

Lopatcong Township Planning Board
Special Meeting

April 21, 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.”

Present: Members Fox, Johnson, Olschewski, Pryor, Woolf Mayor McKay Vice Chairman Gural, Chairman VanVliet. Also present were Attorney Sposaro, Engineer Sterbenz and Planner Ritter.

Business:

ROM History Report -

George Ritter – Put together a report making recommending how the regulations would be strengthened or in some cases repealed from the zoning ordinance itself. Several options have been provided. Essentially, the ordinance that was put before the Board recommended several changes to the definition of asphalt manufacturing and basically the precast concrete facility in terms of definition changes. Asked to consider whether or not the concrete manufacturing facility should be made a permitted use rather a conditional use in the district and it had specifically requested that the asphalt plant basically be repealed as a use or as a conditional use in the township zoning. That is the essence of the draft ordinance proposal that we were asked to look at. After looking at that, we thought there was several recommendations that we thought would address some of the issues that we see as important in going forward with changing, well truthfully with amending the zoning ordinance in any case whether it relates to this or truthfully any other activity where we look to amend it. One of the things that we thought that lead to be, I wouldn't call it necessarily confusion, but in the original ordinance a big chunk of our Industrial District is what I call permissive zoning and what I mean by that is, is that the code actually says these are the types of uses and then it goes on to say such as but not which means it is open ended. Essentially you can draw conclusions as to what types of uses might fit in those categories and it is a very permissive way to construct the ordinance. One of the things that we are recommending here is that we change that section of the ordinance, particularly as it relates to the industrial uses to make it use specific. That is to say that which is probably 95% of the codes are written today where if a use is listed, it is permitted. If the use is not listed, it would be prohibited. In other words, it takes away that discretionary content. It is either a use that is permitted or not. So we would recommend that along with any, if we go ahead and make changes to the ordinance one of the things to do would be to actually repeal that section of the ordinance to make sure we are shifting from a more permissive ordinance to more specific in

terms of uses that may be permitted. The other thing we did was the definitions which everyone has struggled with, what is a concrete manufacturing facility and what is an asphalt facility. What really is that? What are we saying you can or cannot do in town? What we decided to do since there are so many definitions floating around shall we say of what that might be or for that matter, lack of definitions of what is meant by that, we decided to go to OSHA and look up their specific definitions for different types of manufacturing activities and what we did was go through their list and pick the ones that related to at least ones I believe related to the ongoing concrete casting facility that we have in town that properly describes it and then we also tried to find one that properly described what an asphalt manufacturing facility might be in terms of what the ordinance envision as being such a facility. In other words, just to take the extremes, concrete manufacturing I don't think anyone, when this was originally discussed, thought of making actually the actual cement, the actual firing and making cement at an actual cement plant and so we wanted to try and get the definitions we found well enough that clearly these very large scale operations, things that no one ever would be envisioned would properly defined out of the list. We tried to do the same thing for the asphalt manufacturing type of thing so that we didn't leave ourselves open to say someone that wanted to come in and make the binder; the oils to make the binders. We wanted to make it clear that that was not our intent. So, what we did was kick definitions out of OSHA that we thought were close to what we were thinking about for in town. If you look on Page 4, one of those definitions we copied over for Precast Concrete Stone Manufacturers facility; it is about half way down on the plan and that type of facility is defined by them as used in this chapter, is a manufacturing facility for the creation of concrete building products by pouring standard concrete in the specific forms and curing the product on site. It includes the production of concrete by combining cement water, various aggregates of other ingredients on site for use in the manufacturing of such building products. Precast Concrete Stone Manufacturing facility does not include in the establishment primarily engaged in mixing and delivering ready mixed concrete for use in construction projects off-site. Precast Stone is distinguished from precast concrete by the use of fine aggregate in the mixture so that the final product approaches the appearance of natural stone. That was the definition that we took out of there. We thought that very closely mimicked what is going on at Precast right now on the property. It also made it clear that you can't do a concreted batch farm. In other words, you can't set up a series of hoppers and simply sell concrete off-site. So we thought that was a good definition defining the type of activity that everyone perceives that Precast is doing and would be consistent with the Township's goals in terms of the size of those types of facilities they'd like to see. We also did a similar definition for asphalt manufacturing facility. We pulled that out. That's on Page 5 in the middle of the plan. The term there was asphalt manufacturing facilities using this chapter as a manufacturing facility for the creation of asphalt and tar paving mixtures; bituminous concrete and paving blocks made of asphalt and various compositions of asphalt or tar with other materials that includes the storage and dispensing of asphalt paving mixtures. Asphalt manufacturing facilities establishment shall not include an establishment that is primarily engaged in producing asphalt and asphaltic materials. Again, we thought that we defined it tight enough to the type of facility that originally were envisioning in the ordinance for those two types of uses. The next question that came up was how we were going to or how we could look at these facilities in terms of whether or not they should or should not be permitted in the district and what concerns that we should have if they were allowed in the district or not allowed in the district and one of the things that is developed since the original ordinance were put together is that the Highlands has come out with that series of recommendations for these

types of uses. They found, the Highlands in there, and the reason I'm bringing these up, is as the town proceeds through the process of becoming consistent with the Highlands Master Plan, these issues that we are going to talk about tonight would have to be addressed regardless of whether we do it tonight or some other time.

Mayor McKay – Can I ask a question? Is it appropriate to ask questions? Yeah I just got to get a little bit clear. I don't remember any request to determine anything about an asphalt manufacturing facility. I don't know where that came from and what is, you're saying here I think that you want that to be a permitted use; an asphalt manufacturing

Planner Ritter – No. No Mayor, we're not, I haven't gotten that far yet.

Mayor McKay – Oh all right cause I see conditional use as permitted in the ROM Zone.

Planner Ritter – What I was trying to do was sort of give you the logic of how we got where we got. The Highlands, as I said, basically has come out with a series of guidelines and they have made a list of what they consider to be potential major polluters and quite frankly, the concrete plant and the asphalt plant is included in that list of major or potential polluters and they have made certain recommendations as to how they should be dealt with if they are present in our town and how you would handle them and basically what they have done, is come out and said that those types of uses on a carbonic rock area or on an area that has a high recharge rate to the ground water, those uses should be regulated and they should be not in addition to being regulated they should be prohibited uses in the town what they call what they name the area is a called a Tier 1 level around an existing public well and whether they are in that or not they should follow what they call Best Management Practices and they provided a list of them. What we thought was appropriate at this stage for the Board to consider is amending our ordinances so that we incorporate into that the policies put forth by the Highlands for managing these types of uses and what we are suggesting in this ordinance is that the concrete manufacturing facility, the ordinance be amended to make it a permitted use rather than a conditional use in the district and that the asphalt plant be retained as a conditional use but that they be provided that going forward that as part of any approval they would have to meet the Best Management Practices as outlined by the Highlands and I attached the Best Management Practices to the back of the report in terms of what they were thinking of in terms of criteria that would have to go into the design and development of any of these facilities in town and the long and short of it is, it is all designed around containment to make sure that you do not delete the ground water table that any spills that may occur are captured and that they can be cleaned up and they have four or five recommendations of how that would proceed and I thought that that was a very sound way to look at these going forward and we would leave the asphalt in a conditional use standard simply because they would have to meet, if they did not meet any of the Best Management Practices going forward it would open the whole issue of use up again and they'd have to come back for a use variance if they did not choose to comply with any of these recommendations. The other aspect that we are recommending to do is given the concern over outside storage and issues of pollution in that area that if you recall the ordinance also includes resource recycling permitting that to occur in the district and we would think that, quite frankly,

looking at the guidelines of the Highlands the potential for having piles of material stored and having problems with it getting into the ground water table, it make a lot of sense to just repeal that and remove that from our ordinance. No one has applied to do it. There is no activity taking place in the town right now that seems to make sense to just remove that option from the ordinance and bring it into compliance with the Highlands guidelines. That's the proposed, there is more detail here in terms of some of the criteria but that is the basic recommendation that we get rid of the more permissive section and go to a list of specific uses that we repeal the recycling section of the ordinance so that that will not be a permitted use in the district, that we change the concrete manufacturing from a conditional use to a permitted use and that we add standards to the asphalt plant to make sure that they have to meet the Best Management Practices as outlined by the Highlands for this type of use and that we prohibit both asphalt plants and concrete plants if they're located in Tier 1 Well Head areas. We would not allow them to occur in either of those areas for either types and that's the really the broad overview of what is being suggested here and I think basically open it up to Board questions and see where we go.

