

TOWNSHIP OF LOPATCONG
SPECIAL PLANNING BOARD MEETING

April 6, 2017

The meeting of the Planning Board of the Township of Lopatcong was called to order by Chairman Johnson at 7:00 pm.

Present: Members Fitzsimmons, Fox (arrived 7:04), Pryor, Schneider, Woolf, Mayor McKay, Vice-Chairman Olschewski, Chairman Johnson, Alternate Fischbach. Also present was Planner Ritter and Attorney Sposaro.

A silent prayer was offered followed by the Oath of Allegiance.

Chairman Johnson 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."

Business:

Minutes- March 9, 2017 – Motion by Vice-Chairman Olschewski, second by Member Fitzsimmons.

Roll call Vote:

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

NAYS: None

ABSTAIN: Member Schneider, Alternate Fischbach

Swear In – Attorney Sposaro swore in Carlos Correa.

Vice-Chairman Olschewski – Beth before we carry on here. Have we figured out who Carlos is replacing? I think Tom said

Secretary Dilts – Well, Mr., Mayor McKay said Mr. Gural. On the website it's just a vacancy with a term.

Secretary Dilts - So he will assume that vacancy with the term. I have to look back in the records and see just who it was I (inaudible).

Vice-Chairman Olschewski - and Donna I think we discussed this today is the replacement for Pete Pisello right?

Secretary Dilts – I'd have to go back and look and I don't" now (inaudible)

Attorney Sposaro -It is important what slots they fill because all these terms are staggered and

they all have an end date and if you don't keep track of it now, they're very difficult to reconstruct.

Mayor McKay – Yes, I've kept track of it – it's now on the minutes

Secretary Dilts – Yeah, it's in the minutes. It's always in the minutes.

Mayor McKay – It's on the computer too on the website.

Chairman Johnson – Tony is there a protocol on who replaces who?

Attorney Sposaro – That is really the mayor's choice. He's making the appointments so.

Chairman Johnson – Okay, then, that will stand then. The next order of business we have Planning Board Member concerns and we have conflict of interest discussions. There was a memo sent out from Tony. I just want to make sure we have it in our packet here. Did everybody have a chance to look at it?

Member Fox – Is that a public memorandum or is that just to the Board members?

Chairman Johnson – That is?

Attorney Sposaro – The one from today is actually, both are just to Board members, except on today's memo I copied our Planner and our Engineer.

Chairman Johnson – Both meaning, the memo from a few weeks ago.

Attorney Sposaro – The memo, from a few weeks ago?

Chairman Johnson – You said both, are you, said both.

Attorney Sposaro – The memo from today I copied our Planner and Engineer. The memo from March 20 of this year I did not copy anyone.

Member Pryor – But I do have a question though, it was sent without any indication of confidentiality. It deals with an item that's on the agenda.

Attorney Sposaro – Today's memo I don't think is confidential because it, I shared it with our Planner and our Engineer so, I think that's standing alone. They're not my clients. That would go beyond it and I don't think there's anything in that memo that, frankly, is confidential or proprietary. I intend, with the Board's permission, to discuss the contents of that memo here tonight, no concession, answer any questions you may have and try and give the Board some direction on how we deal with the conflicts of issue, conflicts of interest issue. There have been a number of allegations brought to my attention by various Board members that other Board members have conflicts of interest in discussing various matters relating to potential amendments to the Master plan and there have been some public pronouncements on that issue so, I'll proceed

as the Chairman suggests.

Chairman Johnson – Does anybody need like a minute or two to read this memo?

Member Pryor – Well, I did have two questions. Tony, are you going to get to this, your memo says it doesn't make sense to proceed with the third item on the agenda till this is resolved. Do we expect to get this resolved tonight?

Attorney Sposaro – Well, it depends upon what the third item on the agenda is. It is my understanding that there maybe other proposed, other issues related to the reexamination of the Master Plan that are unrelated to the ROM District that perhaps we can and should discuss if there are no conflicts associated with that. But as to the, that zone district, I think the conflict issue needs to get resolved first.

Chairman Johnson – I think so a little correction; we will not be getting to the, we will not be having an ROM discussion tonight. That's kind of the heading that's been going forth for the last fifteen months and I've kind of lumped into the Highlands, but we will continue with the Master Plan reevaluation with George and there is a lot of other districts to look at which we can pursue. I'm assuming at this point, and I talked to George earlier today, so, he is prepared to look at the other districts.

Attorney Sposaro – It's my understanding as well, but before we do that, with your permission, I should probably get to this conflict of interest issue.

Vice-Chairman Olschewski – Can I ask a question first? Before we go any further Tony, can you define for us and the public what it actually means? What defines a conflict of interest? What does that mean?

Attorney Sposaro – All right. At the end of the day, there is the standard that has been established and recognize that this is a fact sensitive inquiry. No two cases or situations are alike. There is some automatic disqualifiers, but when you get into the gray areas, here is the question, and the question is not whether the Board member believes that he or she can be objective. That is not the standard. So, how you feel about it, meaning a board member, frankly, at the end of the day, may not be terribly relevant. The standard is this, would an impartial and concerned citizen, intelligent and appraised of all the facts in the situation feel that there was the potential for non-objectivity on the part of the office holder making a decision. It's a mouthful, I'll say it again. Would an impartial and concerned citizen intelligent and appraised of all the facts of the situation. So, let me stop there and break this down. What I think that means is an individual that is somewhat familiar with the process has a decent education, as a citizen and has a good grasp of the facts of this particular situation. So, we'll take that theoretical person. Would that theoretical person feel that there was potential for non-objectivity on the part of the office holder making a decision? So, I'll break it down again; feel that there was the potential for non-objectivity. What it means is it doesn't mean that it is likely that the person would be less than objective. Is there potential? Would a reasonable person come to the conclusion that yes, I could see that happening. Another way of putting it and that has to do with you, a board member making a decision and whether it is a decision on an application for development, on an

amendment to the Master Plan or on any other decision a board member in his or her capacity is called upon to make as a Board member. That, I don't know how else to say it, there's no simple way to articulate it but that is the standard. As I said in my memo, if the answer is yes, the appearance of conflict exists then that Board member should disqualify him or herself. Take it one step further, if the answer is "maybe" it may in my opinion, is best for a Board member to err on the side of caution and recuse himself. And, I say that for this reason, the courts, especially the appellate court in this state, they hear and they see lots of land use decisions. There are many challenges to decisions made by Boards that go to the law division, superior court law division and some people take those appeals further. In my experience, the cases that get the most attention, where the court is most often ready to strike, is when there is the potential for a conflict and I say that because the court is really concerned with the public perception of impartiality. This Board is viewed as a quasi-judicial board. It makes decision akin to what a judge makes. I brought to your attention a case; I get daily briefings of decisions of relevance in the court system. Every day I get them emailed to me at four o'clock in the morning. Yesterday, there was a decision that was announced that made its way into the summary today about a judge who sat and presided in a criminal case. The defendant had been his client seventeen years ago. The judge did not remember this particular individual. The matter was tried; the individual was found guilty by a jury and sentenced to a significant term of incarceration. Then the defendant raised the issue of conflict of interest of the judge. Went to the law division, they didn't touch it. It went to the appellate division in a recorded decision meaning this is precedent. They vacated the conviction and sent the matter back for this person to be tried all over again and the court stated in its opinion this is just the summary. The court reasoned the necessity of preserving the integrity of impartiality and avoiding all appearances of impropriety must be paramount. The court concluded prejudice envelopes the entire process by casting doubt and leaving the lingering question of whether a trial judge's familiarity favored a defendant or conversely caused the trial judge to overcompensate so as not to reflect an appearance of bias. What's the moral of the story? The moral of the story is if it is a close call, I'm not going to tell a Board member what they should do. A Board member; all of you I think fall into the category of an impartial concerned citizen, intelligent and appraised of the facts of the situation. You got to ask yourself would the situation and the facts of the situation would there be a potential for non-objectivity. Would someone else in your shoes, would someone else perceive that there was the potential for non-objectivity. If the answer is yes, then you should recuse yourself. If the answer is no, it doesn't necessarily end there. There is a process by which we can secure a determination if there is a question of whether somebody has a conflict. If someone recuses themselves and they choose to step down that ends it for that individual. They removed themselves from the process and the process continues. If however, someone chooses not to recuse him or herself and there is another board member or for that matter a member of the public, they have opinions too they feel that that person has a conflict of interest, what I'm proposing here is that we make a submission to the Local, it's called of all things, the Local Finance Board with the Department of Community Affairs. They are the decision makers on questions of conflict of interest. We would give the person who, the Board member who is asserting that they do not have a conflict the opportunity to prepare something in writing, get it to me. If someone wants to submit something in opposition, I'd ask that same person to get it to me. I will submit it to the Local Finance Board and we will secure a determination. My job as your attorney is to keep you in the boundaries. I don't vote on applications. I don't really care about your politics. I don't know who is a Democratic, who is a Republican. I know there is a rift here, but I really don't know what party's

you belong to. I purposely stay out of it. I could care less, but my job is to see that the process is not infected with a conflict because if it is, the court is going to make you go back and start all over again as if you had done nothing and that has to do with ordinance amendments as well as applications for development. So, if I'm coming on strong, you're right, I am and I make no apology for it. I'm doing that because I feel strongly that if you're going to err, you got to err on the side of caution to protect the propriety of what this Board does so that whatever this Board decides, I can defend it in a court of law if and when that becomes necessary and that has to do with conflicts and that has to do with decisions by this Board.

Mayor McKay – Now Tony, can I ask you a couple questions?

Attorney Sposaro – You can ask me as many questions that you like.

Mayor McKay – Thank you. I'm trying to absorb what you just said and it would occur to me that if someone had a representation for instance of being a very pro-environmental, a green person that that person could never sit on this Board without impartiality if it came to approval of an industry that is a polluting type industry. So you, what your saying is that person could never be

Attorney Sposaro – I didn't say that.

Mayor McKay – By your very definition there would be a, you know, a question as to whether that person would always vote for the green side.

Attorney Sposaro – My answer is that when you take an oath, the oath that you take, includes that you're going to be fair, objective and impartial. That's part of the oath that you take. Everybody is

Mayor McKay – Cause you just said it doesn't matter; what if you think you are impartial. What matters is whether the public might think that you are impartial but given your reputation for being somebody who was inclined to support green issues, then you can never be impartial in that matter.

Attorney Sposaro – That doesn't mean that the public necessarily perceives you as being impartial. There are all kinds of people that have, we're all prejudice in the sense that we all have opinions about things. The word prejudice always seems to have a negative connotation. Not necessarily, what it means is, you have opinions. You may be pro and con on various things. You might be a person that likes development. You might be a person that would like to never have another house built in this town. That doesn't mean that you are that you lack impartiality. It really goes one step further than that. If by your words and actions in the past, it becomes apparent to an objective person that there's a question as to whether you can be impartial, whether despite your oath you're going to be tugged in a direction that you can't, that you might not be able to resist, that's when it gets to the level of being in a position where you have a conflict.

Mayor McKay – And, who is it that defines whether people are impartial? Impartial members of

the public. If you have members of the public that are all on one side of the rift, they could not possibly be considered to be impartial. In fact they're here with an agenda. So, if they're the ones that are going to come up and make allegations against members of a Board like this, it is really just a set up. It's not really

Attorney Sposaro – I don't think it is a setup and neither the board member who says that they are or are not conflicted, or a member of the public or another Board member who says they are, neither are the final arbiters. They're just expressing their views and I don't think it is incumbent upon me to play Solomon and make those decisions, that's not my responsibility, that's not my role. My obligation to you is to tell you what the rules are, you are all intelligent people, apply the facts of the particular situation and the particular ordinance to this standard and make a decision on behalf of yourself and to members of the Board as it relates to other people, and members of the public, I ask that you do the same thing. I don't know how else to say it.

Mayor McKay – I really don't know how to define it. I mean if you have pro, like you say, pro-development people, or people that have spent their careers in that kind of work and they're just all for it, a member of the public might say well no matter what that guys going (inaudible) and no matter what he does, there's going to be several members of the public who might view this as the situation view it, you know, be a person who is prejudice towards pro-development. I don't see how you can do this, I really don't.

Member Pryor- Can I express an opinion Tony?

Attorney Sposaro – Well, I, the Mayor asked me a question, so let me try and answer it and then I'll

Member Pryor – Go ahead

Attorney Sposaro – be more than happy to answer any questions you have. The hypothetical that you pose Mayor, I think is just too broad. Someone maybe predevelopment, that may mean they're going to, they'll look and if they have a reasonable opportunity, look to encourage development and support it when possible, but they have to do so within the confines of the Land Use Act and they have to do it within the confines of what the ordinance provides and the application that's before them and when it comes to zoning, they have to do it within the context of the particular area that's involved, the uses that are permitted or not and what their history is in relation to those things. Every one of these inquiries is fact sensitive. I wish I could give you a more definitive response. I am at times as perplexed as you are by this and to give you a couple of strange examples on how fact patterns can develop. I was involved in a case in Brigantine five years ago, six years ago where I represented an objector. There was a hotel that was proposed next to this client's multi-million dollar home that overlooked the ocean and the bay. He didn't want a hotel next to him. I learned that the chairwoman of the Planning Board had been residing with the gentleman for many, many years and the gentleman she was residing with was the supervisor of the board engineer. Very strange and unusual fact pattern. Nobody in south Jersey had the nerve to raise the issue. I went to the second meeting; the meeting was over two nights. I alleged that the chairwoman had a conflict of interest that she might be swayed by what this engineer says and conversely the engineer might be swayed by what she says. The

Board blew me off. The trial judge that it went to, I found out later who was the assignment judge, had been the attorney for the Board. Found out this after the fact. She didn't recuse herself; the board's decision was affirmed. Went to the appellate division. They through that approval out in a nanosecond in a reported decision saying what counts is the appearance of, is the appearance of impropriety. I argued to the appellate division; I said how can I, I lack the ability to explain to my client how he is really getting a fair shake here. I can't explain that to him. I can't justify it, I can't convince him and the court agreed. I've got another case I'm handling right now where physicians owned property where a carwash was to be built. Many of the Board members had been patients of these doctors at some point in time or family members had been. I said you are all disqualified. No we're not. The Board attorney said no you're not. Trial judge, they participated, the thing was approved. Trial judge blew me off. It's in the appellate division. I'll bet you lunch I win. The courts bend over backwards to make sure that the process is as clean as possible. They do, they want the public to have faith and confidence that this board that any quasi-judicial body is going to be fair and impartial because if the public believes otherwise, we're bankrupt, we're morally bankrupt. Joe you had a question?

