopted by the Planning Board at the Reorganization Meeting held on Wednesday, January 27, 2016.

Margaret B. Dilts  
Planning Board Secretary

Motion by Mayor McKay, seconded by Member Olschewski. Roll call vote:

AYES: Vice Chairman Gural, Johnson, Olschewski, Pisello, Woolf, Mayor McKay, Pryor, Chairman VanVliet.

NAYS: None

ABSTAIN: Fox

**Old Business:**

**Minutes** – December 23, 2015. No comments or corrections

Member Gural asked if the minutes were produced off the tape or are you taking notes while we are taping.

Secretary Dilts – I use the tape but I do take notes.

Member Gural – So when you say inaudible, you actually can’t hear.

Secretary Dilts – I can’t hear it. You have to actually speak directly into the mike so if turned or leaning back, most times I can’t hear it.

Motion to approve minutes by Vice-Chairman Gural, seconded by Mayor McKay.

Roll call vote:

AYES: Members Fischbach, Woolf, Mayor McKay, Chairman VanVliet.

NAYS: None

ABSTAIN: Member Pryor

### **New Business:**

#### **ROM Districts – Discussion.**

Vice-Chairman Gural – Basically, I wanted to bring up, I guess it's going on three years now; three years or four years.

Chairman VanVliet – Four years.

Vice-Chairman Gural – Four years since the hearings at the high school concerning the asphalt facility and I guess during that, something happened that precipitated all that discussion and all those meetings and the end result was that the ordinance had been changed to allow that facility to come into our town and what I wanted to do was at that time, it went to the Council to change back the ordinance to disallow that type of facility and then the Council said it would have to come to the Planning Board and I don't think anything ever happened, so, what I am proposing is that we go back to the original ordinance that we had in place. So start that discussion.

Chairman VanVliet – Several things have happened. No. one it is still being litigated. So with the advice of our attorney who is handling the litigation, not to take any action on anything on that segment of the zoning in the Township until it clears through all court cases?

Vice-Chairman Gural – My understanding of that is though that if the applicant is, they fall under what the ordinance was at the time, which allows them to build the facility. Right now, I feel we're exposed as the town; we should bring up the discussion and have that discussion. If it has no relevance on the case that's going on at this point because it would be from this point forward. They've already had their application approved.

Chairman VanVliet – But we don't know what the outcome of that's going to be yet.

Member Olschewski – I believe (inaudible) excuse me but wrong but what you're saying is (inaudible) was approved back (inaudible) it's suggesting I believe my understanding is that any future development

Vice-Chairman Gural – Moving from here.

Member Olschewski- from now on forward will be (inaudible).

Members talking over each other.

Chairman VanVliet – You wouldn't want to permit it.

Vice-Chairman Gural – Wouldn't want to; go back to the old ordinance.

Chairman VanVliet- There's some problems with that too. So, Paul you want to

Engineer Sterbenz – This matter has been discussed by the governing body most in particularly in the Executive Session. This matter has been discussed extensively by the governing body most particularly in Executive Session and there's been advice given by the Township attorney on this particular issue. An ordinance does get adopted by the governing body level, not on a Planning Board level, so I think you need to be careful discussing this. I mean, and I'm not going to be a, I think probably, if you feel that way, I think the Board, if you feel as a majority want to see something like that, you can send a recommendation in writing to the governing body and that can happen. The governing body can consider it but I know this has been discussed, this very issue has been discussed a number of times and I'm not going to go into details again because a lot of it has been in Executive Session.

Attorney Sposaro – Perhaps rather than simply recommending would be to inquire of the governing body and get the advice of the municipal attorney on the advisability of even considering it at this point in time. I think it is worth exploring but I don't want to shoot ourselves in the foot here.

