

TOWNSHP OF LOPATCONG
PLANNING BOARD MEETING

September 25, 2019

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 Devos, Pryor, Weeks, Mayor Mengucci, Vice-Chairman Fischbach, Chairman VanVliet. Alternates Steinhardt and Liptak. Also present was Attorney Bryce, Engineer Wisniewski and Planner DosSantos.

Old Business:

Minutes – Approve August 28, 2019 minutes by Mayor Mengucci, seconded by Member Pryor. All in favor. Abstentions by Member Weeks, Vice-Chairman Fischbach, Mayor Mengucci, Member Steinhardt.

Precast Mfg. – Chairman VanVliet noted that in addition to the Old Business, Precast Concrete has asked for a continuance until the next meeting. They are granting an extension for no action being taken on it. Motion for these reasons by Vice-Chairman Fischbach, seconded by Mayor Mengucci. Roll call vote:

AYES: Members Devos, Pryor, Weeks, Mayor Mengucci, Vice-Chairman Fischbach, Chairman VanVliet, Alternate Steinhardt and Liptak.

NAYS: None

Attorney Bryce – This is just public notice and if anyone is here for the application that was submitted by Precast Manufacturing Company for Block 100, Lot 6.02, that will not be heard tonight. That is actually going to be heard at the next month’s meeting and there will no further notice required so, this is yours of that meeting.

Chairman VanVliet – Noted the next order of business under Old Business is Samson Enterprises, LLC, Block 95, Lot 11.03 for Preliminary and Final Site Plan. Is the applicant here?

Attorney Mandry – Yes, he is.

Member Steinhardt – I need to recuse myself. I have a conflict of interest I am of the same firm as Mr. Peck.

Chairman VanVliet – Okay, very good. Thank you.

Attorney Mandry – Thank you, Mr. Chairman.

Attorney Peck – Excuse me, if I may and I'm sorry to interrupt, for the record Mr. Peck, Florio Perrucci, Steinhardt and Cappelli representing Jeff and Kathy Decker at 1292 Stryker's Road. I believe there is, before Mr. Mandry gets into the substance of their site plan application, I believe there is a jurisdictional issue that the Board ought to consider before actually entertaining this application. So, if I may, present my argument, before

Attorney Bryce – If Mr. Mandry, if the applicant would like to go first, you can then present your argument and then we'll see what the Board says.

Attorney Mandry – I don't think I have to make an argument because I think your planner has agreed with our position that there is no D-1 variance required, but perhaps if, after he gives his testimony, I'd be happy to supplement anything that might be.

Attorney Peck – Thank you very much and thank you Mr. Mandry for your courtesy. Again, I believe having reviewed the application, having reviewed the Township's ordinances, I believe that jurisdiction in this case, is properly before the Zoning Board because this application really should be the subject of a use variance as opposed to a straight site plan application before the Planning Board. My reason for that is simple. This property is located in your ROM, Research and Manufacturing Zone District. The permitted uses in that zone district are farms, warehouse and distribution centers, certain limited specified types of light industry, offices for business, executive, professional, administrative purposes, computer and data processing centers, scientific engineering and/or research laboratories, integrated industrial and office park development, wireless telecommunications equipment, hospital support services, mini warehouse/self-storage facilities, flexible office and warehouse and solar facilities. The applicant here is an excavating company; does not fit within any of those enumerate permitted uses in the ROM Zone. By applicant's own notice, they can see that. They state in their own notice that the applicant wishes, among other things to create "a storage yard for equipment and vehicles necessary to operate the excavating business". The applicant's plans, at least as I understand them, is to construct a 7200 square foot building; of that 2400 square feet would be an office and 4800 square feet at that, is a garage. Mr. Ritter, who, you know, very good planner, I almost always defer to his reasoning, but he is human and I think he got it wrong in this instance. He cited in

his memo to the Board of August 1st, three rationales. He deemed this an office use by the way, that's how this is before the Board. Mr. Ritter thinks that this is an office use and he stated that an office use, the business office use, is a principle permitted use. Yes, I agree that business offices are one of the enumerated subsections of the permitted uses, but this is not a business office use. Mr. Ritter, himself notes, that the office use would only comprise 33.3% of the building. The office use is not the primary use of this. The primary use is the garage and the storage of heavy equipment. The office use is accessory to the principle use. There's also a proposed 2400 square foot storage building proposed for the site and that's the same size as the office. Again, I think that lends credence to the fact that this is a contractor's yard and opposed to an office use and a contractor's yard is defined as a site used for storage, maintenance and staging of vehicles and equipment and materials related to contracting work in any of the building trades, landscape and road building, sewer installation, transport and hauling or similar professions and work is principally conducted off site. I think that that's squarely, it's not defined in the Township ordinance but that's as it's generally used in planning circles. This is clearly a contractor's yard and there's nothing wrong with a contractor's yard. There's just something wrong with a contractor's yard in the ROM Zone and I think classifying it as an office use is mistaken. I can see there is a business use proposed but by that logic, any commercial enterprise that happens to have some office space, could say that they are a business use, therefore, they are permitted in the ROM Zone. Would an oil storage business be permitted in the ROM District? An asphalt plant that happened to have, you know, an office. You know really anything under the sun, so why have an ROM District if you can just tack an office in. Mr. Ritter also noted, his second point, the garage space is a permitted accessory use. True again, but the garage use here is not subordinate to the principle office, you know, what's purported to be the principle use which is office. The office use is clearly subordinate to the garage and equipment storage use. Without the equipment storage, there would be no point for the office. The business, you know, the equipment, the excavating business that could exist without the office but the excavating use couldn't survive without the excavating equipment so that, that again, it's sort of circular logic; the fact that well there's an office, therefore, it's permitted office use and the garage use if permitted cause that's accessory to the principle office use and again, his third rationale is that bulk storage is permitted. It is in the ordinance but I think in the totality of this application, that again, just lends credence to the fact that this is a contractor's yard and not an office use, therefore, I submit that jurisdiction is not properly before this Board because they're not presenting something that's permitted under your zoning ordinance. This should be reviewed by the Zoning Board; they should be seeking a D-variance so the Zoning Board could consider whether this property is in fact particularly well suited for the proposed use. They can analyze both the positives promoted by this application purportedly as well as the detrimental impacts to the neighborhood of the zoning scheme and come up with any mitigating factors against any, it's just, it's a better place for this. I won't belabor it any more. It is not a permitted use; it needs a use variance. So, this Board should not exercise jurisdiction. Thank you.

