

TOWNSHIP OF LOPATCONG
Planning Board Meeting

April 25, 2018

Chairman VanVliet called the Planning Board Meeting to order. The meeting was held in the Municipal Building located at 232 S. Third Street, Phillipsburg, New Jersey.

Prayer was offered followed by the Oath of Allegiance

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

Present: Members Correa, Johnson, Olschewski, Pryor, Weeks, Vice-Chairman Fischbach, Chairman VanVliet, Alternate Steinhardt and Alternate Clymer. Also present were Attorney Bryce, Engineer Sterbenz and Planner Ritter.

Old Business:

Minutes – Member Pryor noted that he would only be able to vote on the portion in which he was present for. Secretary Dilts noted that she added Adam Wisniewski name to the section where a record of the training provided was made. All in favor. Member Olschewski abstained. Member Weeks stated that he watched the video and read the minutes. Alternate Steinhardt abstained as well.

Autumn Ridge at Lopatcong – Block 116, Lots 26.01, 27, 27.02 and 28. A Resolution was prepared by Attorney Bryce. Attorney Bryce acknowledged a correction noted by Member Correa that the name Larken was spelled incorrectly in one place. Member Pryor recused himself from the vote on the resolution. Member Fischbach made a motion to approve with correction noted and adopt the Resolution, seconded by Member Correa. Roll call vote:
AYES: Members Correa, Johnson, Weeks, Vice-Chairman Fischbach, Chairman VanVliet
NAYS: None
ABSTAIN: Olschewski, Pryor

K & S Enterprises, LLC – Block 100, Lot 2 – Completeness. Engineer Wisniewski explained that the April 20th letter issued documents completeness and technical issues. The applicant did resubmit plans and also received was a Consistency Determination from the Highlands Council so the checklist waivers should be granted as well as the application be deemed complete. Member Pryor confirmed that the waivers were not substantive. Engineer Wisniewski confirmed as so. Member Olschewski asked about the building that is going up and the time frame for the construction going on now and if it required an extension from the Planning Board. Engineer Wisniewski said the applicant held a construction meeting last year and now has begun to construct and noted the approval was still valid because they began their construction. Attorney

Bryce explained the Municipal Land Use Law on the subject. Motion to deem K&S Application complete and grant the waivers by Member Pryor, seconded by Member Weeks. Roll call vote: AYES: Members Correa, Johnson, Olschewski, Pryor, Weeks, Vice-Chairman Fischbach, Chairman VanVliet
NAYS: None

Chairman VanVliet stated the Notice will be carried to the May meeting.

Highlands Center Planning Study II – Chairman VanVliet stated that the Highlands Commission has signed off on the submission with some proposed requirements in order to proceed with the application for the Highlands Planning Study and shall begin to draw down on the grant monies for the planning.

Planner Ritter said the report that went up to the Highlands basically contained five recommendations for consideration within the Highlands Center area of the Township. One of those was to recognize the Piazza Tract rezoning for affordable housing; that's the sixteen acre site. The other dealt with the recommendations for zoning changes and that was within the AARC District; that's the Age Restricted Zoning District that's located behind the Phillipsburg Mall; that's a property that's about 60 acres. It was discussed with the Board and there was a general sense that since the property was not in a Highlands Center, it could not be sewerred and since the zoning that's on the property requires sewer essentially, it is town houses, the applicant was, if they proceeded, obviously would have a great deal of difficulties trying to, if they could, get infrastructure to the site. The Highlands Council, looking at the report, has basically come back and said well that's outside the center designation; the one that's currently done and it would be their sense that if the town wishes to change the zoning on that tract from what it is today to something different and incorporate it into the center, this planning report is not the mechanism that they would recommend. That they believe that that has to be addressed by a full amendment to the Highlands Center itself which would require hearings in front of the Highlands Council which would require the Township to submit all sorts of studies to do it and they've raised the question as to whether or not it should even be done let alone whether the Township would want to go that route. So, that's one of the items up for discussion as to whether or not the Board feels it is appropriate to pursue incorporating that site in at this time, or just leave the site as it is currently zoned with the assumption that if and when something happens back there, it can be addressed at a later date which quite frankly, we can. So, that's one of the things that's up for discussion and noted in the Highlands review. The other aspect of the zone, in terms of zoning, was to repeal the Overlay District in the ROM District. Some may remember that there is an Overlay District that extends over the ROM District that allows developers options in terms of mixing uses and intensity of the development. It has been around since 2004. There hasn't been a developer that has chosen to utilize any of that. It was originally put in there when the Ingersoll tract was first being discussed for redevelopment purposes. Obviously, since 2004

there's been an adopted redevelopment plan which has been approved and is proceeding out there in development phase on the site. It is generally felt that the remaining portions of the ROM District, it's probably not worth the investment or carrying it on the books because the real intent was to try and get a mixed use project on the Ingersoll tract so, there is a recommendation in this report that the Overlay District be repealed. It wouldn't change anything that is in the Industrial District; it wouldn't affect any of the users that are out there; it would just eliminate something that no one has chosen to do since 2004 and that's the option of mixed uses. No one has chosen to do that and felt no one would going forward particularly given the fact that there is no sewer service to the area. The recommendation is to repeal that portion of the regulations. The other recommendation in the report deals with the RB District that is on Rt. 22; there was discussion that that district allows both single family and commercial uses and there was a strong feeling that that area should be looked at to determine how that area should be handled. There is a lot of non-conformities in there; in other words, a lot of the lots don't match the area, the setbacks; they don't have the space to really meet the ordinances that are in place today. Almost all of them trigger variances and that type of thing and also there was a concern what is the district; is it commercial or is it residential or what is the intent? So what the Board recommended last year was expanding the R75 Zone to cover the existing single family homes that currently exist in the RB District; incorporate them back into the R75 and actually protect them and then there is a recommendation that the standards be adjusted within the remaining HB, I'm sorry, within the remaining RB District to eliminate many of the variances so that the people that are living down there don't have to every time they want to do an addition or fix something on their house, have to come back in front of the Zoning Board and ask for relief. So, the ordinance says that what we'd like to do for the residential portion is change the design standards in that district from 7,000 to 5,000, reduce the required lot width from 75 to 50 feet, reduce the various setbacks; the front yard from 25 to 20 feet, basically reduce the side yards to 12 to 10 and the rear yard to 25 feet. This may eliminate almost all conflicting standards and actually make a better fit for those that are in the district today and would eliminate them having to get variances just too simply live in their house. The other recommendation which the Highlands Council did respond to is that the Board felt that continuing to allow commercial development in the RB District was not necessarily a bad idea but that most of the lots are so small and difficult to work with that it would make more sense to encourage, if you are going to do commercial, larger lots to have them assemble larger lots and the recommendation at that time was to increase the minimum lot size for commercial activities from 7,000 to 10,000 square feet to hopefully get them, if they are going to develop new stuff actually assembly enough ground to at least have a shot at providing parking and getting approved layouts versus simply taking a single family home and convert it. The Highlands, the question they came up with, was not so much they objected to the lot size change but they did point out that obviously, if the average lot size is 6,000/7,000 square feet and we say the minimum is ten, for commercial, would create a potential for non-conformity and their recommendation was to think about it; do you really want to do that or not and that was the question they raised. So, it really comes down to, in that sense, whether

