

TOWNSHIP OF LOPATCONG
PLANNING BOARD MEETING

February 24, 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 Fox, Johnson, Olschewski, Pryor, Woolf, Mayor McKay, Vice-Chairman Gural, Chairman VanVliet, Alt. No. 1 Fischbach, Alt. No. 2 Frank. Attorney Sposaro, Planner Ritter and Engineer Burr were also present.

Appointment of Professionals:

Resolution No. 16-02 – Board Attorney.

R 16-02

RESOLUTION OF THE TOWNSHIP OF LOPATCONG, COUNTY OF WARREN AND
STATE OF NEW JERSEY APPOINTING ANTHONY SPOSARO AS PLANNING BOARD
ATTORNEY

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Township of Lopatcong, County of Warren and State of New Jersey follows:

Anthony Sposaro is hereby retained as Planning Board Attorney for the year 2016 at a rate of established in a Professional Service Agreement.

This award is in accordance with N.J.S.A. 19:44A-20.5 et seq.

This Resolution shall take effect immediately.

CERTIFICATION

I, Margaret B. Dilts, Planning Board Secretary of 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 a Meeting held on Wednesday, February 24, 2016.

Margaret B. Dilts

Planning Board Secretary

Motion to approve by Member Pryor, seconded by Member Olschewski. Roll call vote:

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

NAYS: None

Resolution No. 16-03 – Planner.

R 16-03

RESOLUTION OF THE TOWNSHIP OF LOPATCONG, COUNTY OF WARREN AND
STATE OF NEW JERSEY APPOINTING GEORGE RITTER AS PLANNER OF RUGGIERO
PLANTE LAND DESIGN, LLC

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Township of Lopatcong, County of Warren and State of New Jersey follows:

George Ritter of Ritter of Ruggiero Plante Land Design, LLC is hereby retained as Township Planner for the year 2016 at a rate established in a Professional Service Agreement.

This award is in accordance with N.J.S.A. 19:44A-20.5 et seq.

This Resolution shall take effect immediately.

CERTIFICATION

I, Margaret B. Dilts, Planning Board Secretary of 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 a meeting held on Wednesday, February 24, 2016.

Margaret B. Dilts
Planning Board Secretary

Motion by Vice-Chairman Gural, seconded by Mayor McKay. Roll call vote:

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

NAYS: None

Resolution No. 16-04 – Board Engineer.

R 16-04

RESOLUTION OF THE TOWNSHIP OF LOPATCONG, COUNTY OF WARREN AND
STATE OF NEW JERSEY APPOINTING PAUL STERBENZ OF MASER CONSULTING,
P.A. AS TOWNSHIP PLANNING BOARD ENGINEER

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Township of Lopatcong,
County of Warren and State of New Jersey follows:

Paul Sterbenz of Maser Consulting, P.A. is hereby retained as Planning Board Engineer for the
year 2016 at a rate established in a Professional Service Agreement.

This award is in accordance with N.J.S.A. 19:44A-20.5 et seq.

This Resolution shall take effect immediately.

CERTIFICATION

I, Margaret B. Dilts, Planning Board Secretary of the Lopatcong Township Planning Board,
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 Planning Board at a Meeting held on Wednesday,
February 24, 2016.

Margaret B. Dilts
Planning Board Secretary

Motion by Member Pryor, seconded by Vice-Chairman Gural. Roll call vote:

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

NAYS: None

Old Business:

Minutes: Chairman VanVliet approved the minutes as submitted as there were not corrections.

New Business:

I-78 Logistics Park, General Development Plan Application – Block 101, Lot 1 and Block
100, Lot 1 (sometimes referred to as Block 101, Lot 1.01).

Karl Kemm – Good evening Ladies and Gentlemen, Karl Kemm of Law firm of McManimon,
Scotland and Baumann attorney for the applicant. I would like to confirm that we have provided
appropriate notice for 200 ft. and all utilities as well as notice in the newspaper and confirm we
have the appropriate notice for jurisdictional proceedings this evening. We are here for a
General Development Plan for the property that everyone knows is the old Ingersoll-Rand
property which is bordered by 22 in Phillipsburg and Lopatcong in the neighborhood of 100 plus

acres and if I just may, a General Development Plan, I'm not sure if this Board hears them that often, many boards don't. It is something that is a little bit more than a conceptual review and is something less than a Site Plan; it is sort of a hybrid of the two. The purpose of it is for long term planning for both the municipality as well as the applicant. It allows from the municipality's prospective to anticipate and absorb and additional municipal services that maybe needed, impacts to the community and services such as garbage, police, traffic impacts and the like as well it gives the applicant the ability to phase in a project over a number of years unless those impacts propose to building everything at one time or a short period of time. As everyone is aware, the project is approximately 200 more acres in Phillipsburg. We've already been to Phillipsburg Planning Board received our General Development Plan for phasing of that portion of the property. It is developed as a whole which just happens to be divided by a property line. So that's what a General Development Plan is and, of course, I will defer to your Council and Planner if they have a different point of view because they're your professionals. The professionals we have this evening to present the application to you is our Engineer Tom McGrath, Traffic Expert Scott Kennel. We will have our planner and economic advisor Mr. Todd Poole and then we will have Mr. Rob Larsen who is our professional planner to give you planning testimony. We have received the reports from both of your professionals and we will address those during the course of our testimony and as you know some of the waivers that are listed in there are also waivers from the Checklist, the Board and the town. Most towns don't have a specific Checklist for General Development Plans so, we had used the Site Plan Checklist and a lot of things don't apply so, there's a few waivers that seem like there's a number of them, it's just that it is not a Site Plan. We do, however, have to return to the Board should you grant us General Development Plan for Site Plan approval for each and every part of the project as you would with any other project in your town so, again, this presents a general oversight, you give us input, we come back with a Site Plan and we go through all the fine grain detail like widths of roadways, sidewalks, the types of trees, location all those fine grain details that we need to provide to you. So, we do also look to the Board for input for when we come back to Site Plan. Like I said, we don't get to that level of detail, but if there is something that you have seen in the plans and have a question about and you would like us to address, when we do come back for a Site Plan, please let us know, we will take notes and make sure we address that, at that time. Our first expert, Mr. Thomas McGrath and he will stand at the microphone so we will move the board over so, we apologize if everyone can't see it, let us know, we'll turn it around.

Chairman VanVliet – Mr. McGrath before you start with your presentation, we have a review of what we, the Checklist and the Conceptual Plan that you have there and it's lacking quite a bit of information that we need before we can make a decision on this right now. We don't have any storm water calculations that are required by our Checklist. We are not looking for specifics but at least for the general storm water regulations. We have some questions about the environmental area here. We got a phone call late this afternoon indicating that someone wanted to present more information on the environmental aspects of it. The letter from the DEP saying the property was clear was for soil only but that the water is still contaminated; you don't have clearance for that yet. So, we are looking for a lot more information, especially on the traffic forecast that you are indicating for Rt. 22. The, a little better general outline of what you are going to do on the Third Street, what type of structure you are building there and generally our traffic counts at peak hours where between 700 and 1100 and you are indicating 63 and 93 or something like that on your traffic report that's here so we find that's extremely, you know, we

just don't have enough information to make an informed decision. So, I'll turn it over to our engineer to see what we really need here so.

Engineer Burr – I think the Chairman summed it up pretty well here. Everyone should be in receipt of our February 17, 2016 letter. I think copies were provided to the applicant as well. In the letter, Paul summarizes eleven items which are required by the town's ordinance as well as the redevelopment plans. Missing items that are required for this type of application and Paul finds a number of them lacking. Specifically, Item 3, Item 4, Item 5, Item 6 and Item 8. I can go over them in more detail but Item 3 the Open Space Plan there's recreation and open space areas proposed on the plan but there is not information on how they are going to be maintained, who is going to own them. Item 4 is very similar with the water and wastewater; no information about it on ownership or maintenance of those facilities. Item 5 is the Storm Water Plan; the ordinance requires some preliminary sizing calculations, volume counts so we can check the adequacy of the Concept Plan. That was not provided. Item 6 is the Environmental Inventory; Paul notes that no geologic information was provided and that's especially important because of all the limestone and karst geology in the area. Item 8 which he calls to is the utilities; there is information on water and sewer on the plan but none of the other utilities. Nothing on electric and cable and I realize some of that obviously is going to be ironed out in the future but his main concerns are 3, 4, 5 and 6 and really just the feeling that additional information needs to be provided. It would, obviously, be helpful if that's provided on plans so we as well as the professionals and the Board members have this information at their fingertips so they can evaluate the application. That's pretty much it unless anybody else has any questions but that was Paul's strong feeling is we really need to have that information up front in order for us to properly evaluate what's being proposed. I didn't mention Environmental Impact specifically. One of the items is Environmental Inventory; it did provide a plan set that concluded a number of environmental constraints flood plan areas, wetland areas but what we called attention to was the fact it was lacking certain geologic information. So, yeah, our position is really to deem this application incomplete until that is provided by way of plan revisions, supplemental reports, what have you.