Attorney Mandry – I'll just be very brief, I think Mr. Peck makes some bold assumptions here, I mean, it is an office which my client has employees that come in, they take orders there, he conducts business there. He can't have his business without the office. So, we respectfully rely on Mr. Ritter's opinion. He analyzed the facts and we respectfully request that this Board so consider the facts. If you need any testimony from my client, be happy to give it to you but the business can't exist there without the office building being the principle use of the property.

Chairman VanVliet – Thank you. Gary, would you

Attorney Bryce -Let me just for the purposes of – Mr. DosSantos do you swear and affirm the testimony you are going to give this Board is the truth, the whole truth and nothing but the truth?

Planner DosSantos – I do. My name is Gary DosSantos. I'm filling in for Mr. Ritter tonight as the planner and I agree with Mr. Ritter's opinions regarding the use. Mr. Peck stated that without the storage there wouldn't be a business. I think you can say the same that was stated by the attorney for the applicant that there would be no business without the office. I think the fact that the office area is smaller than the storage area, is just has to do with the nature of the business. A large office is not required but an office is required to handle the business and the storage area is a size adequate to store the equipment necessary for the business so they go hand in hand and I think Mr. Ritter's opinions are stated factually and based on a review of the ordinance, and based on the fact that there are other businesses in the ROM Zone that are similar; namely, K&S Trucking on Stryker's Road, you have office use there and you also have a large area where trucks are stored, equipment is stored outside and it far exceeds the size of the office so, it's a very similar type of operation.

Attorney Peck – Thank you Mr. Chairman, just a few questions of Mr. DosSantos, if I may. Mr. DosSantos are you familiar with the concept of a contractor's yard?

Planner DosSantos – Yes.

Attorney Peck – Would you agree or disagree that the use proposed by the applicant in this application is a contractor's yard?

Planner DosSantos – I would disagree to this extent; I think that the use is a contracting business use and that would go hand in hand with the business office.

Attorney Peck – Would you agree that it is a site used for the, that it's proposed to be a site used for the storage, maintenance and staging of vehicles, equipment and materials?

Planner DosSantos – In addition to the office, yes.

Attorney Peck – Relating the contracting work and any of the building trades?

Planner DosSantos – If that’s what the applicant intends to do, yes.

Mr. Peck – Is there, can you name any sort of commercial enterprise that would contain an office as part of it, as part of its operations? Is there any sort of commercial enterprise that you would say is not permitted in the ROM Zone District?

Planner DosSantos – Heavy manufacturing, you know, for example a steel plant, plant that would produce because the ROM District does not permit businesses that actually manufacture raw materials. It permits businesses that use materials that are already fabricated and brought to the site and then assembled.

Attorney Peck – And, why wouldn’t a municipality want to have a business manufacturing or using raw materials in the manufacturing process, in the ROM District?

Planner DosSantos – Why would they?

Attorney Peck – Why would they not? You said that that’s something that would be excluded, I’m curious to know why.

Planner DosSantos – It’s not permitted. It’s not what the zone’s intended for.

Attorney Peck – Was the zone intended, was a research office and manufacturing zone intended to store heavy equipment and the raw materials used in an excavating type of business?

Planner DosSantos – I think that’s a permitted use, yes.

Attorney Peck – Okay, so other than heavy industrial manufacturing, is there any other sort of commercial use not permitted; that you would say is not permitted in the ROM Zone so long as it has an office?

Planner DosSantos – A chemical plant that would be one. Anything that would produce innocuous odors or that would store hazardous material.

Attorney Peck – What about have you said innocuous odors so, to have nuisance type factors such as heavy equipment, heavy machinery, diesel powered vehicles coming to and from a lot, would you not say that presents the type of, you know, noxious fumes and smoke that an ROM

Zone is, you know, would not to encourage? That those sorts of things are better suited for an industrial type zone.

Planner DosSantos – Well, many uses in the ROM Zone have heavy trucks and equipment associated with them and that is permitted.

Attorney Peck- Okay, but again, you rely, you will rest on your contention that the only commercial enterprises that would not be permitted in the ROM Zone, are heavy manufacturing type, chemical processing type industries?

Planner DosSantos – Primarily.

Attorney Peck – Notwithstanding the fact that there's just 12 enumerated categories of commercial operations listed in the ROM Zone?

Planner DosSantos – Yeah, not, when the ROM Zone was drafted, it is my understanding that it was not the intent to list every particular industry, but to have more general categories and to allow some flexibility in the zone.

Attorney Peck – Well, if they wanted general categories and if the intent was to be as broad and all-encompassing as you seem to suggest, why do you think the Township committee did not just say every business and commercial use is permitted in the ROM Zone except for heavy industrial or chemical manufacturing?

Planner DosSantos – Mr. Peck, the, Mr. Ritter's opinion that the business office is a permitted use stands and that the construction yard; the storage area is a permitted use as an accessory to the principle business.

Attorney Peck – I understand that that's what he wrote and it is unfortunate that he is not here, but I'm really curious as to the reasoning for that because I can see on the surface where Mr. Ritter would have come up with that opinion, but it seems pretty clear that you take a deeper look at the application, what's actually proposed and what's actually permitted under the ROM Zone, it doesn't jive, but thank you, that was my question.

Attorney Mandry – Is that a question?

Attorney Peck – I said thank you.

Attorney Bryce – Any redirect? Mr. DosSantos I just do have a quick follow up because there's a lot of discussion about commercial uses that may have associated office and you were asked

broadly to identify so, I think a little bit, creatively, you know, it's difficult to be on your feet and just think of them but would you agree that in this ROM Zone, for example, a medical office would not be a permitted use although it may also be, have a commercial aspect?

Planner DosSantos – Yes.

Attorney Bryce – Okay. How about a retail/sales use such as a like a hardware store? Would that be permitted in this district although it's commercial?

Planner DosSantos – No.

Attorney Bryce – Okay. So, retail/commercial uses aren't generally, otherwise, allowed in the zone either, right?

Planner DosSantos – That's correct. We have a Highway/Business Zone that permits those kinds of uses.

Attorney Bryce – Thank you. There's somebody else from the public that

Chairman VanVliet – So, would you please come up, identify yourself, give your address?

Mr. Zohn – How about a mechanic shop? Is a mechanic shop allowed in that area?

Planner DosSantos – I don't have the code in front of me. Are you talking about an automobile repair shop?