Mayor McKay – Um, I have a few. We don't have any Tier 1 Well Head identified.

Planner Ritter - We do. Yes Mayor, we do

Mayor McKay – In the ROM?

Planner Ritter – What?

Mayor McKay – Do we have any in the ROM identified?

Planner Ritter – Yes there are some that overlap. There is no Tier 1, there's Tier 2.

Mayor McKay – As I said there is no Tier 1.

Planner Ritter – To my knowledge, right now, there is no Tier 1. That is correct. As it stands right now based on the mapping we have.

Mayor McKay – And, to become one, you'd have to drill a well – is that essentially

Planner Ritter – Well, it would have to be a public well to have one at some point.

Mayor McKay – So, we wouldn't permit the drilling of a well in that area right?

Planner Ritter – Well, the drilling of a well. No there's nothing that says you can't drill a well in this area.

Mayor McKay – Well, if you went and drilled a well in the area, then these companies would have to close down? That's what I'm trying to get at.

Planner Ritter – Well, if the companies there, they would be just, what’s the best way to put it; they would be pre-existing non-conforming to the regulations which would not be an unusual situation if that came up.

Mayor McKay – Now isn’t Precast a pre-existing?

Planner Ritter – Yes Precast is a pre-existing use that’s correct.

Mayor McKay – But you are now proposing to regulate them more stringently than before.

Planner Ritter- Well actually less; we are going to move them from a conditional use to a permitted use and the only thing we’re saying is that they would have to meet Best Management Practices as one of those stipulations. So it is actually, the degree, let’s put it this way, they need relief and variances for anything they want to do, we are making it easier for them to make that then it currently is cause they are listed as a conditional use now because now if they need variances that varied from the standards of conditional use, they would trigger what is called a “D” variance and would have to seek

Mayor McKay – All right I have no idea what they do there but I think they have a lot of pipes that they manufacture and then they store them outside till they sell them.

Planner Ritter – That’s right. They cast all sorts of stormwater structures.

Mayor McKay – Okay so would this new regulation affect their capacity to store those products as they do now?

Planner Ritter – No they already exist. I think they got about 99, I’m exaggerating, 90% of the lot is already covered with storage which grandfathers the entire lot. They virtually have no ground left to add anything in terms of storage. They’ve pretty much filled that whole site. In fact, they got a variance a couple of years ago to increase their coverage of that lot.

Mayor McKay – Don’t they store under the power wires?

Engineer Sterbenz – They received three or four Site Plan approvals before this Board over the last ten to twelve years and their Site Plans approvals included variances.

Mayor McKay – All right but they store tuff under the electric wires too.

Member Woolf- They also received approval from the power and light company for storage in their right of way.

Mayor McKay – Now would this affect that approval because of what you are proposing here?

Planner Ritter – No. No they already exist. Everything they have would be grandfathered. Like I said, my sense is that they've used every square foot on that property either for storage or for manufacturing processes.

Mayor McKay – All right now you talk here about asphalt manufacturing, manufactured items or manufacturing facility which would be similar to I guess one that makes such things out of cement or concrete but rather makes them out of asphalt.

Planner Ritter- That's right. The original conclusion of the Planning Board back when the asphalt plant came in was that the process that they go through is virtually identical to the concrete casting. The only difference is instead of using Portland cement to make their castings, the asphalt guy uses asphalt concrete to bind everything together and make a product. So it is virtually the same process and under our ordinance, at the time, the conclusion was is that both the concrete plant and the asphalt plant were permitted uses in the district.

Mayor McKay – We don't have any of those operating in the town right now

Planner Ritter – I'm sorry asphalt plants?

Mayor McKay – Asphalt manufacturing facilities.

Planner Ritter – Well I take that back. I don't know if we, the bottom line is we don't have any (inaudible). There may be one, I keep thinking there is but that may not be true. No Paul is shaking his head. I'm thinking of something else. The answer is no.

Mayor McKay – Okay and if someone applied to do this

Planner Ritter – Well yes if somebody applied today, they would come under the ordinances in that area they would come under the ordinance in effect today. If these ordinances were amended, they'd have to abide by whatever the new ordinances were.

Mayor McKay - Is there an application in play right now?

Planner Ritter – Well there is no new application in play. I guess what I could say is that if we go back over the long history of what's been going on, the approval of the asphalt plant that was appealed to the courts as far as I know the town was sustained on their approval of that plant and the rezoning is now under appeal. That rule. I don't know where that's going. If the courts rule in favor of the town and the applicant, they will basically have permission and I'll defer to Tony when I start practicing law here, they could come back into town then and ask to carry out the site plan that was approved. Yes, they could do that and that I think they could do whether we change the ordinance or not.

Mayor McKay – What you are proposing here, could they come in the following week and ask to put up a second plant because it is not a conditional use so they could say we want to put up a second plant?

Planner Ritter – Well, they would have to meet the same proofs. I guess the answer is they could. I'm not sure why they would. It might be more likely if they were going to do that they might ask to extend the one

Mayor McKay – Or they could expand the one they have or a competitor could come in and ask to build one.

Planner Ritter – Sure they could.

Mayor McKay – I thought that some of the folks here were asking for is that we would curtail that beyond the one that's already approved.

Planner Ritter – I understand that and that's an option that's potentially out there. I didn't feel that that was appropriate at this time. At least I explained that. The way I want to explain that is that we had sort of an issue floating around here. If, if we look at what the Highland's is basically saying, and that is that both the concrete manufacturer and the asphalt plant are considered major polluters, potential polluters, my concern is how do make the distinction that I decided that I can't if the asphalt plant should be not permitted but I'm going to take and allow the casting facility to be permitted, if

Mayor McKay – That's an existing use, that's already here.

Planner Ritter – I was just going to say to be consistent in the argument, you would then say that neither should be permitted because then you would say that I am basically addressing the Highlands in the most aggressive way that I can. I'm not going to allow any future expansion of the current concrete plant or if the other asphalt plant happens to put in for it, they'll build it but couldn't expand it you know and then you couldn't have it elsewhere. So, it is a question to me of consistency of how we look at it and I felt that if one is a major polluter and the other is a major polluter, you are either going to regulate it more or you will prohibit both of them and I thought this was

Mayor McKay – So what've done is propose a lot more regulation on the existing facility but we haven't done anything to curtail the expansion of the approved facility should they want to expand it some day or build ten new facilities. That's not

Chairman VanVliet – Both facilities can expand.

Planner Ritter- Both facilities can expand.

Mayor McKay – All right both can expand.

Planner Ritter – We're leaving both the option to go with if they wish.

Mayor McKay – Yeah, I know but I think that was the concern that if you let this get out of hand, you might have ten facilities down there and it's not going to look very nice.

Chairman VanVliet – The problem is you have to be consistent or you are going to be overturned.

Mayor McKay – There is an existing use that's already there that's grandfathered and then there is a new use or there is a new facility that's been approved but isn't built yet and we are at a point now where we can, I think, determine how many of those we want in the Township and I think that's what you were asked to do, is to tell us how we can do that.

Chairman VanVliet- That's the difficult problem. We already have a court case that indicates that. There's the Superior Court of New Jersey who has ruled that they're basically the same type of manufacturing and one is a pollutant, Highland's determines that one is a pollutant the other is a pollutant.

Mayor McKay – Yes, that maybe so, but you're talking about a minuscule amount of material being produced to cure on site, in molds, to make pipes that you are going to store in the yard and are going to sell as compared to massive amounts of materials that are going to be produced to take off site to use for construction projects where the product is cured on site, on construction sites. It's a huge amount of difference in material that's going to be produced in my view. I may be wrong but I think I'm right on that. Isn't that correct?

Member Pryor – Well, it's mixed and stored in vessels.