Member Pryor – Mr. Chairman can I make a few more remarks? I'm Joe Pryor I wear two hats; I sit on the Planning Board and the Council, so, I have to look at this doubly careful. My biggest concern is the traffic impact. To me personally, I think site plan issues get worked out but the traffic is a big one. No. 1, it's seems the numbers in your report are just far apart from Maser. I recommend that your consultant and our consultant get together and see if they can't work on those numbers a little bit. I don't know how we can evaluate numbers here and numbers there. The second thing is, even the numbers you have I wonder if they consider certain things. No. 1 is the Phillipsburg Mall is well below occupancy right now. Someday with the economy, that will bounce back and the numbers will be completely different out of there. When it first opened and they were 100% occupancy, we had a lot of traffic. It's got a lot of empty stores and that's probably the traffic counts that you used. Second, we have a development under construction right down the road from you, Sycamore Landing. I didn't see where that was mentioned or considered. We have a new high school about to open in September, basically, at the end of Roseberry. I don't know how that traffic will affect the area; it will certainly affect the area near the high school probably even on 22 so at least you should give that a look and on the books right now there's litigation but eventually, that will end, so at least for now we have an asphalt

plant approved on Strykers Road. During paving season, that's going to generate a lot of traffic so I think those things were missed. I, in my own mind, I'm having trouble reconciling these numbers with just my view of the site. You have about 4.2 million square feet. I'm thinking in a million square foot building, the one in Lopat, you'd probably have 90 truck bays. That's 90 trucks in, 90 trucks out. I don't know how many cycles in a day; I don't know how many shifts. I got to assume two if for that sort of an investment. You multiply that by 4.2, that's a lot of trucks and I don't, somebody's going to have to get me to these numbers. Right now, that's what I have in my mind. Third Street that is really the main exit to 22 for Morris Park. Rose Hill Heights much of the central part of Lopat. It only takes one truck trying to make a turnaround there to tie that up; you're going to have a cycle and you are going to get three cars through. I would like to see some discussion on Third Street. The other thing is the Traffic Impact Study seemed to focus on just getting cars out on the highway. If you leave your site, you have a multi-phase intersection at the mall, you got one at 519, you got one at Wall-Mart, you got another one before you hit 78. I lived here for 43 years; I've traveled east probably 35 of them. It doesn't take very many semis' to tie that up. It takes a long time for them to slow down, a longtime for them to accelerate. Somebody came up with a level of service, I'm not there yet, you are really going to have to show me so, to me, that is key and to go into the details before we get that settled, I think is putting the cart before the horse. I do have two other comments, we are talking about five percent coming from the north on 57, I'm curious what that route is. 519 has an underpass under a railroad, has a severe height limit; a lot of trucks avoid that. Many trucks get stuck in there. I'd be curious where the Rt. 57 trucks are coming from; what neighborhood you are going to go through. The plans have a commuter railroad station; well a community railroad station. I don't know what that is. The original discussions before the Planning Board talk about much of the product being shipped in by rail. Now, we have a community railroad station so, I don't know, I really don't know what that is. I'd like to know a lot more about that and finally the sewer; the entire 300 some odd acres goes down to Roseberry, you're probably are going to be somewhere in the neighborhood of 100 thousand gallons. Lopat has a contract and we discharge at Roseberry; the other side of the highway. There's been problems in that sewer; it gets rainy, they get overflows in the departments there, we've had problems getting treatment works approvals, I know there is a line that connects to a sewer I'd like to be assured that there is downstream capacity for that and I know it is in P'burg but it affects us. Every connection we make here, we need a treatment works approval from Phillipsburg so those are my major concerns. I'm confident, I don't know about the geology that's always an issue here in Lopat, in this area, I think the other things can be worked out but to me, those are very important issues and I'd really like to see more information on that before we pass on a concept plan.

Attorney Kemm – I certainly understand you concerns Councilman and Chairman, we have taken those items into consideration. We do have our traffic expert here who can go through all the traffic items that noted and to explain sometimes the numbers are presented one way in one report and another way in another report by different engineers; not saying anyone's twisting numbers or hiding numbers; it's just that the format they chose to present them in he'll be able to explain how the Maser review in his report, they jive, the numbers work out. I'll have him testify as to addressing the input of all the other places you indicated the potential new high school, Sycamore Landing and the Phillipsburg Mall. They've done extensive traffic studies; we had extensive testimony in Phillipsburg on all these similar issues so we are prepared to address those. I did, getting back to Mr. Sterbenz report, I did have a chance to speak with Mr. Sterbenz

today and let him know how we would respond to those. Certainly nothing was binding and he said yes, that's fine tell the Board it's good, I don't certainly want to imply that in any fashion, however, some of the items we did request a waiver, he does note there is a waiver. Certain items can be provided by testimony. I don't think we are going to make a radical difference on anyone's review of it; for example, ownership of the streets and utilities and things of that nature; 99 percent of that is going to be privately owned. There will be no municipal services being required for those. The other main item was the utilities that the engineer had pointed out this evening and the storm water. We have prepared to give testimony to address those issues, again, not trying to, you know, brush off the issue but again, it is a General Development Plan approval and not a Site Plan. We do have testimony sufficient we believe, for the Board and the Board's professionals to review the level of utilities provided and the ability to service the project. Again, we have provided that in Phillipsburg and I don't mean to keep referring to Phillipsburg, but just letting you know we had thought about these issues; we have dealt with the issues. The Environmental Inventory we do have additional information that we certainly recognize we need to provide to your professionals to make sure they're comfortable with the environmental condition of the property with the mediation that has been done and how we handle going forward the impact this project will have on any existing environmental conditions and certainly providing the geological information as well. So, we believe that we will be able to address these times and we certainly understand if your professionals want more level of detail to review and we will certainly provide that to you, however, I would prefer the Board to allow us to proceed this evening to put a decent amount of testimony on that I think it will address a lot of issues and as I indicated in my open comments, additional feedback from the Board of items, no offense, Councilman, that other Board members may of thought of that you didn't bring up that would allow us to give more detail to the entire Board, the public and professionals. I think it would be a productive meeting.

Member Pryor – Yeah, I understand that and on the other hand, traffic is very important with me and testimony sometimes is difficult to digest and so on. I think these things should have been addressed in here particularly the impact on all the lights running out to 78. I ride it, you know, I ride it in the morning, I ride it at rush hour; I know how long it takes me to get from one end to the other. I can just see all these trucks on there and I have no idea what your operating plan looks like so, my input to the rest of the Board is they've come out and if we want to hear some more information and maybe generate some more questions, I wouldn't object to that, but I don't think I'm prepared to, you know, vote on anything tonight.

Attorney Kemm – Sir, I wouldn't ask you to vote if you don't feel you have sufficient information. I certainly understand that and respect that.

Chairman VanVliet – I think we're at a position here is there anymore comment from the Board. Any questions?

Member Johnson – I agree with Joe and just a point to clarify; it looks like there is a section of the report here that you assume a growth rate of two percent for three years and ½ percent for seven years. That doesn't sound realistic to me as we were talking about as the Phillipsburg Mall grows. That is not a realistic growth rate and I do share all of Joe's concerns with the traffic as well.

Attorney Kemm – Noted Mr. Johnson, thank you.

Member Fox – And furthermore, as far as traffic, I would have taken it a step further as well, not just on 78 but an additional like beyond further into Phillipsburg you probably already reviewed but that information wasn't necessarily presented to us but we're concerned about it going that direction west as well.

Attorney Kemm – Understood.

Chairman VanVliet – Are we, do you have any comments?

Engineer Burr – The only thing I would say, I mean ultimately it is up to the Board here, but I would say that it is perfectly within your rights as to ask why some of these questions and some of this information to be submitted in writing in or be a plan revisions ahead of time so that you have a chance to review it and digest it. Again, if you want to take or listen to some testimony that's up to you guys, but I certainly think you are within your rights to want this information submitted up front so you have a chance to review and really get ahold of it.

Chairman VanVliet – Some of the information that we are requesting here, and I really don't think we want to grant any of the waivers this evening. If you could put all the information you have into better traffic study and the information we need on the waiver reports, I would prefer that so.

Member Woolf – I read your Traffic Report. You choose the Third Street intersection you only show a right hand turn the way I read the reports, I don't see the jug handle be addressed.