Mr. Zohn – I'm talking about heavy equipment repairs, truck repairs, bringing other customer's in to do that repair.

Planner DosSantos – That would not be permitted.

Mr. Zohn – Okay, cause he told me that's what he plans to do.

Chairman VanVliet – Who told you that?

Mr. Zohn – Mr. Samson.

Attorney Bryce – Well, that's testimony. You can bring a testimony, questions. Any more about jurisdiction?

Chairman VanVliet – Yes, sir.

Bill Kowalchuk - 1286 Stryker's Road – I'm not a legal guy, I'm just a resident of the Township for quite a few years. I just find it strange that the comparison that the fellow made about the trucking firm on Strykers Road which is on the south side of Strykers Road which is where this development should be on this side of Strykers Road is residential property. Now you're saying that, you know, the stipulations for the categories for an ROM you're making it very broad

because the Township didn't state it that way. Well, the Township back in 2012, when they redid this Master Plan, screwed up because this property never should have been rezoned or appropriated as an ROM. It's bordering our back yards. We all have wells. I mean, I'm not really here to cause all kinds of problems, but this man has already been dumping materials back on this property. He doesn't even own it. He's cut a driveway entrance in. When I built my home, I had to get a driveway permit. Was there any permits issued to this man to do this kind of stuff? It's already happening and he hasn't even gotten any approval. What kind of neighbor is he going to be to us?

Chairman VanVliet – I think we're getting a little far field here. You're not talking about jurisdictional stuff; you are now talking about (inaudible).

Mr. Kowalchuk – I'm talking about the zoning. I don't think it's zoned

Chairman VanVliet – It is zoned as an ROM Zone. The fact that in an ROM Zone outdoor storage is permitted indicates that there's that a contractor's yards was always anticipated to be there.

Mr. Kowalchuk – I understand, I owned a metal fabricating shop. I repaired equipment that Mr. Samson uses. I know what goes on with that, with the welding, the grinding, the torching, the burning and all that stuff, okay, so there is going to be a lot of noise back there. The backup alarms. In your April meeting you discussed about his equipment; you discussed two dump trucks. He's going to have more than two dump trucks there. He's an excavating outfit. It just, this does not belong on this property. It's bordering our back yards. It's going to be right in our back yard. Thank you.

Attorney Bryce – Yeah, Chairman, just as a matter of housekeeping, I just and without any objection, and please let me know if you object to any of this. I'm going to just mark for the record as 01 a letter dated June 19, 2019 by Mr. Peck that was submitted to the Board, I think it was all in the package that you guys received and I'm also going to mark as B-1 and that stands for Board-1 a letter of Mr. Ritter dated June 25, 2019 which I'll represent this response to the jurisdictional issue raised and which was referenced by Mr. Peck in his (inaudible) with the Board earlier. Any objections Counsel to these two going into the record?

Attorney Peck – None here.

Attorney Mandry – No objections.

Attorney Bryce – So, that is what we were discussing earlier when Mr. Peck was discussing just to be sure of that. So, those are marked in. Any other documents that should be marked for this determination Counsel aside from the application which we don't need to mark?

Attorney Mandry – Do we have Mr. Ritter's August 1 letter?

Planner DosSantos – That’s the same letter, it was just re-dated.

Attorney Bryce – All right. So, we’re good with those documents? All right. So, the threshold question that’s before this Board is whether this Board has jurisdiction over this matter and namely, whether the pending application presents a permitted use or a non-conforming use within the ROM Zone District. As it’s generally understood, the primary jurisdiction of a Planning Board extends to site plan and subdivision applications citing NJSA 40:55D-25 and it enjoys ancillary jurisdiction to grant associated bulk variance relief in the context of such site plan and subdivision applications citing NJSA 40:55D-60. If, however, a site plan application presents with an underlining non-permitted use, that would otherwise require a variance pursuant to NJSA 40:55-70D which is known as a use variance, amongst other things, then jurisdiction will lie exclusively with the Zoning Board of Adjustment and that’s pursuant to NJSA 40:55D-76. Now, normally the jurisdiction of a Board of Adjustment is appropriately, I’m sorry strike that, normally the jurisdiction of a Planning Board is appropriately invoked when an application is made with an appropriate fee and it’s filed with the Administrative Officer, notice of applicable is given and the application is deemed complete by the board. Here, those prerequisites have been met, however, an interested party has now interposed an objection that the proposed use, that is the subject of the site plan application, is not a permitted use within the zone district, therefore, requiring D-Variance relief subject to the zoning boards exclusive jurisdiction. It is impliedly within this board’s jurisdiction and inherent power at this point to make a threshold determination as to whether or not it has jurisdiction. Cox cites a six-part test that determines jurisdiction and if you will bear with me, I’ll read that just for the benefit of the Board and I’m citing from Cox’s happens to be the 2017 addition, I much love the marked up one,

Attorney Mandry – What section Mr. Bryce?

Attorney Bryce – It’s 16-4.2 and it’s quoted as “rules for making determination” and just reading that it says in order to determine whether the Planning Board or Zoning Board of Adjustment has jurisdiction, the following six step test may be used. No. 1 – to determine if subsection D is involved - A-does it involve a use not permitted in the zone, B-does it involve a principle structure not permitted in the zone, C-does it involve expansion of a non-conforming use, D-does it involve deviation from a standard pertaining solely to a conditional use which is sought to be approved, E-does it involve an increase in permitted floor area ratio, F-does it involve an increase in permitted density, G-does it involve the height of a principle structure which exceeds by ten feet where ten percent of the maximum height permitted in the district for which the principle structure is located. No. 2-if any of the foregoing is yes and I kind of mixed that up, if any, if the answer to any of the foregoing is yes, then the request falls under Subsection D – The Zoning Board of Adjustment has exclusive jurisdiction and five affirmative votes are necessary to bring it relief. I’m going to skip ahead. No. 3-if the answer to all the questions in No. 1 are no, then the request for a variance is cognizable under Section C. No. 4-next determine the answers to the following questions; does the application involve a subdivision, does the