Member Pryor – Well, I agree with you on the part about you can come in promoting a policy, you can be green, you can be whatever. It happens at the federal level but once you get on the Board, you hear an application, you base your decision on the testimony you hear, the facts you hear, not what you read on the outside, not what you get in discussions with other people which you shouldn't be doing, what you hear here and the Municipal Land Use Law and your own ordinance. So you got boundaries no matter what you feel, you're working within that. On the planning side, what you produce has to be reasonable. Otherwise it is arbitrary and capricious. You have to have a sound basis for what you produce and you start with the Master Plan and the goals of the town and that's my biggest problem so far is we are piece mealing ordinances which isn't even the job of this Board. We haven't even looked at the Master Plan. Any ordinance that goes up to the Council it's going to have to be supported by the goals in the Master Plan and we haven't done that. Now I consider myself a reasonable guy. I probably appeared before two dozen Boards in my life, maybe more. I've been an engineer for several Boards. I've been here for four years. I think I can work within those boundaries, however, I am the primary complainant here about conflicts of interest and I'd like to go through those tonight. Maybe if I let them out it will be a lot clearer to everybody what I'm talking about. The publics involved. There's people here know situations that I don't know.

Chairman Johnson – I think that's the intention but I do have one comment. I'd, I'd, I'm pretty sure we were clear about what we were doing and we're not piece mealing ordinances. The Planning Board is not piece mealing ordinances together. We're working on piece mealing the Master Plan.

Member Pryor – You haven't even touched the Master; you haven't talked about goals of the Master Plan. You've taken an ordinance here, an ordinance there

Chairman Johnson – The Master Plan is what we've been talking about for the last 15 months. George has clarified that. The Master Plan is what we are discussing. We are not piece mealing ordinances; we are working on a Master Plan to submit to the Highlands.

Member prior – Why are we taking, why did you come in the first meeting with two ordinances and move that they be submitted to Council?

Chairman Johnson – I didn't.

Member Pryor – Oh, you didn't?

Chairman Johnson – I did not. I'll tell you what I said.

Member Pryor – I'd like to hear that too.

Attorney Sposaro – Can I jump in here?

Chairman Johnson – Maybe, this is probably beyond what

Member Pryor – No, that's part of the conflicts discussion.

Attorney Sposaro – Part of, what I'd like to do is to avoid this turning into a public debate and blood bath over who has a conflict and who does not. Everyone will be given their opportunity to set their position for, in writing, if there is a dispute as to whether somebody has a conflict. I don't want to spend tonight and we didn't ask George to come here tonight to sit through statements and responses and public comment about whether individuals have conflicts and why. I think we should go around, canvass the Board maybe we can identify with specificity the hot button issue that seems to be cause for concern. If we can frame the issue, because as I said, each one of these are fact sensitive. We can then go around and canvas the Board and that Board member can express their views on whether they believe they have a conflict. When we're done, we can find out if anyone feels otherwise. If, this is what I propose. If someone feels a conflict exists, and the Board member feels otherwise, get me your written submissions. I'll get them to the Local Finance Board and let them make a decision. I just think that this is going to become all the more divisive of the Board and it's something that I really don't want to see. I've been representing Boards continuously since 1992. I have never seen this in a Board. I've had discussions with George, I've had discussions with Paul and collectively, we probably have almost a century of experience and we've never seen this and it's sad. The business of this Board is to, is to consider applications for development and to fulfill its statutory obligations with respect to the Master Plan. This isn't the place for politics and I frankly, at this point, I don't really care who I piss off. I have to call it the way it is and if you are not happy with me, so be it.

Chairman Johnson – I think that was the intention of tonight was everybody be able to say their peace, find out if there's a challenge, we can go to the Local Finance Board. That way we don't have to spend, you know, debating it here. We can let the Local Finance Board decide. Present each side of an opinion if there is a conflict.

Attorney Sposaro – When you say, "say your peace", you simply want to indicate whether you after we frame the issue, whether you believe you have a conflict or not. I don't mean you Eric, I mean the Board.

Chairman Johnson – No, everybody should be given the opportunity to recuse them self on a

particular item of the Master Plan if they feel they want to do that right now. This is a good opportunity. I think everybody should be given that opportunity, but I do have one quick question before we start that. How does the idea of a conflict of interest have to do with the personal or financial involvement because I know that's, that's in a lot of the literature I've been reading that you have to have a personal financial advisor

Attorney Sposaro – That's one of the automatic disqualifiers but it's this gray area that is the one that causes guys like me to lose their hair. This impartial and concerned citizen is there potential for non, would the reasonable person feel that there is the potential for non-objectivity. This is great for the courts to write. To put it into practice ain't so simple and it really is fact sensitive.

Chairman Johnson – So, without getting to in depth because we can all do that in a written statements. We probably want to have, you know, every person have the opportunity to recuse themselves and after that see if there is any challenges or do you want to hold off the challenges to the very end? Do you want to do it

Attorney Sposaro – No, I think we should let everybody go around the room and say whether they do or do not have a conflict and we can find it out if any Board members and member of the public feel otherwise and if it is a member of the public, we'll be given an opportunity to submit something to me in writing setting forth their reasons why and the same holds true for any Board member.

Chairman Johnson – And, you should set up a schedule for that.

Attorney Sposaro – We will and I'll just be the collector of the data, so, when it is submitted to the Local Finance Board for a particular, as it relates to a particular individual, it is all submitted at the same time. It is not piece meal and everyone knows they'll get their bite at the apple. It's the fairest procedure that I can think of and I'd like to avoid a public debate on the merits anyone's particular position unless someone feels otherwise I'm not going to stop you from talking but if you open this up and you want to start to debate it, we'll be here till ten o'clock and say good night and we may not finish and if that's what you want to do, that's your prerogative. I'm not going to stop you. I just think it is a waste of time and energy.

Chairman Johnson – The easiest way to close out any concerns on this Board, is to get the Local Finance Board to give their decision. Obviously, there's going to be points here where we're just not all going to agree. It has to go to the Local Finance Board.

Member Pryor – I'd like for everybody to have their say tonight and we can avoid a debate

Chairman Johnson – Yes.

Member Pryor – but I'm not going to with hold any of my arguments until the Local Finance Board decides. I intend to have my say tonight.

Attorney Sposaro – Why don't we do this? Why don't we start with seeing if we can frame the issue where there is the potential or the issue of a conflict? George, maybe you can help me out

to some limited degree here. There's been discussion about the potential rezoning of the ROM Zone and what uses would be permitted and not permitted. Is that really the focus of the conflict issue here as the Board understands it?

Chairman Johnson - I haven't heard of any other zones being of concern, but if there are other zones of concern this would be the time to disclose it, I would think.

Attorney Sposaro – I think when those topics come up we can deal with them then. Otherwise this is going to be almost impossible to manage. So

Chairman Johnson - Talking over each other

Attorney Sposaro - There's the big pink elephant in the room and the pink elephant is whether an asphalt plant is going to be a permitted use or not. That's been the issue that's garnered the most attention I think has been the most controversial. So, we would be disingenuous to the public and to each other to say that that isn't what's at issue. How it's defined and under what circumstances it can be and would be a permitted use. I think those are the issues. Am I missing something?

Vice-Chairman Olschewski – I don't think that is correct. First of all, I'd like to ask a question. Joe indicated in the last meeting and he said it, whoever has a conflict of interest and those is in big trouble. Those were his exact words. What is the big trouble he is talking about?

Member Pryor – Well, if I think if, if one is if you have a conflict of interest whatever you've worked on is, can be overturned quite easily, correct Tony?

Attorney Sposaro – (Inaudible).

Member Pryor – And if you proceed, if someone has presented a conflict of interest and you proceed and you do the work and the, a complaint it doesn't have to be, anybody can make a complaint to the Board of Finance, Division of Local Government Services. You can actually be fined.

Attorney Sposaro – In theory, it's correct. I'm not aware of anyone actually having been fined. I think if you act in good faith, worst that's going to happen

Member Pryor – Hence the question, good faith.

Attorney Sposaro – I think the worst that's going to happen is nothing is going to happen to you individually but you are going to taint and in fact contaminate the work of the Board on that particular issue. That's for me, that's the risk because the Board is my client.

Vice-Chairman Olschewski – Thanks.

Attorney Sposaro – That's what I want to try and bar against.

Vice-Chairman Olschewski – In regards to your second point, and that what you say is, I think you said the word asphalt plant and I don't think it was just asphalt plants. We're not just singling out one industry here right? Is that correct Eric?

Chairman Johnson – No. I've never seen one industry singled out. I think it has been discussed with concrete and asphalt and asphalt manufacturing

Vice-Chairman Olschewski – Yeah so, so I just want to make sure that we're clear, it's just not asphalt plants. I think when it comes to my (inaudible) and Eric we were looking into industries which are moving the town forward, having a future. So to, I would not give anybody the impression we won't be singling out one particular industry but industries which are harmful what we believe, harmful to the public and harmful to the future development of the town. I would not want to be just singling out one industry period.

Attorney Sposaro – The reason I said asphalt and the way in which it is defined, is because reasonable minds might differ on how it is defined. We got a judge in Somerville that said there's no functional difference between a concrete plant and an asphalt plant. Other people feel otherwise. That's why I mentioned not only asphalt but the definition of the particular use in question.

Chairman Johnson – I think it makes sense to move along and make sure everybody, and Joe you as well, everybody gets the chance to recuse them self or not and I think we should start moving it.

Attorney Sposaro – My question and if someone feels otherwise, I will suggest to the Chair that we put this up to a vote whether you want Board members and members to the public to express their views on whether not only for the Board members not only whether they think they have a conflict but if they do not why they think they do not (inaudible) are you going to give other Board members and the public the opportunity to in fact testify and offer their views as to why they think there is a conflict. Do you want to do that tonight?

Chairman Johnson – Can we do that as Public Comment?

Attorney Sposaro – I don't think it makes sense to do it in Public Comment. We need to do it now. Public Comment would be after we've had the discussions regarding the ordinance and whatever ordinance amendments we're going to talk about tonight or whatever Master Plan issues we'll talk about tonight. We'll focus on this; I think we need to deal with it. I think you need to address head on, make some decisions and move on.

Vice-Chairman Olschewski – Absolutely. Eric, Joe has a whole binder. I think let him have what he wants to say and then we can react to whatever

Member Pryor – I'll like to give you the opportunity first to say you have a conflict or you don't.

Talking over each other

Attorney Sposaro – If I can, I think the first thing, does everybody agree on how the issues been framed?

Some members said no.

Mayor McKay – To me, if it's something that Joe doesn't like, he, he's going to consider that to be, you know, you have a conflict. If it is something he likes that will be okay.

Member Pryor – (Inaudible).

Mayor McKay - I think we need to hear from Joe what are his concerns. We don't know what his concerns are maybe (inaudible).

Member Pryor – I'm fine with that.

Talking over each other

Member Schneider – Can I say something Mr. Sposaro?

Attorney Sposaro – Tony

Member Schneider – Tony I think that as you said if you are going to have everybody say what they're going to say, have the public come up and say what they're going to say. The entire (inaudible). We have George here wasting his time sitting here and (inaudible) and if you are going to write these letters with your concerns in them, why don't we just have everybody write the letters and give them to you and

Member Pryor – Because I want this to be discussed in public and that was Tony, the point of Tony's memo. He suggested George not come here tonight and that we resolve this thing and it was your decision to have George come

Chairman Johnson – Absolutely, after discussing it with Tony and George, we felt that this was

Member Pryor – Why did Tony write this memo a couple of hours before the meeting? He said that he wanted to resolve this and it was senseless to go forward till resolved.

Attorney Sposaro – It could get resolved quickly if public statements were not made but if public statements are going to be made and that's the will of the Board, I'm not going to stand in your way.

Mayor McKay – Tony, we don't know what he's referring to.

Attorney Sposaro – Well, we're putting the cart before the horse.

Mayor McKay – Let's have specificity.

Attorney Sposaro – I don't know who's going to disqualify themselves or recuse themselves or not. Can we make all of those moot, it may not.

Maher McKay – Until we know what we're supposed to be doing wrong, we can't really make that decision very easily.

Members talking over each other.

Attorney Sposaro – The question, let me see, if I can say this again. You as a Board member, not you Mayor, just all of you as a Board member do you think that and I'll put it in the context of the standards that the courts have set. Do you as a Board member think that an impartial and concerned intelligent citizen appraised to the facts of the situation would feel that you as a Board member have the potential for non-objectivity in making a decision related to the rezoning of the ROM Zone? That's the issue.

Mayor McKay – The potential for objectivity. What did you say?

Attorney Sposaro – Would a reasonable person feel that there was the potential for non-objectivity?

Mayor McKay – The potential for non-objectivity exists in any situation.

Attorney Sposaro – Mayor, I didn't set the standard I can only tell you what the courts have said.

Mayor McKay- But that's true. It's the potential for non-objectivity would incur

Attorney Sposaro – The potential for would a reasonable person think there's that potential

Mayor McKay – Define a reasonable person?

Attorney Sposaro – What?

Mayor McKay – Who is the reasonable person?

Attorney Sposaro – The theoretical reasonable person.

Member Schneider – I, you know, I, I think Tony public comment should not be because if you are talking about (inaudible) this area, that's exactly what's going to happen here tonight with Public Comment. You do not have an objectionable crowd here this evening.

