

**TOWNSHIP OF LOPATCONG  
PLANNING BOARD MEETING**

**7:00 pm**

March 24, 2021

Topic: Lopatcong Planning Board Meeting  
Time: Mar 24, 2021 07:00 PM Eastern Time (US and Canada)

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Chairman VanVliet called the Planning Board Meeting to order.

A Prayer was offered followed by the Oath of Allegiance

Chairman VanVliet stated “Adequate notice of this meeting has been provided indicating the time and place of the meeting in accordance with Chapter 231 of the Public Laws of 1975 by advertising a Notice in The Star Ledger and The Express-Times and by posting a copy on the bulletin board in the Municipal Building.”

Present: Members Clymer, Coyle, Pryor, Samson, Weeks, Chairman VanVliet. Also present were Attorney Bryce, Engineer Wisniewski and Planner Ritter.

**Old Business:**

**Minutes** – Approve November 23, 2020, December 16, 2020 and January 27, 2021 and February 24, 2021. Motion by Member Weeks, seconded by Member Samson to approve the minutes. All in favor, no Nays and one Abstention by Vice-Chairman Fischbach for February 24<sup>th</sup> minutes.

**Ordinance No. 21-02** – Referred by Council – Ordinance of the Township of Lopatcong, County of Warren and State of New Jersey to Amend and Revise Chapter 243 Of the Lopatcong Township Code entitled “Zoning and Land Use” and More Specifically to Delete Sections 243-75 (A)(2) and 243-77.3 (C)(1)(c) to Remove Warehouse and Distribution Centers from the Rom Zone and to Remove Flexible Office/Warehouse Uses within the PD Zone of the Township.

Chairman VanVliet – This is very similar, I guess, it is actually the same that we were called upon to see if it was in conformance with our Master Plan, the Township’s Master Plan, the last time. We are being called upon to do the same thing now. I guess this is part of the do-over. Joe Pryor could you possibly give us a little more information from Council’s view point?

Member Pryor – I’ll give you my position on the ordinance and I’ll say why we’re doing it over. Of course, we got, there’s some lawsuits pending on the first implementation and the thought was that it’s defensible. The Counsel feels that whatever discrepancies there were, they were diminimus, but to be on the safe side, we’re going to repeat the process. In terms of my own opinion, I argued last time that I felt it was consistent for several reasons; back when the last version of the Master Plan was done, these mega warehouses, high cube warehouses, weren’t anticipated, they weren’t discussed, there were a relatively new phenomenon and the other objective, and it’s always been a (inaudible) balanced development and I feel, and the Township feels, with high cube warehouses, is out of balance with the Township. I will be voting as I did the last but, of course, respect everybody else’s’ opinion Township so last time I don’t know Mr. Chairman is that sufficient?

Chairman VanVliet – Yes, I believe so. I’ll call on our Planner George Ritter; call for an opinion on this.

Attorney Fiorovanti - I hate to interrupt, Matthew Fiorovanti, I represent NFI Real Estate. I just want to inquire as whether, I assume the Board because nothing has changed in terms of the ordinance or Master Plan that the Boards analysis will be the same as it was four months ago but, in any event, if the Board is going to reconsider its analysis and if it comes with a different conclusion, we have Andrew (inaudible) present this evening if that was going to be the case, I would like to present his testimony as to consistency as far as bringing that to your attention just in terms of how we are going to proceed with this review.

Chairman VanVliet - Mr. Bryce, I would like to have your opinion on whether he can interject this or not, I mean this is strictly a Board issue.

Attorney Bryce - The determination of the Board the Board is allowed to determine whether it wants to conduct public comment to consistency with the Master Plan and then to analysis or not, the Board is not obligated to do so. Often times the referral of these types of ordinances to the Planning Board is for determination by the planners themselves meaning the Board members as to their opinion as is consistent with the Master Plan and the various elements thereof. So, I know that traditionally this Board has not sought to seek outside comment from people as to its deliberations regarding consistency. It seems to be a Board determination that has always been the policy of this Board, up to this point and certainly the Board on motion carried by the majority public comment if they wish but again, they are not required to.