application involve a site plan, does the application involve a conditional use not involving deviation from a standard pertaining solely to the conditional use. No. 5-if the answer to any of the foregoing questions in No. 4 is yes, then the answer to the questions in No. 1 is no, then the application goes to the Planning Board. No. 6-if the answer to all the questions in No. 4 are no, then the application goes to the Zoning Board of Adjustment. This is quite clearly indicting that the jurisdiction of this Board rests primarily for site plans and subdivisions and its only ancillary jurisdiction of the Zoning Board would have, if in fact a D-variance is required. It's important to note there that the focus in this instance I think is fairly on the first question and that is whether or not the use that is being applied for is a permitted use. If that is answered yes, than I think the rest of the questions are pretty well self-explanatory and now it is important to note that if what Cox says and what the Land Use Law says is that you have to focus on what's the principle nature of the use or the structure. So, in this matter, the Board has now received argument from objector's counsel, Mr. Peck, and has actually heard testimony and received some documents. One argument that the principle use and structure is not permitted in the zone district and it also heard arguments and analysis that it is a permitted use in the zone district and it did receive the opinion of the Board and analysis of the Board's own consulting expert planner in both the form of a written memorandum and with the testimony hear tonight. So, here putting the finest point on it, the questions before the Board is whether what is proposed is principally a business office which is found in Section 243-75 sub-paragraph 4 in our code with accessory uses of a private garage for the storage of business vehicles in conjunction with a permitted business use which is allowable under Section 243-74 Subsection B and outward bulk storage which is permitted pursuant to Section 243-64.2. Just by way of amplifying that, we actually define outdoor bulk storage in this municipality and outdoor bulk storage is defined as the stockpiling or warehousing of vehicles, merchant based materials and machinery outside the enclosed confines of a building including but not limited to sand, gravel, soil, asphalt, lumber, pipes, plumbing supplies, metal storage, trailers; oh wait, hold on, I misread that, metal, concrete, insulation, construction equipment, construction vehicles, construction materials, storage trailers, and containers in zone districts where outdoor bulk storage is permitted as an accessory use, but then goes into certain requirements that have to be followed. Now, if the Board finds if the use that is being proposed by the applicant to be within the ambit of the ROM Zone Ordinance in its plain meaning, then the Board would retain jurisdiction over this matter and that would be pursuant to NJSA 40:55D-20 which requires that this Board exercise primary jurisdiction over such an application. If, however, this Board thinks that the use as being proposed is not embraced by that ordinance, then it would be appropriate for the Board to decline exercising its jurisdiction and the leave the applicant to then file an application with the Zoning Board of Adjustment. It's important to note that in either of these two alternatives, it is subject to an appeal with the courts and it is subject to their review and that's just the process that we have in the State of New Jersey. So, that is the question before the Board. I will add this; if the Board is uncertain and I'm not sure where people's minds fall on this , but if they think that they can't determine the issue, they could take what is, I guess an uncustomary, but none the less potential step, a step that no party to this

particular application has taken and that is to submit the jurisdictional question to the Zoning Board of Adjustment for an interpretation determination as to whether or not the proposed use is in fact a permitted use within the ROM Zone District. So, there are really two or three options that are available to the Board at this point to take. Certainly, you have the opinion of your retained expert that you are well within your rights to consider.

Chairman VanVliet – Anything from the Board?

Council President Pryor – Yeah, if nobody wants to go first, I'll go first. I do feel it is a challenging question and I have a couple questions for Gary. From what I've heard, this thing centers around the principle use. There's no question an office is a permitted principle use in the ROM Zone. One of the concerns I have is we have one third of the site devoted to office and 2/3rds devoted to equipment storage. That brings in the definition of accessory, which one predominates; if we had no office here, would the equipment storage be permitted? I don't know. It seems like the predominate use here is just based on the assignment of space is the equipment storage. Can you comment on that?

Planner DosSantos – Well, in the ROM Zone you have other uses that would have an office area that would be much less than the total area of the site being used for the business. And, examples would be K & S Trucking on Strykers Road and also the concrete pipe company would be two that come to mind where you have the concrete company has a very large area where they store the pipe, the office area itself is very small but that business would not be able to function without the office and that would be the business office is really the principle use of the property and then the rest of the operation would be accessory to that, in my opinion.

Council President Pryor – Well, the trucking company I'm mean they're primary, what they're selling there is the storage as I understand it; that's a staging area, essentially for projects offsite. That's what they are selling. The business office is almost ancillary to the, you know, the primary use there is storage. If you go to the concrete plant, the office is obviously ancillary. I mean they make concrete there, they cast it, they store their product there. You go there to buy it. You pick it up there. If say the office were 10 percent of the site here, would that still be the primary use?

Planner DosSantos – I don't think the percentage, the proportion of the office to the site is relevant in this case because it's not a question in my mind how large the office occupies, how much space the office occupies as compared to the rest of business because of the nature of the business.

Council President Pryor – Yeah, I still get into the predominate use of the site and that's, that's me, I can't help that. The one other comment I had, I guess a comment was brought up about the generalness of the ordinance. That was discussed in depth in the asphalt plant and it was interesting Mr. Peck brought up the asphalt plant well that's a conditional use south of the highway. I don't know if that was the best example, but in the court suit, the court made a point

that it's long been our practice here to define things in a general way so, I don't know, I'm still undecided myself personally and I mean, we got to get this right. I'm not opposed to seeking an opinion from the Board of Adjustment and I might be the minority here, but I'm trying to base my decision on what I'm hearing.

Mayor Mengucci – I personally would rather go to the Board of Adjustment also. We keep talking about K & S and that area out there. That is obviously an industrial area out there. So, I, you know, I'm not real happy about bulk storage near a residential area. It is permitted in that zone, so be it. The laws are the laws, but if you are asking my opinion, I'm not happy with that type of a situation behind those residents out there, so.

Member Weeks – I'd like to say, I feel, I understand a little bit about both sides. I understand some of the impact that you guys are referring to and how it is going change in your lives and I live next to a Coordinated Health that's been put up; you think you're going to be close, I can look out my back door and see it so, you are talking to the wrong guy here, but I understand he is trying to run a business also, okay, which is, you know, the town is for businesses as far as I am concerned, but we have to get it right for all sides, all right so, I know it's been going on for a little bit of time, but I don't think to get it right so that all sides maybe aren't happy but are accepting of what comes out of it, I think we have to go to that Board and, you know, that's my opinion and move forward for the both sides to look up to from that point of view. That's what I'm saying.

Vice-Chairman Fischbach – Again, we're posing a question is this a permitted use and it seems to be under the ROM Zone. It is, at least meets two of the requirements anyway that I see, the office space, even the bulk storage space, even though and in the bulk storage space which was spoken about that it even mentions construction materials which would be as Mr. Peck stated a building trades type situation, but it is an odd spot for, you know, that ROM Zone and I do understand the concern, so, if it's best suited that we don't get ourselves into a place where we are cornered and we get another opinion by the, you know, Zoning Board that that is permitted then and that's something that the Board wants to do, I think that that may be best suited. I think one other, I think that all the other things have been met by the applicant as far as I know, so really, it's just based on what, you know, we are dealing here if whether it's permitted in that area.

