

TOWNSHIP OF LOPATCONG
PLANNING BOARD MEETING
7:00 pm

November 23, 2020

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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 Gazette 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 was Attorney Bryce and Engineer Wisniewski.

Sworn In: Robert Samson as a Class IV member to unexpired term of 12/31/2023.

Old Business:

Minutes - Motion to accept the Minutes by Mayor Mengucci, seconded by Member Coyle. All votes in favor except for abstentions by Members Clymer, Fischbach, Pryor and Samson.

Chairman VanVliet – Okay, the minutes will stand as published. The next order of business is Precast Manufacturing Block 100, Lot 6.02. Mr. Edleston are you on board?

Attorney Edleston – I am, I am Mr. Chairman

Chairman VanVliet - Okay if would you like to present your presentation?

Attorney Edleston – Yes, Mr. Chairman This matter was initially heard back in July 24th, 2019 and was thereafter carried to January 22nd, so this is actually the third hearing before the Board on this application which essentially seeks to add a break room to the existing facility and it also requires a variance from the required front yard setback. This addition is roughly 745 square feet. There will be 10 additional parking spaces provided and non-conforming issue outstanding was stormwater management. Revised plans have been supplied which indicate the installation of a rain garden slightly reducing impervious coverage. They would be for Preliminary and Final Site Plan and Variance approval. Also, Jim Bryce was nice enough to call me earlier today. My notice did indicate expansion of a non-conforming conditional use in error on the notice so, that portion of the notice can be deleted.

Attorney Bryce – Chairman, just to address that, the expansion here is the C2 variance for increasing the non-conformity expansion of a preexisting condition.

Chairman VanVliet - Is there any testimony from the engineer on what he is proposing to do?

Attorney Edleston - I thought he was going to log into the meeting Chairman, apparently, he must have forgotten so, we can rely on the prior testimony.

Chairman VanVliet - I'm not very comfortable with that because rain gardens are not appropriate for karst areas.

Engineer Wisniewski – We received plans late and no opportunity to present formal memo. Sheet 5 – this was something Maser recommended during initial submission on January 7, 2020 report. A recommendation was to provide a liner to address sink hole issues which are very high in the Township This would be addressed with Mr. Zedderbaum to meet DEP requirements in terms of design for the rain garden. He will go over this with Mr. Zedderbaum. Along with this was the Landscaping Plan that Mr. Ritter must agree with as well. Page 4 – Some additional plantings proposed along front of parking lot fronting on Strykers and along the side yard for additional screening to the building addition. There is a row of 5 trees the area that they are looking to offset the increase in impervious. It appears with 745 sq. ft. addition they will remove 790 sq. feet of impervious surface and plant trees there. It will become a staging area for new manholes so it will be permanently left as pervious surface and I don't know if George reviewed the plans. I emailed to George last week.

Planner Ritter – Applicant has provided the additional landscaping requested. What is unclear is addressing some of the conflicting drawings between the architect and the engineer. It is unclear if that has been addressed. He has provided the landscaping requested in the locations and, in the areas requested, he eliminates one of the variances not the one just noticed but the one we pointed out. That he needed a variance because he had not shown the appropriate buffer. The buffer area is now properly described per new drawings.

Member Pryor – Can I ask a question or two? This goes back to the July 3rd hearing – what exactly is the variance he is looking for here?

Planner Ritter - The variance grows out of the fact that he is extending the little addition and the front façade line and the variance deals with the fact that our setback is required to be 75 ft. and the building runs at 70 ft. so the variance is to place additional building area between the 70 feet that it is at or 75 feet, it is for the volume of the building not the setback. The fact that he is increasing the volume of the building between the front wall.

Member Pryor – Now, George refresh my memory did somebody testify as to the positive and negative criteria here or are we just approving this to approve it?

Planner Ritter – Well did anybody testify; well, they did provide testimony in relation to the fact it does not encroach into the right of way into the right of way than the current building and it is a very small addition and Positive benefits they added a fair amount of landscaping in and around the addition that doesn't exist today. He added landscaping into the buffer zone between his property and the adjoining property. The buffer that screens his parking lot from Stryker's Road he added plant material that should make it thicker. So, he has improved the view from Strykers Road and the encroachment itself, actually pretty small plus or minus square feet.