Planner Ritter- I'm reluctant to get into the manufacturing process because you know. I'll play devil's advocate just for the sake of it – the asphalt plant probably their biggest risk is spills while they are making it or transferring product or whatever and it's gone. You're right. It's cured offsite. The concrete plant actually puts all of its product out in its back yard, lets it sit in the rain, soak in the ground whatever's coming off of it going on in the town. So I don't know where the balancing act is in that and that's why I like to stay away from that actual issue. I don't know which one is having a greater impact on the ground water in town.

Member Pryor – George can I ask a couple questions. All right look you can get in and two plants. There was a ton of testimony submitted to the court and the court came to the conclusion and in the courts view the difference is between products or distinctions without substantive difference more importantly the manufacturer of each project encompassed within the language and spirit of uses permitted. So I think the court has gotten rid of that. We have an active suit. I think you have to recognize what the court says; it's going to be hard to implement something with all the testimony that's here. Even this business about permissive, there was a lot of testimony about permissive manner of the zoning. It says this was done logically and rationally in order to make it competitive in the quest for industrial type. It references Supreme Court case which said it is virtually impossible to numerate all the uses permitted. There is a ton of information in the court case that's been decided. I really don't even understand the difference between permissive and traditional at this point. Everything is saying the two uses are

equivalent. I don't see how you make that distinction. It seems to me if you are writing the one around concrete products plant, it has got to be a candidate for spot zoning in my mind. I do have a question in general. I mean we are eliminating a use, changing some other things. In my view, it is the cart before the horse thing. The Municipal Land Use Law talks about amending the Master Plan and then the zoning follows the Master Plan so, in my view, we are doing things a little backwards here.

Planner Ritter – Well, just to take you through what I thought we were looking at here, this is a report for discussion purposes. If the Board decides they like this, fine. We can develop an ordinance. If they decide they want something different, we can develop an ordinance. Quite frankly, if the Board was to instruct me that they wanted to make an ordinance that repealed it all, we could work on that but the point is, this is for discussion purposes as compared to what we have to do to turn this into an actual ordinance. The actual process to turn this into an ordinance besides coming up with the final wording that everybody is comfortable with we will have to and it can occur in several ways. It basically, the ordinance can be recommended to Council. Council sends it back to the Planning Board. The Planning Board will have to at least amend the Land Use Element of the Master Plan.

Member Pryor – Which requires a hearing on its own correct?

Planner Ritter – It requires a separate hearing on its own. It will require public notice. Since this is not going to be done in conjunction with a Re-examination Report, this is a standalone and since we are changing conditions within the district on specific use, this will require public notice, actual certified notice to everyone within the ROM District south of the railroad tracks. They will have to be individually noticed everyone in that district because if it was done as part of the Re-examination Report you just have to run it in the paper, this will require specific notice to at least 100 people and then they'll have to have a hearing on that. Then Council will have to hold its hearing and adopt or reject it. So there is a process that we have to still do that here. This is just the beginning.

Member Pryor – It's a lengthy one.

Planner Ritter – It is a lengthy process that we have to go through to get an ordinance ready and get it into the proper form and hold the public hearing.

Chairman VanVliet – It would still have to be approved by the Highlands. It would have to go before Highlands

Planner Ritter – They want to see it. That's absolutely right and we have to go through that and really what this is trying to do is layout some things for the Board to talk about, to think about and then quite frankly, to give us direction as to where you would like to go with.

Member Pryor – Yeah the other thing I have to say George, it seems to me with all the testimony, the judge's decision, the two uses are joined at the hip. It seems to me you have to treat them the same. If you don't want an expansion of the asphalt plant, you at the same time are going to have to restrict any expansion of the concrete plant. They are both grandfathered as I understand

it the asphalt plant assuming the litigation goes the way its grandfather for what three years before you can change the zoning for them?

Planner Ritter – Yeah it would be three years

Member Pryor – So, you essentially have two existing uses whether it is built or not, they are both grandfathered. What you can do, I think, is you could probably prohibit expansions but for that to be supported, you really have to consider what was in the case, what the testimony was and I think you would have to develop documentation of what's changed. Why, after all of this and they talk about twenty years of history in the case, why are we changing things now and I'm not saying that can't be done but that should be documented in my mind and all laid out. It's got to more than somebody handing an ordinance up to Council and saying this is what we want.

Planner Ritter – Well, what I think that I don't disagree with a lot of the things you've said. Clearly it was always the opinion of the Board and quite frankly the opinion that the town put forth in the law suit that these were essentially attached at the hip. They were two identical uses, virtually identical uses in terms of process and if you permitted one, the other one's permitted. So that is a very clear thing. The thing that I am suggesting is that the only thing that has really changed since the lawsuit of any significance is that the Highlands have come out with recommendations specifically that deal with the issue of potential pollution and interestingly enough they put both of these uses in the same category and that is why I was telling the Board I would be almost more comfortable to repeal both of them rather than leave one of them and do the other or the way that this ordinance is being proposed is to provide additional regulation to be sure they would meet Best management Practices and move forward from there.

Member Pryor- Well I'm agreeing with you almost. If I understand what you are saying, I think you would have to, you could repeal both like I said but you would have to develop justification for that otherwise the ordinance wouldn't be very defensible and they are joined at the hip so it seems to me you make conditional and you make them both permissible or you eliminate them together. I don't see how they, even the Highlands treats them the same way.

Planner Ritter – Well we could, I mean I'm not saying that we couldn't. I left the asphalt in the conditional use and moved the other one out but quite frankly, they could both be either permitted or conditional. They are both conditional now as far as that goes.

Member Pryor – Yes so how do you justify treating them differently at this point?

Member Fox – Well isn't that the whole part of the conversation is to see if we can or even if we want to.

Member Pryor – Whatever you do you have to have justification for it if the ordinance is going to withstand further litigation?

Mayor McKay – Isn't that what the Highlands came out with that they now consider very um

Member Pryor – And the same with the (inaudible) the same Highlands reg.'s

Chairman VanVliet – They are both grandfathered.

Member Johnson – I have a question just to be 100% clear on what we are talking about were putting concrete manufacturing into one general statement right now. There's two different types of concrete manufacturing. There's concrete manufacturing that the material is taken off-site to be built somewhere else and there's precast concrete manufacturing and I was looking at the definitions that were written up and it looks like there was a definition. It was concrete and asphalt manufacturing which takes the product brings it off-site. Then there is the precast manufacturing and (inaudible).

Planner Ritter – Yes, we're restricting it to the casting type operation but

Member Johnson – Why can't we separate casting type operations?

Member Pryor – The looked at that in depth and came to that conclusion

Chairman VanVliet – Came to that conclusion that they are approximately the same process.

Attorney Sposaro – And let me just jump in here more fundamentally the Highlands is treating them the same. So if the basis for the exclusion of one as opposed to the other is that it presents so environmental risk or problem. With the Highlands viewing them as equally potentially offensive environmentally what's the rationale basis for the arguments and that's as simply as I put it.

Member Johnson – And the Highlands is looking at precast versus

Attorney Sposaro – They look at that operation the same way as an asphalt plant. They put them, they lump them together. They don't distinguish between the two.

Member Johnson – The definition in here is way different.

Member Pryor – The court took a lot of testimony and they know exactly what each plant was going to do and the

Planner Ritter – What we tried to do two things just to – we did contact the Highlands and said do you guys, what's your definition of an asphalt plant and a concrete plant cause we'd like to know cause if you make a distinction maybe we should make a distinction. They make none. There line to us was doesn't matter is it is asphalt plants, whether is mixes casts, whether the concrete guy makes concrete, sells it off-site in bulk or casts the same thing. They didn't make a distinction. What we tried to do in the ordinance here since we were going from a more permission ordinance that says such as, we were going to provide specific definitions that limits the type of industrial type of activity that can take place there so that is matches what the current casting company does and provides a definition on the asphalt plant so that no one can expand that into manufacturing you know the oils, doing all sorts of stuff with it that we never did. That's what we tried to do is pull it down, which I think the town can do, pull it down into

specific definitions of the two activities and go from there. I think that's what we were trying to attempt to do is to make that distinction so it didn't include all concrete manufacturing activity it would include all asphalt manufacturing we tried to narrow it.

Member Fox – So it kind of sounds like making that distinction is kind of difficult and dangerous. So what if we went the other way and we went with the Highlands and we lumped it all together and then we took it and said okay what if we've had enough industrial and we want our ROM to be more research and office and we're kind of tired of all the concrete and the asphalt and everything and why don't we just restrict it all.