Chairman VanVliet - At this point, I think I'm going to disallow public comment on this. We haven't done it in the past. We have maintained it within the Board itself and I would like to proceed with that position now unless there is an objection by any Board members. Hearing no objection, we'll proceed without public comment. George, if you would

Planner Ritter - Yes, thank you, Chairman. So, basically, there is really no change, at least in my opinion as to the consistency with the Master Plan. As stated, the last time that the hearing came before us it is my opinion the ordinance as proposed is inconsistent with the Master Plan. The area of Strykers Road, the area within which the majority of warehousing use is taking place is an area that has been supported for industrial development and that there are numerous warehouses in that area right now and that the Master Plan has never addressed the issue of size and scale of warehousing. It has been a permitted use in the district for many, many years and so, as the Master Plan stands drafted today, it is my opinion that this ordinance would be inconsistent with the Master Plan as currently adopted.

Chairman VanVliet - Thank you, George, do any of the Board members have any comments, questions or anything else they'd like to voice their opinion on with this matter? Hearing none, I guess we'll bring forth a motion to determine the consistency or inconsistency of this proposed ordinance?

Vice-Chairman Fischbach – Garry, how are we going to vote on it?

Chairman VanVliet – That's why I'm asking for a motion; not getting ready to vote yet either.

Vice-Chairman Fischbach - I'll make a motion and I'll base it on our planner, his statement that it is inconsistent. So, I make a motion that we vote upon its inconsistency.

Member Pryor – Mr. Chairman, a yes vote would be yes that it is inconsistent.

Chairman VanVliet - That's correct and a no vote would determine it would be consistent. Do I hear a second?

Member Weeks - Second

Chairman VanVliet - All right roll call, Beth please remember

Secretary Dilts - Member Clymer Yes, for inconsistency or inconsistency, I'm sorry.

Roll call vote:

Member Clymer – Yes, inconsistent

Member Coyle – Yes, inconsistent

Member Pryor – No

Member Samson – No

Member Weeks – Yes

Vice-Chairman Fischbach – Yes

Chairman VanVliet – Yes.

Attorney Bryce - The motion was carried consistent with the last time it was reviewed. I did prepare a resolution that I can read into the record and the Board can vote on that adoption tonight except for Councilman Pryor who voted no and if you would like to proceed with that, I can read it in.

Member Pryor – Member Samson did he not

Secretary Dilts - He voted no as well.

Member Samson - I voted no as well.

Attorney Bryce - I'm sorry, you're right. The people who voted no will not be eligible to vote on it. I apologize counselor. This would be a resolution...

RESOLUTION OF THE PLANNING BOARD OF THE TOWNSHIP OF LOPATCONG,  
WARREN COUNTY, NEW JERSEY REVIEWING ORDINANCE 21-02

WHEREAS, Ordinance No. 21-02 amending chapter 243 concerning Warehousing within the ROM Zone District was referred to the Planning Board for review and a consistency determination; and

WHEREAS, the Planning Board reviewed the Ordinance on March 24, 2021 and found it inconsistent with the Master Plan and had no additional recommendations.

NOW, THEREFORE BE IT RESOLVED by the Planning Board of the Township of Lopatcong, it memorializes its finding that Ordinance 21-02 is inconsistent with the Master Plan of the Township of Lopatcong.

WITNESSETH, this Resolution was duly adopted by the Planning Board of the Township of Lopatcong at its meeting of March 24, 2021

Dated: March 24, 2021

Margaret Beth Dilts  
Planning Board Secretary

Chairman VanVliet - We need a motion to vote on that then?

Attorney Bryce - Yes, you do.

Chairman VanVliet – Okay, I’ll make a motion that we bring this to a vote for adoption by the Planning Board. Do I hear a second?