Member Pryor – So, if I can repeat what you're telling me George the negative impacts are essentially diminimus and the positive impacts are improving the buffer and a better visual.

Planner Ritter – I think that's the best way to summarize it. He's cleaned up that corner of the building. He's made it visually pleasing and he also supplemented the screening along his property between Strykers Road and parking lot. He made an effort.

Member Pryor – Okay, I'll accept that as the proofs.

Chairman VanVliet – Adam, I have one question for you. Let me enlarge this a little bit. There's an inlet on the side on that side of the building structure can't determine for looking at the map here, would it be advantageous to run the stormwater into that inlet; pipe it in?

Engineer Wisniewski – Well, they are providing an underdrain into the rain garden. They are lined and under drained, so, it is daylighting, so, the underdrain is discharging into the little wooded area there by a row of trees there between the inlet and the pipe coming out. I prefer to discharge over land and if it makes its way into the inlet which is discharging by the trees there between the inlet and the pipe coming out. Generally, I prefer they discharge over land because the water will get out to the creek faster.

Chairman VanVliet – Usually with rain gardens, we require a maintenance program on them also. Does he propose any type of maintenance for the rain garden?

Engineer Wisniewski – They haven't so no, that will be addressed in my comments to Precast. Architect drawings to be submitted to go along with engineers plans which will be part of the coordination during resolution compliance if we get to that part tonight.

Member Pryor – Adam, these things are generally are not high maintenance, is that correct?

Engineer Wisniewski – That is correct, yes.

Member Pryor - Once vegetation is established you have to keep it alive right?

Engineer Wisniewski – Basically, you trim it once a year in the fall. Leave it alone winter, spring and summer.

Member Pryor – I'll move that he submit the maintenance program that Adam can approve as a condition.

Chairman VanVliet – Do I hear a second on that?

Vice-Chairman Fischbach – I'll second.

Attorney Bryce - Is this for approval

Chairman VanVliet – Beth, roll call please.

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

NAYS: None

Attorney Bryce – One thing, moving forward on the approval Mr. Samson probably should not vote on it unless he listened to the prior tapes.

Chairman VanVliet - That's true.

Member - Good point.

Member Pryor – Right, I forgot about that or unless he has read all the minutes.

Member Samson – I have not.

Member Pryor – Okay.

Chairman VanVliet - Perhaps instead of voting yes, you should abstain from voting.

Chairman VanVliet – Beth, will you record him as an abstention?

Secretary Dilts – Yes, I will

Roll call vote:

ABSTENTION – Member Samson

Chairman VanVliet – Okay, thank you. George, do you have any further comments?

Planner Ritter - No, no, as I say he has cleaned up the drawings. The only thing I would ask as part of the approval that he submit the architectural along with his final set of plans so resolve the conflicts between the architect's drawings and what the engineer had on the plan in terms of building size and that kind of thing? It's in my review letter as long as he follows what's in there, we're fine

Engineer Wisniewski - And Jim, you typically reference our letters, so, those comments will be included.

Chairman VanVliet - Anyone else have any questions?

Member Samson – I just have one question, if I could. I looked over this and I'm looking at Page 4 here. I see an abandoned septic area. It's seems to be an old field maybe they replaced at one point and I saw somewhere they were replacing the tank, but I do not see the existing field. Wouldn't that have an impact on the plantings over here, like how close they can plant to the field?

Engineer Wisniewski - You're saying where their current field is Bob?

Member Samson - I don't see it on Page 4 or 6; it looks like you have some underground stuff coming in there; right, you have gas, but as far as I know, there's no public sewer and it said that the Septic was re-done in 1980, but I don't see an existing field. The only place it could be would be right up here right by the abandoned area by where they are doing all the plantings.

Engineer Wisniewski – I thought their engineer spoke to that at a previous meeting, but now it's not on the plans that I see.

Member Samson– It's definitely not on there and they have

Engineer Wisniewski – Yeah, the note here says the current septic design approved in March 2008 and installed in 2008 as per the as-built plan.