Attorney Kemm – Okay sir. I don't have it in front of me but I take your word for it and we'll either have our expert testify and provide additional information.

Member Woolf – (Inaudible) we have a low (inaudible) at Morrie's Acres and on your trucks coming down Rt. 57 to make their U-turn we'll say to get out onto 78 come down to make that Third Street jug handle, they don't necessarily make a right hand turn on Third Street and I only see your arrows 90 degrees to the right, I don't see the jug handle addressed.

Attorney Sposaro – Let me jump in here for a second. Procedurally, for the benefit for especially the new Board members, we are at a point in time where you decided as a Board whether you want to deem this application complete and start the public hearing process, you can say you want to hear testimony or you can say we need more information submitted in writing for review by our professionals before we are prepared to deem this application complete and go forward.

Member Olschewski – If I may say something, I think it's beneficial everything anybody has said here especially Joe, there is so many Planning Board members on here and I personally feel and I don't mean to diminish your qualifications but I would be more comfortable if Paul would be here because he's intimately involved in the project and he's probably the one that knows most about it so, I would prefer if I have information in writing and I would prefer Paul be here can

answer any question that may arise.

Attorney Sposaro – Well, not having Paul here may not be a very good reason because a member, a representative of his office is here, but if you feel the professionals need additional documentation in writing to review so they can report back to you on that information before you move forward with the public hearing it is certainly within the right.

Member Fox – I have a question about the, in reading the General Development Plan and the write up presented further detail is irrelevant because they say this is just conceptual anyway. The details are going to come when they come back for actual Site Plan. So, does this meet the requirements of the General Development Plan?

Chairman VanVliet – No.

Member Fox – Okay.

Chairman VanVliet – This is a Conceptual Plan.

Attorney Sposaro – Paul Sterbenz is not here but I've read a lot of his reports and reading between the lines, with the number of incomplete items that are not satisfied under the completeness category, I think what he is saying without saying, is that he does not have enough.

Chairman VanVliet – I think the, if I'm wrong, I'll entertain a motion to deny the, deem the application incomplete and we'll move on from there. Do I have a motion?

Member Pryor – I'll make the motion.

Member Olschewski – I'll second it.

Roll call vote:

AYES: Members

NAYS: Member Fox, Johnson, Olschewski

Member Pryor – I'm sorry we are deeming it incomplete or I've lost the motion here.

Secretary Dilts – Deem the application incomplete.

Member Pryor – So, I want a yes vote, right?

Member Johnson – Wait a minute then, we might need to start over.

Member Pryor – Can we clarify that and start the roll call again. I think my motion was to deem it incomplete so a yes vote means it's incomplete.

Secretary Dilts – I'll start over again.

AYES: Members Johnson, Olschewski, Pryor, Woolf, Mayor McKay, Vice-Chairman Gural,

Chairman VanVliet.
NAYS: Member Fox

Attorney Kemm – Understood. If I may just clarify one thing, don't want to downplay Mr. Ritter's report, we do have his report and he makes similar comments along different vein as he is a Planner, as to the engineer, we also so we don't take more of your time, we'll directly contact Mr. Ritter and make sure whatever we submit satisfies his needs as well.

Chairman VanVliet – Yes, you are welcome to do that contact our professionals to cut down the time and we look forward to seeing your application coming back.

Member Pryor – Yeah, I would second that, I would encourage you to work out these numbers.

Attorney Kemm- Of course, of course and if I may, since we have properly noticed, can we have the notice continue to the next meeting in March so we don't have to re-notice.

Chairman VanVliet – Yes, absolutely. At this time point, we are going to enter into a Joint Session with the Lopatcong Township Council.

Member Johnson – A question before we do, I wanted to hear back from our attorney and continue the discussions on the ROM District zoning. Last month we had suggested that he report back to us at this meeting and I wanted to see, you know what we have to do.

Chairman VanVliet – I know you requested it be put on the agenda, but since it looked like it could have been a very lengthy night tonight, I deferred that to the next meeting, we will discuss it then and all the ramifications of it, cause it could get a little bit past the time I want to take up now.

Member Johnson – Okay, so I did go through the proper procedure to attempt to get it on the agenda?

Chairman VanVliet – Yes.

Member Johnson – Because it is a joint meeting and it's going to be potentially long, that was reason.

Chairman VanVliet – Exactly, you know, I don't you know I thought we might have more public here tonight. I didn't want to hold them up and we certainly didn't want to get past the 10 o'clock hour.

Member Johnson – Actually no, I just, I wasn't aware of the reason so I wanted to clarify that.

Chairman VanVliet – I think I emailed you indicating that, you know, we wouldn't be discussing it I believe.

Member Johnson – And, I didn't have time to reach out to you and find out why. I just wanted to

find out why; if I didn't do it properly or

Chairman VanVliet – It was kind of short notice.

Attorney Sposaro – I think that an ancillary issues that Board members want to raise, why don't we wait until the end of the joint session and presentation by Larken and if any Board members want to raise any issues and we have time, let's do it then.

Chairman VanVliet – Okay, is the Larken applicant here?

Attorney Shimanowitz – Good evening members of Council, members of the Board. First of all thank you for convening this evening. I know it is a little bit unusual but we are happy to be in front of both bodies so, we can make our presentation to both the Planning Board and the Council. Larken is the contract purchaser of about a 16 acre site that has frontage on Rt. 57 and Baltimore Street. We've been before both the Planning Board and the Council a few times since this past March. It has been about a year we've been at this. We were last before you in November and the recommendation was made to do a noticed meeting which you have now done, you've invited the public and to have this joint meeting so this has kind of been a process. We're here tonight to make a full presentation to you, describe what our development proposal is. Just to give you a little preview for those of you who maybe have not heard it before, we actually have two options in our proposal; one is a proposal that includes both residential development as well as commercial development and as well as a second proposal that is entirely residential development. The site is currently zoned Highway/Business. There was a real request from the applicant through this entire process is for a rezoning to allow a residential development. Our hope through all of this is really to work cooperatively. We are a party to your affordable housing litigation. That sounds a little adversarial; we hope that it is not adversarial. We hope that actually this site ends up sort of filling whatever gaps you may have in and you'll hear from our experts on that. We think we can actually, can help the town in sort of managing its number and satisfying its number as well. With that brief introduction, we do have several witnesses with us tonight and some exhibit boards to show you. So, with the Chair's permission, I would like to call my first witness.

Chairman VanVliet – Absolutely.

Attorney Cohen – Before Mr. Shimanowitz puts forth any witness, and by the way, so of you know me and some of you may not I'm Lawrence Cohen partner with Katrina Campbell and you know, Katrina is on vacation but I did attend along with Mr. Shimanowitz and his clients and Mr. Ritter today a meeting involving the litigation on affordable housing which Lopatcong is seeking certification. Just so everybody understands, and may already know this, Larken Associates is what we call an intervenor in this case, so, they are participating in that case and seeking to ultimately their property is not rezoned and granted certain relief, they are going to participate in determining the fair share obligation of Lopatcong and obviously, because they want to have a fair share obligation that will ultimately, they will then, if there is a fair share obligation which is in excess of what we think is a surplus right now, they will be making application ultimately for rezoning of the property and for a particular development. The reason for this presentation again, we met today with the special master who was assigned by the court of Elizabeth Manus

and one of her main roles is to determine whether or not she can mediate a settlement. An important participant in any mediation of this issue is the Fair Share Housing Center which is a basically, a party in all these litigations even though they are not a formal intervenor the Supreme Court has designated them. They did not participate in today's session. We didn't really talk about the Township; we talked about with Mr. Shimanowitz and his client, we didn't get down to particulars with fair share housing. The master is going to be reaching out to contact Fair Share Housing to see if in the next round that they participate so that, I want everybody, I guess in the context of what they're making this application. This is not an application for a Site Plan or is it intended to be a Site Plan. It is not even what we call a Conceptual Plan it is an issue of determination of the potential change in zoning that they are requesting which in their opinion, and I don't want to take any thunder away from them would assist in any issue they may have with the affordable housing component for Lopatcong. So, with that in mind, I want everybody to understand that this is something that they're presenting as a concept; it is not something new, I think it's been heard before and potentially, of reaching at this joint, a potential settlement claim which at some future date, because I know tonight's going to be late and this would be done in closed session because it involves ongoing litigation certain ideas that we may have as far as Mr. Ritter and myself and the engineer and Katrina and we'll present that to you later on and where we think that we stand with reference to the fair share housing obligation of Lopatcong, if any in the future. So, you are going to hear some information concerning that and their potential contribution to fill what they foresee as a potential need along with why this would be a good development. So, I just want everybody to understand the outline of this that this is very conceptual and it's in line with reference to potential change of zoning to this property which is not zoned commercial with which they want to zone it for multi-family residential. By the way, setting aside the affordable component there may be other reasons to grant this as the applicant wants to proceed so there's two basis that their position, is you are going to have a higher requirement for affordable housing and that this is going to meet or at least help meet that component and No. 2, they feel, in any event, it is a good development. So, I just want everybody to understand. Do you have any questions procedurally or what we are doing, I would be happy to answer.