Chairman VanVliet – Anyone else? I think it's basically getting down to a question of the permitted use as far as office is concerned. I don't know that there is any other business that exists in our ROM Zones that the office space isn't smaller than the actual manufacturing, research, outdoor storage space at all so, I think we're getting into an area where that if we're going to make these decisions on the size of the office in relationship to the rest of business, we're going down a steep, slippery slope there so, I would think that, I don't see where there's a D-variance necessary on this. They've met all our requirements of coming to being a permitted use in the zone so I mean if it's getting down to the question of relationship of office space to

actual rest of the space there, it's always been my understanding the ROM Zone which permitted outdoor storage, was always considered to be available to a contractor's yard. That's basically what those areas are designated for. You have outdoor storage on the asphalt plant, you have outdoor storage on the Precast plant, you have outdoor storage on the conveyer building that's there, there's outdoor storage and garaging at several trucking firms out there so, I mean, we're getting into a position where I don't think we should be basing the regulations on relative floor space or cubic space, where ever you want to go, as the measurement of determining whether we have jurisdiction or not.

Member Pryor – May I counter that Mr. Chairman?

Chairman VanVliet – Sure.

Member Pryor – The asphalt plant wasn't approved with the office being a primary use. It's an asphalt plant, everything has an office. The concrete plant, they come back here, it's an expansion of their operations, again.

Attorney Bryce – I just want to put the qualification on; those are conditional uses and that is some different

Member Pryor – Yes, that's true, that's true but, you know, everybody has an office. The golf course has an office, it wasn't approved as an office, it was approved as a golf course and I'm having a problem defining the principle use here and the ancillary use and it seems to me that you could make the argument the ancillary use is dominant here. Now, again, I'm certain, to me, it's a difficult application, but I can't get around that in my mind. You throw up a small office and you call that the principal use, you know, you could build just about anywhere.

Chairman VanVliet – Any further comment? Seeing none, I'm sorry.

Member Devos- Having listened to everybody and I unfortunately have to agree that I think we need to be absolutely certain which way we are going and the way I can see it, and from what I've heard from everyone, it seems that going to the Board of Adjustments might be the best and easiest way to not have the battle that we had in the past, and the law suits we had in the past.

Member Pryor – I have a question for Jim that builds on that, I mean, that doesn't end it so, we got a decision for the Board, but you could still have a fight. It, you're not going to avoid that stuff.

Member Weeks – We've exhausted our side and looked at every side from our side that you can't come back and say we haven't taken steps. We've done everything as a Board and gone even further as a Board to hand out a decision that's best, and to me that's, you know, whether it's a month or two away, is in the town's best interest all the way around and that's why I look at it from that perspective.

Attorney Bryce – I don't know if there's any type of notice requirement for a special question or interpretation for a Zoning Board especially when it gets referred to from a Planning Board. I'll have to take a look at that and I say that only because it is conceivable and possible that it could be a determination that happens at the next Zoning Board meeting because they're simply going to be interpreting the ordinance. It's going to be a legal interpretation; they have original jurisdiction to do the interpretation of a zoning ordinance and what is a permitted use under that ordinance. I don't know if there is a notice requirement; I'll have to take a look into that so it could have to theoretically in September, I'm sorry we're in September, October or November for the Zoning Board. That doesn't mean that the application here is being declined; it's just going to be stayed by the Board pending a determination by the Zoning Board. The question is are they certifying it to the Zoning Board so, it's not going to be

Attorney Mandry – Mr. Chairman, I don't think we heard from Zach yet.

Member Liptak – I mean I think that everyone's arguing about the size and the use. Obviously, every office, every company has an office space, but all the examples that were brought up are on the opposite side of Strykers Road. There is a lot for sale over there next to the concrete plant (inaudible) Keller/Williams has it. If they want to move there, I think that would be a better address. I mean, I'm in real estate development, that is what I do, I look at this stuff all day from the two different standpoints, I think that, that's just going to hurt property values, I think the Planning Board, what the job of the Planning Board is to do, is to help the town overall and I think hurting property values overall just lowers the Township overall from, you know, I don't think that helps at all either way. I 100% love business, I love, you know, business and bringing in businesses to the Township, but I think that a variance would be required in this instance because I don't think that, I mean I agree that the zoning is the zoning and you know, it's on the line if it's allowed there I think, but I also think that it probably could be put in a different place than where it is and where it is being proposed.

Attorney Bryce – I just have to interpose here. I just want every member of the Board to be very cognizant of the fact that if a property is within a zoning district, that property enjoys all of the benefits of that zoning district as permitted uses will require it. Just because a property maybe, should of not maybe possibly should be outside of that zoning district, that doesn't matter. If it is in the zoning district, that is the law that they are entitled to under the Municipal Land Use Law. So, I want to be very clear with that. Also, I just want to be clear with the fact that when we are looking at any type of determination of the Board and I'm just counseling the Board it is really on the application and the merits of the application before it, not a general, in specific applications such as this one, I think the general overall welfare, overarching rainbows and everything else what you're actually for is the merits of the application in front of you.

Member Liptak – I think it's just very close to the line if it's a permitted use or not; especially since if they want to add additional space in the future, I mean, they extend another 2400 square feet, I think the primary use Mr. Pryor was saying is that (inaudible) office. I mean, I think, I

don't know if this is allowable, but I think a very detailed description of what is going to be used at that facility should be submitted to the Board either us or Zoning. I don't know if that's allowed or not.

Attorney Mandry – Mr. Chairman that leads me though to the point is that we've got the opinion of a (inaudible) expert over here who held up over rigorous cross-examination, there is nothing which contradicts what he has said other than your all good judgement okay, but there's nothing in the record that indicates that what he has said is incorrect. Further, as I said Mr. Chairman, you folks haven't heard from my client how essential that office is to his proposed and the arguments as to percentages of the size of the building I think that was clearly refuted by Gary in his testimony so, I know it's hard, there's people here, they're upset okay, nobody wants anybody to be upset with this, okay and I say that on behalf of Mr. Samson and also myself and you're all my neighbors too, okay so, when Architects went up I never objected or did anything, but once I got used to those lawn mowers coming, it was like the train coming down the tracks.