Member Johnson- I would wager to say that the Planning Board making the recommendation is the right thing to do for this town. This recommendation can be shut down by the Township if they don't think it is the right thing to do. This is critically important for our town to do the right thing. It is in everybody's best interest. It is in the town's best interest. We're talking about a major facility coming up in Ingersoll-Rand. We're talking about 300 plus (inaudible) on the existing asphalt facility, there's two apartment complexes coming in. One's a guarantee, ones (inaudible). We have to stop it somewhere and I think at this point it is very important to disallow any future asphalt manufacturing facilities and concrete manufacturing facilities and recycling facilities and do not allow them to expand beyond their current application and their current permitted use. This is important. Not only do I know firsthand that 95% of our residents do not want to see this get any bigger than it already is. I know that firsthand. We also don't want to find ourselves in a situation like Robbinsville where they are in full gridlock this holiday season because of the amount of traffic that came in from the Amazon warehouse shipment facility. This can get out of hand and get out of hand very quickly. This is the right thing to do as a Planning Board and this is looking out for our town and all you can do is make a recommendation and if the Township says no, they say no but I think it is our job to make the recommendation to the Township that we feel it is in our best interest.

Member Pryor – I'm going to respond first to you Eric and then to Mark and maybe I'll preface my response to both of you. The Municipal Land Use Law is a very complicated law. I think Tony would agree with me. It is well litigated, there's lots of case law and it still gets litigated all the time so things that sound very simple sitting here, they're very complicated as you move forward. Maybe I'll go to Mark first. I think you really have to go back and read Judge Miller's decision at least get the facts straight. The facility was allowed under the original ordinance and I'm not defending it. I wasn't even on the Board, Planning Board or here at the time but I did

read the decision. The court decided it was allowed under the original ordinance and the zoning ordinance was amended to make it a Conditional Use and it limited it to the zone south of Rt. 57. Conditional Use means in the Zoning Ordinance it's approvable, it is permitted if they meet certain conditions. They're spelled right out in the ordinance. I think what you are trying to do, you're trying to make sure that there is no enlargement of the existing approved asphalt plant and there will never be a second one. Am I summarizing that correctly? I think there maybe some ways to get that done but as people have said (a) we are in litigation now and (b) Municipal Land Use Law is very complicated. I would agree with Tony's advice that it's not something that has to be done tonight. We have next meeting. I think we start a dialogue. I would suggest, like Tony said, is that we ask Tony to sit with the Township attorney, get up to speed, convey your, your objective and see if there is a way we can discuss that further without getting ourselves in a jam. Is that fair Tony?

Attorney Sposaro – I'm more than happy to do that and report back and I think it would be appropriate to do so in Executive Session since this matter is in litigation. I hear you loud and clear. I know what you want to accomplish. There's lots of different ways of skinning a cat and doing it legally. You just need to make sure that we do it in the appropriate way. I don't quarrel with the pleasure of the majority.

Member Pryor – I don't quarrel with Mark's objectives and my suggestion is that we just do it very carefully. We explore it; we understand it and we don't move in hast and create chaos within the Township.

Member Olschewski – No. Excuse me I think while the suggestion is nothing more than making a recommendation to our Council to consider the request I mean we're not voting to change anything (inaudible) have anything to begin with. What we do is, we make a motion to request our Council (inaudible) and they have then officially get into and start considering the issue and I think that's a good thing to do.

Member Pryor – I have encountered that and it doesn't do any more than what Mark has requested. I would hope that everybody on this Board makes an informed decision. You have the facts in front of you and you understand the alternatives and you understand the proper way to get something done before you make a recommendation. If you want to make something up on the fly, and send it out of here I would be disappointed in that. I think Mark has made, expressed valid concerns. I think there is a way to explore that properly and I'm going to make the motion that we authorize Tony to follow up on Mark's request, discuss this with the Council's attorney and maybe he can come back and we can have a closed session and see what our options are and what the ramifications are and that's my motion.

Member Olschewski – I'll second that.

Chairman VanVliet – Any further comment.

Member Johnson – As he's looking into it, I would like to add a further comment. I have something here I want to pass out and we can take a look at it and it is a trial sample rewrite of ordinance 243-77-6 and 243-77-7 for his consideration and discussion to get it on and I think

what we are trying to accomplish and this is only going to help out to pass this around. So, I'm going to pass this around to everybody.

Member Pryor – You can submit it, but I think it is clear what Mark has suggested and so this ordinance is not part of my motion. You can distribute it as you see fit.

Chairman VanVliet – Any further comments, if not roll call vote:

AYES: Members Fox, Vice-Chairman Gural, Johnson, Olschewski, Pisello, Woolf, Mayor McKay, Pryor, Chairman VanVliet.

NAYS: None

Member Pryor – Mr. Chairman can I respond to Eric now?