Member Clymer – Second.

Chairman VanVliet - All right, Beth would you call the members who voted yes?

AYES: Member Clymer, Coyle, Weeks, Vice-Chairman Fischbach and Chairman VanVliet

NAYS: None

ABSTAIN: Members Pryor and Samson

Chairman VanVliet – Okay, I guess we could move on to our next order of business which is a completion for NFI Real Estate, LLC - Preliminary and Final Major Site Plan Approval and Variance Relief Concerning Property located at 188 Strykers Road and Designated as Block 99, Lots 3.01 & 6. Continuation of hearing for Completeness. It was my understanding this was supposed to be a completely new application. Now, here is says continuation of hearing for Completeness. It is my understanding that this is to be a completely new application. Am I erring with that Mr. Bryce?

Attorney Bryce - Yeah, this is not a completely new application Chair. That was an issue that Bridge did encounter because they submitted an application outside of the jurisdiction of the Board originally. This is actually a continuation of Completeness. There have been several subsequent submissions we did do; the Board may recall we did do an interim resolution determining at the January meeting that application was incomplete, but that was just simply an interim resolution and now it is a continuation as to whether or not their complete for Board purposes.

Chairman VanVliet - Since this is a continuation of our last Completeness hearing, we have been enjoined or however you want to place it with another lawsuit saying that we had some errors at the last Completion hearing. Is there anything that would prevent us in that lawsuit from continuing on with this hearing right now?

Attorney Bryce – No, as to that particular lawsuit that was filed at the conclusion of the principal business today, I would like to bring the Board into an Executive Session to discuss that but that particular lawsuit is challenging the first determination made by the Board in January. It has no bearing on the Board proceeding tonight or the Board’s jurisdiction to determine Completeness.

Chairman VanVliet - Thank you. In that case, is the NFI people here? Mr. Peck are you on board?

Attorney Peck - Yes, good evening Mr. Chairman. I am here along with other representatives from NFI and I appreciate the Board’s consideration to have the continuation of the Completeness determination and as to that lawsuit, I can say we are hoping it can be mooted. It was merely filed, you know, at the 45th day to protect our rights going forward because it is an interesting question the whole Time of Application Rule hasn’t really been flushed out, but regardless, we were here and deemed Incomplete by the Board on January 27th of this year and the reason for that one was at that time we were lacking the Highlands Consistency Determination. We were lacking a review from the Township sewer engineer as to capacity pursuant to Section 243-43F. We were lacking a Phase I Geotechnical Study and then there were some other miscellaneous plan deficiencies. Now, since that January 27th determination, we did receive the Consistency Determination from the Highlands Council, that does contain some conditions that if we are fortunate enough to proceed to an approval, these Highlands Council conditions would have to be conditions of approval, but none the less, we got the Consistency Determination. We’ve also provided the Phase I Geotechnical Report and we addressed the various plan deficiencies that were previously identified. We’ve also received both the Wisniewski/Sterbenz and also Mr. Ritter Reports. The second Completeness reports both dated March 19th of this year. I’ll just note that Mr. Ritter’s review, comments two (2) and three (3); he mentions some issues with sign locations on the plans and sign charts; we’ll take care of that. That will be straightened out and we appreciate Mr. Ritter bringing that to our attention. As to the engineering review, again, it is noted that we have yet to receive the sewer capacity letter from the engineer, however, we did submit that request over a month ago; it’s outside of our control. You know, we’ve been, we have been pursuing this avenue now for about 13 months, so, we’re hoping that this can be waived for Completeness understanding that at some point in the future of course we are going to have to provide this and, of course, obtain the necessary sewerage. We also believe the remaining plan issues we believe are not applicable to the subject application and we do have our Engineer Kyle McKenna who can address both the sewerage issue and the non-applicability issues if the Board so desires. This leaves the Phase I which we did, but now, your engineer suggests that triggers the need for a Phase II Geologic Study. We do have our Geotech engineer here to testify but we do believe that an appropriate level of investigation has been completed and outlined in the Phase I because the initial investigation did include test pits, borings, and geophysical investigation and we don’t object of course, you know, much like the sewer capacity, we don’t object to these studies in the future but for Completeness purposes, we do believe we provided enough for the Board to be able to adequately assess the application, so, therefore, we would ask to be deemed complete but as I indicated we do have our engineers here to answer any questions about any of these outstanding issues.