Planner Ritter – Well you can. As I said before, I'd be more comfortable if

Members talking over each other.

Member Fox – Concerned with truck traffic, commuting times, school, you know, all this other stuff and if more industrial and more manufacturing is just going to increase our traffic and our congestion on our streets and if that's what the residents are concerned with, well then lump it together. So what are the ramifications of lumping it together and trying to start to limit all that?

Chairman VanVliet – Then you get into a situation where you are going to be limiting all commercial development in the town and the history if you read through the history of all of the re-examinations of the master plans from the time they had the first master plan and I believe it was early 70's or 60's whatever it was was the concern that the township wasn't being supported enough by commercial development and it was causing the homeowner, residential community to bear the burden unfairly or not whatever you want to take as is that their taxes are going to go up and they are supporting all of the activities that are required by the education system, the municipal government

Member Fox – Do we still feel that way?

Chairman VanVliet – We still feel that way.

Member Fox – So we don't have enough commercial. We still want commercial?

Chairman VanVliet – And we're looking at right now eliminating our highway business operation on 57; there is a proposal before the Board to do that. We are looking at the operation of the old Ingersoll Rand property OPUS Developments now I-78 Commercial Park whatever it is and the traffic that is going to generate here. The idea of the improvement of the Strykers Road itself was to promote the industrial development along that area south of the railroad that parallels 57. If you are looking to rezone that area prohibiting manufacturing, industrial use, that includes office buildings and all that right on down the road you might as well cross off commercial development in this town.

Member Johnson – No there is a way to do it. I think there is a way to stop this heavy industrial. What we need to do is we need to expand

Chairman VanVliet – Let's get, you keep saying heavy industrial.

Member Johnson - All right there is a way to stop the concrete and

Chairman VanVliet - The court has determined that both are the same

Member Johnson – This is what you do, you take the Highlands restrictions, prohibit concrete and asphalt plants in Tier 1 and our master plan says we prohibit it in Tier 1, Tier 2 and Tier 3. We're not going to allow any more expansions or any more new asphalt or concrete

Chairman VanVliet – I don't know if we are going to be able to do that. We've already went with the Highlands and agreed to conform with their master plan.

Member Johnson - You are allowed to still be on and be above and beyond the Highlands (inaudible) this is just more conservative. Highlands isn't going to tell you now don't do that. This is more conservative. You're taking their regulations

Chairman VanVliet – All right so what do you want to do prohibit all industrial development in the town?

Member Johnson – No I want to expand the Highlands and say we don't want to see it in Tier 1, Tier 2 or Tier 3.

Member Olschewski – Can I ask a question? Prohibiting asphalt plants and concrete plants why does that automatically mean that I cannot have office buildings or any other

Planner Ritter –Maybe, no I'm sorry go ahead.

Member Pryor – I'll go first and you correct me if I'm off the wall here. I don't necessarily; personally I don't disagree with your proposal. I mean there may be a way where you can say okay I have these two plants and that's it. I don't want anymore. You might, I said this before, you might be able to do that. Do it carefully and document everything. One of the reasons you are not going to have an office park there, is there is no sewer and never will be. It was discussed in the court case. It's one of the reasons justifying why that's an industrial area. You need something that's a big building with few employees, you know, not much waste water. So you will never see a corporate park there. You might see a trucking facility, a place to store lumber, I mean things like that. There are going to have to be things that can be built and not have an intense wastewater use.

Vice-Chairman Gural – What about (inaudible) development in the sewer use?

Member Pryor – They are going down through P'burg and they're across the other side 22.

Vice-Chairman Gural – And they're going straight into P'burg?

Member Pryor – Yeah, they don't even come into Lopatcong, they just cross the site right?

Member Olschewski – The Bank of American deal which we had at one point (inaudible) sewer?

Vice-Chairman Gural – No that was Norfolk Southern moving dangerous chemicals across the rail line.

Member Pryor – I know the one; you're talking about the data center?

Member Olschewski – Yes. The (inaudible) would have been never happen either?

Member Pryor – They were going to pump all the way to Baltimore. I just got No. 1 you have constraints now at Baltimore and Captive Plastics just added, I don't know what'd they do Paul, double their flow?

Engineer Sterbenz – 14,000 gallons a day.

Member Pryor – So you are limited on what you can get through that Roseberry connection. So wastewater will always be an issue in that area. They were going to have equalization, a whole bunch of things. So the office park, I'd love to see one, I just don't see it in that area. So you are going to have a different type of development.

Member Olschewski – Okay but there are you say a lumber yard, right? (Inaudible).

Member Pryor – And I am too.

Member Olschewski – There are industries. You restrict asphalt and concrete which I agree with Jon why not but there are industries which are still possible there. A lumber yard would be possible. We have these facilities we have at the beginning. So I'm not sure why one forbidding these two uses would exclude all of them.

Member Pryor – No it eliminates the universe of opportunities each time you eliminate something it is a smaller pool of potential uses for that site and that's all I'm saying.

Member Olschewski – Okay. I agree but I don't want these other (inaudible) asphalt plants and everything that is detrimental to the health of the residents here. I don't want to have anyhow. I don't so but I'm (inaudible) if we can restrict these two needs to be restricted, both of them, do it and in regards to the best practices, I read through and there is a lot of stuff in there which makes a lot of sense and I'm wondering why it's not common practice to begin with.

Planner Ritter – It will be if we incorporate it into our regulations. It's not; right now it is just a piece of paper of best management practices. It's not been adopted by anyone.

Member Olschewski – That is something that should be done.

Planner Ritter – The Highlands are recommending it. Don't get me wrong but it has not been adopted.

Member Pryor- And George that wouldn't necessarily stop anybody. I mean they would just incorporate it in with their design.

Planner Ritter – Absolutely it would follow.

Member Pryor – It doesn't really matter.

Mayor McKay – Would that apply to other businesses in the town? Those standards?

Member Pryor – If they were part of that category.

Chairman VanVliet – (Inaudible) in the development in the zoned area they're going to have

Member Fox – Isn't any approval in our town subject to also meeting county, Highlands or state or federal requirements? Isn't it a guarantee inclusion that they meet the Highlands?

Chairman VanVliet – Absolutely and the asphalt plant that was approved would have those barrier systems as part of the conditions that (inaudible)

Member Fox – That was just one of my, I didn't, you know, one statement I had took us on a thing. I had other more generic questions about the write up and that was one of them. You know, including that Highlands as a conditional use seemed it was nice that it would have been written in our regulations but isn't it already assumed that those requirements have to be met

Planner Ritter – No.

Member Fox – by anything that is developed meeting those other county and state requirements?

Chairman VanVliet – Not unless you specifically state it in the conditional approval of the area, nothing requires them to do it.

Member Fox – Wow. Okay.

Planner Ritter – They'll have to get whatever various state approvals relate to their use but the specific standards in there like making sure nothing can get offsite, lining basins unless you have that in your ordinance per say, then it comes up to whatever the state asks for in their requirements.

Member Fox – And they may not ask for that.

Planner Ritter – That's right. We can ask what we think is an appropriate means to control that.

Chairman VanVliet – Another thing you have to look at when you are doing these types of things is will it be overturned if someone decides to come in here. We turned them down because they don't want to do this stuff but if it is standard practice and they take us to court, we can't give a reasonable amount of reasons why we turned them down, it's going to be either kicked back to

the Planning Board for re-review or it is going to be overturned. We tried; we've always tried to make sure that what we craft is sustainable if it went to a court decision. It comes into a lot of different areas including converting apartment units from two bedrooms to three bedrooms. There have been court cases on that type of development. We have not been sued too often on other aspects but it is a possibility to do that that's why we went to the conditional asphalt. There's 32 pages of conditions for the asphalt plant to build. A lot of the stuff that we are talking about here was incorporated in there about stormwater management systems, you know, that it is not directly being fed into streams, tried to go with the best practices available at the time but you just say I don't want that in my back yard

Talking over each other

Chairman VanVliet – their proposal that he submitted to the Board and that becomes another problem we have here with that and if we continue on with these to go forward and come up with a recommendation for Council is his bias towards the concrete plant and bias against the asphalt plant

Member Olschewski – Concrete, asphalt all the same.