or not you feel that making the shift to a little bit larger lot will have any significant impact on any future commercial development there and whether it will help get a better sense of the commercial that comes in. Obviously, the commercial that's there today, is all grandfathered; it really doesn't matter. So that was that recommendation, and then the final recommendation dealt with Best Management Practices. The Highlands Regulations have asked that carbonate rock areas and areas that have ground water, high yield capability for ground water availability that the town considers adopting Best Management Practices for those uses that might be a major source of contaminants. What they're really saying there is that it's not that you can't do the uses, the various uses that are listed on this use and they're in the back of the report, it says that if you do them, you have to do Best Management Practices to control spills, to make sure that it doesn't get into the streams and get into the ground water on the site and regulations also say if get various state permits and as long as you get the permit, you've met Best Management Practices. This recommends that in the non-residential districts, that the Township adopt basically that for potential polluters that they be subject to Best Management Practices in our non-residential districts; if they come in with a use that's on the list, essentially, they would have to produce a plan that shows how they are going to manage potential sources of pollution and that program has to be designed around Best Management Practices for that use. It also states that any new uses that come in that are a high classification for pollution, cannot locate within a Tier 1 Well Head area. In other words, you can't build it right on top of a well. So that's the only outright prohibition supposedly. If you came in with that, you'd obviously have to get relief. You couldn't put it right next to a Tier 1 Well Head area. So those were the recommendations that were in there, that were drafted and put forth in this report and I'd say that all of them are still, well obviously, subject to your review and consideration again tonight. Other than the center designation, are really consistent with what the Board talked about before and then the decision of whether or not we should withdrawal our request to consider adding the AARC District into our center. That's something that should be discussed tonight and decided if that's something that should be worked on going forward. That is a quick overview and I will answer any questions anybody has on it.

Member Pryor – Mr. Chairman, I was the fellow that asked that this be delayed a month so, I could review it. Maybe I could walk through my comments and get the conversation started. George, the Piazza, is just really housekeeping at this point. There is no problem there. The Senior Zone, I guess the discussion was that it may make sense in that business area, depending on what happens at the mall. There's a story and I don't know how it is documented that was negotiated with the highlands originally, and there maybe some kind of agreement that says that will remain, what Gary

Chairman VanVliet – I don't know if it was an actual agreement. When we adopted the Highlands Plan when we were up there, I think it was the center designation they looked at that property and the Ingersoll property was also designated as Agricultural Preservation and in order

to negotiate getting the Ingersoll property at the time, we looked at one of the last major areas that would have an industrial development on, they agreed that on their overlay they would reclassify it as in need of redevelopment and we could proceed with providing sewerage to it and adding the gallonage which at the time, we did and that the area behind the mall, since it was almost inconceivable about getting utilities there, would be overlaid as Agricultural Preservation and we never went back to try to change the senior citizen's designation. There was a project proposed there and it met so many obstacles that they withdrew even considering it. The owners of the property came in several times trying to get us to rezone the area at that time. One of the problems of trying to rezone it at that time was that the Highlands would override us, we'd have to go back as George said and make a reapplication for our center designations coming back which then we would have to redo all the task scheduling that was met in the beginning which was have Storm water Plan adopted, have a Sanitary Plan adopted which we are one of the few communities that have gotten it done so far, so I really didn't think it was applicable to try to tackle rezoning that area if the applicant itself, himself wanted to go to the Highlands and try to make an appeal to them. They did go, they were turned down on it one time and then it just kind of died on the vine of trying to go back. They wanted us to try and go there and do that, rezoning and get it into a residential area; not necessarily senior citizens but some type of a housing development but it stayed under the overlay project of Agricultural Preservation. I think the danger of trying to rezone it now even though it's the best intentions to get it away from the senior citizen would tick off something that the Township doesn't want to spend the money on and getting involved in it again. I don't think we would get the original planning money that was which enabled us to do that study and they were very expensive to come into. So I would think that we would just want to leave it the way it is right now until we have the option of reviewing and if there's something definite that comes up where there is an applicant that might want to do something on it, but I think it would be an expensive proposition for the town to undertake right now. We may lose some of the tasks that were required by the Highlands to become part of the Highlands. We'd have to review them and it would be no picnic really to go through again.

Member Pryor – Can I add to what you just said Mr. Chairman?

Chairman VanVliet – Sure.

Member Pryor – I think there's a second half to this too. I think the best shot for sewerage that and redeveloping that area or developing it at all is tying it to some redevelopment of the mall. There's been some inquiries along those lines. That needs a long, long time to ripen if it ever does and if it does, I think you're going to need some kind of special zoning or something special there to accommodate, you know, whatever the mall wants to do so, I feel it's probably best to leave that alone right now. Quickly on the remaining ones, the eliminating the variances at Morris Park, the only reservation I had is we did that one night with five people here and didn't really get Morris Park too involved. On the other hand, if we want to move forward, we have

plenty of time before that turns into an ordinance and it seems pretty harmless in my view. I don't know who would object to it in Morris Park. It can only help.

Member Weeks – Leaving the plan as is?

Member Pryor – I'll just finish out here. The, Highland's comment on the commercial properties, after some thought I tend to agree with him if I'm reading everything right. I think you said there were only like six parcels that were undeveloped, so you know, the impact is relatively small

Planner Ritter – It is.

Member Pryor – and I think that if, you said it was difficult to work with these small parcels, and I think that if somebody had an idea that they wanted to implement, they would naturally look at merger anyway so my thought is I probably agree with them on that. The last one is the Best Management Practices and of course I certainly don't object to that, but I do have a question. Looking back through the Highlands material, on our checklist is adopting a Highland's supplement to our land use ordinance and the Best Management Practices are included in that supplement. So I agree with them it's just a question of where you put them. You had some specific recommendations as to specific sections of the code and I don't know. They have a draft prototype of a Highlands supplement and they say that you put your name on it, you tweak it and you can work with that. That has everything in it we're looking for. I just point that out. So those

Planner Ritter – What we have in the report is simply recommending that it fall within each of the districts. It's how we end up implementing it in the end.

Member Pryor – Yeah, in the ordinance it would apply across all the districts if you had, really it applies across the town if you are in a karst district. You all have to meet that in any commercial district. Anywhere you would have one of these facilities, it would apply.

Planner Ritter – Any non-residential district in essence would fall under this ordinance.

Member Pryor – Yeah, so those are my comments. Thank you.

Chairman VanVliet – Anyone else, Eric.

Member Johnson – I have two questions; my first question is is the Best Management Practices; how does that work as far as who monitors it and who reports it? Who enforces it? Is it self-enforced or self-monitored or is there

Planner Ritter – No they have to actually develop, if it ends up being adopted the draft form you have in here, they have to, the applicant has to come into the town if he falls within this area of the code, you would have to develop a plan on how he's going to control the potential for pollution getting offsite or getting into the ground water. That plan gets filed with the town and the town actually then has oversight in terms of how he does it; I mean enforcement of it.