Chairman VanVliet – Yes.

Member Pryor – I didn't get everything you said, I mean you said something about a development; apartments being a sure thing or something like that. That is a patently ridiculous statement. You said there were two and one was under study and one was a sure thing.

Member Johnson – No I said (inaudible) possible thing.

Member Pryor – What did you said more than, you said probable.

Member Johnson – Probable.

Member Pryor – Well, that's a silly statement. There's two ways that it can be done. One is a zoning change through Council and that's no where's near being approved, trust me and the other is a trip to the Zoning Board of Adjustment. Planning Board doesn't even figure in that process. It's going to be a decision of Council or a decision of the Zoning Board of Adjustment. So where you are getting the information that it is probable, that's a rather silly statement for a Board member here to make.

Mayor McKay – He should rephrase that if possible. I think what he was trying to say (inaudible).

Member Pryor – All right we'll accept possible. Anything is possible.

Chairman VanVliet – Okay, so, we'll continue along those lines then. Any further discussion on the ROM? If not, we have correspondence. A letter from Langan Engineering regarding notice of Treatment Works Application for Berry Plastics expansion. I don't know if that belongs before the Planning Board or not Paul do you have any information on that?

Engineer Sterbenz – When an applicant is seeking a treatment works approval from the Dept. of Environmental Protection, there is a checklist that the department has that the applicant has to address. One of the checklist items is providing notification to the Planning Board and the Environmental Commission of the municipality in question so the applicants engineer is

following that checklist requirement and issued letters to both of those bodies here in the Township so that is why this Board got a copy of that letter. I don't think you need to do anything with it unless someone wants to study, you know, look at the package that is in town hall.

Chairman VanVliet – Is this being handled by the Board of Adjustment?

Engineer Sterbenz – Correct.

Member Pryor – But if I can, the TWA is actually endorsed by the Mayor with the approval of Council so your allocations and your TWA are processed at the Council level.

Engineer Sterbenz – There is a request for allocation at this point that the Council will be looking at the February 3<sup>rd</sup> meeting.

Mayor McKay – Are you permitted to give us an idea of how much of an allocation or would you rather hold off?

Engineer Sterbenz – It is approximately 18,000 gallons a day. That's my recollection.

Member Pryor – Some of it is boiler water though so it's a mix of domestic and boiler.

Member Fox – If Council approves it, is it the Planning Board's responsibility for receiving this? Are we responsible for commenting or suggesting anything to it?

Member Pryor – You are welcome to. Ultimately it's Council's decision but the whole point in notifying the Environmental Commission and Planning Board is if you have a comment you can submit it.

Chairman VanVliet – We won't be reviewing it. Any further, Paul you have comment?

Engineer Sterbenz – I just have something for the Board that I'd like to do after Public Comment if permissible.

Chairman VanVliet – I'll open it to Public Comment.

Juniper Leifer – 32 Jade Lane – She thanked the Board for taking the action to recommend to the town council a change in the ordinance. She commented to Mr. Pryor about his bedside manner.

Chairman VanVliet – Commented back to Mrs. Leifer that some of the statements that we make as a board or board member at a public meeting can come back to haunt us in a bad way because when we get down to a hearing of the official hearing of an applicant coming in they very well can go back to our minutes indicate this person is prejudice against to begin with and prevent him from participating in the meeting. It is one of the very things that try to be very careful of up here. I know we seem aloof at times and don't want to say things or get into arguments with people but that is one of the basic reason why we do it so, you know, and it's tough when you

have somebody coming here and we've had it in the past where people have objected to certain members of the Board actually participating in the hearing so far as to say that they must leave the room so I'm trying to prevent that from anybody that's happening here so this sometimes it's tough not to express personal opinions. So you're a chairman and you're looking, it's the same thing so.

Rob Larsen- Congratulated all the new members. He indicated to the Board that he knows the mayor has the authority to appoint who he feels can best serve this Board but wanted to just say two things. First and foremost, we have a lot of things in motion regarding different projects and approvals and he expressed to the mayor that he thought it would be in the best interest of all to hold on to the professionals we have at this time because of the experience and the learning curve of bringing on someone new at this point in time. He asked that everyone should bring a list to the next meeting pointing out any professional who was problematic.