Chairman VanVliet – Thank you, Adam, would you review your comments and your analysis here. I have a couple of questions and I understand you’ve been in contact with the applicant as far as the Geotech studies are concerned. Do you have anything to add to your recommendation in this report?

Engineer Wisniewski – Really, yes, I can speak to that Chairman, thank you. As Mr. Peck had indicated, there was some elements of the phase II Geologic Study completed in the preliminary investigation which was provided in the original submission and there was some additional geophysical study done as far as the Phase I evaluation, but the applicants geotechnical engineer had indicated that further study is required prior to construction beginning on the site, so, we’re just indicating that further study will be required prior to project proceeding into construction. So, there is some information provided we haven’t completed a technical review of any of the data provided but there were two substantial geotechnical studies done and reports provided and we’ll be reviewing that in the future as part of the technical review and we’ll be able to speak more directly as to what additional data may be required prior to the project proceeding to construction.

Chairman VanVliet - Thank you. Any further comments on this?

Member Pryor – Mr. Chairman, may I.

Chairman VanVliet – Yes, absolutely.

Member Pryor - On the sewer, it’s true, he has not received that from our sewer engineer yet. The sewer engineer is working on it. The applicants engineer drafted a report based on an old opinion, it has to be updated and it will be. I think he has framed the issues. There is probably no reason we can’t proceed with the hearing and work out the unanswered questions, so I don’t object to proceeding and we’ll deal with that during the hearing.

Chairman VanVliet - Okay, George do you have any opinion?

Planner Ritter - Not on Completeness, no. My letter identifies the various variances and design waivers which the Board will have to address if and when the application proceeds but there’s no Completeness items outstanding on my review.

Chairman VanVliet - Okay, Mr. Bryce do you have any opinion on this?

Attorney Bryce - My only opinion is just to give guidance to the Board. At this point in time, as I remind the Board, we do have a Checklist requirement for Completeness. It seems at this point in time the majority of the items on the Checklist have been in good faith supplied by the applicant. From my understanding, the only outstanding issue is the sewer verification that is a Checklist item and from what I hear from Mr. Peck they’re just simply looking for a submission

waiver to that and I will represent Mr. Chairman I did speak to the sewer engineer this afternoon just as to the status and he does believe it will be forthcoming fairly shortly so, in order for a hearing to proceed it certainly should be in submitted form from our sewer engineer by that time. So, the submission waiver does not alleviate the requirement that it get supplied, it just allows the applicant to proceed to notice for a hearing having that hearing scheduled, but that information is still required to supplied to the Board.

Chairman VanVliet - Okay, any of the Board members have any further questions on it? Hearing none, I'll entertain a motion to deem the application complete. Do I hear someone with a motion?

Vice-Chairman Fischbach - I'll make that motion baring the sewer report of course, you know.

Attorney Bryce – Yeah, with that waiver request.

Vice-chairman Fischbach - With the waiver request for the sewer report.

Chairman VanVliet – Okay, do I hear a second?

Member Weeks – Second.

Chairman VanVliet - Very good, Beth may I have a roll call please?

Secretary Dilts – Certainly.

AYES: Clymer, Coyle, Pryor, Samson, Weeks, Vice-Chairman Fischbach, Chairman VanVliet.

NAYS: None

Attorney Peck - Thank you very much.

Chairman VanVliet - Mr. Peck, thank you very much.