Chairman VanVliet – But that's not in his, the request he has before the Board. The other thing is that comes down to is the fact that is he biased to the point where he should recuse himself from these discussions and any vote. It is going to become a question. It is your proposal that you submitted to the Board. Am I correct?

Member Johnson – It is a starting point so we can get this discussion going absolutely.

Chairman VanVliet – The point is it was your proposal to come into the Board. You've demonstrated in the past, you've written information that you are totally against the asphalt plant.

Member Johnson – I'm totally against any industry that's going to bring in a dangerous (inaudible).

Chairman VanVliet – You didn't say any industry, you said

Member Johnson – Don't put words in my mouth Gary. Don't do it. Don't put words in my mouth.

Chairman VanVliet – Did you, when you were campaigning, were you going around and the information you put out indicated that it was every industry that was (inaudible) or did you say asphalt plant.

Member Johnson – No. First of all this is not even an appropriate conversation to have.

Chairman VanVliet – Yes it is. I'm not talking about your campaign; I'm talking about your bias situation on this Board.

Member Johnson – I don't have a bias situation on this Board. If it's biased to make sure that the health and safety of our town – that's what every single person that's up here is doing Gary – every single one of them.

Chairman VanVliet – You have already expressed a public opinion on it. According to the definition for members of the, Class IV members of the Board, that put you in the position of having a biased against a certain thing. The other thing is that the applicant we're talking about here or the person that you are defending here which is Precast Concrete was one of the plaintiff's in this lawsuit. So it's the lawsuits response is directly effecting, as the plaintiff he's directly effecting this Board.

Member Johnson – (Inaudible) Gary because we're talking about future plans. It has nothing to do with the current facilities. It has nothing to do with it. This is all about how we move forward in the future. You are turning it into something that it is not.

Chairman VanVliet – No. You expressed those opinions.

Member Johnson – About the future of our township.

Chairman VanVliet – About the asphalt plant on Strykers Road and that could put you in a position if someone came back to us and they looked at this decision and you voted on it that it could be overturned.

Member Olschewski – (Inaudible). I think he has just said he has no bias and he is absolutely fine with

Chairman VanVliet – That's what the Board has to decide. Whether he is biased or not.

Member Olschewski – Okay.

Chairman VanVliet – And that's not my opinion. If you read the New Jersey It would be a vote of this committee, this Board.

Member Fox – No I'd rather stay on topic as (inaudible) but the proposal for how and where we can go forward addressing zoning of the ROM that's the topic of tonight's discussion.

Chairman VanVliet – That leads to another problem. The problem becomes who pays for it?

Members Olschewski – Pays for what?

Chairman VanVliet – This exercise you want to go through with the re-examination of the master plan. It's a standalone.

Member Olschewski – Gary, I mean no disrespect but for me personally the wellbeing of the residents is not something you can weigh in a couple of thousand dollars. For me you cannot.

Chairman VanVliet – Okay. There’s also

Member Olschewski – The wellbeing of the residents is more important than saving a couple thousand dollars.

Chairman VanVliet – Okay, well then there, I, also a provision in our Land Use and Zoning Law – since Mr. Johnson submitted the application to the Board or the proposal to the Board, that he is required to make a deposit of \$1,000 to the Township and if it exceeds that amount for doing this, he will be responsible for that amount.

Member Fox – Wow. I would hope that if I would propose something in the future that I’m told before we actually schedule and have the meeting that I’m going to owe a \$1,000. Cause in the future if I make

Chairman VanVliet – All we have done so far is request our planner to come back to report

Member Fox – So he doesn’t owe the \$1,000 yet?

Chairman VanVliet – No.

Member Fox – Okay.

Chairman VanVliet – If we are going to go forward with his proposal and that’s what we were acting, this is the reaction to that

Member Fox – Because it is a special meeting or if we want to change zoning.

Chairman VanVliet – Because any applicant that comes in that proposes something to us.

Mayor McKay – Can we hear from the Planning Board attorney on this matter. Is Mr. VanVliet’s assessment of this is the same as your assessment of this?

Attorney Sposaro – I need to look at what Gary was referring to.

Mayor McKay – Okay.

Member Pryor – May I approach this another way? Let’s forget about the \$1,000 for the moment. But to do this proposal correctly, is going to take time, it’s going to take planning services, it’s going to take engineering and the question is how do we fund that? We’d have to get some money from the town and increase our budget. In my view, none of this is affordable unless we revisit the master plan. We have a ton of testimony that says our plan is our plan because of this reason. Experts testified we have a court rule. Now we have to explain what’s changed and why we want to do this and in my view that’s the only way you come up with the supportable ordinance. So the question is, it isn’t free, it’s not something discussed among nine guys here. There is a lot of work involved and a lot of time involved. Correct?

Chairman VanVliet – Absolutely. The other thing is that we can have it done and we can accomplish this because, if I'm not in error George, we will be having to do the re-examination of the master plan with Highlands. We already agreed we would come into conformance and in order to do that we would have to re-examine the master plan.

Planner Ritter – Yeah we still have to, which we have not looked at in quite a while, we will have to look at adopting the regulations for the town center and other Highlands regulations to bring us into conformance with the plan and that would normally be done under re-examination.

Member Fox – So why wouldn't all of this discussion and changes just take place as part of that redevelopment?

Planner Ritter – Well that could

Chairman VanVliet – The other thing is that the Highlands would pay for it. There is grant money available for us to do this. We would incorporate all the

Member Fox – It has already been stated that this process takes a long time so if we start it now, by the time we are ready to do the actual changes, we discussed it and were unified and we know what changes we want done.

Attorney Sposaro – The difference here is that there were some Board members that asked that consideration of this particular issue be expedited and taken outside of the normal process of the re-examination of the periodic re-examination of the master plan. That's what makes it different. That's what carves it out. George, if the conditional use standards were tightened for we'll call it, precast and for an asphalt plant, would that be necessarily be inconsistent with the existing master plan?

Planner Ritter – No. I don't think it would be the actual design standard of what we seem to do. I don't see that as raising to the level to be inconsistent with the master plan in terms of how they governed. If we start changing how they, where they permitted, not permitted, I think that clearly goes beyond that.

Member Fox – Would the inconsistent, it is not uncommon for townships or counties to take NJDEP regulations and make them a little bit stricter in their own towns? You know, it's, you can have ordinances that as long as they meet the minimal requirements at the state or federal you can have them so, to a point so that's where my question comes in. If perhaps we took it just a step further from the Highlands and say okay right now the major potential contaminant sources are not allowed in Tier 1 protected areas. Well what if our township went to Tier 1 and Tier 2? That wouldn't eliminate all areas of the ROM just the areas where we have Tier 2 in the ROM. So we just can find them a little bit more but it's not unduly I wouldn't think.

Chairman VanVliet – A lot of things come into factor. Actually who has the jurisdiction control there. Is it the DEP or the township?

Member Fox – I thought we'd make those conditions. We just stated

Planner Ritter – Just what I can add to the concrete, the Highlands recommendations are considered to be minimum standards.

Member Fox – Minimum standards.

Planner Ritter – The town may enact standards that it feels it's more appropriate they can be more stringent they can do that. The Highlands don't, the Highlands are not saying that their regulations are to be to end all. They are the minimum.

Member Woolf – When the Highlands Council was formed and took 800,000 acres out of north Jersey we did not have to answer to the Highlands Council. They took it on their own behalf and now they are starting to mandate what the rules are.

Member Fox – We opted into those as a town.

Member Woolf – We have a choice.

Member Fox – And we are choosing to opting into those regulations.

Member Woolf – If you know the situation of what it would cost you if you don't opt in, you'll have a change of heart.

Engineer Sterbenz – We chose to align our master plan with the Highlands Regional Master Plan, the whole town not just the preservation area.