Member Johnson – So its town enforced

Planner Ritter – It's town enforcement. They would have to come back through. Now certain aspects of this, at least in the draft ordinance that the Highlands has, if he gets the appropriate state permits for his industrial/commercial development, that substitutes for a plan. In other words, he doesn't have to do two, three things if he meets the state requirements, that will substitute for the plan. If it happens to be something that doesn't fit within one of those categories, then he has to develop a plan and put it on file and that would be part of the review of a site plan or anything that comes before this Board that he does the appropriate studies, provides the Board with oversight. Essentially, what he has to do so the Planning Board or if it went to the Zoning Board, would actually be looking at whether he's complying or not and if he happened to fall in a Tier 1 area, basically would mean he could not do it without getting a Use Variance or relief from one of the town, well from the Zoning Board in that case to proceed.

Member Johnson – Okay.

Member Pryor – George, if I can just supplement what you said. I mean if you look through it, there is state involvement; there's things like discharge prevention containment and counter measure plan. He's subject to a whole bunch of things where regulatory agencies really supplement what the town does.

Member Johnson – My second question is I don't remember the exact timing of it, but about two years ago the Board more or less agreed that if we were going to look at the ROM Zone that we wanted to do it in conjunction with the Highlands grant that we have. Not having any idea when or if that will happen, is there any time constraints that we have if we wanted to include that under the grant money or is it a little more open ended? I just don't know if there's a timing constraint that we need to be aware of as far as covering it under the grant money.

Planner Ritter – Well, the answer is that obviously this, if the Board approves this and we send it up, this Board can always amend it and go back and if they determine that they want to, you can go back and amend anything. This is not necessarily closed, done, finished, never to be looked at again. So you always have that option. If you ask me if there is any money left, the answer is I

didn't actually look to see how much is left in the budget tonight but we haven't burned the entire budget if that's the answer.

Member Johnson – The question is more or less is once we submit it to Highlands and they're okay with it, do we need bill 100% of

Planner Ritter – No. We bill for the time that went in. In other words, they'll reimburse us for the time that was spent as compared to what the grant is.

Member Johnson – Right. So it's not lump sum.

Planner Ritter – No, and if there is any money left over it'll sit in the grant.

Member Johnson – Oh it actually sits there.

Planner Ritter – It will sit there and under the grant, if it sits there and the town has other uses for it, we can always ask to amend the grant as long as the Highlands has always taken the position that as long as the money is being spent in the grant to forward the goals and objectives of the Highlands, they'll let the towns come in and change the grant, make recommendations, you know, in other words, you have to get it approved by them,

Member Johnson – Right.

Planner Ritter – but the money doesn't go away. If we don't spend it, it doesn't disappear either. It just sits in the grant. I don't know if that will ever, if there'll come a day that that ends but as of right now, that's what's been happening.

Chairman VanVliet – They have been known to increase the grants that the townships from a implement their own regulations on the townships for planning purposes

Planner Ritter – Well yeah, they have been. They've increased the grants depending on if they all of a sudden come up with something they want the towns to consider. They've tended to bring additional monies in for grants for the towns to look at this stuff. I don't know of any that's in the works now. Almost everybody's working off the grants that have been around for years but there's no reason to believe they wouldn't if there was something that comes up but the money won't go away and we won't be, it isn't like a you know like now that the jobs done, they fully bill out 100% whether we worked on it or not.

Member Pryor – George, if I could add a general question. It might be worthwhile because we have a lot of new members here. As I understand it, you have to petition for the center

designation. We did that like in 2012; got our original one and that's why you call this No. 2 I guess. What are the, not everybody has a center. What are the benefits of getting a center designation?

Planner Ritter – You know, the biggest benefit to Lopatcong for getting the center designation was as it, if you remember when the Highlands regulations originally came out, almost all of your current industrial zoned areas in town are also prime agriculture. So if we didn't proceed with the center designation, and actually were successful doing that and quite frankly, I didn't, that was Maser I believe that got the center designation. That was not something I worked on, but the real advantage of that is, it allows the town the opportunity to extend sewer and water, if and when it becomes available into that area and so one of the main reasons driving the center was to help the town maintain its rateable base or have a potential I should say to have a rateable base out there and be able to extend sewer and water because under the original Highlands Master Plan, the vast majority of that area is prime ag and it would basically, supposedly develop the virtually no density

Member Pryor – So, if I'm stating this correctly you had some relief in favor of higher objectives; economic objectives and your vision of the community as opposed to just preserving a piece of agriculture.

Planner Ritter – Well right, it was actually on the part of the town and it was eventually accepted by the Highlands was to support what has always been the Township's goals and objectives in that part of town. In other words, to have the industrial area to be able to maintain it and fortunately the Highlands agreed with that and actually, let that go ahead because if not, that whole area would essentially be zoned for agriculture right now.

Chairman VanVliet – Especially the Lopatcong portion

Planner Ritter –Yes.

Chairman VanVliet – because it was a corn field.

Member Pryor - Winter wheat and other things, yeah.

Planner Ritter – There was also, part of that was the also recognition of the redevelopment of the Ingersoll parcel which they also had that whole 100 acre area there in Agriculture/Preservation so I mean, if you took the combination of where they were today, essentially the town would have had no industrial base left or you know, non-residential base left. It would basically been Cluster Single Family Agriculture Preservation throughout almost the whole town.

Chairman VanVliet – One of the overriding considerations to get into the Highlands Program was that we did join into the Planning Area. The Preservation Area was imposed on us. There was nothing we could do with that. The Preservation Area it was intimated that basically, we would never get any extensions of sewer, water lines or anything like that if we weren't part of the center designation when that was allowed. Other than that, we would be pretty much Agricultural/Preservation and they would not approve the extension of the sewer or any improvements that we would have or anything like that. That was the candor they would hold over someone that didn't want to go into the Highlands center designations.

Member Weeks – So is there any actions that need to be taken right now that will affect our future if we don't take them? It was just making plans do you understand what I'm saying? I mean do we have to go back in and change something in Morris Park at this point? Do we have to go back and change something, you know what I mean at the mall or we just making a plan that we really don't know what we're planning for?

Planner Ritter – Well no what we're recommending here is something that is in support of the plan. When you talk specifically about the piece behind the mall, that's something that I happen to agree with the Chairman is that there is no great pressure to do anything there. That doesn't, it doesn't make any difference. The mall property at some day, I suspect will become an issue only because right now the zoning on the property requires sewer and water and if you can't get it, in essence that property is zoned into a use that technically you can't do. So at some point it will come up. Is it critical to the town plan that that be addressed now; not at all? Will it hurt the long term development of the town if we don't address it now? Not at all because quite frankly, there's things going on at the mall that may next week change our whole opinion as to what that should be anyhow. So I don't see anything lost or given up or damaging to our plan.