Chairman Johnson – You wanted, did, you wanted the Board to vote on something real quick and that was whether or not to have

Vice-Chairman Olschewski – Yes.

Chairman Jonson – the public involved

Attorney Sposaro – Eric, if you are going to express, if any of you are going to make statements as to why you feel you are not disqualified and if there are any Board members who are going to express their views and opinions and facts as they see them as to why they think you or someone else is disqualified, I don't think you can cut the public out. I mean either there's going to be a public airing of this not limited to Board comments or there is going to be no public discussion of it. It's going to be written submissions and go to the Local Finance Board. I think it is one or the other. I don't think you can split the baby in half.

Talking over each other

Vice-Chairman Olschewski – I want to make the motion to vote on this and I would make the motion to go with Tony's recommendation and have the written statements to the Local Finance Board prepared and we will omit the public discussion tonight.

Member Schneider – Second.

Attorney Sposaro – Well, is there any discussion on the motion.

Member Pryor – Yeah, I think that's an attempt, a blatant attempt to avoid the issue and

Member Schneider – We're getting an answer from the Local Finance Board (inaudible)

Member Pryor – Yeah (inaudible) all these people come to every meeting. You don't think they're informed at least many of them do.

Member Fox – I'm still trying to figure out why the grievance needs to be aired to the public. If there is a debate of conflict of interest, try to establish it and the policy is in place for another board to hear it and make a rule. You know we're all going to combat these issues.

Talking over each other.

Member Pryor – I'll use an example and try and get quickly to the point. Is Lisa Ann Correa your wife?

Member Fox – I'm sorry.

Member Correa – Yes she is.

Member Schneider – Wait we're not talking about this right now.

Talking over each other.

Member Pryor – that's, that's a fact.

Talking over each other.

Chairman Johnson – Order guys order.

Mayor McKay – He’s in the middle of a

Chairman Johnson – Jon was in the middle of a statement and this is not

Member Pryor – We’re debating a motion right now and I’m saying why I think a motion to keep this all private is not fair.

Member Schneider – (Inaudible).

Chairman Johnson – I want to hear Jon, (inaudible) was in the middle of talking.

Member Fox – I was wrapping up just trying to figure out. Never mind Joe, you

Vice-Chairman Olschewski – You know, me personally, I’m very much interested because I as everybody knows was involved in the 189 an I donated some money and I would like to know if that disqualifies me from any future discussion of heavy industry in the town. Just because I was against an asphalt plant which was built besides my son’s school, with that said though, with that said, I cannot everybody here, everybody including you Joe have conflicts of interest all the time.

Member Pryor – Tell me.

Vice-Chairman Olschewski – Tell you.

Member Schneider – But aren’t we voting?

Vice-Chairman Olschewski – We have a motion on the floor

Chairman Johnson – There’s a motion

Vice-Chairman Olschewski – Very quickly, I know that in your and again, this is ending up where don’t know but in your election campaign one of the topics was that you told the public that you were against asphalt plants. So would that disqualify you? I have the paper with me somewhere. It’s in there. So, does that disqualify you?

Member Pryor – Show it to me. Show it to me.

Vice-Chairman Olschewski – I will.

Attorney Sposaro – I’m going to jump in here. I know there’s a motion that’s been made

Vice-Chairman Olschewski – Yes. We have a second. I’d like a vote.

Attorney Sposaro – What I do not want to see happen is the procedure that I've suggested creating yet another issue for controversy.

Chairman Johnson – Tony, would you agree

Attorney Sposaro – I don't want, I don't want anyone to feel that they were deprived of the opportunity to express their views. Perhaps asking someone to reduce it to writing is not, is just asking too much, it is unfair, it's a public hearing. Maybe you all have to just speak. It's I hate to say it, and I am reversing the way I feel about this but the more I think about it, I think we just need to get it out and get it over with no matter how long it takes.

Member Schneider – Then we should send George home because this will take the rest of the evening into after ten o'clock with the folks here and the folks (inaudible).

Attorney Sposaro – Or it's going to take till ten o'clock.

Chairman Johnson – Right, which we didn't anticipate and we actually expected to be done by about 8:30 which was going to give us an hour and half for George so it looks like that's not going to happen.

Mayor McKay – If I could, I have a suggestion.

Chairman Johnson – Go ahead Joe.

Member Pryor – (Inaudible) it's probably what Tony said. I think it has to be aired. You don't want to turn it into a debate. I propose this. Everybody has a turn. Nobody interrupts and my turn is going to be lengthy and I'll wait. You'll hear what I have to say, public has their say, it all gets in the minutes and anybody that wants to submit something in writing to Tony, we submit it. No interruptions. No discussion, no interruptions. Everybody has their say and I tell you this, whatever comes down from the Board, I accept, but I do think Tony that there are some things that are so blatant that I think you have to speak up and I think when a member's wife is one of the plaintiffs that's a problem and we shouldn't have to send that to the Board.

Attorney Sposaro – Let's deal with each situation as it is presented. I'm not going to jump in here and start expressing opinions about a particular individuals unless I have all the facts and I'll express my view but my view is just my opinion. It's just

Member Pryor – People are supposed to listen to your opinion too.

Attorney Sposaro – Tell that to my kids.

Member Pryor – I know.

Vice-Chairman Olschewski – Tony, can I ask you a question? If I stay with Joe's example all right if Carlos's wife was a plaintiff in a specific lawsuit why would that disqualify him for anything which is in the same realm of the topic, in this case, the asphalt plant. Just because they

were against the asphalt plant at that point in time, at that place, would that automatically mean he cannot be voting on anything asphalt related ever again in the town?

Attorney Sposaro – I guess the question is would a reasonable person feel that because this gentleman's wife was a plaintiff in that lawsuit, would there be the potential for non-objectivity on that person's behalf. I can't answer that, I can't answer that question.

Talking over each other

Member Pryor – Could I give you an example?

Attorney Sposaro – No. I think

Talking over each other.

Member Fischbach- Is this the same as last meeting when you and Peter made sure that Larken, everybody knew that you had Larken homes. You let everybody know that in case there was a problem with that so, just in that small little minute thing, you made sure that everybody knew that (inaudible) that you had a Larken home but you don't want anybody to think you were being biased in what your decision would be whether it pro or con (inaudible) so that's what the reasonable person you're trying to advert that reasonable person right, to make that decision.

Vice-Chairman Olschewski – Absolutely, right.

Member Fischbach – Right? So that's it, so that's it.

Vice-Chairman Olschewski – I wonder if Councilmember Joe Pryor also then recuse himself when Larken came before the Council and presented their plans.

Member Pryor – I brought it up when he came before the Planning Board. I asked anybody if they had a problem

Vice-Chairman Olschewski – Not with the public.

Member Pryor – Larken did not, I did.

Vice-Chairman Olschewski – Not with the public

Member Pryor – I did.

Attorney Sposaro – Let's back up for a second. Assume the Board concludes that we should let everybody have their peace and say what they have to say. Is everyone prepared to do that tonight?

Vice-Chairman Olschewski – Not much to say.

Mayor McKay – I don't know what, those conflicts are being, you know, Mr. Pryor thinks they have. I think he has to identify this and then we'll know what, what, it will give us something to think about. I just don't know where this is coming from.

Chairman Johnson – I think Tom, if there's any conflicts that aren't resolved they're obviously going to the Local Finance Board. We're not going to avoid the letters. We not going to avoid your work on the submission. That's all happening but I think at least the Board members we should go around and everybody should say their peace, their opinion, recuse them self, if they want to recuse them self.

Secretary Dilts – Did Mr. Olschewski leave the building?

Chairman Johnson – The building? I don't think so.

Secretary Dilts – I just heard the door.

Talking over each other

Secretary Dilts – He left the building? Oh it's 8:00 pm.

Chairman Johnson – He's coming back. I kind of lost my train of thought but we should, every Board member, I'm not 100% sold on a discussion on a Board having the public involved and others and the Public Comment at the end which also gives them a chance to express their opinion at the end and also write a letter. We're not stopping the public from writing a letter, expressing their concerns but we need to get through the Board members.

Attorney Sposaro – If you need to get through the Board members, but on this particular issue waiting until Public Comment after there is some discussion of an ordinance if we ever get that far, I think is somewhat unfair to the public. I think the public should be given, if you're going to talk on the issue, I think the public should be given the opportunity to speak and we can be, we can limit people as to the amount of time and if they're going to be repetitive, we can use our discretion and cut people off too.

Chairman Johnson – Right, but it is not it is not a discussion let's say it's a comment session I believe. They're like; everybody's going to have their chance to talk without being interrupted

Vice-Chairman Olschewski returned to the meeting at 8:02 pm.

Attorney Sposaro – No different than public comment on an application. People are entitled to express their views.

Chairman Johnson – If we think this is going to go another two hours

Attorney Sposaro – You think?

Chairman Johnson – That's going to end it anyway. I don't know do we want to send George

home?

Member Pryor – I'd like to get this all out in the open tonight.

Chairman Johnson – I agree.

Member Pryor – Then what we don't resolve we'd send to, you know, Local Government services and we wait for an answer.

Mayor McKay – Why don't you tell us what your concerns are because none of us really know.

Chairman Johnson – Go ahead.

Member Woolf – Why don't you just pole all of the Board members? We're all representative of every citizen of this Township. Anything that's said between us, people here, the public should know. I'm the only one that was sitting on the Board during the entire asphalt plant. Our chairman is sitting in the back. Our ex-chairman. Two, three, four o'clock in the morning we listened to two, three, four hundred people. We didn't cut them off. We're here representing these people so whatever we do or say should be in front of our general public and I think you should pole each member just let us say yes or no and move on from there.

Member Schneider – I don't think you properly advertised.

Attorney Sposaro – Because with the decision you make here maybe or the position you take ultimately maybe impacted by what a member of the public has to say. No different than an application for development. You hear the witnesses. You discuss things. You form some views but the public gets to speak and I have to assume that every member of this Board listens to what the public has to say and takes it into consideration. That's your responsibility. It's no different, this is no different.

Chairman Johnson – Then I agree with you and in order to accomplish that we need to hear the conflicts first so we can start with Joe and I know he said he has a lot.

Attorney Sposaro – I think we should go around and find out

Chairman Johnson – That's opposite as to what we're trying to accomplish here. If we're trying to change our opinion based on what we hear from the public first. We should hear from the public first before we decide whether or not we're recusing ourselves.

Vice-Chairman Olschewski – Sure makes sense.

Chairman Johnson – Cause I'd like to, to do it, let's do it that way and then we can have Joe go and the public can go and then we'll go around and people will recuse themselves as necessary and we have Donna whose hands up.

Member Schneider – I have a question. Do you think in all fairness to the entire public that we

advertise this property to let them know that they were going to be allowed to comment on a hearing?

Attorney Sposaro – It says concerns and conflict of interest discussions Planning Board members. I think it fairly apprises the public of the topic. I think it does.

Member Schneider – Okay.

Chairman Johnson – I would like to hear what Joe has to say.

Member Pryor – Is that the will of the Board?

Chairman Johnson – Tony, how do we start this?

Attorney Sposaro – I had, my recommendation was that

Member Fitzsimmons – Take a break

Chairman Johnson – Yep, one second, I just want Tony to finish his thought.

Member Schneider – I'd like to hear Tony.

Attorney Sposaro – My recommendation was that the Board members

Secretary Dilts – Did you want to go according to the roll call?

Attorney Sposaro – Well, I don't know what we're doing yet so let me find out. My view is that particular Board members should express their own opinion as to whether they believe they have a conflict. If they want to expound upon it, they're free to. If they do not want to, they don't have to. I don't think this is turn to Joe and let's hear what he has to say.

Chairman Johnson – Well, I'd like to hear the opinions first before I say whether or not I'm going to recuse myself so I'd like to hear from the public first and

Attorney Sposaro – And, from the other Board members.

Chairman Johnson – And, from the other Board members absolutely. I want to hear from Joe first and I know I'm not the only one.

Attorney Sposaro – Why Joe first? Why don't we just

Talking over each other

Chairman Johnson – He's got, he's the one is forwarding this complaint or this concern but I think we ought to take a five minute break just for a bathroom break and we're going to get to it right away it at 8:10 here.

Attorney Sposaro – Are we going to send George on his way?

Secretary Dilts – Are we going to send George home?

Planner Ritter – I'm here it is up to you.

Chairman Johnson – I think this should be over in about ten minutes.

Talking over each other.

Chairman Johnson – Okay guys break is over, we are going to resume.

Talking over each other.

Chairman Johnson – Will just wait for Beth?

Attorney Sposaro – Yes please.

Vice-Chairman Olschewski – What up.

Chairman Johnson – We just got to wait for Beth

Vice-Chairman Olschewski – She went away.

Member Schneider – Responded to Vice-Chairman Olschewski's remark.

Member Fitzsimmons – Maybe, I hope.

Vice-chairman Olschewski – I hope. There she is.

Chairman Johnson – We had a motion on the floor which we never finalized I think. The meeting is back.

Vice-Chairman Olschewski – Procedurally, the appropriate thing to do for Peter to withdrawal his motion and permit people want to go ahead with

Talking over each other.

Chairman Johnson – I think we want to do the discussion.

Vice-Chairman Olschewski – Yes.

Chairman Johnson – The motion was to do letters only we're back tracking on that so

Vice-Chairman Olschewski – I withdrawal my motion.

Chairman Johnson – All right.

Talking over each other.

Attorney Sposaro – All right, why don't we start with, however you want Mr. Chairman go ahead.

Chairman Johnson - I'd like to start with those Board members who proceed there to be a conflict with another Board member and they can discuss that. Then the public can discuss any concerns that they have and then each Board member will have the right or the ability to recuse themselves. Did you want to go first?

Member Fischbach – Well, I would just note quick I don't believe I need to recuse myself. I can be impartial and I have no conflicts.

Secretary Dilts – And, if everybody could speak into the microphone just so I hear everything.

Chairman Johnson – So, you're done.

Member Fischbach – So, I'm done.

Chairman Johnson – Thank you. Joe I think.