Member Samson – Per the as-built right, but they don't mark it on the drawing anywhere.

Engineer Wisniewski - There's also septic lids showing in the back of the property if you look on Sheet 2.

Member Samson – Yeah, they show the lid and then

Engineer Wisniewski - Further back and a clean out

Attorney Bryce - I don't know if this helps, but the only testimony that I can recall that from my notes is that the Mr. Zedderbaum testified that the septic field is not proposed to be relocated but the septic tank is and he doesn't anticipate having any effect. That was his testimony in July or January. The second year, January 22nd.

Member Samson - The other thing I noticed was they still have Intercounty Paving listed as one of their neighbors. I don't know if that's a big deal or not but

Engineer Wisniewski -That happens from time to time. I don't think that's an issue. I'm trying to find the old set of plans that they submitted to see maybe they forgot to turn it back on when putting these drawings together.

Planner Ritter – If we require them then, we can adjust the plants to not have them right on his bed. If that's what's going on.

Chairman VanVliet - I think we're getting into a situation, where we really should have his engineer testify to this before we go ahead and approve anything.

Member Weeks – I agree with you, Garry.

Attorney Edleston – Yeah, I don't know where he is, Mr. Chairman.

Chairman VanVliet – I'm not faulting you Mr. Edleston at all, but I think we were looking for the architect to submit more data on the building plans with George. We have some serious issues it looks like with this septic system and lacking the testimony on it, I don't think it's just a minor thing that we can make it a condition of approval and go ahead and pass this thing. I think we need more information. His engineer can work with Adam. I don't feel comfortable just giving them a blanket approval on the preliminary and final site plan approval on this. I don't know how the rest of the Board feels about this. Anybody comment?

Member Pryor – I'll support the Chairman.

Mayor Mengucci – I would agree with you also, Garry.

Vice-Chairman Fischbach – Yeah, I would agree also.

Chairman VanVliet – So, we cannot take a motion on it, action on it and come back and re-submit.

Attorney Bryce – Chairman, just for Open Public Meetings Act compliance and regulatory compliance just open it to the public and if there's not comments, carry the notice to the next meeting without further notice.

Chairman VanVliet – Okay, is there anyone here from the public, we'll open it up to the public for questions? Lori do we have anyone from the public?

Host - Ms. Ciesla - No.

Chairman VanVliet - So, we have no public comment then, so, we'll close that portion. Do we want to go with a continuance or do we want to take a vote and possibly turn it down? Mr. Bryce I'm kind of look for you

Attorney Bryce – At this point Chairman, because, Mr. Edleston, I assume that you will give us further extension of time?

Attorney Edleston – I would give you the extension of time and ask that this matter be carried without further public notice, Mr. Chairman.

Chairman VanVliet – I agree with that.

Attorney Bryce – Yeah, given the position I think that is appropriate action.

Chairman VanVliet – Okay, so, we 'll take no action on this now and we will grant him the continuance.

Attorney Bryce -Supported by a motion Mr. Chairman I call for a motion that no action be taken.

Chairman VanVliet – Okay, do I hear a motion to take no action

Member Pryor – Motion for continues

Chairman VanVliet – Do I hear a second?

Member Coyle – I'll second it.

Roll call vote:

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

NAYS: None

Chairman VanVliet - Mr. Samson I hate to interrupt the roll call, but again I don't think you have all the background on this. Do we want to have him on an abstention or not vote?

Attorney Bryce - It's probably better if he just doesn't vote on this. He's there for the quorum, his votes not necessary just to keep the record clean, he should just abstain.

Chairman VanVliet – So, Mr. Samson, would you change that vote to an abstention?

Member Samson – Yeah, I would abstain on that.

Chairman VanVliet- Beth, I'm sorry, will you continue the roll call?

Secretary Dilts –

AYES: Weeks, Mayor Mengucci, Vice-Chairman Fischbach, Chairman VanVliet.

Chairman VanVliet – Okay.

Mr. Edleston – Mr. Chairman, is there a meeting of the Board in December?

Chairman VanVliet – We may we're under the 10-person rule. We could have one in December. Do you want to shoot for that?