Member Weeks – How about the Ingersoll property.

Planner Ritter – Well, that's covered under the redevelopment plan. That's a done deal.

Member Weeks – So, it is what it is, what it is.

Planner Ritter – Well, yeah and it's covered now under the redevelopment regulations so it's not going to revert back to Agriculture/Preservation. It is going to be developed one way or the other.

Member Weeks – No actions need to be taken to change anything to the back door or not, or allow to with that way in any fashion. It's already fixed in that sense.

Planner Ritter – The Ingersoll piece, yes. That's fixed.

Member Weeks – Alright so now back to Morris Park. Is there a reason why we're rezoning?

Planner Ritter – You mean the RB District.

Member Weeks – Yeah the RB District.

Planner Ritter – Well, the reason there and I think it is a valid one, that the Board should consider, I think it, what has come out of these recommendations is to protect, to a greater deal than what is in the current ordinance, the residential development that's in that area. What we're doing is taking homes that are now in the Mixed Use District that could be converted tomorrow for commercial and we're putting them back in the R-75 District which says that they have to stay single family and so, I think we're actually providing a better degree of that.

Member Weeks – And that's what you're recommending.

Planner Ritter – That's what we're recommending.

Member Weeks – Okay.

Planner Ritter – So, I think that helps the people who are living down there. It helps them maintain a more residential community and if you look at the proposed rezoning, really what we've done is move the commercial up much, much closer to 22; we've kept it from pushing back into the neighborhood. So, I think that's very positive and I think that can help stabilize that area. The recommendation on the commercial is that's fair game. I have, I have no strong feeling whether we make it 10,000 or leave it alone. So, I think the changes in that, I think would be helpful to the people that are down there.

Member Weeks – I actually do believe that we need to let the people have the right size to build and also leave the homeowner the ability to have a yard or whatever so, I really do believe the structure of that is pretty good. One more question, and I don't know who I address it to – where do I find or does anybody have a list of all your RMC's, your RM12's, right on down through that you are talking about so that I can sit back and learn that and study that and understand 100% what you are talking about when you talk about it? You know what I'm saying.

Chairman VanVliet – He wants a Zoning Map then basically.

Member Weeks – Well, I want to know what they stand for.

Talking over each other

Member Pryor – The Zoning Ordinance and the Zoning Map is what you need.

Talking over each other

Adam Wisniewski – I believe we update that periodically and then that's linked to the Township ordinance, land use ordinance on the website and that has a table of all the zones and all there

Member Pryor – Can you get Zoning Maps for everybody here?

Planner Ritter – Also just for the Board, if they would want it – 8 ½ by 11 Zoning Maps. Basically, you can just see what the Township's zoning districts are.

Secretary Dilts – We have that in our office Brian.

Member Weeks – You do so I can get it from you.

Attorney Bryce – So when you get onto the actual specifics of it in the zoning ordinance, this is a schedule built into the zoning ordinance, you're actually going to see; well even here it does a good job. The R75 Single Family Public Buildings or Facilities – these are the permitted uses.

Member Weeks – I mean I understand what some of them are zoned but some of them I had to think about what you were saying to because you're moving on too fast.

Adam Wisniewski – You never memorize those tables, obviously.

Chairman VanVliet – Further questions. I guess we need to determine what action we would like to take tonight on the where we're going to precede so if you want to

Vice-Chairman Fischbach – One last, do we have to break these down all individually and just like pick them like as you explain them; decide on them all individually and vote on them that way?

Planner Ritter – If you'd like or I can give you the two that are you know what I mean, it will come out. I can do it either way.

Member Johnson – Does anybody remember on the commercial side of it the lots that were commercial are they adjacent to each other or are they all scattered around?

Member Pryor – They probably zig and zag

Talking over each other

Planner Ritter – There's a map, I drug it out over there. There's a map on the wall

Member Johnson – Oh, wait yeah, here it is.

Planner Ritter – that basically shows you where most of the commercial is that remains in the RM Zone. What essentially, just for everybody 22 is coming along here, the mall is right over on this end, the red on this map is properties that are currently in commercial uses in the district and this is an old map; this does not include the one that matches the board because what the blue line was where we were going to move the RB District and what is really changed is that the old red line here is what is currently RB which includes all these residential. What we did is pull it up so that this, all these are back in the residential zone, all these are back in the residential zone, that's back in the residential zone, so we, we've basically pulled the district closer to 22 and as you can see, there is still going to be some residential lots that are sprinkled through there; there is nothing to be done about that, but what we are doing is preventing it from being pushed further back in the neighborhoods.

Member Steinhardt – Are those lots that are scattered throughout the RB Zone be considered to be R75? Those lots that are scattered throughout the RB Zone that either are mixed in with them be considered R75 Zone?

Planner Ritter – Well the district line for R75, it's in my report but it essentially, the R75 District will come up and around and go down, go down pick these up and go along here so these will all go back into R75 and then essentially that one goes back in the R75, this goes back, so in a sense what will be residential that's sort of in the Commercial Zone are going to be a few lots sprinkled right through here. There's probably 20 of them, 20/25 lots that are still single family in that area.

Member Clymer – So the ones that remain in the RB, how many of them would be restricted to residential if we change it to 10,000 square feet requirement?

Planner Ritter – Wouldn't affect them. The way we were going to write it, is that the residential standards would be the way they are today. They actually preexist; they aren't on 10,000 square foot lots. All we'd say is in this district, if you we're going to do commercial, you had to do it on a 10,000 square foot lot or larger.

Member Clymer – So an existing homeowner that's on 75 foot frontage, but he couldn't sell his house for a doctor's office?

Planner Ritter – That is correct, well he could sell it but they would have to get relief from a board. It would be in the Commercial Zone but it wouldn't meet the lot standard.

Member Clymer – So unless he got relief or bought an adjacent lot

Planner Ritter – Correct

Vice-Chairman Fischbach – And isn't that some of the purpose was for them to actually bundle the lots. If we wanted to have just a parking isn't sufficient under the current standards and all that

Planner Ritter – My experience in today's world is that on a 7,000 square foot lot, you, it's almost impossible to get viable commercial today. The lots aren't big enough; they are not deep enough; 10,000 maybe even stretching it in terms of what most people want. So the idea was is if you're going to do commercial you somehow have to start assembling pieces but if not, that was the intent but I will say that the Highlands statement is true, there are some lots that are in there today, that are commercial but aren't 10,000 square feet. So they become non-conforming. They might be seven but they aren't ten.

Member Fischbach – Would they be grandfathered in?

Planner Ritter – They'd be grandfathered in but the answer's that would be the, that's what the Highland's is talking about that we'd be creating, in the Commercial District, some lots that would now become non-conforming.

Member Weeks – But we've given the residents a piece of mind to know that there's not going to be a camera shop in the other half of the house.

Member Johnson – Right.

Planner Ritter – That's the idea.

Talking over each other.

Member Fischbach – If they're going to do something, they're going to have to buy (inaudible).

Talking over each other.

Chairman VanVliet – Like they do anyway and go for a variance.