Member Pryor – Mr. Chairman, if I could a question for Mr. Cohen. The litigation that is going on as I understand it, we submitted one set of numbers; other people are submitting other set of numbers. The intervenor submitted a set of numbers and the outcome of that, the settlement is a number, our number of low cost units. Is that correct?

Attorney Cohen – If there is a settlement, No. 1 just so everybody understands and its Mr. Pryor right?

Member Pryor – Yes.

Attorney Cohen – Okay. When you say that we presented numbers, we theoretically have not presented any numbers. We have participated in a report to file as you know prepared by E-Consultants that talks about what the state affordable housing need is and the region affordable need is. We are in a Region II together with Morris and Union and so, we are in a particular region. Before you talk about a number for Lopatcong or really any municipality within the county, within the region, you have to talk about the regional need before (inaudible). That

doesn't mean you can't settle the claim before there is a determination of the regional need and then how all the municipalities within the region are supposed to share that particular regional need. So we haven't developed a report. Mr. Ritter has developed a preliminary report which we are required to do. We will be developing a more formal report with our position which, quite frankly, at this moment, is the way the E-Consult report comes down and we have a surplus right now of 102 units. Now, I'm not going to tell you that that's going to hold up when we get to a court session I'm sure there's going to be a lot of discussion as to where we think this might be going so our position at least at this point is based upon a report that we had participated in, is that we don't have any future fair share needs. That doesn't mean that the court will hold to that but that's our position.

Member Pryor – All right. Where I'm heading with this, the outcome of that is not necessarily whether this parcel gets rezoned or not it's going to be how many low cost housing units we need.

Attorney Cohen – Exactly right. Whether or not this parcel gets rezoned, has nothing to do with what our fair share need and our prospective fair share need and for what they call, which is now going to be, it appears, that there's going to be what we call the gap area added to that which was 99 to 2015 but that's another issue. So, the courts going to determine that irrespective of whether this property, is rezoned before that or is not rezoned or whatever. It has nothing to do with it except that if there is an arrangement made, and Larken signs on to that, they're not going to be in a position to say hey we think the fair share number in Lopatcong, the Fair Share Housing Report says they need 347 units over the next ten years, we think it should be 450 units and we agree with the 347. Their position is obviously going to be to get as highest number, I shouldn't say highest number, but certainly to get a number over and above what we believe it is going to be so that they will then they can make an (inaudible) assuming there is a number that they can deal with. Let's presume that we have to construct 150 units in the next ten years and we get a credit for the 102 units leaving 48 units, they're the ones that are obviously going to be right after that decision coming in any say by the way, here we are and we can meet your 48 units right here or whatever we can meet 25 or whatever it might be or 30 and the town would be hard pressed not to look at that, we would be required to look at that but whether or not this property and let's presume you decide to rezone this property, the Planning Board recommends to Council except that this doesn't mean we are out of the lawsuit. We would look, my suggestion would be that we talk to Fair Share Housing to enter into a settlement agreement which by the way, just because Fair Share Housing agrees on a number and Larken agrees on a number, doesn't mean that that's going to be the number. The court has to look at that agreement and make an independent determination that that constitutionally satisfies Lopatcong's fair share housing obligation even though the parties that are particularly involved agree on a settlement.

Member Pryor – One last thing, I'll be quiet I'll let the applicant start. If the court comes down and says we need more units than we have, we are given a period of time to remedy that are we not?

Attorney Cohen – You are normally given a period of time to provide what would be advising to your Housing Master Plan and your Fair Share Housing Plan and adoption of ordinances to do that. You would be under the review of the master who is probably now appointed to do that

although there have been no municipalities that have been put in that position to my knowledge as of this date and that would probably be the procedure. Okay, and obviously, at that time, you can, if we went that far, you would consider this property along with other properties in the municipality and as to see how you're going to accomplish to give a reasonable opportunity doesn't mean that you have to meet that in the next ten years. You have to provide a reasonable opportunity to do that.

Member Pryor – Okay, thank you counsellor, good explanation.

Attorney Cohen – And, that's a lot of information given in 15 minutes, but if anybody has any more questions and Mr. Shimanowitz might want to comment on what I said but

Attorney Shimanowitz – My comment on Mr. Cohen's comments is I think you very accurately summarized the very complicated issue. The only thing I would add to it is just to request of both the Planning Board and the Council to remember even though this is very much intertwined with your decision making on your affordable housing compliance; it is also a straight up zoning request. So, there are regular old planning issues to think about. Part of our position or communication to you is that the site is zoned Commercial and Highway Business. The commercial development in town right now, of which the Larken's have developed a great deal, is not strong. To do more of it is probably not the wisest thing. The site is pretty much surrounded by residential which you will hear all this from the experts, but I just want you to keep that thought in mind as well that independent of and it might be hard for you to do, but independent of the COAH issues, there is just a straight up planning issue what is appropriate for this site today and with that introduction, I would again like to bring up Mr. Heibell our engineer.

Engineer Heibell - The property is four lots that is currently owned by the Piazza family. Larken Associates has it under contract. It is on the southerly side of Baltimore Street. It is 16.6 acres. Along the western boundary of the property there is an existing 300 foot easement with public service and there is also a stream that borders the western portion of the property. It happens to be what is known as a Category 1 stream which is the highest category. There is a 300 foot wide riparian buffer and that shows in red on this plan. That portion of the property could not be developed without permits that probably (inaudible). To the north of here is Warren Heights North which Larken developed. To the west is Warren Heights South which Larken also developed. To the east is an office building and it used to be a child care center. I think now it might be now a second office building which Larken also owns and developed and to the southeast is a shopping center some 33,000 square feet which Larken also owns and has developed as Stryker Plaza. When I came here the first time the, that property which currently is in the HB Zone would be rezoned Office/Family Inclusionary Zoning. That would allow a total of 12 dwelling units per acre. Based on the 16.6 acres, that would be a yield of 199 dwelling units some of which could be apartments units some will be affordable housing COAH units. The Board expressed at that first meeting that there might be a desire of some members of the Planning Board to leave of the property in the HB Zone. So, we drafted a second plan but I did is I carved out two acres which are contiguous with Rt. 57. That would leave 14.6 acres that would ask to be rezoned to the MFI Zone. That would yield 175 residential units. You are going to hear from our architectural consultant who did the concept plan with 8,700 square feet of retail which could be placed on that two acres along with 175 dwelling units. The area has access to

public utilities, public water, public sanitary sewer. I read the report; I know how much capacity the Township currently has. We are certainly aware of the (inaudible) Lopatcong. It is our understanding there is available capacity in your current allocations for a project like this. The capacity of either one of the two projects would be somewhere from about 40/46,000 gallons per day. We have here the architectural consultant, the financial consultant, and traffic engineer.

Attorney Shimanowitz – Unless there is questions of Mr. Heibell, our next witness would be Rob Larsen.

Chairman VanVliet – Okay, is there any more members who have questions?

Member Pryor – Well, again, this is way down the road, but on the capacity there is not only allocation but again there are downstream capacity issues in P'burg and that would be part of anything going forward.

Member Woolf – You said that commercial development in this area is stagnant. Right now, Lopatcong Township, we just saw Ingersoll Rand representatives, Berry Plastic just had an application to double in size. We are still waiting on a legal decision from the asphalt plant. I think we are a little premature in rezoning this at this time.

Attorney Shimanowitz – I would just, respectfully ask, you to listen to our whole presentation and I understand your comment about some of those other properties as some of those are warehouse and other type of uses. My client's, actually the owner/developer of the nearby commercial center, and that, that certainly has been struggling so, you know, that's why we are here to show our views but just ask you to hear our presentation before you draw any conclusions about a rezone.

Attorney Cohen – Sure, the Council understands and I'm sure the Planning Board, this is not an application asking for a decision or any decisions. It is merely a presentation so that members of both the Planning Board and the Council to ask questions; to ask for some additional information and that's all this is is an exchange of ideas at this point. Nobody's asking for any decisions, nobody is asking for any ideas as to where you think you're going on this, that's for us to discuss in the future how this plays into our affordable housing concept may come into discussion at some future time but there are no decisions to be made tonight this is not that type of an application, isn't even a general development as you heard from the previous application and that doesn't restrict anybody from making any comments about how they feel but there is no decisions that are going to be made.

