

**TOWNSHIP OF LOPATCONG
PLANNING BOARD MEETING
REORGANIZATION AND REGULAR MEETING
7:00 pm**

January 27, 2021

Topic: Lopatcong Planning Board Meeting
Time: Jan 27, 2021 07:00 PM Eastern Time (US and Canada)

Join Zoom Meeting

<https://us02web.zoom.us/j/81263463006?pwd=eGVnVmdwY0VBTVZzNk9sTkILSndGQT09>

Meeting ID: 812 6346 3006

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Chairman VanVliet called the Planning Board Meeting to order.

A Prayer was offered followed by the Oath of Allegiance

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

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

Swear in Members: Attorney Bryce swore in the following members:

Class II – Brian Weeks – 12/31/2021
Class III – Joseph Pryor – 12/31/2021
Class IV – Thomas Fischbach – 12/31/2024

Election of Officers:

Nomination for Chairman:

Member Pryor nominated Garrett VanVliet, seconded by Vice-Chairman Fischbach. No other nominations made.

Roll call vote:

AYES: Members Clymer, Coyle, Pryor, Samson, Weeks, Mayor Mengucci, Vice-Chairman Fischbach, Chairman VanVliet

NAYS: None

Nomination for Vice-Chair:

Chairman VanVliet nominated Tom Fischbach, seconded by Member Pryor. No other nominations made.

Roll call vote:

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

NAYS: None

Nomination for Secretary:

Chairman VanVliet nominated Beth Dilts, seconded by Member Clymer. No other nominations made.

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

NAYS: None

Reorganization Resolutions:

All Resolutions adopted on motion by Vice-Chairman Fischbach, seconded by Mayor Mengucci.

Roll call vote:

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

NAYS: None

Resolution No. 21-01 – Annual Meeting Calendar.

R 21-01

RESOLUTION OF THE TOWNSHIP OF LOPATCONG, COUNTY OF WARREN AND
STATE OF NEW JERSEY ADOPTING THE ANNUAL MEETING CALENDAR FOR THE
PLANNING BOARD 2021 MEETINGS

WHEREAS, Section 113 of the Open Public Meetings Act, Chapter 231 P.L. 1975, requires that at least once a year, every public body shall post and mail to the newspapers designated by said body, a schedule of the location, time and date of each meeting of said body during the succeeding year.

NOTICE IS HEREBY GIVEN that the regular meetings of the Lopatcong Township **Planning Board** will be held every fourth Wednesday of each month for the year 2021, at 7:00 pm at the Municipal Building, located at 232 S. Third Street, Phillipsburg, New Jersey.

If the fourth Wednesday shall fall on a legal holiday, the meeting shall be held on the following day. The dates of such meetings are as follows:

January 27, 2021 (Reorganization Meeting)

February 24, 2021	August 25, 2021
March 24, 2021	September 22, 2021
April 28, 2021	October 27, 2021
May 26, 2021	November 29, 2021 (Monday)
June 23, 2021	December 22, 2021
July 28, 2021	

January 26, 2022 (Reorganization Meeting)

The Township Clerk through 2021 will prominently post a copy of this Resolution in the Municipal Building located at 232 S. Third Street, Phillipsburg, New Jersey on the bulletin board and a copy shall be mailed to The Express-Times and The Star-Ledger, which are designated as the official newspapers for publication of legal notices for the Lopatcong Township Planning Board pursuant to Section 3 (d) of the Open Public Meetings Act Chapter 231 P.L. 1975.

CERTIFICATION

I, Margaret B. Dilts, Planning Board Secretary of the Township of Lopatcong, County of Warren and State of New Jersey do hereby certify the foregoing to be a true and correct copy of a Resolution adopted by the Reorganization Meeting held on Wednesday, January 27, 2021.

Margaret B. Dilts

Resolution No. 21-02 – Reappoint James Bryce, Attorney Bryce.

R 21-02

RESOLUTION OF THE TOWNSHIP OF LOPATCONG, COUNTY OF WARREN AND
STATE OF NEW JERSEY APPOINTING JAMES T. BRYCE OF MURPHY MCKEON, P.C.
AS PLANNING BOARD ATTORNEY

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Township of Lopatcong,
County of Warren and State of New Jersey follows:

James T. Bryce, Esq. is hereby retained as Planning Board Attorney for the year 2021 at a rate
established in a Professional Service Agreement.

This award is in accordance with N.J.S.A. 19:44A-20.5 et seq.

This Resolution shall take effect immediately.

CERTIFICATION

I, Margaret B. Dilts, Planning Board Secretary of the Township of Lopatcong, County of Warren
and State of New Jersey do hereby certify the foregoing to be a true and correct copy of a
Resolution adopted by the Planning Board at the Reorganization Meeting held on Wednesday,
January 27,2021.

Margaret B. Dilts

Planning Board Secretary

Resolution No. 21-03 – Reappoint George Ritter, Planner.

R 21-03

RESOLUTION OF THE TOWNSHIP OF LOPATCONG, COUNTY OF WARREN AND
STATE OF NEW JERSEY APPOINTING GEORGE RITTER AS PLANNER OF RUGGIERO
PLANTE LAND DESIGN, LLC

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Township of Lopatcong,
County of Warren and State of New Jersey follows:

George Ritter of Ritter of Ruggiero Plante Land Design, LLC is hereby retained as Township
Planner for the year 2021 at a rate established in a Professional Service Agreement.

This award is in accordance with N.J.S.A. 19:44A-20.5 et seq.

This Resolution shall take effect immediately.

CERTIFICATION

I, Margaret B. Dilts, Planning Board Secretary of the Township of Lopatcong, County of Warren and State of New Jersey do hereby certify the foregoing to be a true and correct copy of a Resolution adopted by the Planning Board at the Reorganization Meeting held on Wednesday, January 27, 2021.

Margaret B. Dilts
Board Secretary

Resolution No. 21-04 – Reappoint Paul Sterbenz/Adam Wisniewski as Engineers.

R 21-04

RESOLUTION OF THE TOWNSHIP OF LOPATCONG, COUNTY OF WARREN AND
STATE OF NEW JERSEY APPOINTING MASER CONSULTING, P.A. AS TOWNSHIP
ENGINEER

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Township of Lopatcong, County of Warren and State of New Jersey follows:

Paul Sterbenz and Adam Wisniewski are hereby retained as Planning Board Engineers for the year 2021 at a rate established in a Professional Service Agreement.

This award is in accordance with N.J.S.A. 19:44A-20.5 et seq.

This Resolution shall take effect immediately.

CERTIFICATION

I, Margaret B. Dilts, Planning Board Secretary for the Township of Lopatcong, County of Warren and State of New Jersey do hereby certify the foregoing to be a true and correct copy of a Resolution adopted by Planning Board at the Reorganization Meeting held on Wednesday, January 27, 2021.

Margaret B. Dilts
Board Secretary

Resolution No. 21-05 – Adopt Rules and Procedures for the Governance of Meetings.

R 21-05

RESOLUTION OF THE TOWNSHIP OF LOPATCONG, COUNTY OF WARREN AND
STATE OF NEW JERSEY ADOPTING RULES FOR THE PLANNING BOARD'S
PROCEDURE AND GOVERNANCE

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Township of Lopatcong, County of Warren and State of New Jersey to adopt rules and regulations for the Board's governance.

CERTIFICATION

I, Margaret B. Dilts, Planning Board Secretary, in the Township of Lopatcong, County of Warren and State of New Jersey do hereby certify the foregoing to be a true and correct copy of a Resolution adopted by the Planning Board at the Reorganization Meeting held on Wednesday, January 27, 2021.

Margaret B. Dilts
Planning Board Secretary

Resolution No. 21-06 – Establish Standard Procedures for Remote Meetings for 2021.

R 21-06

**RESOLUTION OF THE COUNCIL OF THE TOWNSHIP OF LOPATCONG, WARREN
TOWNSHIP, NEW JERSEY, ESTABLISHING STANDARD PROCEDURES
FOR REMOTE MEETINGS REGARDING ACCESS TO PRESENTATIONS
AND DOCUMENTS VIEWED OR MADE AVAILABLE TO ATTENDEES AND
MAKING PUBLIC COMMENT AT MEETINGS OR BY ELECTRONIC MAIL
OR WRITTEN LETTER IN ADVANCE OF THE MEETING IN ACCORDANCE
WITH N.J.A.C. 5:39-1 et seq.**

WHEREAS, Section 8 of P.L. 2020 c. 34 approved May 15, 2020 confirms that a local public body is permitted to conduct a public meeting by electronic means under certain emergency conditions as therein defined, provided that reasonable public notice and provision for public input is made under the circumstances; and

WHEREAS, said statute authorizes the Director of the Division of Local Government Services (“DLGS”) in the Department of Community Affairs (“DCA”) to adopt emergency regulations pursuant to N.J.S.A. 52:14B-4; and

WHEREAS, the Director has adopted such emergency regulations as N.J.A.C. 5:39-1 et seq.; and

WHEREAS, N.J.A.C. 5:39-1.4(h) directs the adoption of a resolution establishing standard procedures and requirements: (i) for access to presentations and documents viewed or made available to attendees; (ii) for the making of public comments during a remote public meeting; (iii) for the making of public comments submitted in writing ahead of a remote meeting; and (iv) for establishing standards of conduct to be followed by members of the public when making comments; and

WHEREAS, the Lopatcong Township Council desires to adopt such a resolution in compliance with the emergency regulations.