Member Pryor - Okay, this is going to take a little bit if you bear with me I'll try not to make it, you know, to oppressive here.

Chairman Johnson – I ask you just one favor if I need a pause real quick, cause I'm writing something down if you get ahead of me. I'm not writing too well I've got my

Attorney Sposaro – Can I just make one request?

Chairman Johnson – Yeah.

Attorney Sposaro – Maybe this will shorten it, maybe it will not. Is there anybody on the Board right now before anybody has said anything that feels they should recuse them self? It doesn't mean you can't change your mind, but at this point in time, is there anyone who feels they should recuse them self?

Vice-Chairman Olschewski - As soon as it comes to the issue of Intercounty Paving, 185 the existing asphalt plant litigation or anything which has to do with it, I will recuse myself. Absolutely.

Chairman Johnson – That is not the question we have.

Attorney Sposaro – The question is do you feel that you should recuse yourself when discussing

the rezoning of the ROM Zone?

Vice-Chairman Olschewski – No, no.

Chairman Johnson – Well, why don't, why don't, hear the, you can change your mind later of course.

Vive-Chairman Olschewski – All right fine.

Attorney Sposaro – But at this point in time there isn't anybody who feels they have a conflict and should recuse them self-correct?

Chairman Johnson – Go ahead.

Member Correa – No. I just want to say that before I joined, before I joined I gave consideration based on the fact that my wife is in the lawsuit and now (inaudible) it really doesn't matter what I think. It is what the law will think. So my, I will write a letter to the finance committee telling them that my wife is a plaintiff in the lawsuit and then based on whatever the recommendation is from the finance committee I will withdrawal from. If they believe there is a conflict then I recuse myself and I also want to make it clear that beside my wife, I also donated money personally against the lawsuit. So I would also put that on the letter going over to the finance committee and if they believe that it is a conflict then I recuse myself. Thank you.

Chairman Johnson – Okay Carlos, thank you. I think we are good to go Joe.

Member Pryor – All right. First Tony led off with the Oath of Office for Planning Board member it mentioned impartiality. I repeat that impartiality can be hindered by conflicts of interest. It's nothing to be embarrassed about they're inevitable. If you are active in things sooner or later you are going to have a conflict. The key is to disclose the potential conflict promptly and fully discuss it and assess how others will feel. On March 3rd Tony wrote a well-researched detailed memo. I appreciate that. He described, I don't want to beat this to death but he said "in the final analysis", and he described the criteria "would an impartial and concerned citizen, intelligent, etc.,

Chairman Johnson – Joe sorry that was March 20th I believe.

Member Pryor – Yes the 20th. I had the wrong one. Yes, the 20th. So, they're going to come up, you have to deal with them. I'm suggesting at least five members of this Planning Board have conflicts of interest and should recuse them. I'm aware of the seriousness of this and I don't take it frivolously. In this decision that found in favor of the Township and the Planning Board, Judge Miller noted conflict of interest rules are important, are imposed and enforced to discourage improper activity and to insure the public trust. That does not give license to an attack by pure speculation upon a public official where there is not a scintilla of evidence to suggest any wrongdoing or improper influence. I give great weight to Judge Miller's words. However, in this case, I believe that the facts give rise to my concerns far exceed a scintilla of evidence. To the contrary I find them rather convincing. And I'll go into the five members who I think should

recuse themselves.

First one is Thomas McKay. Mr. McKay's primary campaign literature included a commitment to continue to advocate against the asphalt plant. The flyer noted "Paid for by Responsible Lopatcong Leadership, 4 Byron Drive, Phillipsburg, NJ". That's the same address given for "McKay for Mayor" on subsequent campaign literature. It would therefore, appear that the RLL which had the primary goal of stopping the asphalt plant and the McKay for Mayor organizations were closely allied if not one and the same. Mr. McKay's campaign door hanger said "had enough of the asphalt plant anxiety. His plan - cease any future township funded defense of the asphalt plant. Now that, that's more than campaign puffery, that's a commitment to essential defund a lawsuit against the Township and the Planning Board. Pictures posted on social media show Mr. McKay at an anti-asphalt plant fundraiser at Bruno's. I assume he paid to be there so I'm assuming he contributed if not he got a free pizza. In his unsuccessful and this gets a little more substantive at this point, in his unsuccessful 2016 lawsuit, against the Council majority Mayor McKay's attorney submitted in a brief as a fact, in a brief now, that the Mayor intends to defund the ongoing asphalt litigation as a waste of taxpayer's funds. Mr. McKay continues to argue this during his appeal. This is perhaps the most incontrovertible evidence of the Mayor's bias. The Township and the Planning Board were named as defendants in the asphalt lawsuit and had a duty to defend. Maybe there's an argument about that, I don't believe it. The Township and Planning Board defended only themselves. They didn't advocate for the plaintiffs or any other defendant. Mr. McKay contends that they supported the asphalt plant. That's inaccurate and intentionally misleading and untrue. The primary focus of the case was the Township's notice and meeting procedures. In order for any applicant or resident to have any confidence in the Township's procedures, he or she must know that the Township is standing behind them. That's all the Township did. When the Township procedures were questioned, the Township defended them. That cannot be confused with being an advocate for either side. Both the Township Council and Board were named as defendants in this case several years ago. Their actions were upheld at the trial court level prior to Mr. McKay assuming office or appointing eight members to the Planning Board. The appeal has progressed through briefs and oral arguments. Mr. Sposaro recently noted "the Board is the Planning Board whether it was ten years ago, five years ago, two years ago; it is still the Planning Board. Its constituents may be fluid, its members may be fluid but it is still the Board". So the Board, as an institution was sued and successfully defended itself at the trial level. To think that one can suddenly change the composition of the Board and defund an ongoing appeal is ludicrous. It is an example of the inexperience and bias that Mr. McKay brings to the Planning Board. An example of how the Board would function if the Mayor's thinking prevailed involves the pending Ferruggia application. An attorney argued that the application belonged before the Board of Adjustment in lieu of the Planning Board. When the Board ruled against him, he reserved the right to sue. If he exercises his right, whom does he sue? It's pointless to sue the applicant. The applicant did nothing except follow the Board's instructions. So he will likely sue the Board. What will the Board do? Will it decline to defend itself and accept the default judgment? That makes no sense and would likely lead into additional litigation. So, how might this bias affect Mr. McKay's actions on the Planning Board? My feeling is, he's had a rocky first term and with the coming elections, one might assume there's pressure on a mayor to fulfill his campaign promises. I'm not saying he's doing this but you want to relate the conflict of how it might play out. So, he might want to fulfill his campaign promises and otherwise impede the progress of the asphalt plant. Currently, he has

chosen not to run but perhaps he has a desire to achieve a political legacy and/or to help his political allies and the fact that a new mayor will have the opportunity to drastically change the composition of the Board puts added pressure on the Mayor. So, are the mayor's opinions the product of sound planning or are they the product of his political campaign. Certainly, the latter is as plausible as the former. Mayor's published positions in campaign promises and this certification in the lawsuit relative to the asphalt plant will surely indicate at least the potential conflict with respect to his role on the Planning Board.

Second concern is Eric Johnson. In my view Mr. Johnson's potential conflict is probably the most concerning. He has been confronted about possible conflicts of interest on at least three occasions by former Planning Board Chair Gary VanVliet, by an attorney for Intercounty Paving and by myself. In all three cases, he denied the conflict and opted not to provide full disclosure and I believe he has made statements at the Board meetings that have already tainted the process. I view Mr. Johnson's potential conflicts as follows: Mr. Johnson's runs three times for Council on a ticket shared with Juniper Leifer, an active and highly visible opponent of the asphalt plant and director of Lopat Speaks. Immediately prior to the 2014 mayoral election Ms. Leifer wrote on Lopat Speaks that we've been working hard for over two years since that decision was made to stop this plant one way or another. She recently wrote on the internet, I am the director of a community association Lopat Speaks which has raised tens of thousands of dollars to fund litigation aimed at fighting a land use approval in our community. A fight began on 2011/2012 and rages on through an appeal process to this day. After the most recent defeat of the Leifer Johnson ticket, Mr. Johnson's running mate wrote the campaign was a great experience for me because I got to go out there and was reminded that the community still stands behind my fight against the asphalt plant. It's my understanding that it need not be the officials on interest that is in conflict if a member's spouse or a business partner has a conflict, that conflict is attributed to the official. Through Lopat Speaks Eric's wife donated \$100 to the Lopatcong Legal Defense Fund which helped fund the litigation against the asphalt plant and I know the litigation is still on-going, still being funded. It's not something that occurred many years ago, it is still active. As a matter of fact, we just had oral arguments. She submitted written and verbal testimony against the plant at the 2012 hearings. She also ran as an RLL backed candidate for the Republican Committee. So, Ms. Johnson's interests become Eric's as well. I would also submit that Mr. Johnson's longtime political relationship with Ms. Leifer including the formation of a joint political campaign fund, the publication of joint campaign signs and literature, leasing of two billboards promoting your team and joint production of a video constitutes a business relationship where Ms. Leifer's interests are attributable to Mr. Johnson as well. The vicarious conflict aside, Mr. Johnson's personal conduct is problematic. Mr. Johnson also testified in opposition to the plant in the original 2012 hearings. He offered his opinion as a professional engineer that the applicant's traffic impact study was deficient. To my knowledge, Mr. Johnson offered no curriculum vitae, data or analysis to support his professional opinion on the traffic. By all measures, it was simply an unsupported personal opinion. Mr. Johnson's actions since joining the Planning Board reinforce my concerns about his bias. His statements provide direct evidence of his preexisting interest affecting his behavior on the Planning Board. At the 2016 Planning Board reorganization, Mr. Johnson's very first Planning Board Meeting, Mr. Johnson voiced strong un-supported opinion. I think at this point, it is very important to disallow any future asphalt manufacturing facilities, concrete manufacturing facilities, and recycling facilities and do not allow them to expand beyond their current application and their current permitted use.

This is important. Not only do I know firsthand that 95% of our residents do not want to see this get any bigger than it already is, I know that first hand. I know that first hand he said that publically; he said it twice. No research, no support. He just offers an unfounded personal opinion similar to his previous testimony before the Planning Board. This statement would seem to be at variance with his last place finish in the last five elections; two general elections and one primary election. Two elections for Republican Committee. A reasonable person would assume that if 95% of the residents oppose the plant, they would have voted for Mr. Johnson in higher numbers. Later in the meeting, Mr. Johnson passed out ordinances that he had drafted prior to assuming his seat on the Board. The ordinances would restrict the expansion of the approved asphalt plant and prohibit new ones. In the public portion of the meeting, Ms. Leifer thanked the Board for taking the action to recommend to the Town Council a change in the ordinance and criticized me for my bedside manner. Chairman VanVliet commented back to Ms. Leifer that some of the statements that we make as a Board or Board Member at a public meeting can come back to haunt us in a bad way because when we get down to the hearing, our words come back to us and I think that's the case right here. It seems inconceivable to me that a new member of the Planning Board would show up at its very first meeting with ordinances impacting the very controversial issue unless his opinion is already tainted. It is clear from reading the minutes that Mr. Johnson had no knowledge of the nexus between the Master Plan and Zoning or how the municipal Land Use Law must be implemented. That did not stop him from passing out his proposed ordinances. Second, his proposed ordinance amendments would not apply to Precast Concrete the manufacturer of concrete and concrete products and an intervenor in the lawsuit. Mr. Johnson's three time running mate Juniper Leifer wrote in Lopat Speaks April 11, 2014 – the citizens who were against the plant owe a tremendous debt of gratitude to Gregg Fischer CEO of Precast manufacturing who has spent an obscene amount of money trying to prevent the plant from being built. On October 29th, 2015 Mr. Fischer wrote a letter to Lehigh Valley Live endorsing the Leifer/Johnson ticket and noting his opposition to the asphalt plant and he is free to do that. I ask why would Mr. Johnson propose to restrict the asphalt plant and not Precast Concrete, especially after the trial court had ruled that there is no substantial difference between the two. No reason was given, but certainly a reasonable person might wonder whether he had been influenced by Mr. Fischer's support for the lawsuit, and/or his letter of endorsement. I asked why would Mr. Johnson be in such a hurry to proceed with the special meetings to discuss the ROM District over the advice of the Township's attorney. Why would he hold one such meeting despite the unavailability of an attorney and with oral arguments pending? Again, one would have to wonder if Mr. Johnson's lack of success in the political arena be as anxious to deliver a win for his constituents or perhaps he wants to put the matter before Council before the Mayoral election. I'm not suggesting that Mr. Johnson and I say this sincerely, that he consciously had such thoughts in mind, but surely an observer would have to question the look and feel of Mr. Johnson's words, actions and relationships and not consider the possibility of a potential conflict and that's all that's required for recusal - possibility

Peter Olschewski Planning Board Chairman Vice-Chair Peter Olschewski donated \$250.00 to help fund the litigation against the asphalt plant. He also submitted testimony at the 2012 Planning Board hearing. I have an excerpt "Our family would like it on record that we directly oppose the decision to invite and have an asphalt plant in our town". Mr. Olschewski, obviously, comes to the Planning Board with a pre-existing bias against the asphalt plant. Bias strong

enough to contribute funds and provide testimony. This bias is not just speculative; it was clearly evident at the special meeting of March 9th. A resolution was on the agenda to authorize funds for Mr. Carbone to represent the Planning Board for oral arguments at the appeal of the asphalt plant approval. Mr. McKay made a motion to adjourn the meeting prior to consideration of the resolution. When I called for Orders of the Day to have the resolution voted on, Mr. Olschewski asked for a 2/3rds vote to have my motion overridden. Why would a member of a municipal board that was being sued not wish to be represented by counsel in an oral argument? That defies logic for me. I don't see how one can be allowed to contribute to a plaintiff, intervenor in the case against the Planning Board and then use one's official position on the Planning Board to prevent the Board's defense. What is a plausible explanation for Mr. Olschewski's bias, I don't know, it could be simple. At the original Planning Board hearing Mr. Olschewski's written testimony stated "Most people we know given the choice would not move in close proximity to an asphalt plant". If that's his reason, then he has a personal interest and that alone should disqualify him or it could be that he just enjoys being a Planning Board member and his long time association with the RLL and the support for Mr. McKay has given him a seat on the Planning Board and a platform he would not have achieved otherwise. Mr. Olschewski is not a citizen and is ineligible to vote or hold an elected office. Regardless of his motivation, and I don't speculate on what it was, it's obvious that Mr. Olschewski come to the Planning Board with an overwhelming bias against the asphalt plant.