Attorney Sposaro – I have a suggestion a pragmatic suggestion here. See if I can summarize where we are and I'm not trying to cut it off but we beat this up pretty bad. George has recommended and I have recommended that you treat precast and asphalt plants the same. He has also indicated to you that by tightening up the conditional use standards allowing them to remain permitted uses we won't necessarily have to conduct a re-examination of the master plan. We don't need to go through that entire process. Tightening those standards could be consistent with what the DEP is saying, I'm sorry, with what the Highlands is saying and it is not inconsistent with our existing master plan. Why don't you give, if it is the Board's desire to tighten those restrictions, why don't you give, instead of all of you and I say this respectfully trying to be planners and coming up with the way to do it, why don't we ask George to give that some consideration on how those standards can be tightened to achieve what you are looking to achieve but also to treat all the businesses in that zone district equally and fairly with and ordinance amendment that is consistent with our master plan. I think that's the best way to skin the cat if that's the way you want to go and just keep this in mind too and then I'll shut up. There was comment earlier about Precast and coming in for an application not so long ago. Precast is essentially built out; there isn't anything else as a practical matter that they can do on that property. So if you are looking to protect Precast in some way, I wouldn't be overly concerned because there's not much else they can do there. Just keep that in the back of your mind.

Engineer Sterbenz – They were approved for 88/89% coverage through variances through the Board.

Member Pryor – Tony may I add one thing? I have agreed with everything that you've said but before I would commit to the tightening, I'd like to see the impact of that, what part of the zone is effected and in what manner and a prudent way to proceed.

Attorney Sposaro – And towards that end, given George the opportunity to reflect upon that and come up with some ideas and to again report back to us and tell us okay this is the practical effect not only on an asphalt plant and Precast but on the other uses that exist and are permitted in the zone district. So you don't unwittingly try and stamp out what you perceive to be a problem and shoot yourself in the foot by creating another problems or another problem for another business that may want to operate there or is operating there. That's my suggestion.

Mayor McKay – I like your suggestion.

Member Gural – I'm going to put this \$1,000 comment that everybody's attention – it's not applicable because it is under the applicant section of the code here and it says right here it is for development alternatives. This is under the applicant's process an applicant who wants to develop something.

Attorney Sposaro – I'll will take a look at that but I don't think we should get hung up on that right now nobody is asking anybody to write a check. Instead of getting sidetracked on that, if what I've said makes sense, unless anybody else has their two cents to offer I would recommend that you make a motion to authorize George to look at tightening the restrictions with a view towards what impact it will have not only upon the existing and proposed operations that are concrete related but all of the other permitted uses in the zone and let's see what we can come up with.

Member Pryor – And I'll make that motion.

Mayor McKay – Second

Chairman VanVliet – Will you roll call – discussion? Roll call Beth please.

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

NAYS: None

Member Fox – The summary description was better than the written. I was very confused by the written report. It didn't seem, once you explained it I could start to see where it was falling in but reading and coming in tonight it seemed like all we were doing was removing conditional conditions and making everything permitted and I don't think that just removing the words such as but not, did everything you said.

Attorney Sposaro – It is exceedingly complex and not always easy to (inaudible).

Member Fox – Coming in tonight I wasn't sure how any of this was going to play out by removing those four words.

Public Comment –

Lori Ciesla – 12 Meadowview Drive – One of the big issues Maureen McCabe and she ran on was the whole asphalt plant and the ROM zone and I know we started the process back in 2013 we ordered some kind of examination at one point. We got a report from George Ritter in 2014 but with the litigation going on it was slow. Somebody up here said what we have said don't rush it. Do keep in mind that you have to be fair across the board and one of the things I noticed you were saying is that the Highlands considers them to be major pollutants – where there other industries considered and would we want to restrict those as well. Precast wrote a letter to the editor supporting Eric Johnson for that – a lot of us donated to Lopat Speaks and we really have to be careful and if there are other major pollutants let's get rid of all of them. Other additional uses that was thought to add that aren't polluters should be thought of.

Motion to adjourn by Member Pryor, seconded by Mayor McKay. All in favor.

Respectfully submitted,

Margaret B. Dilts
Secretary

Planner Ritter -

April 19, 2016

Lopatcong Township / Planning Board

Eric Johnson Rezoning Request ROM zoning district

A proposal to amend:

Permitted and Conditional Uses in the ROM Research Office and Manufacturing Zone

A proposal to amend the list of Permitted and Conditional Uses found in the ROM Research Office and Manufacturing zone was introduced by several members of the Lopatcong Planning Board at its regularly scheduled meeting of January 27, 2016. The proposed amendment sought to:

- Repeal § 243-77.6 and § 243-77.7 of the Township's Zoning and Land Use Code that permit asphalt and concrete manufacturing facilities and resource recycling facilities as conditional uses in the ROM zone south of the Norfolk Southern Railroad.
- Amend § 243-75 A to allow as a permitted principal use precast concrete / stone manufacturing facilities within the ROM zone district south of the Norfolk Southern Railroad and add regulations for such facilities.
- Add a new definition to Chapter 243 for "precast concrete / stone manufacturing facility".

- Amend the definition of the term “concrete manufacturing facility”.

The matter was discussed and further action on the amendment was deferred until the Board’s regularly scheduled meeting of March 23, 2016.

At the Board’s meeting of March 23rd, a draft of the proposed amendments to the conditional use standards was circulated to Board members for further discussion. The draft amendments were prepared by a member of the Board. The Board, after deliberation, requested that the proposed amendments be reviewed by the Township professionals and instructed the Township Planner to prepare a report on the possible impacts of the zoning amendments on the Township Master Plan and Zoning Ordinance. The report is to be considered by the Board at a special meeting scheduled for April 21, 2016.

Items of Concern

The question has been raised about the appropriateness of permitting or expanding such facilities in any zone district in Lopatcong Township. To this end, a careful review of the planning and land use items that could affect the location or expansion of an asphalt and or concrete manufacturing facility has been conducted. They include the factors previously mentioned – proximity to similar industries and residential development; and access / circulation – plus consideration of Highlands Plan Conformance requirements.

The question is should the current Township regulations permitting as conditional uses, industries that utilize asphalt and concrete as base materials for manufacturing of products, be allowed in the ROM zone. The major issues revolve around the questions of what uses are to be considered permitted uses and if permitted, where the uses should be allowed. ROM Amendments 4/19/2016 Report

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There has been some confusion about whether or not specific industrial manufactures would be considered a permitted use in the zone district. Current regulations for the ROM Zone permit, as a principle use, industries that process, assemble, package or store products made of cement or concrete [§ 243-75.A.(3)(b)]. The misperception appears to surface when the question is asked: *Is the applicant manufacturing products using cement or concrete that is produced from raw materials (i.e., stone aggregate, sand, etc.) and combined on-site a permitted use?* The regulations do not provide any language that help to answer this question. No definition, references or examples of what a concrete / cement product is or how such a product is manufactured have been provided. Rather, § 243-75. A. stipulates: *Permitted principal uses shall be as follows: (3) Industry which involves only the processing, assembly, packaging or storage of previously refined materials, such as but not limited to the following industries: (b) Fabrication of products made of metal, wood, paper, cement or concrete.*

The ambiguous language in the regulation is “*previously refined materials*”. The meaning of this phrase and the intent of its inclusion in the regulation can be interpreted differently. For example, “*previously refined materials*” may be: 1) the raw materials needed to make concrete, such as stone, cement, sand and water; or 2) the concrete itself. In the first instance, a business manufacturing products made of concrete, such as storm drainage pipe, would be permitted to use concrete that is made on-site by combining the raw materials (stone, cement, sand and water). Using the second example, the “*previously refined material*” would be the concrete that is made off-site and brought in to make the pipe. The proposed amendments seek to remedy the issue regarding ambiguous language

The locational issue is with regard to asphalt and concrete manufacturing facilities, which are conditional uses permitted in the ROM Zone south of the Norfolk Southern Railroad. The area was chosen because of its proximity to similar industries; vehicular access / circulation characteristics of the area; and the lack of nearby residential development. Further, the ordinance that permits the use in the ROM zone was found to be consistent with the Township’s Master Plan.

No changes with regard to proximity factors have occurred since adoption of the conditional use ordinance permitting the facilities. As for vehicular access and circulation, there have been no new or amended ordinances introduced or adopted by the Township that would change the circumstances influencing location of an asphalt or concrete manufacturing facility in the ROM south area, which remains as the most appropriate zoning district based upon this criteria.