NOW, THEREFORE, BE IT RESOLVED by the Council of the Township of Lopatcong, County of Warren, State of New Jersey, as follows:

1. In conducting a remote public meeting as permitted under Section 8 of P.L. 2020 c. 34, the following standard procedures and requirements shall be applicable:
 - a. Any presentations or documents that would otherwise be viewed or made available to members of the public physically attending a public meeting shall be made visible on a video broadcast of the remote public meeting, or shall be made available on the Township website. If a document would be made available to individual members of the public in a hard copy while physically attending the meeting, the document shall be made available in advance of the meeting for download through an internet link appearing either on the meeting notice or near the posting of the meeting notice, both on the website and at the building where the meeting would have otherwise been held.
 - b. The Council shall allow members of the public to make public comment by audio or by audio and video, depending upon the manner in which the member of the public has accessed the remote meeting. Prior to providing public comment, the individuals shall be required to identify themselves by name and address. The procedure that will be followed to make public comment will be announced at the beginning of the meeting.
 - c. Except for comments at public hearing on applications for development (for which no public comment will be accepted by electronic mail or in written letter form), the Council will accept comments by electronic mail or in written letter form on matters on which the Council is required to otherwise accept audio and/or audio and video comment, **PROVIDED, HOWEVER**, that comment by electronic mail or in written letter form is received by the Municipal Clerk by 4:00 p.m., not less than 48 hours prior to the meeting. The Council will not accept any text-based comment at any time, nor will the Council consider any comment by electronic mail or in written letter form if received beyond the deadline established above.

d. To the extent that public comment is permitted to be submitted before the remote public meeting through electronic mail or by written letter, it shall be read aloud and addressed during the remote public meeting in a manner audible to all meeting participants and the public. Unless waived by the Council at its discretion, a five-minute time limit on public comments of each member of the public is hereby established and shall be similarly applicable on the reading of written comments. Such reading shall be terminated at the expiration of the five-minute period. No member of the public shall have the right to cede or transfer their allocated time to another member of the public. The Council may pass over duplicate written comments, provided that each duplicate comment shall be noted for the record, with its content summarized. No duplicative comments summarized by the Council shall otherwise be read individually.

e. The public attending the remote meeting and/or offering comment shall conduct themselves in a courteous manner and shall follow the decorum in the same fashion as if the meeting were being conducted in-person. If a member of the public disrupts a virtual meeting, the following procedures shall be followed:

(i) The Board shall facilitate a dialogue with the commenter to the extent permitted by the electronic platform being utilized;

(ii) If a member of the public becomes disruptive during the remote public meeting, including, but not limited to, any period for public comment, the disruptive member of the public shall be muted and shall continue to be muted and shall be warned that continued disruption may result in their being prevented from speaking during the remote public meeting, or removed from the remote public meeting. Disruptive conduct includes sustained inappropriate behaviors such as, but not necessarily limited to, shouting, interruption, and use of profanity.

(iii) A member of the public who continues to act in a disruptive manner after receiving an initial warning may be muted while other members of the public are allowed to proceed with their questions and/or comments. If time permits, the disruptive individual shall be allowed to speak after all other members of the public have been given the opportunity to make comment. Should the individual remain disruptive, the individual may be muted or kept on mute for the remainder of the remote public meeting, or removed from the remote public meeting.

2. This resolution shall take effect immediately.

WITNESSETH, this Resolution was duly adopted by the Council of the Township of Lopatcong at its meeting of January 20, 2021.

CERTIFICATION

I, Margaret B. Dilts, Secretary of the Planning Board of the Township of Lopatcong, County of Warren and State of New Jersey do hereby certify the foregoing to be a true and correct copy of a Resolution adopted by the Planning Board at the Reorganization Meeting held on Wednesday, January 27, 2021.

Margaret B. Dilts, CMC

Resolution No. 21-07 – Adopt Newspapers – The Star Ledger and The Express Times Warren County Zone.

R 21-07

RESOLUTION OF THE TOWNSHIP OF LOPATCONG, COUNTY OF WARREN AND STATE OF NEW JERSEY, DESIGNATING NEWSPAPERS TO RECEIVE NOTICES OF MEETINGS FOR THE LOPATCONG TOWNSHIP PLANNING BOARD

WHEREAS, Section 3 (d) of the Open Public Meetings Act, Chapter 231, P.L. 1975, required that certain notices of meetings shall be submitted to two (2) newspapers, one of which shall be designated as the official newspaper of the Township of Lopatcong; and

WHEREAS, the second newspaper designated by this body must be one that has the greatest likelihood of informing the public within the jurisdictional boundaries of this body of such meetings.

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Township of Lopatcong, County of Warren and State of New Jersey.

1. The Express-Times Warren County, NJ Zone is hereby designated as the official newspaper of the Township to receive all notices of meetings as required under the Open Public Meetings Act.
2. The Star Ledger has the greatest likelihood of informing the public within the jurisdictional area of this body of such meetings.

This Resolution shall take effect immediately.

CERTIFICATION

I, Margaret B. Dilts, of the Township of Lopatcong, County of Warren, State of New Jersey, do hereby certify the foregoing to be a true and correct copy of a Resolution adopted by the Planning Board at the Reorganization Meeting held on Wednesday, January 27, 2021.

Margaret B. Dilts

Old Business:

Minutes – Discuss the hire of Court Reporter to complete the meeting minutes. Secretary Dilts provided the fees to have the minutes prepared amounting to just under \$1,000.00; \$100 per hour to listen to the meeting and \$250.00 for the transcript. Motion by Member Pryor, seconded by Vice-Chairman Fischbach to approve. Roll call vote:

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

NAYS: None

Member Clymer suggested this meeting as well be prepared by the Court Reporter.

Resolution – Block 100, Lot 6.02 – Precast Mfg. Block 100, Lot 6.02 – Construct a 735 Sq. Foot addition. Motion to adopt the Resolution by Vice-Chairman Fischbach, seconded by Mayor Mengucci. Roll call vote:

AYES: Member Clymer, Coyle, Pryor, Weeks, Mayor Mengucci, Vice-Chairman Fischbach, Chairman VanVliet.

NAYS: None

ABSTAIN: Member Samson

Resolution - AUTHORIZING THE TOWNSHIP OF LOPATCONG PLANNING BOARD TO UNDERTAKE A PRELIMINARY INVESTIGATION TO DETERMINE WHETHER THE PROPOSED STUDY AREA, WHICH INCLUDES: BLOCK 100, LOTS 1, 2.01, 2.03, 3, 4, 6.03 AND 6.05 (RESEARCH OFFICE MANUFACTURING ZONE); BLOCK 100, LOTS 7.02, 8, 9, 10, 11, 12 AND 13 AND BLOCK 102, LOTS 1.01, 2.01, 2.02, 9.03 AND 9.04 (HIGHWAY BUSINESS ZONE); Block 102, LOT 9 (ACTIVE ADULT RESIDENTIAL COMMUNITY ZONE) AND BLOCK 102, LOT 9.01 (HIGHWAY BUSINESS ZONE – PLANNED DEVELOPMENT DISTRICT OVERLAY QUALIFIES AS AN AREA IN NEED OF NON-CONDEMNATION REDEVELOPMENT PURSUANT TO N.J.S.A. 40A:12A ET SEQ.

RESOLUTION 2021-40

RESOLUTION OF THE TOWNSHIP OF LOPATCONG, COUNTY OF WARREN AND STATE OF NEW JERSEY, AUTHORIZING THE TOWNSHIP OF LOPATCONG PLANNING BOARD TO UNDERTAKE A PRELIMINARY INVESTIGATION TO DETERMINE WHETHER THE PROPOSED STUDY AREA, WHICH INCLUDES: BLOCK 100, LOTS 1, 2.01, 2.03, 3, 4, 6.03 AND 6.05 (RESEARCH OFFICE MANUFACTURING ZONE); BLOCK 100, LOTS 7.02, 8, 9, 10, 11, 12 AND 13 AND BLOCK 102, LOTS 1.01, 2.01, 2.02, 9.03 AND 9.04 (HIGHWAY BUSINESS ZONE); Block 102, LOT 9 (ACTIVE ADULT RESIDENTIAL COMMUNITY ZONE) AND BLOCK 102, LOT 9.01 (HIGHWAY BUSINESS ZONE – PLANNED DEVELOPMENT DISTRICT OVERLAY QUALIFIES AS AN AREA IN NEED OF NON-CONDEMNATION REDEVELOPMENT PURSUANT TO N.J.S.A. 40A:12A ET SEQ.

WHEREAS, the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (“Redevelopment Law”), provides a mechanism to assist local governments in efforts to promote programs of redevelopment; and

WHEREAS, the Redevelopment Law sets forth the procedures for the Township to declare an area in need of redevelopment, along with the development and effectuation of a redevelopment plan; and

WHEREAS, pursuant to the required redevelopment procedures, specifically set forth in N.J.S.A. 40A:12A-6, no area of a municipality shall be deemed a redevelopment area unless the governing body of the municipality shall, by Resolution, authorize the Planning Board to undertake a preliminary investigation to determine whether a proposed area is a redevelopment area meeting the criteria set forth in N.J.S.A. 40A:12A-5; and

WHEREAS, the New Jersey Legislature adopted, and the Governor signed, P.L. 2013, Chapter 159, which amended the Redevelopment Law, including the procedural requirements of N.J.S.A. 40A:12A-5 and N.J.S.A. 40A:12A-6; and

WHEREAS, pursuant to N.J.S.A. 40A:12A-6, “[t]he resolution authorizing the planning board to undertake a preliminary investigation shall state whether the redevelopment area determination shall authorize the municipality to use all those powers provided by the Legislature for use in a redevelopment area other than the use of eminent domain (hereinafter referred to as a “Non-Condemnation Redevelopment Area”) or whether the redevelopment area determination shall authorize the municipality to use all those powers provided by the Legislature for use in a redevelopment area, including the power of eminent domain (hereinafter referred to as a “Condemnation Redevelopment Area”)”; and

WHEREAS, the Township Council desires to commission a study to determine if the Area(s) should be designated a Non-Condemnation Redevelopment Area; and

WHEREAS, the Township Council finds it to be in the best interest of the Township and its residents to authorize the Township’s Planning Board pursuant to N.J.S.A. 40A:12A-4 and N.J.S.A. 40A:12A-6 to undertake such preliminary investigation of the study area which includes properties Block 100, Lots 1, 2.01, 2.03, 3, 4, 6.03 and 6.05 (Research Office Manufacturing

Zone); Block 100, Lots 7.02, 8, 9, 10, 11, 12 and 13 and Block 102, Lots 1.01, 2.01, 2.02, 9.03 and 9.04 (Highway Business Zone); Block 102, Lot 9 (Active Adult Residential Community Zone) and Block 102, Lot 9.01 (Highway Business – Planned Development District Overlay Zone);

WHEREAS, the Township of Lopatcong wishes to direct the Planning Board to undertake a preliminary investigation utilizing George Ritter PP, AICP, of Ruggiero Plante to prepare the preliminary investigation to determine whether the proposed Study Areas qualifies as an area in need of Non-Condensation Redevelopment pursuant to N.J.S.A. 40A:12A-5.