Member Pryor – I'm on the other side of that argument. I, if this goes the other way, I have no problem but I agreed with the Highland's, you're going to create a lot more non-conforming lots. There's only six lots involved and I think if somebody had a proposal and they felt they needed more space to do it, they would assemble lots anyway. So you know, I tend to agree with the Highland's on that one, but I'm not going to dig my heels in

Chairman VanVliet – So do we proceed with the new regulations for the R75 lots, the majority of the homeowners in there now, not address the commercial aspect of it?

Planner Ritter – If that's the pitch, sure it can be done that way, that's not a problem.

Chairman VanVliet – It doesn't preclude us from ever doing that again, but this time, we could proceed that way.

Planner Ritter – Yes and it doesn't take away from the protection of the homeowners. I'm mean, if we proceed with the residential portion, the people that are living down there will gain the extra protection and get a little simpler way to do improvements to their house and it won't do anything for the commercial guys. They'll be doing what they always did.

Member Weeks – But it will also generate then the opportunity not to buy the other side of the house (inaudible) dormant also, you know what I mean because of somebody wanted to do that, I mean I would look at it and say hey I can buy the other half and sell it as commercial someday. You know, what I mean, there's you got to look at all sides of it.

Planner Ritter – Yeah no, I'm saying it would be as it is today within the commercial portion.

Chairman VanVliet – The rest of it exists as a commercial entity now and he's grandfathered in. If he does sell it and they want to do anything as far as expansion or change the use of it, you'd have to go for a variance anyway.

Planner Ritter – Commercial that's correct.

Member Weeks – So you're saying it doesn't matter Gary?

Chairman VanVliet – I'm not saying it doesn't matter, but I would like to see the residential. Did the existing residents go the R75 to get the protections of that but we not go and enforcing the 10,000 square foot minimum lot size for the commercial zone if it only involves six lots or so and that we're not precluded from ever revisiting again by doing it.

Member Weeks – So can I make a motion for that?

Chairman VanVliet – Oh yeah absolutely.

Member Weeks – So I'd like to make a motion I don't know if I worded here that we work on the residential and step them out and leave the commercial alone at this point all right where we come back and address it later.

Chairman VanVliet – Do you want to address that well you've made the motion. Do I hear a second on that?

Member Pryor – I don't know if it is worded with enough detail, but I agree in concept.

Chairman VanVliet – Okay. Further discussion on that now. We have a motion and a second. If we could also address the property behind the mall that we leave that alone also at this point. Make it all one resolution to forward this up to whatever the next steps going to be because we'll have to forward it back to the Highlands correct?

Planner Ritter – Yes, we'll make the changes that come out of the meeting tonight. The Board's recommendation, so this will be forwarded up to the Highlands. Hopefully, and I think they will, we'll get a clean bill of health. It'll come back to this Board and at that point, this Board can as, when it chooses, hold a public hearing and adopt this as an amendment to the Master Plan and at that point, after that, again at the Board's choosing when, it doesn't have to be immediate or at all, then you can think about drafting ordinances, making recommendations to Council and then Council would have to go through their process to adopt the zoning changes.

Chairman VanVliet – And that would have to be an ordinance transmitted to Highlands to be included in the Master Plan revision, correct?

Planner Ritter – Well, the ordinances, this should give us essentially the Highlands input as to the ordinances. Obviously, if we adopt them, the Highlands will get to look at the ordinances but this really will give the basis for Council, if they choose to adopt these recommendations.

Chairman VanVliet – That's basically where we're going is to make this work, presentable to the Council and it's their option if they pass the ordinance.

Planner Ritter – Council doesn't have to do any of this if they don't want to. So that's where we are on the thing right now. So they would go up, they will approve it. It'll come back here. The Board, I assume then will hold public hearings to get the public to come in to see if they absolutely agree with this and then you could adopt it as an amendment which becomes part of

the Master Plan and then the ordinance section is well, that can immediate follow or it could take months, you know, there's no time line to actually produce the ordinances.

Vice-Chairman Fischbach – If I'm correct and I'm trying to follow all these moves here, the only thing that we are doing is changing the setbacks and all that for the residential people in the R75 right, that zone?

Planner Ritter – You're moving the zone line there.

Vice-Chairman Fischbach – Zone line, right and other than that, we're accepting all the recommendations that you have in your report that the Highlands basically spoke on, right. Am I correct?

Planner Ritter – Yes, yes

Vice-Chairman Fischbach – Am I basically correct in that? You know so couldn't that be the motion, the motion would be to accept the report with the changes to the R75 line for the residential zone changes would it be?

Member Weeks – No, I'm okay with it.

Vice-Chairman Fischbach – No, listen I'm just trying to you know simplify it so that we're covering everything and we're not piece-mealing it you know because

Chairman VanVliet – Basically, we're accepting the

Vice-Chairman Fischbach – Right, because basically, we're accepting the Highlands right because they're recommendation was to leave the piece behind the mall alone. They're recommendation was don't mess with this Business District right? They said we could do whatever we wanted to with the R75; they were okay either or, it didn't matter to them and then those other small parcels right, they were okay so, I'm just, you know, if we're going to make one sweeping motion we could make a motion up to just accept the report that the, with the Highlands recommendations and changing

Planner Ritter – And their recommended change.

Vice-Chairman Fischbach – in the recommendation and the changes to the R75 lot.

Member Pryor – Yeah the business side, that really wasn't a recommendation. I think they said for your consideration. Then the other suggestion I had with respect to the Best Management

Practices, rather than reference individual code sections, it should just say be incorporated into the land use code. It may show up in one place, it may show up in an amendment. I don't know yet.

Planner Ritter – All right.

Attorney Bryce – The mechanism is to be determined.

Member Pryor – It's to be determined.

Planner Ritter – Yes, that's to be determined. All we were saying was is that it should apply to the non-conforming

Member Pryor – Yeah and that's what I'm suggesting.

Vice-Chairman Fischbach – Yeah again their recommendations so

Chairman VanVliet – It won't really affect the residents

Attorney Bryce – Amend your motion

Member Weeks – I'll rescind it because I like the way he said it.

Chairman VanVliet – You're making the motion then.

Vice-Chairman Fischbach – I'll make the motion to we accept the recommendations that the Highlands made with the changes to the R75 line.

Member Correa – No second him. I second him. Second Mr. Fischbach.

Vice-Chairman Fischbach – The second had to be

Members talking over each other.

Attorney Bryce – Just to clear, you made a motion – I believe it was seconded. Correct?

Secretary Dilts – Yes, it was by Member Pryor.

Attorney Bryce – You then rescinded your motion correct?

Member Weeks – Yes.

Attorney Bryce – Okay. Who’s the second?

Secretary Dilts - Member Pryor.

Attorney Bryce – You rescind your second?

Member Pryor – I guess. You want it Carlos?

Talking over each other

Member Pryor – Oh to his. Yes, I take that back.

Attorney Bryce – Okay, so that motion fails.