My fourth concern is Donna Schneider. Donna Schneider is a former RLL backed Council member and an outspoken critic of the asphalt plant. Her campaign brochure for the Board of Education read Donna Schneider stood strong alongside other Lopatcong parents against the asphalt plant. Prior to the 2013 primary, Ms. Schneider told the Express-Times the asphalt plant's approval inspired her to run. "I attended every hearing, every night about the asphalt plant and as I was let down by the behavior of Council and how they treated the Lopatcong residents. She added she feared the plant would lead to more industrial plants. Juniper Leifer wrote on Facebook "head to the poles on June 4th and vote for Donna Schneider and Martin Swim". They had provided a clear vision with specific plans and wholly opposed the asphalt plant. After her Council election in 2013, Ms. Schneider posted on the internet "I proud to be backed by RLL, Lopat Speaks and Lopat Care. I'm committed to everyone who supports these groups". Ms. Schneider resigned from Council on June 1, 2016 seven months before the end of her term. She was appointed to the Planning Board in January 2017. Ms. Schneider recently lauded Mr. Johnson on Facebook. "Eric Johnson will tell flat-out, Eric Johnson will flat-out tell you he is against the asphalt plant, the old regime will not". In 2016, after Lopatcong Athletic Association requested that Council name the football after longtime benefactor Doug Steinhardt, Ms. Schneider posted on Facebook "they should be voting to name the asphalt plant that is coming to town across from the elementary school after him because that's the only building he deserves to have his name on". The depths of Ms. Schneider feelings are evident. She and her friends like to broadcast them on social media. There is nothing wrong with that, passion is a

part of politics. Nonetheless, her postings are prima facie evidence that she cannot rationally evaluate elements of the Master Plan that relate to the asphalt plants role in the ROM Zone.

My last one is Carlos Correa. Mr. Correa is being sworn in tonight. On his volunteer form, he noted interest in land planning in general. His wife, I feel the conflict is blatant. I am surprised the Mayor didn't mention this when he made the appointment last night. I don't understand how somebody can contribute to a lawsuit against the Planning Board how ones wife and again, you have the gregarious conflict from your spouse, how she can continue to be a plaintiff against the Planning Board and serve on the Planning Board.

I'll conclude, regardless of the true motivation of the foregoing Board members for amending the Zoning Ordinance, it is obvious that the potential exists for multiple conflicts of interest to taint the process. Further, it is not up to the individual member to rule on his own conflict. Publically stated words and opinions cannot be retracted. The efforts of certain members of the Board appear to be driven by a single minded idea, not a planning process. Actions have been proposed that are inconsistent with the Municipal Land Use Law and the recent trial court decision. The process that has been followed to date has been hasty and hap-hazard. By the Mayor's own admission, he does not understand it and I can of course quote when he said that. Again, it is impossible that the type of land use represented by the asphalt plant may no longer be compatible with the goals of an updated Master Plan. However, that has not yet been demonstrated and the above members of the Planning Board have potential conflicts that likely prevent them from objectively pursuing the process and thank you for letting me finish and those are my concerns.

Mayor McKay – I would suggest that we need time to refute Mr. Prior's speculative tirades.

Members talking over each other

Member Fox – Let's not go back forth. Have everybody make their statements

Mayor McKay – Oh all right.

Member Fox – things get put in writing. You can refute at future boards, other times everything that

Chairman Johnson – It's certainly when it's Tom's time to speak if he wants to refute anything he can but at this point, that's not the order of what we are doing things. So Joe has expressed his concerns so thank you Joe.

Mayor McKay – Those are his opinions.

Chairman Johnsons – and uh, his opinions. Obviously, at this point, we're going to take any other concerns for any other board members that you might have as well before we get to public concerns. So, is there any other concerns by Board members for any other potential conflicts?

Member Woolf – I have one question for counsel. Suppose what Joe just read off here and five people are disqualified. Where does that leave us as a Planning Board?

Member Fitzsimmons- We need nine right?

Vice-Chairman Olschewski – No.

Attorney Sposaro – There is a provision in the Land Use Act ruled necessity we may have to get members from the Zoning Board or the Board of Education.

Member Pryor – I do want to say one final thing. These really aren't intended to be personal attacks. They address the conflict of issue, conflict of interest issue. If the DCA decides there is no conflict, I move on. The speculative motivations the only purpose of that is to show the benefit does not have to be in terms of money. It can be in terms of political benefit, it can be in many different terms and that's just, you know, suggesting why, why a conflict, how a conflict could turn into a problem and again, I emphasize that some of those hypotheticals I mentioned I'm not saying that's your motivation. I'm saying that's how a conflict could turn into a problem.

Chairman Johnson – I, unfortunately, do not have my notes with me. They are at work, but there were a couple of things I wanted to ask Joe and

Member Pryor – I thought we said no debate. I don't mind.

Chairman Johnson – This is not a debate. I'm not refuting you why I am expressing concerns with the potential conflict and I'll do the best I can, I don't have my notes with me, but I was under the impression that your campaign along with Lou who has expressed his concern against the asphalt plant but I'm concerned that you were funded by the PAC which received a large majority of their contributions from Steinhardt's law firm which is related directly to the owner of 189 and I don't have it in front of me

Member Pryor – You know I will say. I'm perfectly willing to discuss donations. We got I think it was \$600.00 from the PAC.

Member Fox – Are you trying to say that he has a conflict of interest?

Vice-Chairman Olschewski – That's what he said.

Chairman Johnson – I'm expressing my concerns

Member Pryor – All right go ahead. All right, and that was brought up at Council. It was asked to the Township Attorney about whether receiving something from the PAC was a conflict.

Member Fox – We're not debating him. He's now saying his

Member Pryor – All right, fine. You send that to DCA and

Chairman Johnson – No, it's just a (inaudible) again

Member Pryor – The PAC, that PAC donates to a lot of folks.

Vice-Chairman Olschewski – Doesn't matter.

Chairman Johnson – I understand

Member Fox – Joe, we already cut you off. Stop cutting him off.

Member Pryor – I willing, I said go ahead send stuff and he looked back at me.

Chairman Johnson – Again, darn it, I don't want to, cause it's not my time to refute what you said and I'm not trying to do that but it's kind of related just because of the actions that have been taken to really, really inhibit the Planning Board from functioning. The attempt to stop the last meeting that we had because the Attorney wasn't present everybody on the Board new that the attorney wasn't present but yet you waited until the night of the meeting when everybody was already here to say it. An email two days before hand could have resolved the whole issue. We all knew that was happening. During the discussions in 2016,

Member Pryor – Is that a conflict to bring that up?

Chairman Johnson – Well, I'm just saying it could appear that there was an attempt to actually

Member Pryor – I didn't know there was, be an attorney sitting in the audience till we got here. That's not a conflict Eric. Why don't you stick to the topic?

Member Schneider – Can Eric just get everything out that he had and

Member Pryor – I told him go ahead send this off stuff

Member Schneider – He's cutting him off.

Member - Joe go ahead

Chairman Johnson – Bear with me, I'm doing this with no notes. I got nothing but there was another thing that really bothered me and the discussions that were happening in 2016 and everybody's entitled to their opinion and a vision and because I expressed my vision of how the future of this town should proceed I was threatened personally by getting fined. I think it was a \$1,000 for having the discussion and I think it came from the Chair but I remember you being in support of it but again I don't have it in front of me but I felt that shows a little bias too. The attempts, the attempts that again, I'm trying not to make it personal but you seem to be targeting everybody that was involved with the campaign that I was running or that was against you and I don't know if that's true or not again it's, it's speculation, it's an observation but everybody that's been called out was part of the campaign. Since I'm going by memory, that's all I've got but in all fairness to the procedures happening now Joe that I will probably write a letter just with

a couple of those issues and if I come up with another one I'll have the courtesy to let you know and it's part of the procedures.

Member Pryor – Be my guest, read it here.

Chairman Johnson – Well, I'll send it to you, it is no big deal.

Member Pryor – Then I'll read it here.

Chairman Johnson – That's fine. That's all I can remember. So, before we move onto public concerns, I will ask the Board if there is any other.

Mayor McKay – I have few comments. I don't think I'm had the opportunity to prepare something like Mr. Pryor did. I mean he must have put a lot of time and effort into this and had I had the time, perhaps I could had come up with as many speculative nuances and ridiculous

Vice-Chairman Olschewski – Insinuations.

Mayor May – Insinuations yeah.

Vice-Chairman Olschewski – There you go.

Mayor McKay – Yeah, you know, could it be Joe that you are behaving in this fashion some might say it could be, I'm not saying that you are, but maybe you're trying to get on the bridge commission. Ahhh who gets on the bridge commission? Well, maybe that's what you're trying to do. That's you know

Member Pryor – Be my, be my guest send that to DCA.

Mayor McKay – go on and on with stuff it's all nonsense, it's all nonsense

Member Pryor – Please send it to DCA.

Chairman Johnson – My question for Tom.

Mayor McKay – What?

Chairman Johnson – Are you, do you have some issues that you intend to put in into a letter

Mayor McKay – I have some comments. I don't have enough time to look at all this.

Chairman Johnson – You don't have to do it tonight.

Member Woolf – I thought you were going to be poling the Board here to get their opinion to see whether or not they were going to recuse themselves?

Chairman Johnson – After

Mayor McKay – Yeah, cause that’s what we’re doing.

Member Woolf – There was supposed to be no discussion by the Board members

Chairman Johnson – This is concerns. I understand this is concerns by Board members of potential conflicts which is what Joe did and if Tom has one. That’s what I’m trying to figure out.

Member Woolf - Pole him

Mayor McKay – Well, let me finish my turn.

Member Woolf – (Inaudible) the Board

Mayor McKay – What?

Vice-Chairman Olschewski - Are you done.

Mayor McKay – No.

Chairman Johnson – The Board will be poled

Attorney Sposaro – Does any member of the Board feel they need more time to prepare?

Chairman Johnson – I don’t for the public.

Vice-Chairman Olschewski – No.

Mayor McKay – Well some of these things I mean I was told I was photographed, secretly photographed at Bruno’s Pizza Place. I don’t know if I was at Bruno’s Pizza place.

Members talking over each other

Vice-Chairman Olschewski – (Inaudible) you were probably got the pizza for free then knowing you.

Talking over each other

Chairman Johnson – Tom, Tom, Tom the only thing I want to know, everyone’s going to get a chance to speak like Gary said, is your intention to write a letter regarding your concerns of conflicts for Joe? Joe has the right to know if you are planning on writing a letter and say that you are and I understand, you don’t have to, you don’t have to speak it now but

Mayor McKay- In order for me to write the letter to DCA, I have to have a written thing of what he just said because you have to answer it point by point. Being pictures of me at Bruno’s

Chairman Johnson – Well, you don’t need to do the later tonight.

Mayor McKay –my primary literature said I didn't like the asphalt plant, you know, I had two little nieces that, or granddaughters rather that were suffered from respiratory diseases. When I heard about the asphalt plant, it wasn't my favorite thing.

Chairman Jonson – I think, I think you have time for the letter

Mayor McKay – (Inaudible)

Chairman Johnson – I think you are going to have time for it. I think it's just fair to know do you intend on writing one. It sounds like you said yes.

Mayor McKay – I need to see what was said about what Joe just said about me and then I'll reply to it. Yeah, I think I have to reply to it because there's you know they're splitting hairs here.

Chairman Johnson – Well replying, replying to it

Attorney Sposaro – Are you going to reply in public Mayor?

Mayor McKay – What?

Chairman Johnson – We're replying sorry

Attorney Sposaro – Do you want to reply in public?

Mayor McKay – Yeah, I want to reply in public.

Chairman Johnson – Okay, replying is different than writing a complaint to the Finance Board with your, with your concerns. I'm trying to differentiate the two right now.

Mayor McKay – Well, this the issues like the defunding the asphalt plant. That was never to my knowledge said.

Member Pryor – It's right in your lawsuit.

Mayor McKay – What was said was there were two lawsuits. There was the initial lawsuit and then there was it went into appeal. I don't know that the Town Council or the Planning Board ever voted to go into appeal and to fund that. I could not find any indication of it. We sent an attorney to represent the Planning Board but there was no indication has an agreement with the Council to do that or that has been properly approved by resolution over the last five years to do that. These are things that I would be concerned with from a procedural standpoint. Procedural, all right. That you don't do it that way. You do it a certain way. You know you approve them each year and then you don't give them money unless they're approved. So for procedural aspects yeah I have, I need to see what, you know, what the concern is here and answer that. These are procedural things and I don't think, you know, should behave in that fashion.

Chairman Johnson – So, Tom, we will come up with a time frame that we all have to respond to this.

Mayor McKay – Yeah, we need to see the written accusations

Chairman Johnson – We'll (inaudible) that down

Mayor McKay – and then we'll, you know, I'll be glad to do that.

Chairman Johnson – Is there any, before we move to the public concerns is there any other; this is concerns not rebutting what Joe said. Its concerns

Attorney Sposaro – It's Public Comment.

Member Fitzsimmons – Question of Tony. Public Comment or written. Can you do both?

Attorney Sposaro – Yes.

Member Fitzsimmons- Okay, that clarifies.

Chairman Johnson – Does it have to be written to go to the Finance Board though?

Attorney Sposaro – I don't know how else you can present your

Chairman Johnson – Exactly, so, if somebody wants something to go to the Finance Board, it has to be

Attorney Sposaro – It can be both but it's at a minimum it has to be written if you want the Finance Board to consider what you have to say.