NOW, THEREFORE, BE IT RESOLVED, by the Township Council of the Township of Lopatcong, in the County of Warren, and State of New Jersey, that the Planning Board is hereby authorized to undertake a preliminary investigation, utilizing George Ritter PP, AICP, of Ruggiero Plante to prepare the preliminary investigation, pursuant to the notice, conduct a hearing and comply with other requirements of the Redevelopment Law, N.J.S.A. 40A:12A-1 et seq., as amended, in order to recommend to the Township Council whether the area comprising the study area is an area in need of **Non-Condensation Redevelopment** according to the criteria set forth in N.J.S.A. 4A:12A-5.

BE IT FURTHER RESOLVED, that the Planning Board is hereby directed to provide individual notice to the property owners of record in the Study Areas in accordance with N.J.S.A. 40A:12A-6.

BE IT FURTHER RESOLVED, that the Planning Board shall submit its findings and recommendations to the Township Council in the form of a Resolution with supporting documentation.

BE IT FURTHER RESOLVED, that a certified copy of this Resolution is to be forwarded to the Planning Board of the Township of Lopatcong.

BE IT FURTHER RESOLVED, that this Resolution shall take effect pursuant to law.

I, Margaret B. Dilts, Clerk of the Township of Lopatcong, in the County of Warren, State of New Jersey, do hereby certify the foregoing to be a true and exact copy of resolution which was adopted by the Township Council at a meeting held on the 20th day of January, 2021.

Margaret B. Dilts, Municipal Clerk

Motion to adopt this Resolution by Council President Pryor, seconded by Mayor Mengucci. Member Pryor noted that Planner Ritter will undertake the matter that will require action by the Planning Board and the Township Council.

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

NAYS: None

Chairman VanVliet – This has come back to the Planning Board. So, any comments on that

Member Pryor – Mr. Chairman, can you hear me? I have a suggestion that would probably benefit everybody. This did originate at Council and George, at Council, made a brief presentation as to what it does and what it may or may not do give that, it's brief but maybe he could do that.

Chairman VanVliet - Are you willing to do that, George?

Planner Ritter – Yes, that's not a problem. Essentially, what the Council is asking the Planning Board to take a look at is a series of properties first take in need of redevelopment. That's basically looking at these properties or appropriate to include in a Redevelopment Zone. The second part, of this after we go through that process and a determination is made, the second process will be to actually develop a Redevelopment Plan or a combination of Redevelopment Plans for the areas that are selected as being in need of redevelopment, so, it's a twostep process. As I say, the first process will be looking at these different properties and trying to determine if they meet the criteria to be designated for a redevelopment area. The next step would be to actually look at whether or not what plans should be developed and as I said, it may be one Redevelopment Plan with different phases or several Redevelopment Plans depending on where these properties are located in the Township. It is a twostep process. It involves data collection, assembling these things and that the stakeholders, they're going to be involved in the properties that are determined to be in need to redevelopment with the actual stakeholders in those properties project that would extend over several months, go through in terms of holding public hearings that will be required, and to get the input of the various groups who will be involved in these plans.

Member Pryor – George, could you identify the properties we're talking about relative to some landmarks?

Planner Ritter - I don't know if I can get them all but, essentially, the area that were looking at is the area of the Township associated with the Phillipsburg Mall. Remaining portion of the mall, second larger parcel would be the area behind the mall that is referred to here as the Active Adult Residential Community and then there was an interest in looking at the properties directly across from the mall – where the tasty freeze was, the soft ice cream place, the storage area is located out there. That's the primary focus of what's going to be looked at and see if they can be incorporated into a consistent plan of how the town might like to see that area developed or redeveloped in the future.

Member Pryor – George, can I clarify that just, the ice cream place I believe is actually in P'Burg and then there is a self-storage and then Lopatcong starts just west of that and we would go all the way down the highway to the Christmas Tree Farm.

Planner Ritter – Yes, that sounds better than my description the landmarks out there that I remember is the tasty freeze. That's the general area

That's generally Rt. 22 both sides

Chairman VanVliet – So, the Council's authorized us to undertake this study. Can I have a motion to approve the Resolution?

Member Pryor – Motion

Mayor Mengucci – I'll second it.

Chairman VanVliet – Beth, may I have a roll call please.

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

NAYS: None

NFI Real Estate, LLC – Preliminary/Final Site Plan – Block 99, Lots 3.01 and 6 – Completeness. Chairman VanVliet – Under New Business, I think we're to the point where we have two applications for completeness; NFI Real Estate, LLC and six (6) for completeness only. Is the applicant on?

Attorney Peck – Yes, good evening, Mr. chairman, Mark Peck with the Florio, Perrucci Law Firm on behalf of the applicant, NFI Real Estate, LLC.

Chairman VanVliet - Good evening Mr. Peck, how are you doing?

Attorney Peck - I'm fine, thank you.

Chairman VanVliet - Good. Would you care to proceed with the presentation you would have?

Attorney Peck – Yes, thank you very much Mr. Chairman, members of the Board. Again, for the record, my name is Mark Peck. I am an attorney with the Florio/Perrucci Law Firm here on behalf of NFI Real Estate, LLC. We are here tonight only for a Completeness determination on the application for Preliminary and Final Site Plan approval with Bulk Variance relief and Design Waivers. That's for property located at 188 Strykers Road which is Lot 3.01 in Block 99. There is also a proposed access over Lot 6 in Block 99. Now, we did receive both the Maser and the Ritter January 22 reports. We'd like to address some of the comments contained therein and we also have with us our Engineer, Kyle McKenna from Bohler Engineering to address some of the more technical concepts. So, moving down the first item is Checklist Item 62. I'm referring to the Maser Report. This is on Page 4 of 6. The comments on the Preliminary Site Plan Details

Checklist is half way down that page. So, Mr. Sterbenz and Mr. Wisniewski noted the following deficiencies. The first is Checklist Item 62 which is the Consistency Determination from the New Jersey Highlands Council. Now, this is an interesting conundrum because, you know, we did file for the Consistency Determination, but by the terms of the Highlands Council, their own application for this, it states the Highlands Council will only conduct a Consistency Determination under this application where an application for development has been submitted to a municipality and the municipality has determined that such Highlands Council review is required. So, obviously, the review is required. We submitted our application. The Highlands Council personnel they are going to be on site tomorrow, so, we do expect this determination soon but, obviously, we don't have it this evening and we understand that it is sort of a mandatory, non-waivable feature, but we did want to note, for the record, that this is underway. So, presumably, the next time the Board meets, we will have satisfied this condition. The next item has to do with a Checklist Item per Ordinance 2020-09 and this is a review by the Township Sewer Engineer regarding available capacity. Now, this is interesting and we actually object to this comment because while I understand that this ordinance apparently was adopted, it does not appear on the Checklist, this requirement. This ordinance apparently amended or created a new Section 243 -43F in your Zoning Ordinance, but if you go to the Township Website, and look at the Ordinance Book, it is not there. Section 243-43 ends at Subsection E, so, this hasn't made it in there and then you go to the website and look at the New Ordinances Section of the website and that's not there either. The New Ordinances end at 2020-02 and while we certainly recognize and the Board, you know, has every right to request this information and we're going to need, you know, when we get to public hearing, we're going to need to provide this information to satisfy the Board as to these issues, but as far as for Completeness, I submit this is an improper completeness item for the reasons I just stated and beyond that, we have been, for close to a year, been trying to get some response from the Township on sewer issues. We wrote a letter on February 18 of last year to the Township requesting an amendment to the Wastewater Management Plan and a sewer allocation and we did appear at two Council meetings on March 4 and June 3rd of last year. So, we have been trying. We understand that we have to address this, but we don't think it is a proper Checklist, you know, completeness type item and then moving on the next five (5) items are more technical in nature, so, and these have to do with Checklist Item 11, which is the dimensions and variances for all lot lines; Item 12 which is set back distances for various features on the plan; Item 27 showing dimensions of proposed sidewalks; Item 38 location of the driveway on Lot 6, which I mentioned before, and 45 locations, dimensions and construction details of solid waste disposal receptacles. I'm going to defer to our Engineer, Kyle McKenna on these.

Engineer Wisniewski – Is Kyle on?

Attorney Peck – He's getting there.

Engineer Wisniewski – Okay.

Attorney Peck - He is in the same room, but just, you know (inaudible).

Engineer McKenna- All right, can everyone hear me? Sorry, can everyone hear me?

Multiple Members - Yes.

Engineer McKenna – Great, thank you. So, as Mr. Peck noted, there are some requests for supplemental dimensions and survey information on the plans that we submitted. We have no objection to providing that information. I think it is really just a matter of just supplemental notations to further detail of the various items pointed out. Our Zoning and Bulk Table does provide what we feel is an acceptable level of setback criteria for buildings and proposed structure of the property, but no objection during supplemental submission to provide the additional detail provided. So, I guess skipping ahead to Item No. 59 on the Checklist, so, with our application, we did submit a preliminary geotechnical investigation which is inclusive of a physical investigation as well, so, there was borings and test pits completed, along with an actual scan of the site for electrical resistivity which is attributed to known conditions in the area related to limestone and karst topography. We marked, we felt that this was meeting the intent of the Checklist criteria. It actually, in our opinion, is a little bit beyond what the standard Phase I in the ordinance requires, again, if the Board feels that we need to provide supplemental information in the form of the maps and other items identified in the ordinance, again, we did feel it meets the intent of this Checklist item as far as Completeness in providing data to review the application from a geological geotechnical perspective, but we did again feel it meets the intent application from geological and technical perspective.

Attorney Peck - And Kyle, I'm just going to shout, there's also three items that we indicated that we feel are not applicable; Items 37 which is location, size and (inaudible) lands to be dedicated to the Township or County supporting any delineation; Item 48 delineation of floodways and streams and rivers and Item 60 presence of wetlands compliance with applicable DEP regulations. Can you explain to the Board why these are not applicable?