Vice-Chairman Fischbach – Now I’m going to make, my motion is to accept the changes, recommendations from the Highlands with the changes to the R75 line with the setbacks.

Attorney Bryce – George, that’s good for you?

Planner Ritter – Yeah, I know what the Board wishes.

Member Correa – And I second that.

Chairman VanVliet – Beth may we have a roll call please.

AYES: Members Correa, Johnson, Olschewski, Pryor, Weeks, Vice-Chairman Fischbach, Chairman VanVliet.

NAYS: None

Chairman VanVliet – Okay, now we move up to the Planning Board Rules and Regulations discussion. Last time we had passed out a copy of the rules and regulations on the conduct for Planning Board members. I’ll defer to our attorney on which was we’re going on this one.

Attorney Bryce – Thank you Mr. Chairman and as you noted I did distribute this draft of Planning Board Rules and Regulations at the last meeting for your consideration. The good thing is tonight, no matter what you tell me, you don’t need to make individual motions. Actually, you just need to give me some directions with consensus as looking at them so that I can ultimately incorporate them as you wish into these rules and regulations and then if it’s clear

enough, at the next meeting it would be on for a resolution of adoption of these rules and regulations and that would be the motion that we have. So tonight, I just need guidance. I don't need any type of specific motion. So with that preface being said, the rules and regulations that I have before you are really a cobbling of different rules and regulations from various boards that I've work on in the past and also from model rules and regulations as provided in the Cox book. So this was a general draft. Certainly, I can anticipate that there's going to be a lot of comments and changes. I know one off the bat is the 10:30 end. Reflected in here is actually 10:00 so I already know that one.

Member Pryor – Starting time too.

Attorney Bryce – Starting time as well. Again, it was just; this was the starting point for fine-tuning by you guys. So, I leave it to you guys as to your direction; how you would like to tell me to change this. I'm sure that you guys can just do an open kind of discussion

Member Pryor – I have a suggestion Mr. Chairman before we speak the evening away and there's no need to get this done by next month either. I've given some suggestion to the Chairman; he'll pass them on to you. I suggest everybody do the same and if you have a word processor my own feeling is you throw the changes on there, we'll see them altogether and we can cross out or whatever we want to do next month. Otherwise, you'll be sitting here taking dictations from folks and arguing and it will never end and if you can get it out before the meeting we'll all

Attorney Bryce – However you would like to do it. These are your rules, they are not mine.

Member Pryor – Mr. Chairman that's my suggestion.

Member Olschewski – May I ask just two questions. Who commissioned this?

Attorney Bryce – It was actually discussed at the February meeting.

Member Olschewski – That we are drafting a new; didn't we have an old one?

Attorney Bryce – No, that was the problem.

Vice-Chairman Fischbach – That was the yeah, that was the issue.

Member Olschewski – And you draft from, would you be so kind as, give me a pen, tell me what other ordinance or, or, or the draft from other towns something

Attorney Bryce – I did ordinances for the Township of Little Falls that created these changes. I've looked at other ones from my directory in my computer from other municipalities that we represent and also from the Cox book.

Member Olschewski – Okay. Have you had any discussions with any Board members with regards to this or did you just come up with everything

Attorney Bryce – No, it was a discussion that was here on the February meeting.

Member Olschewski – But you have not had any discussions with anybody in regard to what to put in here and not.

Attorney Bryce – Nope, no discussions.

Member Olschewski – Everything in here is coming from you.

Attorney Bryce – Yep.

Member Olschewski – Thank you.

Chairman VanVliet – And you now have a chance to review it and make comments on it.

Member Olschewski – Thank you.

Member Johnson – I do have one, actually (inaudible) email but (inaudible) on Section 4 we just said that the minutes are made for public inspection. We mean after the minutes are approved by us. The approved minutes are being

Attorney Bryce – Yes, that you can put in there and I would be able to put that into that section.

Member Johnson – You know, I can send you an email but on page, under Section 3.3 under the ethics, the last paragraph where board members chooses whether or not they, what town or specific statute did that come from? That seems that was, that doesn't seem like that's something that came from you Mr. Attorney, it looks like it was something that was kind of spoon fed to you and I don't think it's

Member Pryor – No you're full of bologna and I'll tell that right now.

Member Johnson – It looks like it's something that's

Member Pryor – That came, that came with his first, no yeah, I’m going to tell you right now when you say it looks like it was spoon fed, you’re full of bologna.

Member Johnson – Can I finish my thought? It was just my opinion and I just wanted to clarify that. It doesn’t look like it’s consistent with the Municipal Land Use Law or would be upheld by

Member Pryor – It actually is and we’ll discuss that next time.

Member Johnson – So if I reach out to you and say well can you tell me where this came from or what kind of

Attorney Bryce – Actually, I created that and this was the basis of my creation of that is that this Board has to police itself to some degree. At some point conflicts of interest have to be resolved. So the entire idea about this is that if there is an obvious conflict of interest and if there’s a member that after consultation, does not want to step down despite an obvious conflict of interest, it will poison every type of action that the Board takes thereafter. There’s no resort to the courts at that point in time because you have an applicant in front of you possibly. So it is up to the Board to actually make a motion to actually require that. It’s the Board’s inherent powers, in my legal opinion to be able to do that for its members. So just as a, and I’ll just use and example just because there’s limitations out of Montville, there was a councilwoman who made very bad comments at least public perceived them, the only thing that they could really do is censure that particular person but the governing body had an inherent ability to do that; inherent jurisdiction over its own members. So that’s where this comes from.

Member Olschewski – I would think that’s gives any and I don’t say that that is the case here right I’m just saying that would give any partisan board the ability to silence any member they do not wish to have. I think that’s inherently; I’m democratic. I very much would like to know in what other town you have implemented this very change. I do not believe that that is upholdable in court. I don’t think you can. I don’t think the Board has any or supersedes any state law. I’d that is something something I just don’t understand. That would mean if for whatever reason and I know Joe loves me, and Tom, everybody likes me but if they would not like me right, for whatever reason they could just say you know what the guy is conflicted even if I’m not and there is no recourse for me to just say, you know what that is what that is not right. I think we have what is it called, department of what?

Attorney Bryce – Local Government

Member Pryor – You know all that can be debated. It’s not going to be debated tonight and I’m sure Mr. Bryce can explain that.

Member Olschewski – I don't know why Joe why you say what's debated and what is not debated.

Member Correa – Can I speak? I mean we open it up say open for debate and I just don't know why one member of this Planning Board gets to speak out that's it not debatable; means that it's not debatable.

Member Steinhardt – I agree with Joe, I think it would fair for everyone to have review it on our own and give our opinion to the Chairman and Attorney Bryce

Member Olschewski – No

Member Steinhardt – and then come back.

Member Pryor – Mr. Bryce will get all this. We appreciate Peter's legal opinions. I'm sure he's trained

Member Johnson – And I guess

Member Olschewski – We had this for three weeks; did you not look at it?

Member Correa – Yes.

Member Steinhardt – I did not have this. I was not here and did not get it in an email.

Member Olschewski – I know you were included in the email because I looked at it.