Talking over each other

Attorney Mandry – Excuse me I'm speaking. So, my point is, okay, you know, the zoning is what the zone says. The zone says if it's an office as the principle use, it's permitted. We can't rewrite the ordinance and I respectfully say to you gentlemen and lady, you can't rewrite that ordinance. It's an office. You can't have Mr. Samson's business operate without an office and I'd like you to hear from him, if you so permit Mr. Chairman, as to whether or not that use of that office and what is proposed activities are in that office before you make up your mind and I know it's hard everybody, I get it okay, but the end of the day the cats out of the bag. The ordinance is there. Principle use as an office and you've got an experienced expert that gives his opinion and nothing to refute it; not one little bit did he crack that lid, okay. That man's opinion is air-tight and I think you nice folks have to live with it.

Member Pryor – I, can I respond to that?

Chairman VanVliet – Sure.

Member Pryor – There's a couple things you inferred that at least some of us are yielding to the audience. I don't. I'm 71 years old. I'm not running for anything. I decide this on the basis of what's before me. I have a lot of experience with Planning Boards too. My career was appearing before Planning Boards. I'm not sitting here as an expert. I listen to my experts but if all we had to do is accept everything the expert said, we wouldn't have a Board, you could go before three people and get your application approved or denied so I have a concern here and it's the job of the Zoning Board to interpret the zoning ordinances

Attorney Bryce – Statutorily it's the Zoning Board's jurisdiction.

Member Pryor – Statutorily if there is a question here, that's where we go, so

Member Devos – Can I ask a question that, it's just; it's for my own information? Do you currently have an office now?

Mr. Samson – Yes.

Attorney Bryce – If we're going to be taking testimony.

Member Devos – Oh, I'm sorry.

Attorney Mandry – It's fine; we welcome testimony.

Attorney Bryce – That's up to the Board if they want to hear further testimony.

Chairman VanVliet – Are you presenting him for testimony and refuting the request to go to the Zoning Board or is this the start of the application?

Attorney Mandry – Well, we want to respond to Ms. Devos' question.

Member Devos – No, I withdrawal the question.

Attorney Mandry - We're more than happy to but I would also like to be able to ask a few questions of my client so that there is a good record because right now, I mean, what basis, I'm sorry, what basis are we using to determine whether or not that is the principle office use. I think its speculation on the Board's part. I say that respectfully, okay. Right now, you don't have any sworn testimony from anyone other than my engineer's commentary in the preparation of the documents so, that's why I respectfully request he be sworn and be allowed to testify Mr. Chairman.

Chairman VanVliet – I think we should allow it.

Attorney Bryce – I do too. I mean it would give insight as to the nature of the operations as long as the testimony is limited. I think to the nature of the operations. How the operations work at the site, is anticipated to work, without getting into the details as the site plan data and things of that nature.

Chairman VanVliet – Okay. We'll allow it.

Attorney Bryce – He's certainly going to be available for cross-examination.

Chairman VanVliet – Have him sworn.

Attorney Mandry – And, where would you like me, Mr. Chairman?

Chairman VanVliet – Right next to him, if you like.

Attorney Bryce – Sir, if you could raise your right hand. Do you swear and affirm that the testimony that is about to be disbursed, is the truth, the whole truth and nothing but the truth?

Mr. Samson – I do.

Attorney Bryce – Okay, could you please state your full name for the record?

Mr. Samson – Robert Samson.

Attorney Bryce – Thank you very much sir.

Attorney Mandry – Mr. Samson, can you tell the Board what your current occupation is and what your business is?

Mr. Samson – I'm a business owner. We have a company that does septic systems.

Attorney Mandry – Okay. Any connection with that business; is there certain equipment that you utilize?

Mr. Samson – Yes.

Attorney Mandry – And, how do you arrange for contracts with your perspective septic service people?

Mr. Samson – Everything is done through the secretary in the office.

Attorney Mandry – Okay, and can you describe the office that you currently use? Where is it located?

Mr. Samson – The office right now is on South Main Street in Phillipsburg; roughly, 2000 square feet.

Attorney Mandry – And then, where is your equipment stored?

Mr. Samson – We keep it on a farm out in Harmony.

Attorney Mandry – And, does that create a hardship for you?

Mr. Samson – It does.

Attorney Mandry – All right. Is it necessary to have an office for you in order for you to run your business operation; your excavating business?

Mr. Samson – Absolutely.

Attorney Mandry – And, why is that?

Mr. Samson – I couldn't, I have to have a secretary and I can't, you know, they have to report somewhere, they have to work all day and if I have to be there and come and help them with anything or look through files and stuff like that; we have to have an office.

Attorney Mandry – Do you ever meet with clients on site?

Mr. Samson – At my office?

Attorney Mandry – Correct.

Mr. Samson – Very rarely, very rarely.

Attorney Mandry – That’s all I have, Mr. Chairman.

Chairman VanVliet – Any questions of this witness?

Attorney Peck – Yes, Mr. Chairman.

Chairman VanVliet – Certainly.

Attorney Peck – If I may, Mr. Samson does your business involve farming?

Mr. Samson – No.

Attorney Peck – Does it involve warehouse or distribution centers?

Mr. Samson – No.

Attorney Peck – Does it involve the process, assembling, packaging or storage of previously refined materials such as a manufacturing of light machines, fabrication of product made of metal, wood, paper, cement or concrete, assembly of electronic components or manufacturing dairy foods and other foods or printing and publishing?

Mr. Samson – No.

Attorney Peck – Is your business engaged in computer and data processing?

Mr. Samson – It is not.

Attorney Peck – Is it engaged in scientific, engineering and/or research?

Mr. Samson – No. sir.

Attorney Peck – Is it an integrated industrial or office park development?

Mr. Samson – Say that one more time.

Attorney Peck – Is it an integrated industrial/office park development?

Mr. Samson – Yeah, I’m not really sure. I don’t think so, I don’t really

Attorney Peck – You’re not a telecommunications business, are you?

Mr. Samson – No, sir.

Attorney Peck – A hospital support service?

Mr. Samson – No.

Attorney Peck – Self-storage facility?

Mr. Samson – No.

Attorney Peck – Or a solar facility?

Mr. Samson – We are not.

Attorney Peck – You, in fact, are an excavating business, correct?

Mr. Samson – Correct.