Engineer McKenna – So, as far as locations, size and any lands to be dedicated to the Town and the County, none are proposed as far as dedication, so, we felt that was non-applicable reason. In review of the available state NJDEP on line mapping and GIS, there's no presence of wetlands on or immediately adjacent to the subject site. Again, the same goes with flood hazard area or other environmentally sensitive areas. We've met with NJDEP Highlands preliminarily and they agree with our interpretation in that regard and we are, again, in terms of this application, we have an application into the on-line mapping and GIS, no presence of wetlands adjacent to the site. Highlands agrees with our interpretation. The application into the Highlands that was submitted on December 22nd and as Mr. Peck noted they are scheduled for a field visit tomorrow, so again, we don't feel that this is applicable to the application for Completeness for technical review.

Mr. Peck- And, okay, Kyle now, why don't we just move onto Final Site Plan which, again, deficiencies are very similar to what we've seen on the preliminary; it is Items 26, 52, 54 and 61 which is, again, setbacks for various features on site, provisions for refuse and garbage disposal on site, emergency lanes and fire zones and then again, the Phase I.

Engineer McKenna – Sure, so, the Checklist Item No. 26 similar to my previous explanation, supplemental dimensions to the various features throughout the site, we can provide that

information. The refuse and garbage, we did provide a notation on our plans indicating that refuse and garbage disposal be handled via compactor through the area. That's the intent. If additional information is needed at this time, for the Board to review the application, we could provide that, but really the intent was that we would address that during testimony and just note that that is the overall plan. Obviously, ultimately depending upon tenants and that nature, again, just going back to, I'm sorry, emergency fire lane, so, we had initially noted a waiver for providing emergency fire lanes immediately adjacent to the entirety of the building. That's something we can work through with the Board professionals, but again, I think this is just a matter of providing some additional detail and notation as to where the circulation patterns and accommodations for the emergency vehicles would be on the site. And again, back to Item No. 61 Phase I, Geological Study, the intent was that the Preliminary Geotechnical Report that was submitted with the application really does meet the intent of the Checklist item and would facilitate technical review of the application.

Attorney Peck – Non- applicable items on the Final Detail Checklist Item No. 42, that's the same preliminary Item No. 37 dedication to the Township and County, that's not going to happen, so, that's not applicable. Item 55 present and proposed number of units.

Engineer McKenna – There again considering the use of the proposed application, we don't feel that is applicable, no proposed residential units, it would be a warehouse or type use.

Mr. Peck – Finally, preliminary Item 60 what we just spoke about, I'm going to take over. So, therefore, Mr. Chairman, based on the testimony that you just heard, we, you know, we understand that the Highlands kind of precludes us from getting Completeness tonight and we'll have to ask, you know, that we get that at a subsequent meeting, but for the remainder, and Checklist Item 59 on the preliminary and 61 on the final, the Phase I, we think, we satisfied that and the remainder of the Checklist items with the exception of that sewer engineer capacity review, which is, we understand, something we have to do during the course of the hearing, but the other Checklist items we would ask for waivers for Completeness purposes only.

Chairman VanVliet- Is that the end of your presentation?

Attorney Peck – That is. Thank you.

Chairman VanVliet – Thank you. Mr. Bryce do you have a comment on this?

Attorney Bryce – I see that there's not just the Board members, but there's a lot of public on here and I'm just going to ask you to put it on mute because I do get a lot of feedback, so, if everybody could just mute it benefit (inaudible). Just for the benefit of the public and the Board, Mr. Chairman, just to explain the process and standards that are generally (inaudible) I think it is important to understand.

Engineer Wisniewski - You're breaking up Jim.

Member Samson – You're breaking up pretty bad.

Attorney Bryce - Can you hear me?

Chairman VanVliet – I can now, yes.

Inaudible

Attorney Bryce - Can you pause, can you quiet your particular, put yourself on mute? Thank you. I think that was the source of the feedback. Everybody can hear me now?

Member Samson – Yes.

Attorney Bryce – Alright, so for the benefit of the Board and for the public, we'll just review what the purpose of what Completeness is and the standards that are generally applicable to Completeness determinations. I think the Board has to understand initially that Completeness is what is called for under the Municipal Land Use Law, so, that an applications decision time starts to commence. So, when an application for development is filed, it does not, a Board does not have to actually make a decision for a certain amount of time and that amount of time is commenced when it is determined that an application is complete. The Board has to do a Completeness determination for any application that is filed within 45 days of the submission and clearly the Board is doing that here. I think that it is important to note that the Completeness hearing and the Completeness process is administrative in nature and it is an administrative process that the Board undertakes, so, it's not particularly a hearing as would normally have a hearing where members of the public are allowed to ask questions and cross-examine the witnesses based on what the applicant is bringing forward. So, when you're looking at Lopatcong's Zoning Ordinance, Lopatcong Zoning and Land Use Ordinance and you look at Section 243-30, the initial submission is required to be reviewed by your municipal engineer, a report is supposed to be put together and that report is to be considered by the Board when making a Completeness determination at a public hearing, which you're doing. It's important to note that Section 243-30 both A and B make it clear that it is the Board that determines Completeness, not the engineer and no one else, it is the Board's mandate to determine Completeness. As I indicated, as this is an administrative hearing, it is to be conducted in public, but it's generally not open for public comment and public participation. By your Ordinance Section 243-30B and by custom, the applicant is permitted to appear and, of course, respond to Completeness concerns that are raised by the Board. As the Completeness determinations, the Board is limited in its judgement as to whether the application conforms to the Township's submission requirements as set forth in both its Ordinance and its Checklist. The Municipal Land Use Law defines an application as, let me just flip to it, because it is important to note, an application for development means the application form and all accompanying documents required by ordinance for approval of a subdivision plat, site plan, plan development, cluster development, conditional use, zoning variance or direction of the issuance of a permit pursuant to Section 25 or 27 of the Municipal Land Use Law. So, when you look at that particular definition, the question is whether or not the application that is submitted is meeting the ordinance and submission requirements as located within your ordinance. It is important to note that the Municipal Land Use Law, Section 25 or 27 of the Municipal Land Use Law, so, when you look at that whether or not the application that is submitted is meeting the ordinance and submission requirements as contained within your ordinance, it is important to note that the Municipal Land Use Law at Section 40:55D 10.3 does allow the Board the opportunity to grant

certain submission waivers upon request of the applicant. In deciding whether to grant such submission waivers, the Board is reminded it must act reasonably and not in an arbitrary and capricious manner. In Lopatcong, the Township has adopted ordinances, that set forth the Checklists and additional submission requirements for applications in order for them to be deemed completed. Usually, when the Board is reviewing applications for Completeness, minor admissions and some minor details can be waived for submission purposes but ultimately still required. Usually, issues that are jurisdictional, of course, are more concerning. In this particular case, and it has to be noted, that the satisfaction of the Township's application requirements and Checklist is a bit more heightened in the face that there is a recent zoning amendment that did become effective on January 17th but that effective date was after this particular application was filed. This implicates the Time of Application Rule which is found at NJSA 40:55D- 10.5 and just so the Board is aware of what that rule says, and it is important to note, that the law states that notwithstanding any provision of law to the contrary those development regulations which are in effect on the date of submission that an application for development shall govern the review of that application for development and any decision made with regard to that application for development. Any provisions of an ordinance except those related to health and public safety that are adopted subsequent to the date of submission of an application for development shall not be applicable to that application for development. So that is called the Time of Application Rule but the determination as to whether, in this particular case, the filed materials and the forms that were submitted constitute an application for development will directly affect this Board's jurisdiction to ultimately determine and listen to this particular application. The leading authority on this point, is a case called Dunbar Holmes the Zoning Board of the Township of Franklin it is cited at 243NJ546 2018 it is a Supreme Court Case and this case makes it clear that the benefit from Time of Application Rule as imbedded in NJSA 40:55D-10.5 which I just talked about, an application must contain the required information and documents required by the Township's Zoning and Land Use Ordinance. Now, I do note, that in this particular case there are multiple requirements within the Township Code and Checklist that are required to be submitted. It is within the Board's reasonable discretion whether or not the waivers requested should be granted. The Board is not compelled to grant any type of submission waiver and the Board is bound to follow the law that is established in the municipality by ordinance. It simply can't ignore the authority that exists. So, to that point, and just to Mr. Peck's point, I do know there was a concern raised as to the sewer issue and I believe it was an ordinance that was ultimately adopted in September of this year and I believe it became effective in October. That is a requirement and that requirement doesn't just go away that did modify the Checklist requirements it certainly was a published ordinance that was on notice. I do see it on the website and it is noted on the website and noted as pending legislation and ultimately adopted legislation it just hasn't been codified yet, but it is on the Township of Lopatcong's Website. So, that is a Checklist item that is a Checklist detail that just can't be ignored by the Board. So, with that being said, the Board is, I think at this point, tasked with whether or not the submission that was made by the applicant and the materials that they submitted fully comply with the Checklist and other submission requirements as detailed by your ordinance and as detailed by both your planner and you're engineer and if it hasn't whether or not a waiver should be granted by the Board for those requirements. certainly, if you want any further direction as to what the Time of

Application Rule is, I'm happy to give that. There is some authority that I think is beneficial to the Board and, you know, certainly in the Dunbar Case it suggests that in order for the benefit of the Time of Application Rule, the applicant must submit the required application documents that are required by ordinance and Checklist. In fact, I think that the court there said the standard requires that the zoning officer hear the Board compare the contents of submission to the requirements of the municipal ordinance. It does not require review of each submission to determine a meaningful review can be undertaken. It's simply whether it is present or it is not. Certainly, the applicant and I'm just quoting from that case, "the applicant's submission will provisionally trigger the Time of Application Rule if a waiver request for one or more items accompanies all required materials. If the Board grants the waiver, then the application will be deemed complete. If the Board denies the waiver, it's decision will be subject to review under customary arbitrary and capricious, or reasonable standard". So, I think that is what I have to advise the Board at this point Chairman, and the public, in weighing the Completeness of the application that's before it.