Member Steinhardt – I, no, you. I don't. Okay. I've been having a problem with my email. My email is not the email that you sent it to; that is my old email. Beth and I've had a discussion about it. I do not use that email. I did not see the email because I do not have that email.

Member Johnson – I mean certainly in putting questions in writing and, you know, emailing the attorney are good ideas. I think the concern is the Municipal Land Use Law is a very complicated law and it's even more complicated when you get into ethics and what you are going to be doing is you're going to be resting on the opinions of the Board majority who are not trained in this. I believe and what you said earlier was a great idea is if you're not sure you

Chairman VanVliet – Recuse yourself.

Member Johnson – seek the attorney's, well you seek the attorney's opinion first. That's the first thing you do. Well if there's an accusation, if there's an accusation

Chairman VanVliet – It's not only your opinion and you're the individual involved, the opinion of someone else that would be a reasonable person who thinks you have a conflict.

Member Johnson – Right and that's not the Board's, so I guess my question, if I said Tom you have a conflict and he's like well no I don't think so. Well, let's ask the attorney. That's a reasonable step. You get the attorney's opinion. Now if the attorney says Tom I think you have a conflict. Now if you disregard the attorney's

Vice-Chairman Fischbach – Okay, okay so to that point, and I decide no I still disagree and it's the Board's action based on this to take the action based on the attorney's recommendation to make that Board member recuse itself. That's actually how I'm, that's how I'm looking at this.

Member Johnson – I'm looking at it differently.

Vice-Chairman Fischbach – I'm looking at this as that, we're going to the question of a conflict of interest is going to come up and if a person disagrees that it's there conflict, that they're conflicted, then we're going to refer to the professional

Member Johnson – Exactly

Vice-Chairman Fischbach – and then the professional's gonna go yes or no or maybe we need to look into this more or I mean, I don't know really, I'll be honest with you, how that goes, but if the professional turns around and says yeah I do see that it could be a possible or potential conflict of interest because it could even be just potential conflict of interest. It doesn't need to be like right in stone

Member Olschw4ski – Okay.

Vice-Chairman Fischbach – and then once he does that, if that person, if I turn around and say I don't, I don't think the lawyer's right. I don't think the lawyer's right

Member Olschewski – Okay.

Vice-Chairman Fischbach – and I'm not going to recuse myself from anything then it's the Board's position at that point, based on what's written here to make that decision based on that attorney's

Member Olschewski – No.

Vice-Chairman Fischbach – because now they're making a reasonable, what a reasonable man would make is no different than being a trustee of an ARISA Fund. You make reasonable decisions based on a reasonable man right and then you make that decision. Now I'm sure it could be argued through whatever, but I'm just saying that's

Member Johnson – And I'm going to take it one step further where I would say that the Board should not have the power to overrule our attorney's decision or a court

Attorney Bryce – I have no power.

Member Johnson – I'm mean your opinion is very

Chairman VanVliet – An opinion is only an opinion. First thing you are going to get into is the fact that you are putting the Board attorney in an untenable position

Member Olschewski – Oh no, we don't

Chairman VanVliet – because he represents the Board in total not an individual.

Member Olschewski – Now what happened in the past you as a legal professional, I will let you know I will consult my own attorney on the matter but our former Planning Board Attorney Tony we were (inaudible) on a matter like that, he in front of what's is called

Vice-Chairman Fischbach – Department of Community Affairs.

Member Pryor – And they didn't answer for nine months.

Vice-Chairman Fischbach – DCA right that's

Member Pryor – and what do you do with the applicants standing in front of you?

Member Olschewski – It goes before that, is that not the right way to do it?

Member Pryor – Peter answer me; what do you do with the applicants standing in front of you? You gonna wait nine months?

Chairman VanVliet – Consider the affect it has on a vote from the Township on the Board. If you give the applicant the opportunity to come up with some reason why anyone who's accused of having a conflict of interest, is allowed to vote on it, and that jeopardizes the entire process.

Member Olschewski – Yeah, I think you, Joe thinks that everybody here has conflict of interest; and (inaudible) brought up that from the start, but since I know how it operates for the last year and a half where is Joe is, things, that step to go to the DCA is that not the legal step to do it.

Attorney Bryce – I don't think so, no.

Member Olschewski – So you think our former attorney did something wrong here

Attorney Bryce – I don't know what he did where

Member Pryor – Because it came back

Attorney Bryce – it's on a complaint; an allegation that something breached the Local Government Ethics Law.

Member Olschewski – And is it your legal opinion that if we exclude any member from doing his duty, based on (inaudible) that is your opinion that it's upholdable in court. So if I went to the court and I sued the Board because you think that decision by the Board to exclude a member that is (inaudible). I just want to have your opinion on the record that that is your statement.

Attorney Bryce – No, yeah, I can a look, further look into it for you

Member Olschewski – Maybe you

Attorney Bryce – excuse me, let me finish.

Chairman VanVliet – Hold on.

Attorney Bryce – The fact of the matter is if a Board takes action or a member has a known conflict of interest and it is patently clear and the applicant is aware of the conflict of interest and the Board denies an applicant and application, that entire decision is subject to a (inaudible) based upon that very simple conflict of interest. So if you are member and you have a patent conflict of interest and you won't remove yourself, the Board is put into a position, the Board itself is put in a position where no matter what action it takes, it is going to be subject to judicial review and reversal and the Board has some inherent authority to control its own membership. It has to, at some level, so if there is a member who is under this schematic that is removed from

that and you think that your rights as a member have been somehow impaired by the Board's action, you can take that up with the courts to see if the Board was right.

Member Weeks – Here's my (inaudible) I don't want to be a dead Board; don't make me waste my time with people knowing or not knowing. Get yourself, your head in the game, know where you're headed and knock off the crap. I'm going to word it just like that. You know whether you're conflicted. If you don't think you're conflicted all right, sit back and look at it all right. I had to sit back and look at myself Pete for the position I hold. If I can say am I conflicted dealing with these issues all right and I have to accept that all right. There's going to come a point that there's going to be somebody that I deal with that I'm going to go listen I deal with him, you know what I mean, and this is how I deal with it. I'm not talking about the past I don't care about that. (Inaudible) this is a different Board all right, so let's give it a chance. Let's try to hold onto the company all right. I'm telling you right now the Board needs to move. I felt that too long that it has to grow, it has to succeed as a body it's time to grow. Search yourself out, you know it (inaudible) and we go that route let's do it in a manner that is respectful and come to an answer all right. I would rather you say to me I feel you're conflicted and I go, you know what? I'm okay with that and I step out and not have to drag every one of us into court all right and pay a bill for no reason and that's my opinion.

Member Olschewski – You know if we wouldn't have a case which is currently pending right, I would agree with you. I have a Board member here Carlos where we have word from our attorney where Carlos asked our attorney okay and I sit here and the attorney said yes you can and Member Pryor say no he can't. Now I have Member Pryor calling his friend and he's sitting in the diner with Gary and his other people, they're talking about Carlos and figuring out you know what, we overrule or attorney, we don't really like Carlos right and that's the need of Carlos and it doesn't matter what the attorney said and it doesn't matter what

Chairman VanVliet – We're you in the diner that time where I was having a proposed conversation with Joe on this?