Chairman Johnson – That's what I expected. So hearing, hearing

Member Schneider – Does anybody else need to say anything before I go?

Vice-Chairman Olschewski – Go Donna I'll wait for you.

Member Schneider – You can go first

Vice-Chairman Olschewski – No. After you.

Member Schneider –Okay. Okay I just want to say that you know there are some things that everyone has said and done. I really wasn't going to say that anyone here had a conflict because I thought that everybody here would be adult enough to put the Planning Board's needs in front of anything else. Having said that, I will be filing a letter also Joe on your contributions and how your campaign was run. Whatever, Ms. Campbell said really is of no relevance to me. I will be (inaudible) board that will make the decision. Also, by posting on social media does not mean that I have a conflict. I have not direct or pecuniary interest indirect or direct for to of gain. I do

not have any personal interests. It is not affecting me monetarily or my home or anything else and also I am not a member in any organization that has policies that I wish to further. So, any of those things that do constitute a conflict, I do not have any of those and because I have an opinion and because I ran on a platform does not make any future in this Township the but what happened in the past has no bearing on what the future of this Township holds.

Vice-Chairman Olschewski – You done?

Member Schneider – Yes.

Vice-Chairman Olschewski - That was good.

Member Schneider –Thanks.

Vice-Chairman Olschewski – What she said.

Chairman Johnson – Peter go ahead. I am assuming you're ready?

Vice-Chairman Olschewski – I, I find. First of all I'm a little embarrassed I have to say. I find it a little hypocritical Joe many of the things you brought forward either have no bearing on anything and then you bring up these four year old, five year old things which in your head maybe valid but and as I said to you, you brought up peoples campaigns and how they ran and not ran and you yourself ran and I have it in front of me saying that you are not a pro-asphalt plant supporter and you want smart growth in the town which is actually nothing than what Donna has said in the past, I have said in the past, Eric has said in the past and it was in your campaign literature as well.

Member Pryor – Why don't you read that?

Vice-Chairman Olschewski – and I will

Member Pryor – Why don't you read it into the record what it says?

Member Schneider – Can somebody please stop him from interrupting every single person that speaks?

Chairman Johnson – Just real, real quick, there's going to be another time of course at the end of this meeting Peter to refute stuff. Are you

Vice-Chairman Olschewski – I, I, I

Chairman Johnson – suggesting of areas of concern?

Vice-Chairman Olschewski – it, what I'm saying Eric, is if Joe, if Joe feels that our, our contribution in the past with this one asphalt plant are of concern and they should be, they are conflicts of interest, then Joe did nothing else than we have done. He used the asphalt plant in

being against the asphalt plant for his own political gain and I don't see that there is a difference. In addition to and my friend Gary Woolf over there, since he was a member of the old Planning Board, I would venture to say he cannot vote against himself. Is he conflicted, I don't know? With all these things said, I have a question to the Attorney, Tony and again, I have to ask you one more time, I apologize. Everything which is discussed here right is based or is, is in regards to one specific plant which we have, I have, opposed; I still do because for whatever reason my kid was going to school there. Is something where we have an opinion about one project in town, does that prohibit us from making sound judgment and do what we were sworn to do which is being impartial? Does that constitute for us to be impartial when it comes to the same type of industry that sounds ridiculous to me. I mean everybody has an opinion about something as Donna clearly said and just because we oppose one thing at one point in time in the town that means we cannot be impartial about something similar in another part of the town miles away? I think as an attorney you should have a clear opinion about that. Thank you.

Chairman Johnson – A question then that Peter brought up do we want, Gary do you want to have the Local Finance Board confirm your ability to partake in these discussions as well?

Member Woolf – I'll go through the counsel but I'm going to say no. I don't think I have to.

Chairman Johnson – Okay.

Member Woolf – I was on the Planning Board. I said it at the meeting when this Board approved the asphalt plant that they met Township Code, they met County Code, they met State Code, they met Federal Code. I have no feelings one way or the other whatsoever of who builds what, you know, as long as it is in our Master Plan. I don't think I have a conflict. If counsel says I do

Chairman Johnson – Well, the real thing Gary is,

Member Woolf – If someone wants to write a letter against me?

Chairman Johnson – Yeah, that's what I'm saying, if somebody does, I don't know if that's happening, if somebody does, you're okay with

Member Woolf – (Inaudible) I'm here for the public. I'm not here

Chairman Johnson – Right that's what I, that's

Talking over each other

Mayor McKay – Tony, one more last question. I'm really not sure why this is even coming up at all because I understand that the asphalt plant situation was approved by and Judge Miller's decision and now it's in the appellate courts and the final arguments have been heard. So, we could make any kind of rule we want and it wouldn't affect the opening of that asphalt plant if the appellate courts uphold Judge Miller. Is that correct?

Attorney Sposaro - Unless it goes to the Supreme Court or unless the appellate division reverses. It's not over till it's over. It's not built till it's built.

Mayor McKay – So, is that the concern that the appellate court might reverse and then they would have to work through the process again and Mr. Pryor wants to make sure they have that opportunity.

Attorney Sposaro – Right now the issue is the discussion of the rezoning of the ROM Zone and there's been some pointed discussion, specific discussion about asphalt plants, how they're defined, whether they should be permitted.

Mayor McKay – I think

Attorney Sposaro – It gets pretty close

Mayor McKay- How I understood it, was that this plant is going to happen if the court allows it and we can't, there's nothing that anyone can do about that but what goes after that. I mean do you want ten plants or do you want to keep it at one or is two good. That's the kind of thing I think is the appropriate (inaudible) of a Planning Board. Is that not so?

Attorney Sposaro – Yes, but if the, if this plant for some reason, any reason never gets built and you are discussing and then eventually excluding this as a permitted use, it gets awfully close in my view to targeting this particular property. I just think you are in that area where perhaps reasonable minds could differ. I don't know.

Mayor McKay – I (inaudible muffled sounds) outside of the you know picture (inaudible muffled sound) this was my opinion. I think that was everyone's opinion.

Attorney Sposaro – Not necessarily. The rezoning of the ROM District would include this property and this thing isn't built yet. What happens if the company goes bankrupt and it doesn't get built? Well, and someone else comes along and wants to build a different type of plant but on the same property and now it is not permitted because the zonings been so amended. If you participated in that and if you ran on a platform that says you don't want to see any more of these plants, does that create a conflict? That's going to be for the Local Finance Board to decide. I don't know how to answer any of these, some of these questions anymore.

Mayor McKay – If you don't, we certainly don't. I mean you have to remember we're just all regular citizens up here and many are green, they've only been here a little while and they're trying to learn how to do this. They need your, they need your help to do that.

Attorney Sposaro – I, I cannot, I'm not here to pass judgment on and make a decision for board members in their particular situations. A Board member could ask me for advice. I guess I could give them advice but I'm not here to make a decision. I can't sit here and say I think you have a conflict or I do not think you have a conflict. I think it is unfair to ask me to put myself in

a position of this theoretical reasonable citizen is there the potential for non-objectivity. I don't know how such a person would feel. I'm in a different role. I'm an advocate. I'm an attorney. It's perhaps not what you want to hear but I don't have a better answer for you.

Mayor McKay – I go back to what I said earlier, there is always a potential that somebody might think something. You can't stop that and to prove that that person is not reasonable or informed you know how are you going to prove that?

Attorney Sposaro – There's always the potential, but what a reasonable person feel that there's, that the potential is real. Because that's, there's lots of people with conspiracy theories out there.

Mayor McKay – Oh yes.

Attorney Sposaro - It doesn't mean they're reasonable people and just because there's the potential for that, doesn't mean that a reasonable person would come to that conclusion. That's the catch. You're right there is the potential. Anything is possible but would a reasonable person feel that there's the potential for non-objectivity. That's really the standard.

Mayor McKay – That's a tough standard. I'm sure none of the people on this Board are hell bent on doing anything that would get the Planning Board in trouble or to make radical change or deny people their rights and, you know, to the extent that we understand these things, and that's why we need you and we need our professionals up here to help us out. I don't think anyone is trying to do anything like that. You know, I think that they just trying to get to a point where well I kind of feel the future of the Township going in this direction and I felt that way a long time people might say. So then they just gonna kind of that affects their thinking and a reasonable person out there might be totally be of a different than mind saying that persons just terrible and they're just trying to do something I don't want and there you go. So

Attorney Sposaro – Well, each of you took an oath and it's interesting that I had to swear our newest member in tonight and the last line of the oath is “and I will faithfully and impartially and justly perform the duties of the office”. Everybody took that oath and I think everybody took that oath seriously and did so honestly

Mayor McKay – Yes they did (inaudible).

Attorney Sposaro – with that in mind, would a reasonable person continue to believe that there is potential for non-objectivity? You all stood here and raised your hand and in effect put your hand on the Bible and you swore to God that that's what you were going to do; to be faithful, impartial and just.

Mayor McKay – And I think that's what everyone wants to do but (inaudible) a very fine (inaudible).

Attorney Sposaro – It is, it is.

Chairman Johnson – I think the next thing what we’re going to do before we went around and everybody either recuses themselves or decides to write a letter was going to go public right?

Attorney Sposaro – Yes. Does anyone on the Board feel they want more time to address this publically?

Chairman Johnson – There’ll be more time after public.

Attorney Sposaro – I mean after tonight because Mr. Pryor came in as the Mayor said well prepared with a long detailed statement and I think it caught some of you frankly, by surprise and you may have to dig back into your own records, documents, recollection to pull it together and you may have something to say about it. I’m not encouraging it, but I’m not discouraging either. I want to give everybody a full opportunity to say what they have to say.

Chairman Johnson – I think we can decide that at the end of the meeting.

Attorney Sposaro – Okay, that’s up to you.

Member Fischbach – I have one thing I want to clear up maybe what the Mayor is saying and again, don’t, please don’t take this any other way and it’s an objective okay, so looking from the outside, looking in I’ve been sitting here since 2014. I’ve been an alternate, I’m fine with that. The mayor makes the appointments. Gary is the oldest member on this Board and second to him is, quite honestly, me. Everybody else on this Board came after me. Okay. The Mayor appointed everybody and from the outside looking in, they were people that were associated with whatever views they had, political or whatever. Okay, but I sit here as an Alternate and they’re all new people that for four years that all came in. Okay, with no experience.

Mayor McKay – Were you not reappointed?

Member Fischbach – I was reappointed as an Alternate.

Mayor McKay – Thank you.

Member Fischbach – As an Alternate, never a term limit and again, I’m not sitting, I’m fine. That’s fine, I’m fine, I have a very busy life and I’m fine with that but from an outside looking in, as an objective person what does that look like? And, I’ll leave it at that.

Chairman Johnson – Thank you for your comment.

Member Schneider – I just wanted to add one thing and, you know, this is all revolving around this issue but because as Peter said, I had an issue with something that was being built on a certain piece of property at a certain time, does not mean I have any biased towards the asphalt company itself. It is the project and where it was, where it was going and what time it was going up. That was my issue. Not with the asphalt plant company and you said too, everybody has an opinion. This is going forward and everyone has a vision sitting here of what this town what

they'd like to see in this Township. So, that's why people come on these boards because you have a vision because you maybe didn't like the things that were going on. You go on these boards to change to make change or to try and change or to you know, have more goals for your visions make it be brought to light and that's why a lot of us folks are here I'm sure. For me, I can only speak for myself but I'm here because I did not like some of the things that were going on and I did want to come and I did want to voice my opinions of what I would like to see in the future. Whatever this asphalt plant does or doesn't do that's not my concern. It's what is in the future and what I would like to see this Township be.

Chairman Johnson - Thank you Donna. Do we need motion to get Public Comments at this point Tony or do we just (inaudible).

Attorney Sposaro – Just open it to the public.

Chairman Johnson – All right let's open this up to public and then when public is done we'll continue with our discussions here on the Board.

Robert Larsen – How are you?

Vice-Chairman Olschewski – So far, so good Rob. Be gentle.

Robert Larsen – Okay.

Chairman Johnson – Just want to give your name and address for

Robert Larsen – Rob Larsen 26 Browning Court. First of all, before I begin, I wanted to address your comments about the political donations. If you have an issue with any money anyone donated, the first place you should start would be Trenton. Okay they monitor all the monies that I donate and anyone else, other people that donate okay so, it is a strictly monitored system and they're perfectly legal and that shouldn't even be an issue. We've already dealt with that in other forms besides now we're talking about it here as well as the Town Council so you're wrong in what you were saying as it being a conflict. Okay, and if you want the website to look it up and verify it, I can provide that to you. Okay. Mr. Mayor since assuming office you have appointed most of the people on this Planning Board. This has resulted in a conflicted and inexperienced board that can hardly function. Mr. Johnson since you've become the Chair, the meetings have dissolved into utter chaos. We have now have seen members who think they can get up and leave during hearings, members who refuse to acknowledge blatant conflicts of interest, a hurried, disjointed approach to the master plan, in an attempt to generate an issue before elections. A special meeting held without legal representation. You put oral arguments on a suit involving the Planning Board and with the lawyer for one of the parties in attendance. Members freely conversing with the audience and witnesses during breaks and improper and amateur attempt by the Chair to introduce his own feasibility analysis as testimony in the middle of a hearing and aborted attempt by several members to deprive the current board of legal

representation at the oral arguments for the asphalt plant. Mr. Johnson you recently asked Bill Wright at a Recreation Committee meeting for his opinion on the Ferruggia application; an absurd and improper inquiry for one who is supposed to guide the Board to a decision based on testimony and criteria set forth in the Municipal Land Use Law. Mr. Johnson your lack of competence can only be described as troubling and embarrassing. I call upon you to resign as Chair before you get the Board in a lawsuit. I also call upon you to reexamine your very obvious conflicts of interest. Thank you.

Chairman Johnson – Thank you for your comment. And we have additional comments. Yes. Gary come on up.