Attorney Peck - Mr. Chairman, may I be heard?

Chairman VanVliet – Yes, sorry, I was muted.

Attorney Peck – Yes, thank you very much and certainly, Mr. Bryce, his commentary is noted, and I have had some discussions of the Dunbar Case with Mr. Bryce, but I would note that what the Dunbar Holmes Case, the leading case on the time of Application Rule notes, means the application for development means the application form which we submitted and all accompanying documents required by ordinance for approval of this Site Plan. We submitted all the accompanying documents going through them. The Highlands Consistency Determination by the terms we have no control over an outside agency they won't accept our Consistency Determination application until we filed this application, we have no control over their schedule, they are coming on site tomorrow, I think yet well, we'll see how it is interpreted, but I think it is a stretch when you look at what the court rejected in Dunbar Holmes that is was the case where an applicant didn't submit a survey, didn't submit stormwater calculations, basically didn't submit anything other than the application form. Here we submitted to the Board our application to the Highlands for the Consistency Determination. Let me finish. I'm just suggesting that we've done everything within our power with regards to the Highland's Consistency Determination and we will in fact have that determination within the next couple of weeks. They granted it, they indicated that they would grant it before, we just don't have the piece of paper. So, that's the first item. The second item is the sewer report or Ordinance 2020-09 which became effective only in October. Now, Mr. Bryce claims it was on the website. I take his word for it that it was. I'm pretty familiar with the Lopatcong Website and I'm there several times a week, unfortunately, and I was there multiple times in the past week in connection with this application and I couldn't find it. I think it is very unreasonable and I don't envy Mr. Bryce having to argue this to Judge Miller or whoever hears it, to claim that this actually is a Checklist item when it doesn't appear on the Checklist when it doesn't appear on the code when you go to the Lopatcong Website and go to the Ordinance Code Book, it's not there.

Engineer Wisniewski - Mr. Peck, sorry to interrupt just to provide some clarification. If you go to Chapter 243 on the Electronic Codebook that Ordinance 2020-09 does appear on the Electronic Code on the Township's official Electronic Zoning and Land Use Code.

Attorney Peck – Okay. I went into E-Code again this afternoon and I couldn't find it and I pulled up 243 and it ended at E.

Member Pryor - If I could interrupt, this is Joe Pryor, I have it in front of me now, it's been there since I've been looking at this application. It's there. Maybe you didn't look in the right place. Mr. Bryce noted it was advertised, so, that is a fact.

Attorney Peck - Clearly, we have a difference of opinion here. I don't think that the Checklist is supposed to put the public and the applicants on notice of what's required. It doesn't require an applicant to go on a detective hunt to read through the minutes of the past how many years meetings to see if perhaps an ordinance was introduced its really patently unreasonable, and again, this Board is charged to not act in an arbitrary and capricious and unreasonable manner and, in this case, related to the sewer issue, we've already indicated that it is perfectly valid for the Board to request this information of us as the applicant in the course of a hearing, but to deem this a Completeness item, I think you are completely off base and I don't think there is a court in this State that will see it the way that Mr. Bryce is indicating. Now as for checklist item

Member Pryor - The Board will make that decision but you're just wrong when you say it is not on the website and you look today, cause it's there.

Attorney Peck - Well, I'll look again and you may have the code in separate spots but if you go, I'm picturing it right now where it says Ordinance Code Book click on it, go to the Table of Contents, go down to Chapter 243, pull up Section 43 and you'll see it ends at E, at least that is what I've seen in the last half dozen times I've gone to the website, but regardless, regardless moving onto Checklist Items 11, 12, 27 38 and 45 those have to do with very minor discrepancies on the Site Plan which was filed, so, again, under the application for development as set forth the in the land use law and also in Dunbar Holmes an application for development is the application form and all the accompanying documents required by ordinance. We submitted the documents required by ordinance. We're not required to have, make sure that Checklist Items 11, 12, 27, 38 and 45 are necessarily there and finally Checklist Item 59, as Mr. McKenna testified, we have in fact submitted that. So, again, I submit to the Board with regards to the Preliminary Site Plan Application, we're not incomplete that what we have.

Engineer Wisniewski - Mr. Peck just I'd like to speak to the Geotechnical Study the study was a Preliminary Geotechnical Study prepared at the time a preliminary concept plan was prepared and presented or being prepared by the engineering firm Bohler where Mr. McKenna is working so that study was prepared on a preliminary basis and based on, you know, our preliminary review as part of Completeness, it does not meet the ordinance requirements outlined for geotechnical study for projects being developed in areas of limestone and karst topography. So, it will be and this report prepared by Whitestone Associates does have a kind of clarification and/or, you know, I don't know what the term would be, but a disclaimer saying that a final concept plan has not been prepared and this is a preliminary study of the site. So, the study

needs to be prepared based on the plan being presented to the Board indicating you know the ultimate earth work and different other technical, geotechnical items that will have to be done on the site so there is additional work needed in order to make this report consistent with the submission requirements.

Attorney Peck – Okay, but that again comes back to the Board being charged to act in a reasonable manner and you know these waivers for Completeness purposes only, these very few waivers for completeness purposes only which are routinely granted in the course of really any land use application I would just submit that these few items are customarily and ordinarily given completeness waivers for. So, we'll leave it at that and again while I'm talking to you and I pulled up the municipal website again and I'm looking at your code book right now and home page left hand side Ordinance Book 243-43 ends at E so if you are expecting the public or any applicant to have any, any notice to this requirement to have a sewer capacity review, you are mistaken. How is anyone going to know it is not in the code book and it is not on your Checklist.

Attorney Bryce - Mr. Peck, all due respect to your legal position, that's fine, except that this is an ordinance. The ordinance was adopted by the municipality. The Board is not in the position to overlook the ordinance. It's unfortunate that certain applicants that have not done a due-diligence of pending and newly adopted legislation.

Attorney Peck - It's not in the New Ordinances, Mr. Bryce. It's not there.

Chairman VanVliet – Gentlemen, gentlemen, please.

Attorney Bryce - Mr. Peck, let me just be very clear what is been provided on line is courtesy it is not the law in and of itself that is why the Municipal Clerk has the adopted Ordinance Books that are available for public inspection that is why ordinances are noticed has the public hearing.

Attorney Peck - How can we inspect the Ordinance Book when the municipal building's closed, she would not let me in tonight.

Attorney Bryce - Do not say for one second that this ordinance is not effective to this Board because it is and this, this Board has the jurisdiction whether or not to waive the submission requirement at this time. Let me be more specific, Mr. Peck, the Completeness as indicated in Dunbar Holmes isn't a dispositive issue for your Time of Application Rule. The Time of Application Rule is whether or not when you submitted it, it was actually fulfilled and complete from the technical perspective. Completeness has nothing to do with it as per the Dunbar Holmes, so, you know, we can start dickering back and forth but at the end of the day, it is this the Board's determination as to whether or not this application is complete and contains all the materials and information as required by the Ordinance and the Checklist itself period and if it is not inclined to grant a submission waiver, then it is arguable, if not mandatory that when it comes to the Highlands Area Consistency Determination that is not waivable, it is therefore incomplete. That is the Board's determination, not mine and not yours.

Attorney Peck - That's all understood, but again, I just renew my objection to deeming the item from Ordinance 2020-09 to be a Checklist item. I understand that the ordinance is adopted I am not challenging its validity, what I am challenging is how it can be imposed on an applicant

when no reasonable person and I hear what you're saying, it is incumbent us to check all the legal notices and all that, I get it. You say it is there in the Clerk's Office for public inspection, guess what, I showed up at the municipal building this evening, wouldn't let me in. So, again, whatever, I made the argument. I think there is very fewer waivers for Completeness purposes only that we are requesting and I would request that and again we have no objection to providing the information required by Ordinance 2020-09, we just think it is completely unreasonable and unjust to require it as a Checklist item. Thank you.

Chairman VanVliet – Adam, do you have any comments on the report here? Have you gone through the report?

Engineer Wisniewski - I mean, Mr. Peck went through it as did Mr. McKenna I mean, you know, some of these typically would be items that we would also list in a technical review, so, those additional dimensions we are requesting and those would speak to, you know, handicap accessibility, dimensioning of sidewalks and things of that nature as well as, you know, showing where certain disposable receptacles would be located if there trash compactors or if a dumpster might be constructed one day and how that would be screened, those things can, obviously, be changed as a site is developed and an ultimate tenant is selected, but, you know, I believe those certain items that, unfortunately, you know, we're kind of rehashing here would make those items that would make the application incomplete and those other items within non-applicability, I have no objection to a discussion regarding dedication of lands to the Township or County that's not being considered with this application so that would be non-appliable regarding flood plans flood ways and wetlands. I would agree I didn't see anything on any mapping or software that is publicly available indicated any of those features being on the site.

Member Pryor – Adam, I would like to interrupt you right their because I object to that. The creek runs by the site, it is very easy thing to get you get a presence or absence determination there's no reason here they are putting they are not applicable that's an easy thing to get you get a clean site if there are wetlands site, they get delineated and we all know that, so I'll just put my two cents in there.

Engineer Wisniewski – Okay.

Chairman VanVliet – Adam, are you complete or

Engineer Wisniewski - I mean really, I think that we went through, I think the completeness items are clearly focused on that. The sewer approval, the Highlands consistency, obviously, and then also the Geotechnical Study being completed in accordance with the ordinance.

Chairman VanVliet – Thank you. George, do you have any comments?

Planner George –I'm sorry it took a while to figure out what button to push. No, not in terms of Completeness. My review is as we've always provided to applicant and the Board a review of the various variances and design waivers that are associated with their current submission. The only comment and I can't really add anything to it, was Adam's comment and in terms of that applications for development shall not be deemed complete or considered for review until the Board has in its hands, a Highlands Determination. That's the only thing that's noted in my

review the same as in Adam's as a potential Completeness item. The rest of mine is to inform the applicant and the Board as to what design variances and design waivers would be requested as we proceed.

Chairman VanVliet - Thank you. Do any of the Board members have additional questions of our professionals or comments they'd like to make?