Member Olschewski – He told Rob that he thought nobody wanted anything but a chance to sit down with the new members for a short chat.

Bill Wright – Had a problem with the oath taken by all new members. One member did not pledge allegiance to the flag but took the oath.

Member Olschewski – Informed Mr. Wright that he was not a United States citizen. He is willing to uphold the laws and the constitution. He pays respect by standing up but does not pledge allegiance to the flag.

Lori Ciesla – Ordinance in question 243-11 Membership – Says the Planning Board shall consist of nine members. The members of Class IV shall hold no other Township office but one member shall be a member of the Board of Adjustment and Environmental Commission and Board of Education. She commented on the ordinance for the asphalt plant noting both making very good points. She also commented on members being careful as to how they speak.

Member Pryor – Apologized to Eric if he came on strong. Like Lori said, as a member of a Board you have to exercise care in what you say and how you present things.

Marla Endick – 10 Byron Drive – She thought people are here for different reasons and the first meeting of the new Board and wished them well.

Councilman Belcaro – Gave a little advice and words can come back – think before you speak and choose wisely.

Chairman VanVliet – Ask to adjourn.

Member Johnson – Langan Engineering letter – did someone look into the additional flow that would be entering the sewer system – concerned about the capacity.

Member Pryor – We don't do that here. The Township has a sewer engineer and Paul takes a look at this and the amount of flow will be discussed, the allocation discussed and there will be

other issues discussed on this and generally, you can't approve a TWA on a conditional basis; it's an endorsement or it is not but you can attach all these conditions to the allocation and this will be looked at with care at the Council level. Now this is as good a place as any to say this. I may comment on this at the Council level but as of right now I can't vote. I happen to own several hundred shares of STAG. STAG owns three buildings in New Jersey. This building happens to be one of them. It doesn't look anything like the buildings they show on their brochure but I am technically a stockholder so unless I sell my stock over the next week, I'll probably be abstaining on the final vote on this.

Engineer Sterbenz – Today an application was filed by OPUS Investments for the Lopatcong portion of the Ingersoll-Rand tract specifically a general development plan. Approval was requested by OPUS and this is something they are looking to have on the agenda for the February 24th meeting. Does the Board want the professionals to proceed and do a review and report on that for the next meeting?

Chairman VanVliet – I think that would be more than desirable. Do they have the required escrow posted?

Engineer Sterbenz – They have not posted escrow. That is something I've talked to the applicant about today and when they post the escrow we can proceed with the review of the paperwork. Given your action tonight in tabling the appointments I just wanted to make sure that if was okay for George, Tony and myself to do that review and get it ready for a hearing next month.

Chairman VanVliet – I think by tabling the appointments you're extended under your contracts for (inaudible).

Mayor McKay – It in their contracts, they have holdover.

Attorney Sposaro – I just have one other comment and this has nothing to do with me but it has to do with Mr. Ritter. The reason he is not here tonight is his wife is gravely ill in fact, she is in hospice and that's why he is not here. He is taking care of his wife but this municipality is in the middle of some very serious litigation regarding COAH and Mr. Ritter is in the middle of that and he's been this municipalities guiding force on that litigation for a long period of time before it was instituted and now and I think it would be really ill-advised to change horses midstream. I go meeting to meeting for me it's, if you reappoint me that's great and if you don't, I'm a big boy but I think you are making a terrible mistake in leaving George hanging out there because he has to devote a lot of time and attention as does his firm to that litigation and it is extraordinary important to this municipality. That's just my observation.

Engineer Sterbenz – The second issue I wanted to review with the Board and indicated earlier the new Board members wanted to get to know the professionals between now and the next meeting. I wanted to know how you were going to do that. I know I submitted and responded to an RFP and submitted documents to the Board. Is that reviewing what I submitted to the Board or are you looking to do an interview of me. If you are, I'm going to be missing actually; I'm traveling on the 24<sup>th</sup> of February. I'm not going to be here so if you intent was to do an interview I would like to be afforded an interview. I have represented this Board for a long time and I believe I've

done an incredible job for this Board and so if that is your intent, I'd like to be able to arrange for an interview but if it is, I'm not sure what your intent is at this point. So I wanted clarification on that.