Gary VanVliet – Good evening being on this side. I'm Gary VanVliet, former Chairman of the Planning Board – 14 Dryden Terrace in Lopatcong Township. I just like to reiterate some of the comments that are coming through here is the fact that when I was on the Board and trying to represent the people of Lopatcong Township I represented them from the point of trying to save them a lot of money with lawsuits we tried to stay within the actual municipal government rules, regulations, advice from Counsel and one of the troubling aspects Mr. Johnson came on the Planning Board was his first meeting he introduced an ordinance that he wanted passed concerning Strykers Road and the ROM area. One of my great concerns was if at that same meeting we have our attorney it wasn't our attorney it was counsel's attorney Mr. Cohen who indicated to us that we were crazy if we were going to start rezoning that area because the lawsuit was still in effect and some of the problems that comes in with that is had it been overturned, had we had an adverse (inaudible) and sent it back down to be heard at the lower court level or they actually took it back to where we were going to have it on the Planning Board, intervenor here that we would be subject to a lawsuit by the owner of the property. Who knows how much money would be (inaudible) millions of dollars at that point and that was all of the things I was trying to avoid wholeheartedly. The advice from Mr. Carbone who was the Planning Board's defense attorney for those hearings and however it went, indicated to me (inaudible) "email that (inaudible) crazy in going forth with trying to do a rezoning an area while the lawsuit was still alive". So those were a lot of the concerns that I was looking at from an aspect of trying to keep the Township on a financially sound basis and not contributing to another lawsuit. Let it work out to its fruition and other aspects of what it was Mr. Johnson Eric wanted to proceed with that ordinance that he had the biggest problem was that it's not really the Planning Board's single individual responsibility of the Planning Board to bring an ordinance in. The ordinance was basically the same ordinance that the Ms. Endick, Ms. Leifer at the time tried to put through as the Faulkner Act but whether she found out that the Faulkner Act was preceded by the Municipal Land Use Act that they couldn't force that same ordinance on the Council and they came to the Planning Board with it. At that time it was, we were really in the point of defending ourselves for the allegations and our advice from the attorney was to table that until the lawsuit was completed one way or the other. That was my sole purpose of trying to channel this to a way that we were going, we would have started to have a reexamination of the Master

Plan because the Highlands, a lot of different conflicts were coming in; the Highlands was doing their own re-examination of the Master Plan, we were under the auspices of the Highlands Commission, we were supposed to be in conformance with their Regional Master Plan with our re-examination of our Master Plan. I don't even think they have their Regional Maser Plan done yet do they George?

Planner Ritter – No.

Gary VanVliet – So we're backed up that way of not being able to conform with what the law says there. The other thing is that we still have the active appeal going and no matter what way it went, basically we were going to have to go into another lawsuit if it went against us. So let it play out. Going, because they had the appeal going, trying to do this at a time could possibly influence what the court was going to rule on it. If they go back and look at okay, this is what the Planning Board wants to do and redoing the rezoning, the ROM Zone, why wouldn't we grant them to come back the other way. I don't how an appeal court thinks, what parameters they work under. I'm sure Mr. Sposaro can tell you, you never know which, I just said, it's not over till the fat lady sings. So those are my objectives of trying to keep the Planning Board the way we were going and I really think it was probably a mistake to try to rezone while the lawsuit was in but the vote was the other way. The one comment that you made about being fined \$1,000 well this is the Land Use Law says that anyone who is an applicant that introduces an ordinance through the Planning Board or wants to come up for an application before the Planning Board must put a \$1,000 in escrow in order to pay for the professionals that we would have to go in order to reexamine that and that's what we were faced with. You were never forced to pay the \$1,000.

Chairman Johnson – That's true.

Gary VanVliet –Okay. (Inaudible) you said you were going to be fined a \$1,000 so I just

Chairman Johnson – I was never, I was never forced to pay it and you're right I didn't pay it but I think you're right the conversation was determined that I was not an applicant so therefore

Gary VanVliet – Well, you know, if you had all actions of an applicant coming in so whether you are an applicant or not, you are the person who brought this to the Planning Board. It wasn't developed internally from the Planning Board, so.

Chairman Johnson – Well, honestly, I appreciate your comment. I mean you have a lot of experience on the Planning Board stop by any time and again you're a wealth of knowledge, you're a wealth of knowledge.

Gary VanVliet – You guys are the new Planning Board (inaudible) I faced the same problems you did for sitting here but those were the actions that we took but I think you are going to find in the future that one of the biggest problems you are going to have is trying to avoid the lawsuit

so at least get down to I was sued many times so. Those were back in the days when you were sued personally. So anyway that's way I have to say and that's in defense of my rain as the Planning Board Chairman. So, thank you very much.

Vice-Chairman Olschewski – Thanks Gary.

Brian Weeks – 208 South Seventh Street. I want to say it's probably one of the hardest things to search your own soles sitting back there watching. All right. I'm sure you're all sitting back going what did I do? Where did I go? What did I say? Who met me? Eric you promised to go through, everybody went through. You missed one person and I never heard from him and that was Ken Fitzpatrick.

Chairman Johnson – We're not done yet. Don't worry. Yes, we're not done yet. Thank you Brian.

Peter Herrigel – Good evening I'm Peter I'm an attorney for 189 Strykers Road Associates

Secretary Dilts – Can you please spell your last name?

Peter Herrigel – Sure it's H-e-r-r-i-g-e-l and I'm just trying to figure out sort of scheduling in the event, and I'm not saying that they are going, everybody is talking about submitting letters and I'm just trying to figure out whether there's going to be a time line when you want submissions in if my client chooses to submit something. I assume you'll make that known and I just wanted to clarify and request that.

Attorney Sposaro – Absolutely.

Chairman Johnson – I actually think we are going to make that known tonight. I think we are going to figure it out and come up with a schedule. Yeah why wouldn't we. We'll commit to a schedule tonight. No reason not to. All right I think the next thing we are going to do is go through each member and they're going to have the opportunity to recuse themselves or I guess

Attorney Sposaro – Or not

Chairman Johnson – or not and then give, then they have the opportunity to write the letter if they want to at that point or they can just let it ride I guess. You don't have to write a letter

Attorney Sposaro – If you don't have to.

Chairman Johnson – Do we want to just go roll call order?

Attorney Sposaro – Why not.

Chairman Johnson – I don't know. Does anybody have any objections to roll call order? No we're good. All right.

Secretary Dilts – Member Correa – I’m writing the letter.

Attorney Sposaro – That’s why you’re first. The Chairman goes last so I think we’ll have

Chairman Johnson – No so you’re still going to write the letter.

Member Correa – All right

Chairman Johnson – Okay.

Secretary Dilts – Member Fitzsimmons –

Member Fitzsimmons - Well Brian brought this up. I guess my last name is Fitzsimmons. I voted for both sides in the last elections; supported Lori, Maureen McCabe. I donated money. I voted for Eric Johnson, Lou Belcaro, both sides. I’ve come to meetings occasionally and I was asked to be on the Planning Board. I thought it would be a great experience for me to do. I’ve had houses in the past. Wanted to contribute to a community that I’ve lived here 15 months since 2002. I’ve seen the politics go back and forth. It’s a shame it’s been reduced to this. Tom and I are neighbors; doesn’t mean that we agree with each other. I feel I can be impartial. I see all this stuff piled up here tonight. It’s a shame we can’t get to it. Do I recuse myself because I voted for the RLL and donated \$200.00? I don’t know. I did take that oath. I feel I can be impartial. I’ve heard both sides and there’s points to each side. Should I put this in writing I don’t know?

Chairman Johnson – Tony what do you think? There hasn’t been any

Member Fitzsimmons – You said you wouldn’t give an opinion but

Chairman Johnson – So you write a letter.

Attorney Sposaro – The, you’re taking a position. Your opinion is that you are not disqualified. Has anyone take exception to that?

Member Fitzsimmons – I have opinions, you know,

Attorney Sposaro – We all have opinions.

Member Fitzsimmons - I don’t necessarily support that

Attorney Sposaro – Exactly

Member Fitzsimmons - air pollution and things of an asphalt plant.

Attorney Sposaro – You are of the view that you can be impartial and will be impartial and that you, it’s a high standard that you meet the high standard but someone who can and should participate in the entire process. You’re of that opinion. No one else is voicing a contrary opinion, that, that’s it as far as you’re concerned.

Member Fitzsimmons – I'm not looking backward for something in the court, in appeal right now. I'm here to look forward

Attorney Sposaro – Understood.

Member Fitzsimmons – and you know, take a look at this map and see what we want or don't want in the future. Again, I've seen all sides of it so again, it is a shame we can't get to more important things

Attorney Sposaro – Agreed.

Member Fitzsimmons – I don't feel I should recuse myself because when was Lori and Maureen back in RLL, 2012? Eighteen days a month I traveled. I came to a few meetings. I went to one of Garrett's meetings; the television cameras were there, name calling people almost throwing chairs and I said this is unbelievable but I can understand the school nearby and just common sense thinking pollution. I fly in all parts of the world and I'm seeing this asphalt plant. Is that what we want near schools? If I was a part of it, maybe I would have been Planning Board, I would have voted against it and I did donate to that campaign \$200 to support the RLL but now years later I don't feel I should have to recuse myself for that.

Vice-Chairman Olschewski – Ken, it's probably best if you write the letter let somebody else decide and you're on the safe side and that's it.

Attorney Sposaro – Nobody's raising the issue. Not that I know of anyway.

Chairman Johnson – I guess the only thing if Ken, if it makes you more comfortable to get an opinion from the Local Finance Board, then write your letter and let them give you an opinion. I don't think you have to personally but it's not my call. If you want to

Member Fitzsimmons- It's probably, I said more now. I said what I wanted to say. Brian I'm glad you brought it up. (Inaudible) matter of fact I was out helping a friend campaign against Brian when he ran for commission. A good friend of mine Jeff Hahn were out knocking on doors. Does that create a problem with whether I'm impartial or not?

Vice-Chairman Olschewski – No.

Member Fitzsimmons – I've seen both sides here.

Chairman Johnson – Not, just with Brian just kidding. I think you're good but you can always write the letter if it makes you feel more comfortable. I guess we can move onto the next.

Secretary Dilts – So, okay I got that he's not going to recuse himself, not disqualified so there's no letter. Member Fox.

Member Fox – I do not intend to recuse myself. I don't think I have any problem being impartial and don't think I have a conflict of interest.

Secretary Dilts – Member Pryor.

Member Pryor – No I'm certainly not going to recuse myself. I am going to write a letter with my concerns about the five individuals I mentioned.

Member Schneider – No I'm not going to recuse myself. I will be writing a letter for on behalf of myself and a letter regarding Mr. Pryor. However, I would like a copy of all of Mr. Pryor's allegations so I can write a comprehensive letter and how do I get that Tony?

Chairman Johnson – Do we want to talk about the procedures at the end?

Attorney Sposaro – Yes. I think we'll talk about the procedures. I would think that you might have to wait till the minutes are generated. Beth's minutes are pretty comprehensive.

Secretary Dilts – Okay. Are you finished Donna?

Member Schneider – Yes.

Secretary Dilts –Member Woolf.

Member Woolf – No and no. Peter if you want to write a letter

Vice-Chairman Olschewski – No I don't. No, no, no.

Talking over each other.

Secretary Dilts – Mayor McKay

Mayor McKay – I guess I'll have to write my letter. I'll need time to research some of these heinous allegations especially being at Bruno's but.

Vice-Chairman Olschewski – I can't believe you didn't pay for the pizza.

Mayor McKay – Yeah and oh by the way, the literature came out in the primary was before the court decisions, doesn't matter.

Secretary Dilts – Vice-Chairman Olschewski.

Vice-Chairman Olschewski – I'm not going to recuse myself. I will write a letter.

Secretary Dilts – Chairman Johnson.

Chairman Johnson – I'm not going to recuse myself. I will write a letter to, briefly I have looked into this in depth and I've taken Joe's comments very seriously and the public's comments very

seriously. I've reviewed Tony's memo. I hate to say how many times I read it, it was probably too many. I read it at least three times. I reviewed all my campaign literature. I reviewed the sample ordinance that I sent out. What I sent out, this sample ordinance, it was a follow up to Mark Goral's request. The conversation was started by Mark and when I handed this out, I said and I quote "is a trial sample re-write of an existing ordinance to be considered in our conversations moving forward". That's not trying to force an ordinance down anybody's throat so again; I shared all this information with Tony. I reached out for a second opinion. My second opinion was from an expert attorney in this field. He was actually one of the editors of the Municipal Land Use Law. I can't get any higher than that. We had a great conversation and his opinion is the same as mine. So taking everything into consideration, I have no doubt that I don't have a conflict of interest. I'm not going to recuse myself and that is because we are talking about the future of development and vision for our town, not an already approved asphalt plant that happened five years ago. This is the future of our town, so I'm not going to recuse myself. I will write my letter. That's my two cents.

Mayor McKay – Now I would like to add

.Mayor McKay – What.

Secretary Dilts – Member Fischbach

Mayor McKay – Oh Fischbach I'm sorry.

Member Fischbach – See you forgot about me.

Mayor McKay – I thought you went already. You went already and I'm the one who appointed you.

Member Fischbach – You're right.

Chairman Johnson – You can't catch a break.

Member Fischbach – I'm not going to recuse myself and I'm not going to write a letter. Again, if anyone wants to write a letter on me that's go ahead.

Chairman Johnson – And Beth I did want to add one thing. As far as the timing of this, there was, and this is separate, this will probably not even be in the letter. It's probably not an issue for anybody else. There was mention of that this issue of the Master Plan rezoning is thrown, is begin thrown out here and the timing of this is right before the election. Like this has anything to do with the election. This has been a 15 month ongoing discussion. There's no agenda here other than looking out for the future of the town and a vision. This is 15 months in the works. How could that be before an election? And this is going to take, I don't know, it could potentially take another year if we actually

Vice-Chairman Olschewski – Without getting anywhere.