Engineer Wisniewski – Mr. Chairman, I'm sorry to interrupt the discussion about the meeting, but I was just looking through the historic documents that they submitted. The plan that was submitted back in January 2019 does show the new septic location. I guess it's part of the record, but it's not on current site plans which was an omission, obviously, by their engineer. It shows that the current septic bed is located down where we, where Mr. Samson pointed out the location of the septic lids between the two storage sheds that's the current tank for the septic system and that all gets piped over just to the, let's say this is the west, within the gravel storage area and it's not shown here on their survey now know but it was at one time shown as a 24X60 foot bed, that's on the plan. So, it's just an omission by Mr. Zedderbaum not to show it on the survey. He has resubmitted as of last week, but it was at one point, on the plans.

Chairman VanVliet - Let's clean up the plans and we have a couple other issues with the architecture going there, so, I would say continue with the continuance take it without notice to the December meeting.

Attorney Bryce – And, that's going to be the 16th.

Chairman VanVliet – The 16th, correct. Okay. Mr. Edleston, thank you very much sorry about this but

Attorney Edleston – Thank the Board and the professionals also.

Chairman VanVliet – Beth, do you have a question Beth?

Secretary - I think Brian lost his connection. I think he's going to try and dial back in. He can hear everybody; he just can't speak.

Chairman VanVliet – Okay, well the next order of business is Ordinance 20-12

Ordinance No. 20-12 – Review Ordinance of the Township of Lopatcong, County of Warren and State of New Jersey to Amend and Revise Chapter 243 entitled “Zoning and Land Use” to Delete Section 243-75 (A)(2) and 243-77.3(C)(1)(c) to Remove Warehouses and Distribution Centers as Permitted Uses in the ROM and PD Zone.

Chairman VanVliet – Okay, has everyone received a copy of this? Basically, I guess it proposes to eliminate warehouses in the ROM Zones. I'll start with George; you have any comments on this?

Planner Ritter – Well, I guess my first comment would be is that to repeal these two things, as our Master Plan currently exists, this really would not be conforming to the Master Plan. This is in an area of the town that for lack of better characterization, these types of uses have been supported, in fact, promoted, and I think that's the most obvious thing to be said, the other thing is that if we do repeal them totally from the ROM Zone, we're are not only affecting probably future use of property, but we are going to turn several of our businesses in the town into non-conforming uses. Essentially, the big warehouse on 22 would be non-conforming, the current one under construction on Strykers Road will be made non-conforming and also the existing warehouse, I'm sorry, I can't remember the name of the gentleman up on the, on the corner of Strykers Road does warehousing and ships building supplies sand that sort of things into New York, he would be non-conforming. It would be an impact well beyond just the remaining open properties. From the standpoint of what is still available to be developed, to give the Board a little sense of that, there's really only two properties that are currently available and that's the area behind the plastics company and the area where the solar field is currently located on Strykers Road. The ROM District on 22, the only thing that remains, what I call it the Christmas Tree Farm site, but that area is part of our municipally important ground water recharge area and that would be limited to 15% disturbance over probably $\frac{3}{4}$ of that property and the remainder seems to be within a flood plain of the stream, so, it's highly unlikely that that'll be developed intensely going forward. Obviously, if we repeal these things, there will be impact not only on future use, but with the people that are currently there. I think that's the broadest of overviews. Obviously, there are things that we can do that would reduce intensity of the development rather than prohibit it if the Board's is interested in talking about that or not but clearly, there are other ways than outright banning to gain some more control over this. You know we can look at reducing building coverage, building height; once of the things that for the ROM South of the railroad back when the Township was very interested in getting the computer, I'm sorry,

Chairman VanVliet - Data center.

Secretary Dilts - Bank of America.

Planner Ritter - Thank you the data center, the ordinance was amended to allow building south of the railroad to go to a maximum building height from 45 feet to 60 feet allowed them to have, to go to a building coverage of 25% to 30%, so, there are things we can do to reduce, I think the intensity, if that is some of the goals that you'd are interested in doing. One thing that this did bring to mind, I will say, is that probably one of the ROM District's that out right appeal, not immediately, but in the short term, make some sense. If you remember, the outlining ROM District up next to the, I'm trying to think of the name of that street, it is the ROM District that has the, I keep wanting to say Belvidere Road

Secretary Dilts – Belview Road.