Chairman VanVliet – I don't know where to go with that one. To tell you the truth it is, I wholeheartedly agree with Tony. I mean, you know, I might be prejudiced; I've been here a long time. I've worked with these gentlemen through thick and thin; they've all been great.

Member Pryor – Well, I second that and I'm sure the offer stands for all of them. They made the offer, they're accessible. I'm guessing if they want to come down and see your facility, visit your office that would be feasible. So, they are available if you feel you have to get to know them better. Give anyone of them a call.

Member Woolf – I agree with our attorney. I'm just showing our new members say good faith that you would like to review our existing engineers. I've worked with Maser and Paul in particular for 12 to 15 years now with emergency management disasters in this Township. I don't care what time of day or night it is, his firm is always available. They've covered a disaster 24/7 if necessary. I, with the knowledge that Paul has and George both with what we have going on in this Township right now I highly recommend keeping them on but until you gentlemen and ma'am get to know them, I'll back you people until you feel comfortable.

Member Olschewski – Maybe Gary that's all it takes. People like you and Gary have long work experiences and I know Paul and hold him in the highest regards but it makes sense for Audra and maybe Jon just speak to you and Gary and ask whatever questions they may have and it's enough.

Mayor McKay – Let's leave it up to them to make the calls. If they want to call people.

Chairman VanVliet – One of the great things is the fact that we have the cohesiveness of Paul being Township Engineer, has already been appointed to Board of Adjustment. Just having the engineering firm being the same firm in relationship to the Council, he's privy to their Executive Sessions when the engineering is required. He's available anytime whenever I've tried to get in touch with him with issues we've had with the Planning Board. People I've spoken to on the Board of Adjustment feel the same way about it. Just having that cohesiveness and the cohesiveness of the three professionals that we have now worked together tremendously for this Township. I know there's been a lot of controversy with asphalt plants and everything else but the behind the scenes work, what we have tried to do and accomplish what we do, held discussion with Mark after the public meetings over, but it is, they've been great to work with and when I started on this Board in 1994, the people we had them, I shouldn't say that. I was here in 91, sorry. The people we had and firms we had let this Township down a couple of roads that they shouldn't of gone down. We had, we were poorly represented in the school situation that Phillipsburg came in with and you've seen the result of what we have now. The just the, I can't tell you how fantastic George has been, George Ritter and the COAH applications we've had to go through and the Highland applications we've gone through. It was really and the Highlands came out with a seven page manifesto we had to go through and we're still not completed with it. His firm did a tremendous amount of work on it. We went to I don't know

how many meetings we attended at the Highlands Council up there to try and just get Ingersoll out of a permanent farm land assessment. Whether you agree with what's happening with Ingersoll then or now, at the time we were looking at an industrial place to go with, this is all history I won't go into it but they ended up doing a fantastic job coordinating and actually making the applications to Highlands in particular but just dealing with COAH has just been an absolute nightmare. We spent tremendous amounts of money just doing the Round 3 numbers we were supposed to come up with, thought we were safe in the area but we had an access number that we would have and if any of you get the chance to read the Larken COAH how it would affect Lopatcong Township we could be in big trouble but anyway

Member Frank – But I would just have to make a comment that I have no agenda. I would just like to and it wasn't even my suggestion on this, but I would like to talk to other people that are on the Board, who've been on the Board before and that's pretty much what it is, just to that's what my agenda is but thank you.

Vice-Chairman Gural – I want to put (inaudible) because last year I was a new member and I didn't know anything about a Planning Board at all, professionals or anything like that. First of all I think it is silly that the first meeting we vote to bring new people in. I think it should be at least a month for new members to get to know somebody but, I can't change that but coming in you don't know these people, you've never met them or don't know backgrounds or George I didn't know at all but he's an encyclopedia, when he opens his mouth you just go, you know wow. Paul, I deal with a lot of engineers in my job, half of them are full of crap, he knows what he's talking about. Tony has done a good job so, you know, all three is great but coming in as a new person it's hard because we just don't know and you're required to vote right away. First thing you do is vote.

Chairman VanVliet – I agree with you.

Vice-Chairman Gural – That's hard too.

Chairman VanVliet – Oh, absolutely, and I agree with you and this situation, the Reorganization tonight is extraordinary. We normally don't have that many new members; at least Class IV members coming in at one time. I mean, we might change I, II and III around almost yearly but the Class IV members, I think we still, do we have a pecking order now of how many years, are we staggered on the appointments now.