Chairman Johnson – without getting anywhere. I mean it could take another year. The time that we have to talk about this is always secondary to the other issues that we have. We have applications that come in. That has to take precedence so this has always been on the back burner. It's going to take a long time. No decisions have been made while the court is still in session or arguments are no decisions have been made. We've been trying to advance the discussions forward. I don't even know how close we are but it's going to take a lot of time so I don't think any decision will come from this Board until we know the outcome of the lawsuit. (Inaudible) going to be one as far as a decision goes but that's the timing of it. This has been (inaudible) are new to the Planning Board meetings this has been an ongoing discussion for now 15 months and I believe the Master Plan re-evaluation is going on three to four years George somewhere around that range? So this is a very

Planner Ritter – (Inaudible).

Chairman Johnson – very long process and to be quiet honest with you, it's a great timing process but you know, it takes time, it just takes time to do.

Mayor McKay – Okay, I'd like to (inaudible) I think we need to continue with the good work of this Board (inaudible) this Board has a lot of work. Look at these piles. If we put the (garbled speech).

Secretary Dilts – Back away from the microphone.

Mayor McKay – I'm sorry. There are many applications that are coming before this Planning Board. We're working (inaudible) I don't want this issue to taint the public's perception of the Planning Board. Perhaps it might be wise to put any discussion of the ROM off for say three months and then revisit it then. This way, there can be no allegation or doubt that people are trying to work against any, you know, any existing approval that that's in court or something like that so I would suggest we do that. We just put that part of the discussion off for three months and that we continue on the rest of the Master Plan work that we tried to come here tonight to do so, that we can meet our deadlines in that regard. So, that would be my suggestion. How do the rest of you feel?

Chairman Johnson – I think it's hard to lock ourselves down to three months. I mean what if the court decision takes four months.

Mayor McKay – Well then, we revisit in three months.

Chairman Johnson – Okay. Yeah I don't want, we don't want

Mayor McKay – It won't be discussed for three months and then that way we can (inaudible)

Chairman Johnson – We could, I mean, if the court makes a decision in a month, I don't know if that's precedent or not Tony, but if they made their decision in a month, we could revisit it in

two months but I think your idea of waiting for to know how the court decides, could definitely be an important factor.

Mayor McKay – (Inaudible).

Attorney Sposaro – I think it is one of the most profound things that have been said tonight.

Mayor McKay – Okay, why don't we. I'm going to make that a motion that we do that. Do I have a second?

Member Pryor - I'll second.

Chairman Johnson – All right let's do roll call. Wait is there discussion? You'll have an opportunity, yes. Let's do roll call.

Member Fox – So the motion was that we put off discussion of the ROM portion of the planned redevelopment until the

Mayor McKay – talking over Member Fox.

Member Fox – planned redevelopment until such, until there's undesignated portion of say two plus months.

Talking over each other

Member Schneider – We don't have to act on any of it. Can't we just have the discussions?

Chairman Johnson- I'm willing to have the discussions but I'm also willing to wait a couple months and see if something comes out of the court. I think the revisit in three months; two to three months range is actually pretty good idea if the court.

Member Fox – Four or six, I don't want to wait, I don't want to wait until a decision is

Mayor McKay – (Inaudible garbled speech).

Member Fox – Put it on hold until it's last.

Member Schneider –Until it's last.

Member Fox – Until it's last. We've gone through all the other issues, then we will address the ROM Zone last in our discussions

Member Schneider- Regardless of when it is.

Member Fox – redevelopment of the Master Plan.

Chairman Johnson – Well then, at that point we can revisit it and see if it's prudent to have discussions, so we can

Member Fox – We can knock out all the other parts and save the ROM Zone for last.

Attorney Sposaro – That's not the motion that was made.

Talking over each other

Chairman Johnson – Tom, unless you want to re-track it and reword it we have to vote on it.

Member Fitzsimmons – And if we keep going like Joe was saying, are we going to have special meetings? Right now we meet the third to discuss the Master Plan.

Member Fox – No we're not going to keep having special meetings.

Talking over each other

Chairman Johnson – We'll fit it in where we can and if we can't fit it in, we'll have to have special meetings if we can't fit it in. I'd love to fit this in a normal meeting. We've been I don't know if you want to call it fortunate or unfortunate, that we've been very busy this year. So there hasn't been time so, if there's not time

Member Fitzsimmons- Busier with this stack.

Talking over each other

Chairman Johnson – Just wait, just wait. So Tom are you retracting your motion based on the comments from Jon or are we going to vote on this thing? You can retract it now or we're going to vote.

Mayor McKay – I'd like Tony to give me his idea of how that motion should sound.

Attorney Sposaro – You should table discussion of the, discussion regarding the ROM Zone and it's relation to the Master Plan until we get some direction from the court. Some kind of direction from the court we can then revisit cause we don't know what the decision is going to be or how long it is going to take. So, to put a time limit on it, it makes no sense. To try and forecast what they're going to say makes no sense. If it's a remand, it maybe one thing. If they affirm but then there's a petition for certification from the Supreme Court, that's another thing. I think we need to wait and see. So, I think we should put it on hold pending further direction from the court.

Mayor McKay – Okay, that's the motion.

Member Pryor – And, I'll second that motion.

Mayor McKay – All right roll call please.

AYES: Members Correa, Fitzsimmons, Pryor, Woolf, Mayor McKay, Fischbach

NAYS: Member Fox, Schneider, Vice-Chairman Olschewski, Chairman Johnson

Attorney Sposaro – Carried. I will prepare a resolution on that one.

Chairman Johnson – I don't know if it's worth another motion but I also kind of one thing that Joe's been alluding to which I wanted to add as part of the motion which is why I voted no, I think we also need to wait until we get the decision from the Local Finance Board. I think we need to wait for that also but

Member Pryor – I would, I don't mean to interrupt, but I would support that as well. You're going to get that. You may have one, you may get the other. All I can say is I really agree with Tony, you're spinning your wheels till you wait, you know, until you get direction from the court. I agree with Tony there. If you get a decision from the DCA in two weeks, you're not, but let's say you did, I still think it's prudent to wait until you get direction from the court.

Chairman Johnson – I was more on the side with Jon of what his idea was, but the motion carried so we're not done with this discussion yet as much as I hate to say it. We need to come up with a time frame for when we want these letters submitted to Tony so he can do his work.

Attorney Sposaro – My work's going to be collating, collating it all and sending it to where I have to send it.

Chairman Johnson – What's the correct, do you want it, do we want to get the challenges letters in first and then that gives the people that are being challenged the opportunity to, I guess, refute it or rebut it.

Member Fox – Within two weeks will the minutes be, well we can either do it when the minutes are posted or when the minutes are accepted at a meeting? Because there maybe comments on the minutes as posted that we want corrected before the minutes become official then you'll have two weeks to write a letter from that point to get your letters to Tony.

Vice-Chairman Olschewski – (Inaudible).

Member Fox – I would think that somethings that we're, said people are going to want to read in order to argue, you know, to write their letter.

Vice-Chairman Olschewski – I would think that somebody who writes, I think that first a complaint needs to be filed to the Local Finance Board which would be Joe's allegations and I

would think that then after that has been done and that has been submitted and filed, then we have whatever time we need to write our rebuttal and then it goes where it goes.

Member Pryor – If I could, if I could

Chairman Johnson – Go ahead

Member Pryor – I mean anybody can file a complaint to the DCA and the complaint gets filed, it gets investigated. There is no time frame after that. You get a case number, you get contacted. Tony's suggestion was that the whole package, both sides have their say, it goes down there together. I have no quarrel with that. With the motion that the ROM discussion gets deferred, the reason to get that down there is not as important as if we were going to work next week on the ROM Zone. So, I think you can all relax, take your time and be happy with what you send.

Attorney Sposaro – Why don't we wait for the minutes to be adopted albeit it the next meeting. I don't know how long it will take the appellate division to give some direction and we can revisit a time table at next month's meeting. How does that sound?

Chairman Johnson – Beth, can you have the meeting minutes ready for us to vote on in two weeks?

Secretary Dilts – No. It takes me anywhere from 70 to 100 hours to get a set of meeting minutes done.

Attorney Sposaro – So, when do you think you can have them?

Secretary Dilts – I need a month.

Member Fox – So, the June meeting. No.

Member Correa – The May meeting.

Member Fox – The May meeting yeah.

Members talking over each other.

Attorney Sposaro – The regular May meeting.

Secretary Dilts – Yeah.

Chairman Johnson – All right and at that point we can, we should be able to get our letters into Tony within two or three weeks I would think.

Attorney Sposaro – And, if there's anyone from the public that wants to submit, why don't we say, two weeks from when those minutes are adopted.

Chairman Johnson – Now is there any protocol as far as the challenge and I'm going to use Joe as example just because it is easier. When Joe submits his letter, is it possible to see that letter as being one of the people he's challenging or do we have to go solely on the meeting minutes, on what's posted?

Member Pryor – You know, let me speak since you, I have no objection, I want to get, I want to get the thing settled. I'm not looking to turn this into briefs and answers and rebuttals. I've raised my concerns. They are honest concerns. I want everybody to have a fair shot. If I'm wrong, if I have my facts wrong I'll apologize, we move forward. So Tony, with that in mind, you suggest what.

Attorney Sposaro – Why don't we do this, anyone who is going to raise an issue as to a Board members conflict, as it relates to this particular issue should get something in writing to Beth who will then get it to me within two weeks of the May meeting when the minutes are adopted. We can then decide, then I would say give the Board members if they want to respond to that in writing two weeks thereafter, and then we'll submit the whole package.

Chairman Johnson – So, I think we're really talking about the honor system. If I wrote a letter with a concern about Joe, Joe has the right to read it and know about it and vice-versa so in two weeks after the May meeting, all the complaint letters should be in and that will give the complaint

Attorney Sposaro – I can't stop someone if they want to submit something yet again to the Local Finance Board but the package that I will put together will be the complaints that I receive and the Board members responses.

Chairman Johnson – And that, the time line we're setting is with your

Attorney Spsoaro – Yes.

Chairman Johnson – so obviously, if somebody wants to do it on their own, there's no time wait

Attorney Sposaro – They're going to do what they're going to do.

Member Pryor – Yeah, maybe I can, I’ve no intent to submit directly. I’ll submit to Tony.
You’re the

Attorney Sposaro – Fine.

Member Pryor – distributor of the documents fax it out; email it, whatever you want
Attorney Sposaro – Okay.

Member Pryor – I have no problem with people.

Chairman Johnson – I agree with Joe. If he can submit directly to Tony.

Member Schneider – Tony, if you get letters from the public, will you allow us to see those
letters to respond?

Attorney Sposaro – Oh absolutely.

Member Schneider – Okay.

Attorney Sposaro – I want to give you every opportunity to do so.

Member Schneider – Thank you, okay.

Chairman Johnson – Well, we’ve got ten minutes left. We’re going to ask George, can you have
a five minute discussion on a very easy bullet point that you have on your list? If not, if not it
doesn’t matter.

Vice-Chairman Olschewski – Eric come on.

Chairman Johnson – Honestly, it’s funny, it’s funny but he’s got a lot of bullet items and some
are very simple but if you want to hold off on it, I’m okay with that too.

Planner Ritter – This way I think we can cover quite a few of them if we can get a half an hour at
the end of one of our Planning Board meetings.

Vice-Chairman Olschewski – Thank you.

Planner Ritter – We have about eight issues to discuss that does not involve the ROM and I think
those eight questions can be handled probably in an hour, hour and a half discussion with the
Board. Cause I don’t think they are controversial but I need your input and then we can see

where we get but I really do think we can get through three or four of them in half an hour, forty-five minutes.

Chairman Johnson – So, at the next meeting

Planner Ritter – At the next meeting

Chairman Johnson – At the next meeting, what we're going to do

Planner Ritter – We'll just do it after

Chairman Johnson – We're going to check the work load, we're going to check our workload at the next meeting. If we feel we need a special meeting because of these piles, you know, to talk with you

Planner Ritter – Well, that's fine.

Chairman Johnson – then we can do that too but I'm not going to decide that tonight. We can see how it plays out in the next meeting. So I going to take a motion to go into Public Comment.

Vice-Chairman Olschewski – Motion.

Chairman Johnson – Thank you.

Mayor McKay – Second.

Chairman Johnson – All right, I know we have one.

Mayor McKay – All in favor.

Members – Aye.

John Betz – 225 Red School Lane – I'm John Betz from Brakeley Gardens here in Lopatcong. It was just a question to ponder is it the Planning Board, is the Planning Board is appointed to the, to a plan for the town as the Mayor envisions the town to be or as each and every one of you individuals see the plan? Under the testimony given here, is each and every one of your job, your jobs, to decide for yourself or is it your job to represent the Mayor's envisionment for the town to be? I don't need an answer.

Chairman Johnson – Tony, if you want to answer that from a legal perspective?

Attorney Sposaro – I'll just go back to the oath. Suppose to act faithfully, impartially and justly. So it is not an individual board members decision on how this municipality moves forward, (inaudible) as it relates to (inaudible) you discharge your obligations and the majority rules and we move forward.

Chairman Johnson – Based on individual opinions I think that was what the question was more leaning towards. Would you agree with that? Tony

Member Schneider – It as kind of a backhanded question.

Attorney Sposaro – I would hope everybody has an opinion.

Member Schneider – It was kind of a backhanded question insinuating that us here as a majority are here for the Mayor's vision and that we are here as a to say yes vote or a no vote, the way the Mayor votes.

Attorney Sposaro – I ask myself (inaudible)

Member Schneider – Yeah exactly and yeah as you can see by the votes tonight they weren't all the same way and you know, everybody votes individually.

Chairman Johnson – In all fairness was your question answered?

John Betz – Yes it was. Thank you Tony. Thank you Eric.

Chairman Johnson – Yes no problem so we're still in Public Comment if anybody has anything further to add. We didn't really talk about much tonight so seeing none we'll close it to Public Comment. I think that's it.

Mayor McKay – Motion to adjourn.

Member Fischbach – Second

Chairman Johnson – Who's making the motion? All right we got the motion. All in favor.

Respectfully submitted,

Margaret B. Dilts
Secretary