Member Pryor - I'd just like to go back to the sewer for a second. It is correct, Mr. Peck did come before Council. He was looking for a Wastewater Management Plan amendment. His applicant knew, and we're under no obligation to do that. The Wastewater Management Plan is a planning tool. It is incorporated as part of the Highlands, right now. The applicant knew sewer would be an issue and I'll just add that.

Chairman VanVliet - Thank you.

Engineer Sterbenz - Mr. Chairman, my name is Paul Sterbenz. I just wanted to augment what Adam discussed before about the Geotechnical Report. The reason why Adam and I flagged that item as not being addressed had to do with the Phase I investigation which is in the ordinance. The Phase I investigation is supposed to be high level review of subsurface conditions not only on the site but also within a quarter mile of the site and that information was not provided in the report. Yes, there is information in the report that is probably more related to a Phase II investigation which is also discussed in the ordinance but there was nothing in the report that led us to believe that the Phase I investigation was done and that's why we made that determination for both the preliminary Checklist review as well as the Final Major Site Plan Checklist review. So, thank you.

Chairman VanVliet - Thank you, my major concerns, basically, we're going down here is on top of the list is the Highlands Councils requirements that we have to have an approval of the Consistency Determination by them before we take any action and our ordinance indicates that we do not have the authority to waive that until that is completed. We don't have a Consistency Determination for this project yet. I don't have a crystal ball to figure out what they're going to be doing there and we have in the past not determined or have determined that it is inconsistent for the Checklist without that determination and that's one of my major problems here. The other thing is the sewer capacity, the ordinance was put in because of the fact that we are running short of sewer capacity in the Township and we wanted to try to figure out, you know, what we can do and what we can't do and without that we are not going forward. So, at this point I would think that we would probably determine that this application is incomplete at this time. You know, they're welcome to come back and submit another application if they want and that's my feeling on this now, so, without any further comments from anyone, I'm opening up to the Board members and the professionals, the applicant, hearing none of those, we will move to a determination. Thank you.

Member Pryor - Do you want a motion?

Chairman VanVliet - If everyone has had their say, I'm going to have a motion that we deem it incomplete. Did you make a motion on that Joe?

Member Pryor – or did you?

Member Pryor – I'll will make that motion if it's put on the floor yet.

Chairman VanVliet – Okay, do I have a second?

Member Samson – Second.

Secretary Dilts - Who was the second please?

Member Samson - Robert Samson.

Chairman VanVliet – Okay, Beth roll call.

AYES: Members Clymer,

I have a question; what is it for, incomplete?

Chairman VanVliet – Yes.

Member Clymer - Okay, vote is for incomplete, yes.

AYES: Coyle, Pryor, Samson, Weeks, Mayor Mengucci, Vice-Chairman Fischbach, Chairman VanVliet

NAYS: None

Chairman VanVliet - Mr. Peck, we're sorry, but it's been deemed incomplete. You're welcome to come back without prejudice, so.

Attorney Peck - Thank you very much. We'll be figuring out our next steps.

Chairman VanVliet – Okay, we now move on to the application of Bridge Construction for, again, another warehouse on Strykers Road - Block 99, Lot 6 Subdivision Site Plan Completeness. Is the applicant here?

Attorney Aithal - Mr. Chairman, this is Arvind Aithal, the attorney for the applicant. Can you hear me?

Chairman VanVliet - You are breaking up.

Attorney Aithal – Unfortunately, Zoom booted me off of it even though I was probably the 5th or 6th person on today, but I can't log on. I've had to call in and I probably have the worst connection possible on a network that's providing me four (4) bars. So, I can only say that it is probably not on my end it sounds as though like it is a very difficult endeavor for the members of the Board there this evening. I hope you can hear me and if at some point, maybe I should just say a few words at a time and just confirm that I am still being heard.

Chairman VanVliet - You are being heard at this point.

Attorney Aithal - Thank you very much. Mr. Chairman, what I'd like to start off and after the dialogue and the analysis that you attorney was able to provide the Board, I have one little bit I'd like the Board to also consider and that is many of the comments that we have in the review

letters that we're going to be going over and I have Bret Skapinetz our engineer with Dynamic to go over some of the technical details, but in terms of the law, I want the Board to keep in mind that there are qualitative versus quantitative issues in determining Completeness. In 1979, the state of the law in New Jersey was to look at, essentially, how many items were missing; the quantitative and if you are missing them, well, sorry, you are incomplete. The law in New Jersey and the cases have changed to analyze this in a more logical fashion by looking at the qualitative issues. Now there are 63 items the last I checked, on your Checklist. There are also an additional 33 that you can find under your Zoning Ordinance in Section 243-43. Those 99 or so items make up what we would say are the items that are your Checklist type items. I will echo in an issue that you have opined about but to second what Mr. Peck has been saying, I've been looking also for Ordinance 2020-09 and I'll tell you ordinance in Code 360 does not have reference to it. I'm sure it exists. Everyone says this about everyone else's website that it's not the most logically laid out, but in terms of whether it is a fairness issue in finding that ordinance and it is readily available, I can tell you that Mr. Peck was, I'm sure, very diligent in looking for it and I can only speak for myself saying that I was diligent looking for it including while we were on hold, I had difficulty finding it as well. But in terms of the review letters, we have that same comment that we have to comply with Section 243-43F of the land use ordinance which was codified by 2020-09 that's the codification of Ordinance 2020-09. We have in fact already requested the sanitary sewer capacity review from Maser prior to our submission and there's correspondence that we provided, so, I think that we complied substantially with that. Again, this is a qualitative rather than a quantitative analysis that this Board has to have. There are a number of other Checklist items and I'd like our engineer Bret, if you are on the line, if you could unmute yourself, I'd like to walk you through that, if we could do that.

Engineer Skapinetz - Not a problem, I am here. I will.

Attorney Aithal - So, we have the same issue as was the Board just heard about Checklist Item 62

Engineer Skapinetz – Yes.

Attorney Aithal - and that is the Highlands site being actually looked at. It's scheduled to be looked at tomorrow. I don't want to overstate this Bret, so tell me if I am incorrect in how I'm characterizing this. We need to submit an application to get the Highlands folks out here to look and do a determination and we can't do that until that application's been filed.

Engineer Skapinetz - That's correct

Attorney Aithal - They are coming out as quickly as they can control board meeting to have these reviews. It's going to be done tomorrow, so, let me start off by saying that if the Board's determination tonight is, you're incomplete because you didn't have the Highlands Checklist Item 62 taken care from the Highlands Council, then I would ask your Board attorney to opine whether this is in fact the appropriate time for me to ask you to carry this until next meeting?

Attorney Bryce – This is a Completeness determination at this point in time. Certainly, your application you can ask it to be carried. I don't know if that is going to have any effect. Let's get

to the heart of it the Time of Application Rule is whether it was complete when it was actually submitted.

Attorney Aithal - Right, I'm not much into gamesmanship. What I am into, is making sure that fairness prevails and that is we have absolutely, the applicant, absolutely no say in determining when these meetings are scheduled and when you're going to schedule us for a Completeness review before a hearing. We can't file the application with the Highlands Council until an application has been filed with the municipality that's been done. You've scheduled an application for review for Completeness at a time, the day prior to the Highlands Council walk the site to make that determination and I'm going to go back to is this a qualitative or quantitative item. I know you are going to say, look we can't waive it because we don't have the authority to waive it, but you do have the authority to say well, we are not going to waive that requirement, but without that, you are not going to get a hearing. The application itself, again, quality over quantity is, we have to make that application. We've done that. Bret, I'd like you to cover Checklist Item 62, go through the items that we've actually undertaken, well the steps that we've undertaken, to comply with Item 62.

Engineer Skapinetz – Well, Item 62 is that Highlands Consistency Determination request and we have made the application to Highlands. We did it concurrently with making application to the town and getting that in the door, so, that they could perform their review and as you noted, we do have the scheduled meeting with them tomorrow morning to walk through, as the initial step to on their end. They typically perform their site visit and compile the information to then issue that determination.

Attorney Aithal - But now, I also discussed Checklist item well it's actually an ordinance item under Ordinance 2020-09 and I don't want to open up that can of worms, again, about whether it's, you know, a Checklist item or not but tell us what we done in terms of compliance with that?

Engineer Skapinetz - I know and it was listening in on the previous application and there was talk about capacity and a Wastewater Management Plan and whether that property, I guess has sewer or not. This property is within the sewer service area. We did our due diligence understanding Lopatcong is served by the Town of Phillipsburg Treatment Plant. We spoke to Remington and Vernon, the engineers for the plant. We obtained data from them understanding that there is available capacity in Lopatcong, but we do understand that, that's dwindling and we did hear the comment earlier about that from the Chairman, but what we do know that there is available capacity for this project currently, today based on that information ahead of the application we did make a request from Maser Consulting. We put it in writing indicating it was a request we did get a response back indicating that they would work on a letter for us, but have not received that to date.

Attorney Aithal – And, we have that in our control to get that letter out because that is in fact the consulting engineers for the municipality, correct?

Engineer Skapinetz - Yes

Attorney Aithal - Okay. So, I would characterize this as compliance would you not? that we have done what we can to get the Township to provide the information to the Board.

Engineer Skapinetz - We did everything that we can under our power to be able to request that item to make that Checklist item complete.

Attorney Aithal - Mr. Chairman, as to that, I would like if the Board to bifurcate each one of these issues. I would like them to bifurcate each one of these issues and make a determination as to whether they believe that this item is in fact disqualifying for us to have our application deemed complete separate and apart from every other. I would rather not have this Board say well you've got (8) items, so, as a whole, we're going to count eight as being not qualitative or quantitatively, I should say if were not complete I want this Board to look at these on as quantitative basis. So, I ask the Chair, at this point to have this Board make a determination as to whether that item, we are in compliance.