Attorney Shimanowitz – Our next witness is Rob Larsen, our architect and site planner.

Rob Larsen- Okay, I'm Rob Larsen I'm the architect/planner. Also been here before and worked with Mr. Heibell on coming up with some concepts here and I'm going to present two concepts and this is some example architecture as part of my presentation. The first one I'm going to put up is for the first scenario which Mr. Heibell described which is for a residential development of the entire 16 point something odd acres and again, I took a look at the area and discussions with Mr. Heibell and that would reconsidered on 57 and Baltimore Street. What I've come up with

here is actually a mix of two and three structures laid out in a concept plan with a boulevard entrance off of Rt. 57, the detention basin considered, a recreation center and as you can see we had six buildings which I'll show you our three story and two story apartments with garages. We also do show a minor connection if you felt it necessary to these other properties. Second concept plan, I'm going to put up as was mentioned set aside a two acre parcel showing this building right here, a 100 square foot retail structure. It would maintain, I guess the sense of retail out here along Rt. 57 and also a recreation center which I thought was more appropriate in context and again, I'm proposing now five of those three story structures. Again, maintaining a connection out to Baltimore Street boulevard entrance on Rt. 57 (inaudible) parcels. I'm going to put up what we see, again this is conceptual, but what we are trying to show here is that we intend to build some very attractive architecture. What we see on top here is the three story structures and what we see on the bottom here note that that is elevation two are the two story garage product.

Councilwoman Schneider – Can I ask a question? How many bedrooms are you planning with that?

Rob Larsen – I would believe there would be a mix of one and two's and then obviously, whatever (inaudible). Actually, you touch on something which I'm hoping I can get across. We are trying to provide a variety. We are looking at 199 units there. So, again, I hope, again, I've prepared the concepts (inaudible) across essentially we'd like to build a pretty exciting project, I think an attractive project.

Attorney Sposaro – I just have one quick question. The Board, one of your earlier boards could you just pull it out. Did you make a special effort to coordinate the colors of that plan with your tie and your shirt tonight?

Rob Larsen – I should do that from now on.

Mr. Shimanowitz – Our next witness is Mr. Art Bernard who is going to speak, actually, to the affordable housing component with this.

Art Bernard – Good evening. I know some of us have met before. I thought I would just give you a little bit of my background so you understand why it is me talking to you tonight about affordable housing. I'm a licensed professional planner with 40 years of experience in land use planning and affordable housing and 8 ½ of those years was spent starting up the Council on Affordable Housing which is now defunct but from 1986 to 1994 we got it started and I had the distinct pleasure and honor of writing all of the regulations in the first round and second round, the only regulations they've been able to sustain and since leaving COAH in 1994, I've worked with some 24 municipalities around the state in various capacities and I've worked with private sector clients all over the state before local boards and in Superior Court. I've served the Superior Court as a Special Master in five different communities. I've represented New Jersey Builder's Association as it's affordable housing consultant for the last 20 years and it's fair to say that much of my practice involves around the state's affordable housing obligation and I still represent municipalities and I think we may talk a little bit about in terms of settlement about an experience that I'm having with the court and Fair Share Housing. I guess we're the first ones that

are going through this process. But before we get into that, I just wanted to talk about the site because I think whether it has affordable housing on it or not, it's just a great site for attached housing. If we can get that aerial, you know, the site is an infill site with access to public water and sewer so it can certainly accommodate the higher densities. It has access to Rt. 57 which is a state highway designed with traffic from one community to another so it has excellent access to jobs and shopping in the area. It also has access to Baltimore Street and can get to Stryker Road through the shopping center so, the sites traffic can be distributed to multiple points and for traffic that's going to the corner of Rt. 57 and Strykers Road, there is a traffic light so people can make turning movements at a controlled intersection. In terms of the land uses, I think you can see that it is adjacent to attached housing to the north and to the west, so the proposed use is certainly compatible with adjacent land uses. It is adjacent to a shopping center; it is adjacent to a medical facility, it is in close proximity to the elementary school which is just to the east and to the fire department which is just up to the north on Stryker Road and it is sound planning to locate attached housing near shopping, schools and municipal services. In terms of environmental issues, you've heard Mr. Heibell tell you that the western portion of the site on the properties impacted by the buffer area associated with a Category 1 stream but the remainder of the site can be developed consistent with DEP regulations so when I look at it, I just think this is an excellent site for the proposed housing even if there was no affordable housing obligation. But we know that there is one and some of the information I'm going to give you now is for people who aren't that familiar with this topic and perhaps the public that has never had to deal with it but since 1975 New Jersey Supreme Court has consistently found that each municipality is responsible for its share of low and moderate income housing. Now, who are these people who live in this housing? Who are these low and moderate income households? Well they span a variety of professions including but not limited to teachers and nurses and social workers and paralegals and firefighters. They include young people starting out and older people on fixed incomes but these people either have worked their way into retirement or they are working; they go through credit and criminal checks just like anybody else who rents a unit and there's absolutely no reason to think that they wouldn't be an asset to the community. A little bit more history, in the 1980's, the courts had expressed displeasure that even though they had decided a case in 1975, not much was happening with low and moderate income housing so the courts were establishing municipal fair share numbers and awarding developer's relief to build affordable housing. Some of you probable lived through that and remember that; there was a great deal of controversy about that and eventually the legislature established a state agency to do this work; to implement the affordable housing obligation and that was my former agency the Council on Affordable Housing and COAH's responsible successfully for a while but for the past 15 years, it just was unable to do its job and in March of last year the New Jersey Supreme Court recognized that COAH wasn't functioning anymore and ordered the lower courts to determine fair share again and to review municipal plans. It ordered the lower courts to utilize a specific formula to compute fair share. Now, shortly after that decision, the non-profit that Mr. Cohen was talking about, Fair Share Housing Center utilized that formula and calculated at 347 units fair share for Lopatcong for a period that started in 1999 last time that COAH actually adopted rules and expands ten years into our future into 2025. The League of Municipalities countered by hiring a consultant and that constant has calculated a zero fair share for Lopatcong for a period not from 1999 to 2025 but from 2015 to 2025. The theory is the past is the past and we don't have to worry about it. Now who's right? Well, right now we don't know if either party is going to totally prevail but we do know a couple of things. We do know that two courts have

issued rulings that the housing obligation must be addressed from 1999 to 2025. So we now know that the League of Municipalities will probably have to come up with a way to address 16 more years of a housing obligation. That's a big deal. You know, he figured out a housing need for ten years now he has to figure it out for 26 years. The League's consultant in his latest submission to the court has conceded that it must demand its work in at least two ways that will add to each municipal housing obligation. I'm only about half-way through that report but he has considered at least two ways that could you know, substantial increases in the housing obligation. Now, one of the disadvantages is there is some uncertainty; there is some risk but one of the advantages of being in court other than COAH is the court likes to settle cases rather than going through expense of trials. State agency can't do that. The court can and in your case, the court has been cleared that it would like to settle all of its cases. We've been through a similar situation in Middlesex County where the court has actually set reduced housing obligations and is in the process of reducing them substantially as a carrot to settle the cases. I think I was involved in the first one in Piscataway where there was a substantial reduction in return for a solid plan for affordable housing that we were able to settle with Fair Share Housing Center and I think that the opportunity exists here as well. The Township has an opportunity not only to limit its legal fees but to gain control of its fair share number and control where the housing is actually built and it can do so in part by taking a serious look at this site. So I'll be happy to answer any of your questions if you have any.

Attorney Cohen – Mr. Bernard, if you could present to the Board, we haven't heard this yet, one the proposed affordable housing component would be under the plan.

Mr. Bernard – The proposal is to comply with the states standards and at 15% of the total number of units would be affordable units and they would comply in all respects with the state regulations that deal with the bedroom mix, the pricing and the deed restrictions and the affirmative market.

Attorney Cohen – Well, I understand that but my understanding is, correct me if I'm wrong so members of both boards can understand it, is that the 200 number and the 175 number proposed are the gross number of units and incorporated in there would be a 15% set aside of the units for affordable housing. Is that correct?

Art Bernard – That's accurate. So for the 200 unit example it would be 30 affordable units.

Attorney Cohen – I just want everybody to understand that's what the proposal is and I want to you know thank you.

Member Woolf – Well where do we stand if it doesn't meet the quota?