Planner Ritter – That might be a good one that outright prohibition against large scale warehousing would make sense. The roads up there are not in any way close to be able to handle it and truthfully, I think we all hate to see somebody come in there and try to redevelop that for that kind of purpose. That is sort of a brief overview of where we are and I toss it back to the Board for discussion.

Member Pryor – I can address all of George's comments speaking for the Council, but I would rather hear everybody else's opinion first.

Engineer Wisniewski – George and the PD Zone also includes the Phillipsburg Mall property, right?

Planner Ritter – Yes, but the PD Zone is in the HB District and it's for PD overlay and with the PD has a condition that you have to have more than 50 acres in Lopatcong and if you develop it, you must have at least three different use types on it. So, first of all they don't have 50 acres in Lopatcong, so, I don't think they qualify as a conditional use on that site and secondly, quite frankly, they're not interested in putting multiple uses on the site. So, I would say warehouses on there is not a permitted use as it's currently zoned and so, it's not permitted is the bottom line. They would have to get a Use Variance or the Township would have to approve a redevelopment plan or something to allow that to happen, so, I don't consider that site one that warehousing and trucking terminals (inaudible).

Member Pryor - Which site is that George?

Planner Ritter - The Phillipsburg mall site

Member Pryor - That actually, the underlying is Highway Business like George said, and they're asking for a variance in order to build a warehouse and that's separate, that's separate from this and that will be addressed separately.

Member week – George, can you hear me?

George – Yes.

Member Week– Is there a way to make it a smaller footprint; the building and more open land?

Planner Ritter - Well yes, that's the other way to look at this is that instead of outright prohibiting warehousing, we could as an example instead of allowing them 65% impervious cover that could be reduced to some lower number that makes us more comfortable maybe, maybe 55, maybe 60, I don't know, but what I'm saying is you can cut that and we could also turn around and say you can't have a building that covers 25% of your site. Maybe that could be reduced down to, I mean, I'm picking numbers, 25 down to 15%/20% and still leave the option for development. The other thing that I think is important, is the current ROM District, before we put in the standard to get the data center, had a cap of 45-feet, clearly, you can reduce the height of the building, you don't have to have 60-foot-high buildings in this district. I don't think that would be going too far to say the height of these buildings have to come down. The other thing we can do is that since most of the ROM District directly abuts your residential district, you can just, basically, put in some buffers to protect those residential areas going up to 150 or 200 feet and taking those off the table. There are things we can do to reduce intensity far from just outright banning them. Obviously, banning them is the most effective way to reduce the whole thing, but it might not be the best course of action

Mayor Mengucci – If we would cut that down to 15 or 25% that would probably chase them away as far as warehousing would go.

Planner Ritter. Well, it might and if we cut the building area down to say 15% it just might not make a big enough box for them and they may just walk because when you see on most of these plans that have come before us, the building itself covers most of the site as much as the we think of having tons of truck parking and all that stuff that's actually a pretty low percentage of their site compared to what the building covers and so regulating the height of the building and the size of the building could discourage big box types of users to come in, but still allow, you know, the option for local developers to have warehousing and that kind of thing at a scale we were all used to and expected out there, on those two remaining sites.

Member Weeks – But you can also George, am I right, you can make that into, making it up here now, of course, let's say the building, I think Jim said 25%, you can now say so much goes for a parking lot and so much has to stay as open land. Is that correct?

Planner Ritter – Well yes, if we said as an example that you couldn't have impervious cover on more than 55% of the site then the remainder of the site would have to stay green. And like I say, having more buffer along the residential areas I think could be justified. It would also mean they would have to adjust the plans tight up against residential properties which happens to be the whole upper edge of the remainder of the ROM District and I think that is supportable and I don't think that is pushing over the line in terms of asking them to do that.

Mayor Mengucci - Especially if you are going to have a lot of trucks in there backing up to essentially the Overlook section that's going to be 24/7, that's just not good.