Attorney Bryce - I understand counsel that you would like to direct the Board on how to conduct its business but that's up to the Chair. There is some discussion about meaningful review versus quantitative and qualitative and I think you have to look at the Dunbar Case, because what the Supreme Court there was critical of, was the trial court judges concern with looking to see whether or not if the material submitted would have provided the Board with meaningful review and he determined for the Time of Application Rule benefit in any event that what was submitted was enough for a meaningful review. That was wholly discounted and rejected by the Supreme Court. Again, the court looked to the information and the documents required and the ordinance and checklist. The court there, Justice Solomon said that clearly applied objective standard advances the Municipal Land Use Law goal of statewide consistency and uniformity and land use divisions I'm going to omit the site it says the standard requires that the zoning officer compare the contents of submission to the requirements of the municipal ordinance. It does not require a review of each submission to determine whether a meaningful review can be undertaken. The trial court outlined the standard for requiring enough information so that at least the Township could deem a meaningful Board review objection of the application was review arbitrary and capricious because the Township was able to functionally begin a review on the date of the application submission. We agree with the Appellate Division that the trial court standard is fatally imprecise and inconsistent with the legislature's intent that the MLUL bring consistency, statewide uniformity and predictability to the approval process. Once again, I'm going to omit citations but the entire point is that we are not looking for qualitative, but we are looking at quantitative whether things are there, present or not, as required by ordinance. Whether a submission waiver can be granted is within the Board's discretion and how the Board wishes to treat its Completeness review, I think is up to the Board with all due respect to your specific request.

Attorney Aithal - I understand. I am not trying to usurp the Appellate or the Chair. Please don't misunderstand that and I certainly didn't mean that. What I am suggesting is to the Chair that you look at each one of these individually. I would ask the Chair to consider make a finding on this specific issue whether the Chair believes, and the Board believes this item itself is sufficient in and of itself to deem our application complete.

Chairman VanVliet - Which ordinance, Checklist item are you referring to?

Attorney Aithal - This would be, it's actually not the Checklist item but it is under Ordinance 2020-09 and that requires a review issued by the Township's Sewer Engineer indicating there is capacity as our engineer's indicated we've made that request and that request does not reside with us it is entirely within the control of the consulting engineer for the Township.

Engineer Sterbenz - Mr. Chairman, I'm going to jump in, I'm Paul Sterbenz, the Township Engineer and just to clarify Mr. Skapinetz did request a Will Serve Letter from me. I was not going to issue a Will Serve Letter. I am not the Township Sewer Engineer. Mr. Dan Madden is the Sewer Engineer and there is a process here for establishing capacity through the Planning Board submission process. So, I did not respond to that particular request because there is a process for determining capacity; it's not through me.

Chairman VanVliet - So, did you make an application to our sewer engineer?

Attorney Aithal - Bret, let me just have you jump in, if you wouldn't mind that the initial request that we had.

Engineer Skapinetz - We made that request to Mr. Sterbenz for the Will Serve Letter to understand whether or not sewer was available for the property and we

Chairman VanVliet - He's not the person that determines that it is our sewer engineer that determines that.

Engineer Skapinetz - Excuse me

Chairman VanVliet - He's not the person who determines that.

Member Pryor - We never issue Will Serve Letters.

Engineer Skapinetz - Okay.

Chairman VanVliet - But that still remains that it did not go to the proper person.

Member Pryor - That's correct that comes down the road the analysis is a complicated one not as simple as a Will Serve Letter.

Chairman VanVliet - Correct.

Member Pryor - It's not as simple as a Will Serve Letter.

Engineer Skapinetz - Okay, analysis

Chairman VanVliet - Have you Completed that then?

Attorney Aithal - Let me point out to the Board, the Checklist item that you are referring to requires to submit this to the Township for their opinion. If there is a process for it and it is not in that ordinance, I'm not sure how this Board can determine we're incomplete because we did not follow a procedure in the ordinance that it's relying upon to say it's a Checklist item.

Chairman VanVliet - I'm not here to make that determination that would be above my pay grade.

Attorney Aithal - And with all due respect process, control of the Township, we have in fact submitted an application that complies with the requirements. We do know, that we do have certainly can consult with your engineer that there is in fact capacity, is a situation, is one that the Board can comfortably make a determination that it is ready to proceed and that further analysis will result in a report from your consulting engineer indicating that is, in fact, the case.

Chairman VanVliet - I'm not going to argue the point with you here. I am not a lawyer, I'm, you know, an engineer and I don't see where you are coming from. You didn't go to the right person, we don't have that information and that is the information we are look for, so, as a Planning Board. I will defer to Mr. Bryce on this one to get some advice on this.

Attorney Bryce – Mr. Chairman, that is one issue of several. You've got several Checklist items that are just simply missing. Checklist Item 62, the sewer, regardless, even if you assume that the sewer isn't even applicable, there's lacking minimum setback distances for features along Strykers Road frontage, sidewalk dimensions – dimensions not provided for parking areas, more importantly the location of driveways on the site including those under construction on Strykers Road. There is a Checklist requirement that is very clear that information should have been provided. It does not depict a 50-foot-wide access and utility easement, again driveways within 100 feet. Preliminary Architectural Plans were not provided for at least the proposed parking garage and I guess an LOI for boundaries of freshwater wetlands shown on the plan which was also required by our Checklist. They do that, indicate that the location size and description of lands to be dedicated is not applicable and I assume that to be true, so, you know, there is more than a handful of items of information that were not provided with the material submitted.

Attorney Aithal - So, I'll have our engineer go through each of these. I was really focusing and Ordinance 2020-09 for the moment.

Engineer Skapinetz - Right and I'm prepared to go through each one of these and Mr. Bryce just to run through the list from Mr. Sterbenz letter of July 22nd or January 22nd the Checklist Item No. 12 minimum distances with respect to features along the frontage, we have detail, we need to provide some additional detail but we had provided some in the plan, so, that's, I guess, a that's a minor addition to the plans for clarification, but I believe we met the intent. Sidewalks dimensions we have a lot of sidewalks throughout and we need to add additional dimensions to the plan. I believe it is the same with 12. No. 28 we do have a detail in our plans that calls out the size of parking stalls, we do have call out in our chart, parking chart that says 9x18 stalls. we just need to provide some additional dimensions in some additional locations on the plans, so, I do believe we me the intent of Checklist Item 28, but we'll certainly provide the additional detail. Driveway within 100-feet from the site We do have an aerial plan. We are showing the driveways that are in closest proximity based on our survey, we believe we are covering all those within the 100 feet between those two sheets but, certainly, we can provide additional clarification including the driveway that is proposed for across the street we know from us that's under construction. I believe that's really just providing some additional technical clarification but again we meet the intent of the Checklist Item. No. 36 we need to provide an access and

utility easement for sure, again, that's an item that we can easily provide in the plan. The other one, the last one Checklist Item 38, same thing about the driveways within 100-feet of the site as I noted similar to No. 30 with respect to the architectural plans and elevations, we did submit preliminary elevations and floor plans for the buildings. This project has proposed parking decks so we did not provide specific detail there and while we're on this site, first and foremost, we will provide elevation of the decks but respect to the application here, and this is called out in Mr. Ritter's letter and this will clarify an item brought up in Mr. Ritter's letter with regards to the deck being used as FAR in our application as well as the height of the deck. We fully intend to comply with the accessory height of 40-feet and will do, stand by, the fact that the deck area does not count as Floor Area Ratio with respect to your ordinance but in speaking with Mr. Sterbenz, separately when we received his letter, we do note that he needs the clarification elevation to the Board and to his office.

Attorney Aithal - Checklist Item 60 did you touch upon that as well, I'm sorry, I was breaking up.

Engine Skapinetz - No. 60, yeah, actually you know what, I didn't and Checklist Item No. 60 as it's written in Mr. Sterbenz letter is talking about a letter of interpretation verifying the boundaries of freshwater wetlands. We do show fresh water wetlands on our plan. We do know that down a hill from our site towards Lopatcong Creek, there is wetlands associated with that and they are flagged surveyed and they are noted on our plan. We are filing for a LOI, but that process similar to Highlands takes time and I think the Board is probably well aware of applications which I'm sure have come across it that involve wetlands and obtaining an LOI from the State of New Jersey and of course that does take time for them to review, but when I do read your Checklist, your Checklist for preliminary under that item, notes the presence of wetlands if any and compliance with applicable NJDEP regulations, we're showing the presence of wetlands. We do know that they are there, we have them flagged compliance with DEP regulations is going to come, once we get the LOI that line is verified and we can make the appropriate application to the DEP as a result of their determination as to the type and location of the wetlands that we've indicated in our plan. So, that's part of the process, so, I do believe we meet Checklist Item 60 by showing the wetlands in our submission set.

Attorney Aithal - So, Mr. Chairman, at this time, what I'd like to ask is as your attorney has advised you already you have 45 days to act from the date and application is filed to make a determination of Completeness and that 45 days is there not only for the benefit for the municipality but also for the benefit of the applicant. This application was filed on December 23rd, I believe within the 45-day period. I don't know when your next Planning Board Meeting is, but the applicant is prepared to grant an extension of time for the Completeness review, we would like that opportunity to further address this because we believe that there are items that will be met without a determination by this Board tonight as to Completeness or incompleteness that will be met which are outside of our control. First would like to ask the Chair to entertain my request to carry this to the next Planning Board hearing with an extension of time being granted by the applicant.

Attorney Bryce – Chairman, the application for Completeness whether or not it is complete now or complete later certainly they are not prohibited from submitting additional documents in the future for continuation for Completeness. The Board is, I think, empowered to make a Completeness determination as to the materials submitted thus far and you're acting within your statutory time frame to do so. I would note Chairman that there may be certain things the Board is willing to waive and I leave that to the Board's discretion; LOI, things that were mentioned again, the Board has the opportunity to grant a submission waiver. There was something that was brought up by the applicant's engineer though that is concerning which is regarding the FAR which calls into question the Board's jurisdiction over this entire application. Counsel do you want to be heard on that?

Attorney Aithal - The engineer indicated that both the FAR and I think that is a strict interpretation and I think the ordinance that I believe you should be making, which is whether the floor area of the garage is counted purposes of the sites FAR and if we exceed the FAR with the garage whether that in fact triggers a "D" Variance. I do not believe that it does. Our engineer also indicated he does not believe it does either and I think that in an abundance of caution this Board, which may not have jurisdiction, I would say it probably does, should probably research that issue and not make a decision tonight as to Completeness.