Member Olschewski – It's it, I find it, I find it troubling all right; personally find it troubling that in an environment which is partisan and I wish it would not be like that. As partisan as it is right, that a Board is able to silence one member right, very, very troubling to me and I hope it is upholdable in court and I guarantee you I will challenge you every step of the way.

Attorney Bryce – I just want to be clear. These are not my rules. These are a draft. You guys agree to them. These are the rules that I've drafted for your consideration. Don't challenge me. These are your rules.

Member Olschewski – They're not interested to see what other towns that has been implemented and I'm very much looking forward to letting me know where that has happened.

Member Steinhardt – I'm only 20 years old. I'm studying to go to law school; I'm by no means a lawyer. I think that on every level of government there is an ethics law. In Congress they have a Board of Ethics where they discuss (inaudible) like this. This is acceptable because and as a Member of the Board, I don't understand why you would, if you know that you have a conflict and I know that I have a conflict of interest, I don't understand why you would want to go through the trouble of spending tax payer money to put things through court when you know that you have a conflict of interest. So it is not like anyone is trying to silence you, if I know that I have a conflict of interest, I am not going to sit here and say I want to be a part of this so that I can ruin the deal for the applicant, I can ruin the deal for the Board, I can do make the whole process reversible knowing I have a conflict of interest. No one's trying to silence me when there is a known obvious conflict of interest in my hands. It's not like I'm sitting here saying; I'm not going to try and say you can't be involved and without evidence that you have a conflict of interest. No one is sitting here trying to silence you. It is a matter of ethics; it's a very understandable law. No one is trying to silence you and that's the whole point. The point is that you have a conflict of interest, in the case that you have a conflict of interest, you are not to be involved with that application so, it is not that someone's trying to silence you, I like, that's what I don't understand.

Member Olschewski – Well, first of all, I don't have a conflict of interest (inaudible) all right.

Member Steinhardt – No, no.

Member Olschewski – I'm just saying anybody.

Member Steinhardt – I'm saying

Member Olschewski – but what you assume that the person, your assumption is that the person has an obvious conflict of interest and he just denied it.

Member Steinhardt – That, that's what the law says, but no, what I'm saying, that is exactly what the law says. If there is an obvious conflict of interest, there is evidence. If you were to put this in a court of law, there is evidence that there was a conflict of interest

Member Olschewski – Okay

Member Steinhardt – and but, for, for any reason. So it's not, it's not to come at anyone. If for any reason this person has, you know, wants to be involved but doesn't want to say why, but

there is evidence on the table that they should not be, that is why the Board would be able to vote. So they cannot silence you if there is no hard evidence that there is a conflict of interest.

Member Olschewski – That has happened in the past we went to the DCA. I think that's the organization who rules over this all right. So there is a body in who is bi-partisan and is not involved, cause that's what we want right. We want a body in place who is bi-partisan and is not involved so that's what we want right? We want a bi-partisan body deciding if that member is conflicted. We don't want the partisan. You want bi-partisan right? You want somebody's whose objective looking into that and saying yes or no right, that's what you want right?

Chairman VanVliet – This Board is not appointed on

Member Olschewski – I mean there's a body in place who does this.

Member Steinhardt – Yeah, but it, it's, it should never have to go that far because if there is hard evidence, there should be no reason to, there should be no reason to deny it. That's the whole point of it but it is protecting the Board as a whole if someone were. If someone were to have an evident conflict of interest, if this (inaudible) protection of the Board as a whole, so that person cannot forcibly put themselves in involvement in the application. That is what it is saying.

Chairman VanVliet – Okay, I'm going to Peter this is it. No, this is it. You can have this conversation later but we're getting to far afield here on what we're actually trying to accomplish here.

Member Olschewski – Okay, thank you.

Chairman VanVliet – So that's why we're promulgating the rules and regulations because it was obvious that we didn't have and a lot of people had indicated that they didn't know what they were supposed to do in these kind of situations so we're needing a rules and procedures shall we say and you're going to have input on what we're going to do. You can forward it to me and I'll forward it to the Chairman. That will probably be the best way to do it.

Attorney Bryce – That's fine.

Chairman VanVliet – So he's not getting 27 different directions. Email me what your suggestions are, the way you would like to see the wording, what you object to with and we will forward it to the attorney and we'll take it up, you know if we have that next time. We are not rushing to get it done. We want to get it done right, so.

Member Pryor – Yeah, I would like to suggest that everything go through the Chair and the Chair will communicate with the attorney and then there is no allegations that somebody spoon fed somebody.

Chairman VanVliet – I want all of the Board members to realize that our board attorney is here for the good of the Board and does not represent any individual. So if you are looking for a legal opinion on what you want to do, I would suggest you contact your own attorney if that would elevate you from any problem of

Attorney Bryce – I am the Board’s attorney. I’m not, as you said, individual attorney and it is the entire design of this to try to actually create some mechanism in which the Board can actually rule on something that could do it before a court and be reviewed and I will say when it comes to conflicts of interest, there often times, they can become very difficult issues to resolve so there is an entire body of law that is always changing body of laws, conflicts of interest. We have the Local Government Ethics Law which you guys are expect to follow and there’s cases about it all of the time and sometimes courts will find them ,sometimes they won’t. They’re very fact sensitive. The rule of thumb is that if you think you may have a conflict of interest because it doesn’t feel right or something seems off, you probably do. That’s the rule of thumb and that’s the standard you guys are held to so.

Member Johnson – Thank you for making it clear cause you’re right every case isn’t easy.

Attorney Bryce – No it’s not.

Member Johnson – It’s not so simple.

Vice-Chairman Fischbach – I’m Joe recused himself from the Autumn Ridge. If he didn’t do it himself, who here would have known that he felt that he had a conflict of interest.

Member Weeks – I don’t know what’s going on with Carlos but the way I look at it is it is better to walk away if you even think you are in the middle of something then hold on coming, please I’m not saying he is or isn’t I don’t know what’s going on Pete. Nothing is coming from me. I will walk away first then have to be recused before you will ever get me to that level. You know what I mean? You said you think I might, done. It doesn’t matter.

Chairman VanVliet – It might be a different perspective. In any event, this is what we’re looking to ask so anybody has anything. You want my email address

Member Weeks – I don’t want to hurt the Planning Board.

Member Steinhardt – I didn't hear what you said.

Chairman VanVliet – You have my email address? Okay if you have any suggestions just email me something and I'll make sure they're forwarded, unless you want to send it to me in Swahili a language I'm overly familiar with so. Okay no further discussion; on that I'll ask for public comment. It doesn't look like we have any kind of a public so I will entertain a motion to adjourn.

Motion by Vice-Chairman Fischbach, seconded by Member Pryor. All in favor.

Respectfully submitted,

Margaret B. Dilts
Planning board Secretary