The one circumstance effecting the location of such facilities in the Township is conformance with the Highlands Regional Master Plan (RMP). Since adoption of the asphalt / concrete manufacturing facility ordinance in 2011, Lopatcong has adopted a Highlands Master Plan Reexamination Report and Highlands Master Plan Element. Both documents were adopted by Township Council in 2013 in furtherance of the Township’s petition to seek Highlands Plan Conformance.

Highlands Plan Conformance

The research conducted for this report included a review of the Highlands Regional Master Plan. The Township is located in the Highlands Region with lands in both the Preservation Area and Planning Area. Further, large portions of the Township are located in the Lopatcong Township Highlands Center. The ROM Amendments 4/19/2016 Report

Township has elected to conform to the Highlands Regional Master Plan (RMP). Plan conformance requires municipalities to adopt and / or amend zoning ordinances that carryout the goals and objectives of the RMP. In furtherance of that requirement, the Ordinances in question have been examined to determine if any conflicts exist between the Ordinances and the proposed amendments, and the RMP. The Ordinances permit development of asphalt and concrete manufacturing facilities and resource recycling facilities as conditional uses in the ROM zone south of the Norfolk Southern Railroad (ROM South). The ROM South district is in the Highlands Planning Area and the Lopatcong Highlands Center. In 2011, the Planning Board approved a site plan for an asphalt and concrete manufacturing facility and a resource recycling facility on property located in the ROM South zone pursuant to the Ordinances. With respect to asphalt, concrete and resource recycling facilities, the primary issue to consider with regard to RMP conformance is environmental impacts to ground water supplies. Pursuant to the RMP, factors that may negatively impact ground water are geologic in nature – location in or proximity to carbonate rock (Karst) topography, prime groundwater recharge areas and wellhead protection areas. All areas in the Highlands Region underlain with carbonate rock are collectively known in the RMP as the Carbonate Rock Area: The majority of Lopatcong Township is located in the Carbonate Rock Area. Further, all of the lands in the ROM South district are in the Carbonate Rock Area. With regard to ground water recharge, all of the undeveloped lands in the ROM South district are located within a prime ground water recharge area. Wellhead protection areas Tiers 2 and 3 cover a portion of the ROM South district west of Stryker Road – no Tier 1 area has been mapped in the ROM South district. Full conformance with the RMP requires the Township to adopt a Highlands Land Use Ordinance (Highlands Ordinance). Lopatcong Township has not yet completed such an ordinance, but a review of the 2012 model document prepared by the Highlands Council for use by conforming municipalities reveals: a) asphalt and / or concrete manufacturing facilities are listed as a Major Potential Contaminant Source (PCS); and b) development of any activity listed as a PCS in a Prime Ground Water Recharge Area (PGWRA), Carbonate Rock Area (CRA) or Wellhead Protection Area (WHPA) requires:

Best Management Practices. All Major PCS facilities shall be designed in a manner that prevents the unintentional discharge of toxic or hazardous pollutants to ground water, surface water bodies, or the land surface, from all internal and external areas, including loading, storage, and transfer areas, in accordance with the provisions of this section. (*Highlands Ordinance § 6.9.3. A.*)

Further, the Highlands Ordinance prohibits development of asphalt and / or concrete manufacturing facilities in a Tier 1 WHPA:

Wellhead Protection Area, Tier 1. Any principal or accessory use or structure related or devoted to such use, which is designated by the Highlands Council as a Major or Minor Potential Contaminant Source (PCS), where otherwise permitted by the municipal ordinance, is expressly prohibited from that portion of any Tier 1 Wellhead Protection Area lying within 200 feet of the wellhead. (*Highlands Ordinance § 5.2.3. B.*) ROM Amendments 4/19/2016 Report

RECOMMENDATIONS

The following recommendations are offered for the Board's consideration. They address issues discussed above regarding principal and conditional uses permitted in the ROM Zone and conformance with the Highlands. Further, the Board's desire to add *precast concrete / stone manufacturing facilities* as a permitted use in the ROM Zone and to prohibit Resource Recycling Facilities in the Township are addressed.

Principal uses permitted in the ROM Zone

▫ Amend § 243-75. A. (3), which identifies permitted principal uses as *Industry which involves only the processing, assembly, packaging or storage of previously refined materials, such as but not limited to the following industries:* as follows:

Remove the words *such as but not*. The amended paragraph would then read: *Industry which involves only the processing, assembly, packaging or storage of previously refined materials, limited to the following industries:*

This amendment specifies certain uses as those that are permitted in the zone. A use that is not listed would be prohibited in the district.

- Amend § 243-75 A to add *precast concrete / stone manufacturing facility* as a permitted principal use in the ROM zone south of the Norfolk Southern RR.
- A definition for *precast concrete / stone manufacturing facility* should be added to the definition section of Chapter 243 Zoning & Land Use (§ 243-5).

The term "precast concrete / stone manufacturing facility," as used in this chapter, is a manufacturing facility for the creation of concrete building products by pouring standard concrete into specific forms and curing the products on-site; and includes the production of the concrete by combining cement, water, various aggregates and other ingredients on-site for use in the manufacturing of such concrete building products. A precast concrete / stone manufacturing facility does not include an establishment primarily engaged in mixing and delivering ready-made concrete for use in construction projects off-site. Precast stone is distinguished from precast concrete by use of a fine aggregate in the mixture, so that the final product approaches the appearance of naturally occurring rock or stone.

▫ Add regulations for precast concrete / stone manufacturing facilities regarding location, hours of operation and outdoor storage as follows:

Precast concrete manufacturing facilities may only be located in the ROM Zone south of the Norfolk Southern RR.

Precast concrete manufacturing facilities may operate as necessary on a twenty-four hour basis seven days a week.

Outdoor bulk storage shall be a permitted accessory use subject to § 243-64.2 and § 243-75 D. (4).

Outdoor equipment storage shall be permitted pursuant to standards set forth in § 243-75 D. (5).

ROM Amendments 4/19/2016 Report

Precast concrete / stone manufacturing facilities located in an area designated by the New Jersey Highlands Council as Carbonate Rock Areas and / or Prime Ground Water Recharge Areas, the facilities shall be designed in accordance with Best Management Practices pursuant to Highlands regulations (see attached BMPs). Precast concrete / stone manufacturing facilities shall be prohibited from locating within a Tier 1 Well Head Protection Area.

Conditional uses permitted in the ROM Zone

- Redefine the term “asphalt manufacturing facility” (§ 243-77.6 A) and move the term to § 243-5 Definitions.

The definition should be amended to clarify that these facilities manufacture paving products made of asphalt, but do not include the making of asphalt as follows:

The term "asphalt-manufacturing facility," as used in this chapter, is a manufacturing facility for the creation of asphalt and tar paving mixtures (bituminous concrete); and paving blocks made of asphalt and various compositions of asphalt or tar with other materials; and includes the storage and dispensing of the asphalt paving mixtures. An asphalt manufacturing facility shall not include an establishment that is primarily engaged in producing asphalt and asphaltic materials.

- Amend § 243-77.6 to delete the definition for the term “concrete –manufacturing facility” (subsection B); and remove all references to *concrete manufacturing facilities* subsection C, d and E.
- Add a new subsection to read as follows:

Asphalt manufacturing facilities located in an area designated by the New Jersey Highlands Council as Carbonate Rock Areas and / or Prime Ground Water Recharge Areas, the facilities shall be designed in accordance with Best Management Practices pursuant to Highlands regulations (see attached BMPs). Asphalt manufacturing facilities shall be prohibited from locating within a Tier 1 Well Head Protection Area.

- Amend § 243-75 C Conditional uses... to delete subsection (3) *Concrete-manufacturing facility*.

Conformance with the Highlands Regional Master Plan

Add language to the sections of Chapter 243 that regulate *asphalt and precast concrete /stone manufacturing facilities* for the purpose of conforming to requirements of the New Jersey Highlands Council regarding suitable locations for development of such facilities.

- § 243-75 A. Asphalt and/or precast concrete / stone manufacturing facilities may only be located in the ROM Zone south of the Norfolk Southern Railroad. When such facilities are located in an area designated by the New Jersey Highlands Council as Carbonate Rock Areas and / or Prime Ground Water Recharge Areas, the facilities shall be designed in accordance with Best Management Practices pursuant to Highlands regulations (see attached BMPs). Asphalt and / or precast concrete / stone manufacturing facilities shall be prohibited from locating within a Tier 1 Well Head Protection Area.