Attorney Bryce Well, I think that the Board right now has the benefit of the planners and engineer's review. From my understanding, our local ordinance does define floor area and for gross. Our local ordinance does not define FAR or Floor Area Ratio. It just kind of states what the floor area is. I note that in Section NJSA 40:55-70-D4, it says in particular cases for special reasons and this is for the Zoning Board jurisdiction, under Section 20 increase in the permitted Floor Area Ratio as defined in Section 3.1 of PL 1975 Chapter 291 which is 40:55 D-4 and if you look at what the definition of Floor Area Ratio is there, as required under the Municipal Land Use Law defined as Floor Area Ratio, means the sum of the area of all floors of buildings or structures compared to the total area that is the subject of an with an application for development municipal ordinance or planned development. So, the question I think that when you're looking at and if I understood our engineer and planner's review, is that the warehouse is a building and the parking garage is a structure and under the Municipal Land Use Law all of that goes into the Floor Area Ratio by definition and exceeds what's permitted in the ordinance, so, I don't know how the Board can even assume jurisdiction if a "D4" Variance is required and I would suggest that if a "D4" Variance is required as indicated, you are in front of the wrong Board and I think the Board would, frankly, lack jurisdiction based upon FAR as required.

Engineer Skapinetz - Mr. Bryce, I do want to point out, and I think you noted earlier, that there was no definition in your ordinance, but if I can point you to Section 243 -5 in your definitions, for Gross Floor Area it specifies and I'll read it the sum of the gross horizontal areas of the floor or floors in a building whether used for occupancy, business or storage, said areas shall be measured between the outside face of exterior walls or from the center line of walls separating two uses. Said areas, shall include usable areas below the level of the adjoining ground, garage space or accessory building space that says to me that this is not a building for occupancy, business or storage and even further clarifies, talking about how areas below a garage space

would qualify, to go on further, your building definition then, if it does go to gross floor area, it's floors of a building whereas your definition of building under that same section calls out that if it is a structure constructed or erected on the ground with a roof supported by columns or walls the term building shall be construed as if followed by the words or part thereof and we do not have, this is not a structure that has a roof, so I'm

Engineer Wisniewski - But it does have a roof and it has columns that support floor, right?

Attorney Aithal - It does not have a roof.

Engineer Skapinetz - Excuse me

Attorney Aithal - It does not have a roof.

Engineer Skapinetz - Right, correct.

Engineer Wisniewski - You're parking on the roof. It's a parking deck, right? You're parking cars on the roof.

Engineer Skapinetz - It's not a roof.

Attorney Aithal - It's a floor.

Chairman VanVliet – That's fine. However, it still exists that you exceed the floor area ratio. Have to ask for a Use Variance on that and we are not empowered to grant that.

Attorney Bryce – And, Chairman, if I may Chairman, I'm looking at the Floor Area Gross as defined in our ordinance and it says the sum of the Gross Horizontal Areas of the floor or floors of a building, whether used for occupancy, business or storage, said area shall be measured between the outside face of the exterior walls or from the center line of wall separating uses. Then it goes on and it is important, it says, set areas shall include usable areas below the level of the adjoining ground where accessory building seems to be an inclusive definition when it comes Floor Area Gross. But, I still don't believe that, that is what the standard it is when it comes to this particular parking garage because what is clear in the Municipal Land Use Law, as I indicated while our ordinance would define Floor Area Gross, and separate that from Floor Area Net and Floor Area Livable and what is clear, what distinguishes this is that Section 40:55D I think it is 4 defines Floor Area Ratio as not just a building but also structure and certainly a parking garage is a structure under both our ordinance and the Municipal Land Use Law and the Section under 70 which is Section 70D-4 references the actual definition provided in the Municipal Land Use Law for a FAR which includes structure. So, it looks to me as if it is a FAR issue when you are exceeding what our permitted FAR is, cause it says clearly Floor Area Ratio means the sum of the area of all floors of buildings or structures so it includes structures and structures are defined as a combination of floor construction, occupancy use whether installed on or above the surface of a parcel of land, so, I think that under the very requirements as provided for in the Municipal Land Use Law, specifically, a FAR of 37% is in excess of what we're allowed under the ordinance and a D-Variance would be required and this Board does not have jurisdiction over the variance.

Attorney Aithal - Let me stop for just one minute. This is Arvind Aithal the attorney for the applicant. So, my question is this and if we are all in agreement that the Municipal Land Use Law has a definition for floor area and we're not in agreement with it and the MLUL also defers to the municipality to provide the definitions for what would be considered to be what's authorized, I should say by the municipal ordinance to be counted as the floor areas for the buildings the local ordinance does, in fact, require a roof of a the structure in order to be considered to be a building So, I'm not sure whether this Board is in a position to opine on the spot, I'm a little disappointed because this was, in fact, an issue that we believed was clear from the ordinance itself and we're substantially prejudiced because here we are, at this hearing, the ship has already sailed as to whether this Board is taking jurisdiction of this application, and here we are in the middle of having a discussion of the application, and low and behold, something that was caught by your professionals, that we brought up, suddenly raises the eyebrows of the Board members to start scrambling through your ordinance to look for the definition. I think that the prudent thing to do at this point, is that it is not question as whether that we the applicant is ready to proceed today, but it appears that the Township ready to proceed opine about this application because it has yet to make a determination as to whether it even has jurisdiction.

Attorney Bryce – And, counsellor I appreciate that but except, you know what, it was in the review memorandum that was provided to you and to the Board and the Board makes the determination as to jurisdiction; it is not Mr. Ritter, it is not Mr. Sterbenz, it is not myself, yet, we will guide the Board. I will say this, I think that it has not just been brought to your attention in advance of an issue of jurisdiction. The only time it can be brought is in a public hearing before the Board. It would improper for Mr. Ritter just to say we're not hearing you because we think you lack jurisdiction. I think the question is squarely before the Board and the Board has the inherent ability to interpret its jurisdiction, in fact, there's case law that if it is learned throughout the course of a hearing, they lack jurisdiction. The Board can deny application for lack of jurisdiction, it is still empowered to always determine its jurisdiction, so, if you are offended, or not, I apologize. It is really not the Board's concern at this point. The fact of the matter is, when you look Municipal Land Use Law says, which as I reference -40:55D Section 70D4 and cross-reference as specifically made by the Municipal Land Use Law where it defines Floor Area Ratio where it clearly says it's the sum of all floors, buildings or structures. the Township doesn't even have to say anything compared to the total area of the plan subject to the application for development. That seems fairly clear to me that's a D and that's just my opinion fairly clear to me it is just a D-4 Variance and, frankly, to suggest that parking structure is somehow, you know, doesn't have a roof, I mean does it have gutters. I would assume

Attorney Aithal - I'm going to defer to your ordinance because the MLUL does. It defers to another ordinance.

Attorney Bryce - No, the Municipal Land Use Law actually defines FAR.

Attorney Aithal - And, it defines it to include what this Ordinance of the Municipality defines

Attorney Bryce - It defines, as I indicated, FAR, actually, defines how it is measured and what it is and includes not just buildings but structures.

Attorney Aithal - Authorized by the municipal ordinance or by a planned development

Attorney Bryce – That is as related and that modify as continuous property, as allowed, so, let not try to use that modification to twist the meaning of that statute.

Attorney Aithal – Understood, so, this Board would with the parking deck? I withdrawal the parking deck from the plans.

Chairman VanVliet - You made that application. At this point, since our jurisdiction is in questions, I think there's is enough Checklist items that have not been completed and I specifically reference Checklist Item 62 can't waive the completion determination by the Highlands that, I would think, we should deem this application incomplete and then we'll determine whether we have jurisdiction of whether we have jurisdiction over this or not. Is this a reasonable approach Mr. Bryce?

Attorney Bryce - Mr. Chairman, two phase process on this Chairman - you can determine Completeness just for the benefit of the applicant just so the record is clear, but I do think the Board should make the determination based upon Mr. Ritters review, Mr. Sterbenz review, the application itself, the Municipal Land Use Law and my opinion, it lacks jurisdiction over this application to deny the application without prejudice for lack of jurisdiction.

Chairman VanVliet - Can we combine those two deeming it incomplete and indicating that we have lack of jurisdiction on this in one motion or do we want to break it up?

Attorney Bryce - You can do it either way, Chairman, that's however the member wants to make a motion.

Chairman VanVliet - Any further comment by the Board members? How about our professionals? Any further comment? Hearing none, pardon George, go ahead.

Planner Ritter – We've covered the issue, I'm fine.

Chairman VanVliet - Okay, in that case, I propose a motion that we deem the application incomplete and determine that we don't have jurisdiction over this as the application is presented. Do I hear motion on that?

Member Pryor - I'll make that motion.

Member Coyle – I'll second it.

Chairman VanVliet - Beth, may we have a roll call please

AYES: Members Clymer, Member Coyle, Member Pryor, Member Samson, Member Weeks, Mayor Mengucci, Vice-Chairman Fischbach, Chairman VanVliet.

NAYS: None

Member Clymer – Beth, did you call me?

Secretary Dilts - Yes, did you answer?

Member Clymer - My answer is yes.

Chairman VanVliet - Motion carries. The application deemed incomplete and the Planning Board doesn't have jurisdiction as the application was presented. You are free to reapply and come in with the proper information.

Attorney Aithal -Thank you, Mr. Chairman,

Chairman VanVliet - Thank you. Okay, I lost my minutes here, so.

Attorney Bryce – Chairman, you're up to public comment.

Chairman VanVliet - Public comment, thank you very much. At this point, I'll open it up to public comment. Is there anyone on the line that wants to make a comment on this? I don't hear anything, but I don't know who is muted and who is not. I hear no comments from the public; no one is putting their hand up.

Host Ciesla - Indicates that no one has raised their hands.

Chairman VanVliet – Okay, thank you very much. Thanked everyone. Motion to adjourn by Mayor Mengucci, seconded by Vice-Chairman Fischbach. All in favor, yes; no Nays; no abstentions. Meeting now adjourned.

Respectfully submitted,

Margaret B. Dilts,
Planning Board Secretary