Attorney Cohen – That's a different issue. By the way, nobody at this point, just so you understand, just saying that we need these additional numbers for court but if we do need additional numbers that this is going to meet your ultimate quote. The applicant is not presenting it that way but they have as Mr. Bernard has indicated, that this is in his opinion a good site for the development which could meet whatever our number is going to be if there's going to be a future number up to 30 units at least as they propose it now of affordable housing.

Member Belcaro – How many do we have in the Township right now?

Planner Ritter – We have credits for 102. We believe we have credits in other words that we can apply against this up to 102 units.

Attorney Cohen – By the way, so you just understand that, let's presume that the court bought into the highest number possible that Mr. Bernard mentioned 347. We would maintain that we have 102 credits. By the way, credits is different than separate units. That's not saying we have 102 separate surplus units; we have more than that in town but they meet previous requirements. But we what we call credits because you get certain credits for rental units, you get credits for group homes by number of bedrooms rather than actually separate residential units so we believe we have 102 credits. That is open for review by the court also and that potentially could be reduced 102 credits. Let's presume the 102 credits stay and the highest number that is assigned to us is 347, deduct 102 and over the next, till 2025, we have to come up with a differential numbers of the 245. So that's the way, how the math works. If that were, this would be a very small opportunity. We don't anticipate, if there is an additional need at this point. We'll say more in closed session for everything. We don't anticipate that is going to come to be 347 all right. It may be zero, but it could be 347 or anywhere in between.

Chairman VanVliet – You indicated that the COAH is now defunct. Is deed restriction going to still carry on with affordable housing?

Art Bernard – Yes.

Chairman VanVliet – I believe Lopatcong offers a mix of housing opportunities the best in this region. We have apartments, you know fit into the financial category that lack the deed restriction.

Art Bernard – Yeah, I understand that. There are, I mean there are clear regulations that deal with, this has been an issue for years in a number of communities. In most situations, however, in order to get a credit, you do need a deed restriction.

Chairman VanVliet – Fine. I was just wondering if it was going to remain in effect. You know, when you look at the Region II, these average houses, single family homes, you know, affordable, at one point I was hearing over \$200,000. Is that a reasonable figure or?

Art Bernard – You mean would that be affordable to a moderate income housing?

Chairman VanVliet – All I'm saying is that in Region II that was the price of affordable housing.

Art Bernard – Well, there is a range of prices that are affordable. That may be affordable at the top end of moderate but certainly not too low. Certainly not to the lower end of moderate either but, but

Member Olschewski – As much as I appreciate your (inaudible) I'm not sure while you are part of the presentation. I feel you're just trying to scam me a little. We, at this point in time, we don't

know if we have enough COAH units or not right? Nobody knows if we have complied with

Art Bernard – By communicating, if you felt like I tried to scare you, I apologize.

Member Olschewski – A little.

Art Bernard – I clearly did not try to do that.

Member Olschewski – I'm not sure why this presentation of the COAH is even an issue of the whole presentation.

Art Bernard – I think, well because it's part of the proposal. We are intervenors in the case and we are having discussions to see if we can settle the case and so, what I tried to give you today is not necessarily my opinion on what your fair share is going to be, I try to make it just factual and I think everything I gave you was factual including what Fair Share Housing Center says if your number is and what the League of Municipalities consultant says your number is and what the court has done.

Member Olschewski – Well, we don't know right?

Art Bernard – Well, we do know and that's what I was trying to do is that we do know that the court has made a ruling about the fact that, that the League of Municipalities number was faulty because it didn't include a housing obligation for a time period that started in 1999 and ended in 2015. So, it neglected 16 years of housing and I guess that's the only place where I expressed an opinion that that was a big deal. I think it is fairly obvious that when you're taking, you take a 26 year housing obligation and you neglect to include 16 years of it, it is a big deal and so all I'm trying to convey is, is that position that we are all in right now, that there's elements of risk for everybody.

Member Olschewski – I got it.

Art Bernard – And that we had, we both, both parties have an opportunity to, to eliminate efforts.

Member Olschewski – But the project should be able to stand on its right? Without even the COAH thing. That should be

Art Bernard – I absolutely believe that, that this site is an excellent site for this use whether there was affordable housing on it.

Member Olschewski – And, I just want to clarify that we, as a max of COAH units is going to be around 30. That is going to be the proposal and we have 8,700 square feet of retail I believe was

Art Bernard – With one of the proposals there's some retail. I think it was net

Everyone talking over each other

Attorney Cohen – The calculation would probably be 27 units with the alternative development and just to expand a little bit on your questions, all right, because let's presume that we have any COAH obligation, so at this point, as the law stands in New Jersey, and as Mr. Bernard said, every municipality has a constitutional obligation for a reasonable opportunity for low or moderate income housing. We would be remiss, let's presume they were just making a development application to come in with 175 units not proposing any low or moderate income housing because they believe that we have a surplus and we don't need low or moderate income housing it obviously cost the builder money to build low or moderate income housing because they have to figure that in the price of the market units; they don't do that out of the goodness of their heart, obviously. We would be remiss, in my opinion that to not ask them aren't you going to provide any affordable housing and they could come and (inaudible) we don't want to build it. They are saying that, in their opinion, and by the way, nothing prevents a community from developing more affordable housing then the designated number that the court may give you and in addition to that, when the next round comes about which we assume is after 2025, unless the law really changes or something happens in the future, if you have surplus in previous rounds, that goes to your new numbers so, just keep that in mind. It's not just potentially for this litigation; it's also future and building you know, providing what our constitutional obligation is.

Member Olschewski – Mr. Chairman, would you know the numbers of the affordable housing units in Sycamore Landing? Do you know how many units are added to Sycamore Landing?

Chairman VanVliet – I would think at least 50.

Planner Ritter – 50 affordable.

Attorney Cohen – That usual, when we said there's 102 excess credits in our opinion, that's not including

Planner Ritter – No it is.

Attorney Cohen – It is. This includes the 50 units in Sycamore Landing because that's been approved, that's under construction.

Member Fox – Thank you. Was that also 15%.

Planner Ritter – That was a 20% set aside.

Attorney Cohen – And, by the way, what they're offering (inaudible) that doesn't provide a builder by the way, because that's a guideline. That doesn't prevent a builder from offering more, agreeing to build more because there's a quid pro quo.

Member Fox – Oh was that a, a minimum (inaudible) minimum requirement 15%.

Attorney Cohen – Well

Art Bernard – There's a state, there's a state standard. It's 15% percent for rentals but Mr. Cohen

is, yeah, I think he's correct that if we are entering into negotiation and that's one of the issues on the table, we're going to talk about that.

Councilwoman Schneider – (Inaudible) and if we were to go with your plan (inaudible) 2 to 400 children.

Art Bernard – I actually, I think you are going to hear from our fiscal expert who, I'm not trying to blow smoke, I think he is by far the best fiscal expert in the state. I think he's going to surprise you with, you know, what the data actually is for one and two bedroom rental apartments. I think you're going to either not believe a word he says or be pleasantly surprised.

Member Olschewski – If I may, I think if I remember properly I think they came out with for Sycamore with some crazy amount of 13 kids. I think yeah I, you remember it was some amount like that. Not saying it's going to be 13

Attorney Cohen – But by the way, just so you know, on this issue, the state has done, forgetting about (inaudible) and Mr. Ritter can tell you substantial amount of data with reference to the generation of school children because it is very important in the state (inaudible) that generate from different types of housing. So, it is not only that this witness may testify and you may tend to believe that or not believe it or tell you well I know, you know, that there is going to be 1 ½ units; there staked out by Mr. Ritter and that is available for this information and I think it is going to be more towards at least data that I familiar with lower numbers from the state data then you know one child per unit or ½ child per unit or something like that.

Councilwoman Schneider – (Inaudible).

Art Bernard – I'm not going to tell you there aren't going to be any school children but I've seen the data, I've seen data that actually when municipalities do the study, I've seen it when developers do the study and when they actually look at the units I think you'll be presently surprised. Are there any other questions.

Member Olschewski – Yeah, I'm not sure who I can ask what question, I know that Mr. Gardner is currently do we know how many units of his old developments actually currently not rented? At one point in time, and maybe Donna I would like to ask Mr. Gardner if he has open units in his old developments, why are we building new ones. If that is correct that maybe at one point in time, and I'm not sure you are the person to ask these questions. We hear about the schools, we hear about the trucks, we hear about the streets, why do we need more apartments?

Art Bernard – I'm sure Mr. Gardner wouldn't be interested in building more (inaudible).

Attorney Shimanowitz – It's a fair question and perhaps I'll have one of the Gardner's respond to it but I understand the concern. Again, they're successful businessmen. They don't do this (inaudible) I hope you are enjoying them. Unless Council has an objection, we'd like to move onto our next witness which would be Mr. Redding who is our fiscal expert. He will get to the school children issue and the dollars.