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Resource Recycling Facilities

The Board has expressed concerns regarding the storage of potential contaminants associated with Resource Recycling Facilities as defined in Chapter 243. It is the Board's desire to prohibit such a use from all zoning districts in Lopatcong Township. To accomplish this objective, the following action is necessary.

- Repeal, in its entirety, § 243-77.7 Resource Recycling Facilities.

Source: Model Highlands Area Land Use Ordinance December 2012

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A. **Best Management Practices.** All Major PCS facilities shall be designed in a manner that prevents the unintentional discharge of toxic or hazardous pollutants to ground water, surface water bodies, or the land surface, from all internal and external areas, including loading, storage, and transfer areas, in accordance with the provisions of this section.

1. All portions or areas of a facility in which hazardous substances or hazardous wastes are stored, processed, manufactured or transferred outdoors, shall be designed so that the discharges of hazardous substances will be prevented from overflowing, draining, or leaching into the ground water or surface waters.

2. Containers in which regulated substances are stored must be clearly and visibly labeled and must be kept closed and sealed when material is not being transferred from one container to another.

3. Wherever hazardous substances are stored, processed, manufactured or transferred outdoors, the design features shall include secondary containment and/or diversionary structures which may include but are not limited to any one or a combination of the following:

a) Containers, dikes, berms or retaining walls sufficiently impermeable to contain spilled hazardous substances, for the duration of a spill event.

b) Curbing.

c) Gutter, culverts and other drainage systems.

d) Weirs, booms and other barriers.

e) Lined diversion ponds, lined lagoons and lined retention basins, holding tanks, sumps, slop tanks and other collecting systems.

f) Drip pans.

4. Secondary containment and/or diversionary systems, structure or equipment must meet the following standards:

a) The system must block all routes by which spilled hazardous substances could be expected to flow, migrate, or escape into the ground water or surface waters.

b) The system must have sufficient capacity to contain or divert the largest probable single discharge that could occur within the containment area, plus an additional capacity to compensate for any anticipated normal accumulation of rainwater.

c) In order to prevent the discharge of hazardous substances into ground water, all components of the system shall be made of or lined with impermeable materials sufficient to contain the substance for the duration of a spill event. Such material or liner must be maintained in an impermeable condition.

d) No manufacturing area, processing area, transfer area, dike storage area, or other storage area, or secondary containment/diversion system appurtenant thereto shall drain into a watercourse, or into a ditch, sewer, pipe or storm drain that leads directly or indirectly into a surface or subsurface disposal area, unless provision has been made to intercept and treat any spilled hazardous substances in an NJDEP approved industrial wastewater treatment or pre-treatment facility, or other NJDEP approved facility.

e) Outdoor storage of regulated substances in regulated containers and the containment structure must include a cover to minimize accumulation of water in the containment area and contact between precipitation and storage container(s).

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5. Catchment basins, lagoons and other containment areas that may contain hazardous substances shall not be located in a manner that would subject them to flooding by natural waterways.

6. Stormwater shall be managed so as to prevent contamination of ground water, and so as to be in accordance with applicable laws and regulations of the state of New Jersey, and of the municipality.

7. All transfers of petroleum from delivery trucks and storage containers over five gallons in capacity shall be conducted over an impervious surface having a positive limiting barrier (e.g. berm, lip) at its perimeter

B. *Compliance Mechanisms.* Any of the following permits and authorizations shall be considered equivalent to the best management practices of this Ordinance. As applicable to the PCS involved, these may also be submitted in lieu of an Operations and Contingency Plan, as otherwise required under subsection § 6.9.3.C, following.

1. A NJPDES permit approved by NJDEP pursuant to N.J.A.C. 7:14A;

2. An underground storage tank approved by NJDEP under N.J.A.C. 7:14B;

3. A Discharge Prevention, Containment and Countermeasure Plan (DPCC) approved by NJDEP pursuant to N.J.A.C. 7:1E;

4. A hazardous waste remedial action approved by NJDEP pursuant to N.J.A.C. 7:26B, 26C, 26D or 26E, or by the United State Environmental Protection Agency pursuant to the Resource Conservation Recovery Act (RCRA) or the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA);

5. A hazardous waste facility approved by NJDEP pursuant to N.J.A.C. 26G;

6. Approval by the SCD of a Farm Conservation Plan or Resource System Management Plan pursuant to N.J.A.C. 2:92, (see § 6.10.4 below and APPENDIX E);

7. A solid waste facility approved by NJDEP pursuant to N.J.A.C. 26H; and

8. A high-density Animal Waste Management Plan, an Animal Waste Management Plan, or a Comprehensive Nutrient Management Plan, as appropriate, developed pursuant to N.J.A.C. 2:91.

C. *Operations and Contingency Plans.* Unless one of the permits or approvals listed at § 6.9.3 B.1-8 above is provided, or the applicant certifies that no potential contaminants will be stored, discharged, manufactured or used on-site, as a condition of approval of any application involving a Major PCS, the applicant shall prepare and obtain approval of an Operations and Contingency Plan in accordance with the requirements herein. No Certificate of Occupancy or Approval (as appropriate) for the development shall be issued until or unless the qualified professional authorized to administer these provisions verifies that the Operations and Contingency Plan has been approved and is on file with the appropriate entities.

D. *Approval of Operations & Contingency Plans.* The proposed Operations and Contingency Plan shall be submitted to the Board of Health (or equivalent acting authority), Fire Department, Police Departments and Office of Emergency Management, as applicable. These agencies shall review and make any appropriate recommendations for approval or modifications of the Operations and Contingency Plan. The applicant shall incorporate the recommendations to produce a final document, for review by the designated municipal professional and each of the participating agencies. The designated municipal professional shall coordinate the agencies' responses to ensure

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that the final Plan addresses all concerns of substance. Upon approval by the designated municipal professional, the Plan shall be filed with all applicable entities and put into effect as indicated therein. In the event of any irreconcilable issue in developing or finalizing the Plan, it shall be provided as proposed, to the reviewing Board, along with the recommendations of the designated professional, the participating agencies, and the applicant and applicant's agents and professionals. A decision by the reviewing Board shall be final.

E. *Required Content of Operations & Contingency Plans.* An Operations and Contingency Plan shall be developed, where required under this Ordinance, for each Major PCS or group thereof (where multiple sources exist within a single facility owned and operated by a single entity) and shall address the following elements. The Operations and Contingency Plan must demonstrate that the potential for a significant discharge is the lowest technologically feasible:

1. Documentation of the applicable Major Potential Contaminant Sources existing and proposed for the site;
2. Types and quantities of hazardous substances or wastes that may be used, discharged or stored on site;
3. Means used to prevent the spillage, leakage or discharge of such materials;
4. Means to be used to contain or remedy accidental spillage, leakage, discharge or migration of such materials from the site directly or indirectly into ground water;
5. At a minimum, utilize best management practices as defined by § 6.9.3 and as specified by NJDEP and the United States Environmental Protection Agency, including but not limited to the regulations and guidance in the following areas: Discharge Prevention Containment and Countermeasures [N.J.A.C. 7:1E-4.2 (or most current)], Spill Prevention Control and Countermeasures [40 CFR 112.3 et seq.(or most current)], Stormwater and Non-point Source Pollution Control Best Management Practices Manual [NJDEP, April 2004 (or most current)].
6. Specific training of facility personnel to contain or remedy accidental spillage, leakage, discharge or migration of such materials from the site directly or indirectly into ground water, or surface water bodies or the land surface that provide recharge to the underlying aquifer.
7. Procedures including a contact list and phone numbers for notifying the appropriate administrative authorities, including but not limited to NJDEP, the local fire and police, local office of emergency management and the Board of Health, regarding any spillage or discharge of such materials; and
8. Demonstration that the proposed facility is designed to employ best management practices to the maximum extent feasible.

F. *Confidentiality Protections.* Any information included in an Operations and Contingency Plan which constitutes proprietary commercial or financial information, or is otherwise protected from disclosure under 7 CFR Part 205.501 and 205.504 or the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., shall be held confidential by all local entities participating in its review or implementation, subject to the limitations set forth therein.