Attorney Peck – I appreciate your forbearance and your courtesy. Will we have a public hearing your next, are we available for April?

Chairman VanVliet – April, you'll have to notice.

Attorney Peck – Yeah, well have to notice.

Chairman VanVliet - We'll see if the sewer reports in hopefully and we'll proceed with a hearing, so.

Attorney Peck - Very good. Thank you very much. Have a good evening.

Chairman VanVliet - You are officially requesting to come on the meeting schedule then?

Attorney Peck - Yes

Chairman VanVliet – Okay. Thank you very much. Okay, there is no further business, I'll ask if there are any public comments.

John Betz – Garry, can you hear me this is John Betz? I would like to know where this particular warehouse is located? I mean is that the one on Strykers Road that's getting built?

Chairman VanVliet - No. This is basically behind Berry Plastics.

John Betz - Behind Berry Plastics where (inaudible) or were there two warehouses being built Berry Plastics family you know involved in

Chairman VanVliet - Property you are talking about. That is the one behind Berry Plastics. I don't have anything official yet but there's someone interested in the property where the solar farm is. That is the best reference I can give you there.

John Betz - Mr. Peck where the solar farm is that where Mr. Peck is referring to?

Chairman VanVliet – Mr. Peck's property, this is NFI property is behind Berry Plastics.

John Betz - Talking about at a meeting a few months ago denied the right to build the warehouse behind Berry Plastics

Chairman VanVliet - That concerns both properties.

John Betz - That concerns both properties. Ok thank you, Garry.

Chairman VanVliet – You're certainly welcome. Anyone else? Hearing none, I'll entertain a motion to adjourn.

Attorney Bryce – Chair, do you want to go into Executive Session or do you want to hold off on that?

Chairman VanVliet – No, I'd like to go into Executive Session. I was just going to turn off ask to make a motion to go into Executive Session do I hear a motion to go into Executive Session.

Member Coyle – I'll make a motion.

Chairman VanVliet – Okay is there a second?

Clymer – I'll second

Chairman VanVliet - Okay we'll roll call that one.

Attorney Bryce - And this is a motion to discuss NFI

Member Clymer, Coyle, Pryor, Samson, Weeks, Vice-Chairman Fischbach, Chairman VanVliet  
NAYS: None

#### Resolution

#### RESOLUTION OF THE TOWNSHIP OF LOPATCONG, COUNTY OF WARREN AND THE STATE OF NEW JERSEY AUTHORIZING AN EXECUTIVE SESSION

WHEREAS, there are presently pending matters to be considered in Executive Session concerning possible matters listed:

Attorney/Client Privilege – Litigation Matters – NFI Real Estate, LLC

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Township of Lopatcong, County of Warren and the State of New Jersey that the Planning Board is authorized to hold an Executive Session.

BE IT FURTHER RESOLVED that the Council of the Township of Lopatcong will make said matters public within approximately 30 days of said meeting or until such a time as confidentiality of the matters is no longer required.

#### CERTIFICATION

I, Margaret B. Dilts, Planning Board Secretary, of the Township of Lopatcong, County of Warren and State of New Jersey do hereby certify the foregoing to be a true and correct copy of a Resolution adopted by the Planning Board at a Meeting held on Wednesday, March 24, 2021.

Margaret B. Dilts,

Chairman VanVliet – Okay, at this time I'd like to ask the public to recuse themselves off line. We'll return for the public portion of the meeting not for comment but we will return to regular session of the Planning Board strictly for adjournment, so.

Attorney Bryce - There will be no action taken when we come back out of Executive for the public's benefit.

Chairman VanVliet – We’ll give a few minutes for the public to leave us. Thank you so much for attending this evening.

Regular Session resumed with no action taken.

**Public Comment** – No Public Comment

**Adjournment** – Motion by Member Coyle, seconded by Vice-Chairman Fischbach. All in favor.

Respectfully submitted,

Margaret B. Dilts  
Planning Board Secretary