Attorney Peck – And you just testified (inaudible) you can conduct your excavating business without needing to have your office at the same location of your materials and your equipment correct?

Mr. Samson – It's a hardship for me not to have everything together. There's too much running back and forth. It's better for me if everything is in one place.

Attorney Peck – Understood, but your business, your business is excavating. Your business is not processing paperwork or data or other things that you would commonly think of as an office type use, correct?

Mr. Samson – No, creating, I'm mean

Attorney Mandry – You generate invoices, don't you Bob?

Mr. Samson- Sure.

Attorney Mandry – You send out correspondence, don't you Bob?

Mr. Samson – Yeah.

Attorney Mandry – You got a secretary that will write your checks Bob?

Mr. Samson – Absolutely.

Attorney Peck – It was my turn, you can re-direct.

Attorney Mandry – You're turn, you're stating the obvious Counsel.

Attorney Peck – Well, I am and the obvious is that

Attorney Mandry – Well, the obvious is that you wasting everyone’s time here.

Attorney Peck – Okay, well the obvious, I think that it is an excavating business and that the planner respectively, the Board’s planner is engaged in a tetralogy. Business uses, business office uses are permitting in the zone.

Talking over each other

Attorney Mandry – This (inaudible) Mr. Chairman, this is not questioning and I object. It is not a question, the point of it is, we gave him leeway. We let them put on their dog and pony show, okay, and now he’s way out of line.

Attorney Peck – I’m done with my questioning, thank you, but I would like the opportunity though to make a final summary.

Attorney Mandry – I object.

Attorney Peck – My request is on the record.

Chairman VanVliet – One question; what’s your excavating equipment consist of?

Mr. Samson – So, we have two excavators, we have a mini-excavator, we have a bulldozer, a skid steer, various hand tools and some dump trucks.

Chairman VanVliet – Total, how many pieces of equipment and trucks?

Mr. Samson – So, there’s one, two, three, four, five, six, seven pieces.

Chairman VanVliet – So, a minimal amount.

Mr. Samson – Minimal. It’s big stuff. It’s big stuff. That’s why we have to have, you know, that’s why the building is bigger than the office. You know, obviously, fax machines and stuff like that, computers are much smaller than bull dozers and excavators and dump trucks. That’s why the office is so small and the other stuff is so big.

Chairman VanVliet – Any further questions of this witness?

Attorney Bryce – I just have a question just to go in, cause I noticed that there’s the word septic in your business title and this is for operating a business correct?

Mr. Samson – Correct.

Attorney Bryce – Okay. The septic aspect, do you receive like, I’m not a concrete guy or a septic guy, so I really don’t know what I’m talking about here. I know a little bit about it and what happens when they fail. So,

Mr. Samson – Give me a call when you need it.

Attorney Bryce – Yeah. Do you receive concrete pieces? Do you put concrete pieces together?

Mr. Samson – No, no. Everything is done on site. You know, as a matter of fact, the equipment is hardly ever there. The equipment goes from job to job to job. In the winter time when everything stops, that's when we bring it there. The trucks are there every day but aside from that, the equipment goes from job to job to job.

Vice-Chairman Fischbach – So, you don't store the tanks, you don't store the piping, anything that is associated with the septic system?

Mr. Samson- Nope.

Vice-Chairman Fischbach – Do you have gravel?

Mr. Samson – Nope. The least amount of times that I have to handle that stuff, the better off I am. When we get there, they deliver everything and that's the end of it. We truck the stone out; we truck the fill out and that's it.

Vice-Chairman Fischbach – And, the office makes like reports; septic reports like if there's an inspection.

Mr. Samson – We do inspections

Vice-Chairman Fischbach – The Board of Health or somebody like that.

Mr. Samson – All the paperwork and correspondence goes through the office.

Mayor Mengucci – So, if there's no, I'm sorry Tommy, go ahead.

Vice-Chairman Fischbach – No, go ahead.

Mayor Mengucci – There's no, you have a request here for a 30 x 80 area for outdoor storage?

Mr. Samson – For, to park the truck under.

Mayor Mengucci – Okay, so, what we got, what would actually go in the building there?

Mr. Samson – Some other, all the equipment won't fit under that small building. So, in the winter time, we'll put some of the stuff inside there.

Mayor Mengucci – Okay.

Attorney Mandry – Bob, how many months of the year do you normally operate? The excavation?

Mr. Samson – The excavation is about nine months out of the year.

Member Weeks – And, you start what time in the morning?

Mr. Samson – Six o'clock.

Attorney Mandry – And, that can all be controlled through the site plan restrictions.

Chairman VanVliet – Anyone else have any questions? Gary?

Planner DosSantos- I'm only have one question. Mr. Samson is your business registered with the State?

Mr. Samson – Of course.

Planner DosSantos – Is the address on the registration your equipment yard or your business office?

Mr. Samson – My business office.

Planner DosSantos – Thank you.

Mayor Mengucci – I believe our noise ordinance is seven.

Vice-Chairman Fischbach – Yeah, I believe so.

Mayor Mengucci – Is it seven?

Member Weeks – And, Saturdays it's eight cause I have to wait to start my equipment.

Chairman VanVliet – Will the noise from the equipment

Mr. Samson – Well, we don't run the equipment on the site. The only thing that leaves is the trucks.

Chairman VanVliet – That's what I'm asking. Is it the normal start of it or?

Mr. Samson – The trucks start for ten minutes and then they leave. They're not allowed to idle I think under an ordinance, for more than 15 minutes. They start for ten minutes and they leave.

Chairman VanVliet – (Inaudible) rules are registered in the State of New Jersey.

Mr. Samson – Correct.

Chairman VanVliet – Okay. I guess we're ready for the vote.

Attorney Bryce – Yeah, it's the Board's pleasure as to whether or not

Talking over each other.

Member Weeks - I run the same equipment pretty much sometimes a little bit bigger. I operate around a lot of people and I don't get complaints. All right, you know what I mean, and theirs are closer than what these guys are going to be, so, but I still think that again, and I'll vote for this is you need to go, you know, what I mean and get reviewed, all right, just because we've done everything we can possibly do to eliminate any opportunity for, for a flashback. All right and it's a couple weeks away, all right, to go that route. It's possible. I agree with everything they're telling me that it meets it.

Mayor Mengucci – (Inaudible) I vote to go to the zoning. Is that what we're voting on?

Chairman VanVliet – Motion on something.

Council President Pryor – I make a motion that this application be referred to the Zoning Board of Adjustment for a determination on whether it is a conforming or a non-conforming use.