Mr. Redding – Good evening my name is Richard Redding. I've also been here before it was back in May of last year. As you heard tonight, what we've considered with three alternatives; one was all residential homes all commercial and there was kind of a middle of the road one which is a mixed use which is the one we spent the most time evaluating and our evaluation was fairly detailed and that was a 150 page report that utilized a methodology that's been developed by the Center for Policy Research and we went through the entire fiscal analysis utilizing the information obtained from the Township and the Board of Ed as the fiscal base for the Township and using an input/output model to measure the impact of the new development. As you've heard, the mixed use model or the mixed use alternative has a total of 175 housing units plus 8700 square feet of commercial/retail space. Of those, 148 units would be market units and they're comprised of roughly 1/3 one bedroom and 2/3 two bedroom so 49 one bedroom and 99 two bedroom. The affordable units are distributed pursuant to what you call u-hac which means you have a mixture of one, two and three bedroom units on the affordable units. My study was done back a little while ago, back in April of 2015. Actually, it was done a few days after the Supreme Court decision and it was also done before this applicant was in the arena in this matter. Nevertheless, the alternatives that were presented back over a year ago or nearly a year ago, always included affordable housing as a component of development so, it's been part of the plans from the outset and my analysis is not structured on that being a necessity for the development but rather this development would be able to support an affordable housing component. The analysis we completed was showed that if the mixed use alternative was developed, we would have about 15 employees in the retail center and 362 residents. Also, on the school side, we used the demographic multipliers that are published by the Center for Urban Policy Research in 2006 and there are separate multipliers for the market units and actually the affordable units. For example, the 148 market units using standard statewide demographic multipliers who generate 13 school children. The 27 affordable units on the other hand generate 18. So, the bulk of the students will actually come out of the affordable housing units. Those numbers amount to .17 students per unit and interestingly enough, we looked at Warren Heights which has 414 units and those 414 units have 53 students; .128, so, actually, the actual numbers is lower than the numbers I used in the analysis.

Planner Ritter – We just, well, it was done as a review of his original report. We actually contacted the school district and got their actual projections; what they were getting out of there in terms of school kids and we found, and quite frankly, the school district itself didn't believe that it would be that low until they got the numbers for us. It actually came out lower than what the state projections yielded for this type of development.

Mr. Redding – It was in your report in August.

Planner Ritter – It was in our August 18th report of 2015.

Mr. Cohen – I don't know if they're the same mix as you're proposing here like the 414, I don't know what the bedroom is on this.

Planner Ritter – I don't think we had an absolute mix on that either because the school district couldn't tell us what that was.

Mr. Redding – They couldn't break it down by grade. Just as an example, what you have in this town, you know, you're not going to get out of one and two bedroom apartments, two students per unit. It just doesn't happen. I think about a one bedroom unit who wants to live in a one bedroom unit with a school child or several school children. Matter of fact, your health officer may not even allow that so, these are numbers that are traditional for the industry. The important thing in all of this, is going through, is this a project that will cost the Township money or will it cover some expenses and that was really the focus of our analysis and we looked at it for the mixed use development and we also looked at it, if went in the other direction which is all commercial or all residential. Using standard analysis here, market units would generate costs, total costs; municipal, school, county about \$282,000.00. They would be offset by \$741,000.00 for a surplus of \$459,000.00. Now, on the other hand, the affordable units only generate \$79,000.00 and \$212,000.00 in costs so, they have a deficit of \$132,000.00 but the important thing here is that this project works like the affordable housing (inaudible) that the income and ratable pays for the development of the affordable units and importantly, provides enough revenues to offset the costs. There is a surplus overall of about \$26,000.00. What that means is, the Township doesn't have to build the affordable units nor do the residents and taxpayers of Lopatcong have to pay for the deficits. This is the way the project is supposed to work and we went through and tried to explain it, a couple of reasons why and when we did it in comparison of the not only to the other units, but keeping Lopatcong, you have about \$561,000.00 of assessments for every student. This project, when it comes in, for every student it brings in, will bring in \$1.9 million dollars or about 3 ½ times your average so, what it is, is in the Township you have a lot of single family homes and that your person student valuation in single family homes is much lower than it is by multi-family apartment so, you may not understand it but if you have ten apartments units and you generate a fraction of a child, it is a much higher than a value of a single family with one or two children so, the ratio here for this project is \$1.9 million versus \$560,000.00. That's why we show a surplus on the school side. We went through it and did that also for the two other alternatives. You typically think that your non-residential alternative is the best fiscal alternative because you don't have any school children or school costs but what happens in current market conditions that non-residential ratable isn't really all that valued. If you develop the site for 90,500 square feet of retail space you would have about an 11 million dollar value. The mixed use development is a 29 million dollar value and the all residential is actually a 32 million dollar value. The all retail use doesn't have any school costs and you are right, it doesn't but because the valuation is so much slower, you get to the bottom line with surplus on the all commercial project is \$240,000.00 compared to the mixed use of \$326,000.00 because you start with a higher valuation. So, even though you have more expenses, you have a lot more revenue to work with so, of the three obviously, all residential which is the 199 unit would generate the most revenue, but I don't think is the one at least my initial presentation was the one the Township was looking was through the mixed use development but overall and even with the inclusion it is expected to generate annual revenue surplus of \$326,000.00. From that standpoint, it is not a drain on the Township, it would cover all of its costs, cover the cost of the affordable units and still generate surplus. Typically in rental projects if you do capitalization analysis assume a 5% vacancy so now even if those units are 5% of the units are vacant which means they don't have people and they don't have school kids, you are still paying taxes on them. So, you are still getting the revenues but you wouldn't have the costs so, yes you are right, there's typically a 5% vacancy. No, I didn't adjust for that.

Attorney Cohen – Just so you're understanding this, tax assessor says it's an apartment complex; let's presume this is 200 units. It assessed at based upon what is believed its fair market value was as a whole, his number was 39 million. So, it's assessed at 39 million. It is taxed on an assessment of 39 million dollars. That probably assumes pretty much for occupancy if the assessor's doing his job and build in a figure based on capitalization method as Mr. Redding had said and we'll use a 5% vacancy factor which is fairly standard across the state and they're going to value. The owner of the complex will pay the same tax whether he has them all rented or he has a 20% vacancy. He may file a tax appeal and claim that his assessment is too high but he pays the taxes basically, no matter what the assessment is, no matter what the occupancy rate is so, it is not, you don't pay per tenant that occupies it, you pay on a total value.

Member Johnson – You were talking about how much money this will generate for the town versus the expense, you made it seem like a pretty good rateable bigger than I've ever seen for a residential apartment complex or rental. Are those numbers comparable to one of our other rental developments that we have? Can we back up your numbers with an example in our towns?

Mr. Redding – There is a, I have not done a comparison to another project but there was a valuation analysis it was included on the basis of that and how we got to it and it was based on the anticipated rent of the units and capitalization of those rents. For example, on the commercial we had \$10 gross rent on that. On the residential units, we had monthly rents from \$1250 on the one bedroom and \$1550 on the two bedroom and then we had the affordable rents as required so, it is a capitalized valuation and 29 million dollars for overall we are talking about a pre-unit value of \$162,000.00 so, that is the valuation. Lopatcong is, basically, at 100% of ratio so, the assessed value would be the same.

Member Johnson – I think it would be worthwhile to take a look at that because I've never seen anything residential be described as a good rateable ever in my career.

Attorney Cohen – This is not a question of good rateable, it is a question of how much an assessor, what value an assessor would place on this type of a new development. So, probably if Planning Board and Council is interested, could do a proforma workup of these types of things assuming once they know the basic rentals and what they're going to be, there are formulas for expenses for these types of developments. They are the cap rate, I don't know what cap rate Mr. Redding used but there's last year I tried a case, a tax appeal case, and presume the cap rate would be about the same for Lopatcong and Phillipsburg because of given the area and so forth, remember the higher the cap rate the lower the value of the assessment and vice-versa but these things can be calculated as to what this property would probably be assessed at with a fair degree of accuracy. The assessor can certainly do a proforma based upon a 175 and 200 units and 8700 of feet of commercial.

Member Johnson – I think that would be our due diligence to

Attorney Cohen – That could definitely be calculated by an assessor.

Chairman VanVliet – Any further questions? Before we put your traffic engineer on, I'd like to

take a five minute break and then we'll resume when we come back.