Mayor McKay – I reconstituted them with appropriate terms. Why they're the way they are, is anyone's guess. You know, we've got through this.

Chairman VanVliet – So did someone, we all four year members or all they all four year members.

Mayor McKay – No some are four, some are three, some are two. Now it is right.

Tony Guarino – Just wondering how is it that you're ready to go for Beth (inaudible).

Member Olschewski – I’m here at every meeting and I know Beth quite well; we really do. George Ritter, however, besides that I really have no idea what George Ritter is, I don’t.

Tony Guarino – (Inaudible).

Member Pisello- If you look back on the vote for that, I voted no on that because I know Paul very well and I’ve been at the meetings and I know the Township changing horses in the race like to me wasn’t a smart move with everything going on but as far as the attorney, as far as I know, attorneys are attorney’s.

Tony Guarino– Mayor McKay you also know her.

Secretary Dilts – No attorneys are not attorneys, Attorney Sposaro is in a class of his own (inaudible).

Tony Guarino – Mayor McKay you voted (inaudible) because I didn’t hear it.

Mayor McKay – I voted to wait a month yeah to wait a month. It has nothing to do with me.

Tony Guarino – (Inaudible) I’m just curious.

Members/public talking over each other

Member Fox – That was the reasoning to put the motion forth but that doesn’t have to be the reason for everybody to agree to (inaudible) everybody’s got their own reasons.

People talking over each other.

Member Fox – That’s not the reason everyone voted yes. Everyone votes yes or no for their own reasons. Not for the reason that put the motion forward.

Members talking over each other

Member Olschewski – I voted no to give the new members the courtesy to get to know these people.

Public and members talking over each other.

Member Fox - I don’t know more than half of the people. But that’s not why I agreed to (inaudible).

Chairman VanVliet – I think we are getting beyond what the discussion is here.

Mayor McKay – These new folks all need to go to training. Has that been arranged?

Chairman VanVliet – They have to be trained within 18 months.

Mayor McKay – When is the next.

Secretary Dilts – Paul along with his associate runs a class mid-year.

Engineer Sterbenz – I do a class generally every year with an attorney in the northern part of the County and it is for very little money and he is certified to run the courses. He tests everybody in the end so you get your certification. So, Roger Thomas and I are looking to have that course toward the middle of the year.

Mayor McKay – That is a long time for them to wait – 6 months without the course.

Engineer Sterbenz – There are some courses around. I'm teaching an NJPO course up in Sussex County on April 2<sup>nd</sup> for example. Board members don't have to go to that one specifically; there's courses all over the state. So, you can sign up and take a course before that but if you don't do that, you know, Roger Thomas who's an attorney in the County here and represents a number of boards, him and I will be doing a course toward the middle of the year and if the board member hasn't taken the course then, you can come and visit us that day and take the course.

Mayor McKay – So, who has the listing when these courses; do you have the listing Beth?

Secretary Dilts – I can send a list to everybody. I can go on their website.

Chairman VanVliet – With this amount of people that need to be trained, when this first came out, you have it on a Saturday Paul or

Engineer Sterbenz – NJPO is typically doing it on a Saturday, yes.

Mr. Mengucci – 801 Belvidere Road – Welcome to all the new Board members here. Mr. Gural I agree with a lot of what you said. Back in 2006 when we redid the park, it was Paul along with myself, Mayor Steinhardt along with some other people on a Saturday we went up there and rolled out some sod around the pool we kind of made an event out of it; some coffee, some donuts, had a great time volunteering for our Township. Most of you people on this Board wouldn't know that and that's my point. Take the time to get to know the people that are serving us because we have some good quality people up here. The antagonism that has gone on here in this Township at every level; I sat up here for 15 years, I've sat in the back, this is my fourth year out the view from the back row is ugly. It is time to get off the hamster wheel at every level and work together but for God's sake take the time, use somebody like myself or any past Board members to get some history because you certainly don't know where you're going to go if you don't know where the hell you've been. Thanks.

Chairman VanVliet – Any further discussion? If not, I'll entertain a motion to adjourn.

Motion by Member Gural seconded by Member Pisello. All in favor.

Respectfully submitted,

Margaret B. Dilts  
Secretary