Chairman VanVliet – Do I hear a second?

Mayor Mengucci – I'll second it.

Chairman VanVliet – Beth, roll call.

AYES: Members Devos, Pryor, Weeks, Mayor Mengucci, Vice-Chairman Fischbach, Member Liptak.

NAYS: Chairman VanVliet

Attorney Bryce – So, at this point in time, I think that the Board fairly still has not yielded jurisdiction of it, it's seeking the opinion for a special question as to its jurisdiction at the Zoning Board. I'm going to take a look into the notice requirements as the town may have notice requirements to do that; I'm not sure sitting here. I'll have to take a look at that and see if we can get it on the agenda. It's going to be a legal question, but I'm not sure if notice is required. It may just be a question that gets posed to the Board. The Board makes a determination and refers it back to the Planning Board. I'll look at that procedure.

Mr. Samson – So, if we don't have to notice, it will be at the next zoning meeting?

Attorney Bryce – You will not have to notice that. It's the Board that's seeking the opinion, so you are not on the hook to notice the Zoning Board, you can go to the Zoning Board.

Mayor Mengucci – That's on us.

Attorney Bryce – By all means, you can participate there, but you don't have the obligation to put a notice in the paper or provide the 200-foot list.

Mr. Samson – Okay.

Chairman VanVliet – Ok.

Mr. Samson – Can I sit down now?

Attorney Bryce – By all means.

Mr. Peck – Thank you very much.

Attorney Bryce – So, we can now make a motion to carry this pending determination by the Zoning Board.

Member Pryor - I will make that the same motion.

Chairman VanVliet – Second.

Vice-Chairman Fischbach – Second

Chairman VanVliet – Roll call Beth, please.

Attorney Mandry - Before you vote, I don't mean to interrupt, but we deemed this complete April 24, 2019.

Attorney Bryce – You've given us a few extensions in there.

Attorney Mandry – All right. Take a look at that though, Jim.

Attorney Bryce – Will you give us an extension to look at this?

Attorney Mandry – Yes.

Attorney Bryce – Okay.

Attorney Mandry – It's always an issue.

Attorney Bruce – I get it.

Roll call vote:

AYES: Members Devos, Pryor, Weeks, Mayor Mengucci, Vice-Chairman Fischbach, Chairman VanVliet, Member Liptak.

NAYS: None

Chairman VanVliet – Okay, see you in the future. Okay, under New Business we have the Highlands Master Plan Report including Groundwater Discharge Areas and Township Stormwater Management Ordinance Chapter 199. Gary would you like to a

Planner DosSantos – All right.

Chairman VanVliet – review that?

Member Weeks – I'd like to share something first.

Secretary Dilts – I already told him, Brian.

Attorney Bryce – Yeah, and just a, I did talk to George about this initially a little bit, actually I think he left me a voicemail message as a courtesy call.

Planner DosSantos – This is being done as a requirement of the Highland's Council for our plan conformance with the Highlands Regional Master Plan. They now require municipalities that have significant ground water recharge areas to designate portions of their municipality as municipally important groundwater recharge areas and they have mapped areas. We have worked with the Highlands Council to come up with a map of specific areas that would be included as municipally important groundwater recharge areas and based on the advice of our Council, we have prepared a Master Plan Re-examination Report to handle this. What is going to be required is an amendment to the Highlands Element of the Master Plan to include municipally important groundwater recharge areas and also some revisions, mostly additions to our Stormwater Management Ordinance to cover municipally important groundwater recharge areas. So, both of those we have included in the Master Plan Reexamination Report and I also prepared to help you understand the where the changes are required in the stormwater management ordinance Chapter 1999. We took the entire ordinance and we red-lined it where the changes would occur so you can see the context of where we are proposing where Highlands wants us to make changes to our ordinance.

Member Pryor – Gary, if I could the map seems to be the heart of this and I am just having a lot of trouble picking up any detail.

Planner DosSantos – Well, I printed out color copies so are you looking at the colored copy or the, yeah.

Member Pryor – This color copy.

Planner DosSantos – They were handed out and they're probably easier to see and we and also, George, when he's probably at the next meeting, whenever this is scheduled for a public presentation, George can bring a full-size map and review that with the Board at that time.

Member Pryor – Could you get one full-size map here to Beth and anybody that wants to see it, can come in and look at it.

Planner DosSantos – Sure.

Member Pryor – That would work for me at least.

Chairman VanVliet – We'll hold a hearing on that thing and send it up to Council for their final action.

Planner DosSantos – The Master Plan Amendment would be approved by the Planning Board, but of course, the ordinance would be done by the Council.

Attorney Bryce – And, in order for that amendment to be adopted by the Planning Board, we do have to provide public notice of that hearing.

Chairman VanVliet – Right. Any further questions on it? Hearing none, okay that's about it. We'll move onto public comment. Does anyone have any comments from the public? John, you okay? It is unusual when you don't have a comment.

Bill Kowalchuk – 1286 Stryker's Road. Just a question, really, in you January meeting, you were reviewing the Highlands Map and there was some and it's really it's about the Highlands; it's about the Samson project, there was some concern about the area, the area where Samson wants to put his business, and I gathered from that meeting that you were going to go back to the Highlands and get a determination; that property, if that could be developed. Was there anything that came out of that?

Chairman VanVliet – It went back to the Highlands, Gary did, the principal in doing that to review all of the areas that were going to be requiring groundwater discharge.

Bill Kowalchuk – Okay, because I know you talked about the (inaudible) areas; it was the entire ROM area.

Chairman VanVliet – Well, it protects the whole Township. It's just not just ROM areas. It's been revised and I think we had negotiations with the Highlands

Planner DosSantos – That particular lot was excluded from municipally important groundwater recharge area.

Bill Kowalchuk – Initially, it wasn't excluded, correct?

Planner DosSantos – A portion was included in that, but after reviewing the entire town, there were other areas that were determined to be more important to include and that's how it was resolved by Highland's.

Bill Kowalchuk – Okay, and that was your determination?

Planner DosSantos – It was not my determination, it was Highland’s determination.

Bill Kowalchuk – Okay, all right. Thank you.

Chairman VanVliet – Anyone else? If not I’ll close the public portion and entertain a motion for adjournment.

Vice-Chairman Fischbach – Motion

Member Pryor – Second.

Chairman VanVliet – All those in favor.

Respectfully submitted,

Margaret B. Dilts
Planning Board Secretary