Traffic Engineer – I've prepared over 500 traffic impact studies, I've testified in over 100 municipalities and reviewed over 500 applications. The other thing is as far this property would require a DOT access permit, I'm very familiar with that process having processed over 300 access permits for various projects from residential to commercial for the Board's benefit and I've also been qualified by New Jersey's Superior Court as a traffic expert on three land use matters. I'm going to keep it short and just focus on two topics; the first will be access as was previously testified by some of the other witnesses. Larken group is committed to knowing they can have access to Rt. 57 that will have it as a right in/right out with no left turns and that is predicated on the fact that we also have alternate access to Baltimore and we're, the concept plan showed interconnections to the other commercial properties so, this site, as it sits, has great access to great highways and local roadways so as far as DOT and getting that permitted, I don't see any issues with that and specifically, if we go as a right in/right out, but the more important aspect of this is from a traffic generation standpoint and when you compare what is permitted as Mr. Heibell had testified that this property by zoning could accommodate approximately 90,500 feet of retail space and that we have two other proposals and I'll just briefly touch on peak hour trip generations so you can see the comparison of the different scenarios from what is permitted versus the two residential proposals. During a week day morning period, a retail center would generate approximately 150 peak hour trips in the morning whereas 199 apartments would be just over 100 trips and the mixed use development would generate approximately 124 trips generally lower than what the retail, but then when you look at the pm and the Saturday peak hours which are really the highest traffic generation time periods for retail, during the weekday pm peak hour, a development of 90,000 plus square feet would generate 560 trips during the one peak hour and 160 trips during the one peak hour. Whereas 199 apartments would be 123 trips and then the mixed use proposal would be 226 trips. So, obviously, it is significantly lower than a retail development and then I'll touch on the Saturday peak hour of a retail development of 90,000 square feet could generate approximately 120 peak hour trips. Whereas 199 apartments would be just over 100 or 104 trips and then the mixed use would be 270 trips. So, as you can see from a traffic generation standpoint, a residential proposal would be significantly less than the retail and the same is true when you look at it from a daily prospective. So, again, the important thing is here is that there's great access to this property given the fact that we have frontage on a state highway and the local roadway and the interconnections, and as a residential development it would generate significantly less traffic than as is permitted by current zone.

Chairman VanVliet – We had at one of the original presentations to consider all residential. We are also considering having no access to 57 and that scenario, what the recommendation would be there?

Traffic Engineer – Well, as far as on the residential proposals, I mean given the amount of traffic that could be generated, as 199 apartments solely, just residential, just by my observations the area roadways and Baltimore would be more than adequate to accommodate that but as far as a mixed use proposal, you know, the retail unit use is going to be having traffic not only from internally and the local but it also feeds off from 57 so for a retail space to be viable, it is my opinion that you would have to have at least a right in/right out access onto 57.

Chairman VanVliet – That was one of our problems. How would we really control the right in/right out?

Traffic Engineer – It is difficult. You can go with generalized islands, but when you have an undivided roadway, it is an enforcement issue. Yes, I would agree with you.

Chairman VanVliet – Any further

Member Olschewski – I do. I just want to define a trip is back and forth?

Traffic Engineer – A trip is one car. It is a movement in.

Member Olschewski – Okay. That's not back and forth it's just

Traffic Engineer – Just one correct.

Member Johnson – I have a question too. So, a lot of people aren't working right so, 199 units are only generating 104 trips so that means 102?

Traffic Engineer – For a sixty minute period, it doesn't mean that

Member Johnson – Okay, so that's, that's (inaudible).

Traffic Engineer – Correct, it's for a sixty minute period. It is when we do a traffic analysis; we focus on a sixty minute period. It doesn't mean in that peak hour, it could be 7:30 to 8:30; 7 to 8, but it doesn't mean that people aren't leaving before 7 o'clock or even closer to 9. So, that doesn't represent traffic all day long. That's just for a sixty minute period.

Member Olschewski – And, the in and out on 57 that's just a stop sign thing kind of a

Traffic Engineer – That would be a stop sign correct. There's not enough traffic volume to warrant a traffic signal and have to be subject to NJDOT requirements and 99% of the times, NJDOT will not approve a traffic signal for private use. There are exceptions; Phillipsburg Mall has but that's again, that's a major traffic generator.

Member Olschewski – We just have a traffic signal like (inaudible).

Traffic Engineer – Correct and that's what works well with the site. There's the alternate access that provides to Baltimore to Strykers so, the people do have the means to use the traffic signal to do left turns so, that infrastructure is already in place.

Member Johnson – Are existing counts pretty current that were used for the analysis?

Traffic Engineer – We didn't do traffic counts. Once a site plan application is prepared, then there will be current traffic counts done and a formal detailed traffic analysis. My evaluation is just on a traffic generation perspective of what's permitted versus what's being proposed.

Member Fox – Does Larken control all those adjacent properties that those driveways are going out to?

Traffic Engineer – That’s my understanding but I’ll defer

Member Fox – For the residential coming through commercial areas is a possibility.

Mr. Shimanowitz – The access you see to the commercial area is to Larken’s property.

Traffic Engineer – Whereas that’s relevant for interconnectivity so, that you don’t have people in public roads but the likelihood of people using it as a cut through is definitely possible but it’s again, it’s limited to whatever is generated by the site itself. Someone is not going to come off Baltimore, come through the site and go through as (inaudible).

Chairman VanVliet – Any further questions? Thank you very much.

Mr. Shimanowitz – Mr. Chairman that’s our last witness. If there are no other questions for the witness.

Member Fox – Is there any comparison to the Lopatcong Master Plan and how the residential and commercial growth is or is not in compliance with the master plan.

Mr. Shimanowitz – I know that along the way, you know, like I said in my introduction, I know that your planner, Mr. Ritter had prepared a report of the Planning Board’s (inaudible). So, there is something from your own consultant in terms of the compatibility which you might want to take a look at.

Chairman VanVliet – One of the factors, you guys are all new, is the fact that you are required to conform, substantially conform with the Highlands Regional Master Plan. They are in the process now of reviewing their master plan and hopefully, it will be out here shortly so, we know what we have to try to conform to. The other thing is, this would also be subject to approval by the Highlands Council. So, there is a little process to go through here. Just for your own knowledge, is that this Board cannot grant the variance outright without doing a review of the master plan.

Member Olschewski – Does our planner have an opinion in regards to the property? Do you have any opinions, any

Planner Ritter – Well, we put together a report that goes into, the for lack of a better term, the pros and cons of basically, what they are proposing as compared to what is there. In other words, how it is zoned. The report itself, quite frankly, found that the site plan itself in terms of the uses they’re proposing is compatible with the neighborhood. That doesn’t mean that the commercial is incompatible or it ought to be changed but we feel that it does fit within the fabric of that neighborhood if the Board felt it was an appropriate way to go but the report itself does address the different aspects, the pros and cons of it. It looks at sewer usage, water usage. It

looks at how it would fit in the fabric of that neighborhood. We did not make a recommendation to go and change the zoning though but we did find, and I feel that the apartments in that area are not incompatible with what is out there. If the Board concludes that it wants to change the zoning, and basically, reduce the amount of commercial zoning in that portion of the town, it does fit within that fabric and that's basically, what's in the report. You should take a look at it, there is more in the report than just land use compatibility.

Member Olschewski – I most certainly will take a look at it.

Member Pryor – Can I clarify one thing? The Board can't change anything. The Board can make a recommendation. Only the Council can change the zoning. It is done by ordinance. The Board can issue some variances. Land Use Variances is not one of the variances that can be issued by this Board. So, we are here purely to listen, perhaps make a recommendation but the Council will decide.

Mr. Shimanowitz - Again, thank you for listening to us. We were here in November and it was the Council's recommendation that we have this meeting and we are happy to accomplish that. Again, we'd like you to keep us in mind in terms of a straight up zoning. We do note this has implications for your affordable housing and we're going to keep working with Mr. Cohen and the court master toward that end as well. So, but we would like to keep this ball rolling so we'd like you to keep it in the fore front and you know, the simple request is for rezoning so, at some point in time the Council needs to make a decision. We know that's not going to happen tonight and we know it is a process but that's what we are seeking so through the normal process and/or the settlement process or hopefully not the litigation process that's where we are trying to get to and with that I thank you again.

Chairman VanVliet – Thank you I'm going to open it up to public comment now – would you be willing to entertain questions from the public. Is there anyone who has any questions or comments on the presentation this evening or the information?

Marla Endick – Had a question for the professionals – can existing complexes that already exist in the Township increase their COAH units instead of building another complex.

Mark Reitemeyer – He thought excessive – too many apartment complexes and many empty places that are not filled.

Chairman VanVliet – Asked for a motion to adjourn the meeting. Motion by Mayor McKay, seconded by Member Pryor. All in favor.

Respectfully submitted,

Margaret B. Dilts
Secretary