Planner Ritter - Correct and it leaves room for landscaping mounds, buffers; I mean to get some stuff in there and if the Board felt comfortable making sure that the height of the building doesn't get above 40/45 feet also would help play the scale of the building down so it is not looming up there like a 6-story building against the back property line.

Member Weeks – But it also leaves room for a walking path around for the employees.

Planner Ritter – Well, that's true it would leave room to do other things.

Member Weeks – Inaudible

Member Pryor – Does anybody else want to speak otherwise I'd like to go through these one by one.

Mayor Mengucci – Go ahead Joe.

Chairman VanVliet – Historically we have taken Strykers Road our Industrial Section of the town and we wanted to strike a balance between the taxes for commercial and residential. We're overloaded with residential and I'd hate to cut off the development of those properties in order to boost our tax rateables from the commercial end. I think by banning the warehouses, we're doing a pretty good job of doing that and we haven't had anything to really come like a pharmaceutical campus or anything like that that was envisioned to begin with but it has kind of developed into a warehouse/trucking area anyway. So, I really don't want to cut our nose off to spite our face as far as banning warehousing all together in that area. Every business out there has some type of warehousing going except maybe the automotive repair center that used to be old Hensfoot Farm there, so, for what's it's worth.

Member Pryor – Well, it's worth a lot and everything said is correct Garry and everything George said is correct; and the Council actually had some thoughts about doing many of these things or making it a conditional use and putting some other conditions in to not only reducing the mass but maybe employing conditions about traffic and so on, but let me walk through and this is my thinking so I don't speak for the other 4 members of the council but this did pass 5 nothing the first time around and let me just walk through this. I forget our first Master Plan I

think it maybe even predated the Municipal Land Use Law. It's always encouraged a balanced approach between residential and non-residential development and for a long time we were in terrible, terrible financial condition and a lot of it had to do with really declining total assessment total, assessed valuation, and a lot of that had to do with the non-residential side. The changes we made were back pursuant to a re-examination report in January 2012 and it had the following language; it says provide planning incentives in the form of enhanced design standards that will attract new industrial development requiring expansive ground floor area and high floor to ceiling distance such as data processing centers modular housing manufacturers and structural steel fabricators So, there's no question back at that time the Master Plan was changed and the zoning was changed to allow something like the data center which was on the table at that time. It was left alone and we recently had two high cube warehouses approved; of course, there is the Ingersoll Rand site and then the one on Strykers. The two together are approximately 1.5 million square feet and that will help and we're in much better financial condition then we were in 2013, and these two structures will really put us in very good shape. The problem is the Master Plan and accompany zoning change did not anticipate this surge in interest in the so-called logistics centers and the County, well it's estimated just walking across the street there's 250 acres of undeveloped ROM across the street and that's in a round number but it's estimated to accommodate 1.6 million additional square feet of high cube warehouse, so, it more than doubles what we have now. Then the County just finished a study in September including the foregoing sites in Lopatcong, they're estimating up to 45 million square feet in the County and that includes warehouses under construction, proposed or planned and potential future sites based upon current zoning. So, that's an issue. I take the position that the Master Plan is not static. As you grow, that's why you have re-examination reports and you make adjustments. These warehouses with their humongous floor areas, and 60-foot height, you know, they generate a significant amount of truck traffic and the County, there's no question in the County's Report there's going to completely over tax the County's road system and the council, you know, had three principal concerns; first is the mass and repetitive nature of these structures. I think we risk becoming the tale of two cities; one comprised of housing and one comprised of distribution centers. Second, is the potential impact on Overlook which abuts the ROM Zone and third, is the impact on the intersections at either end of Strykers. We don't control them for one; second, the Planning Board doesn't control offsite traffic. From what I've read, the courts and the law assume that offsite traffic was considered when the zoning was created so that's the function of Council and that's one of the things we're looking at. Now, we did look at things like conditional use and these other changes, but we feel it's important to pause and revisit our planning before the genie is out of the bottle and trust me these sites are under consideration. This is our last opportunity to pass an ordinance this year. Otherwise, we go into the next year and do all this planning that you're talking about and we may already have one or even two complete applications before us. So, this is our last bite at the apple this time around if want to take time and consider all the things we discussed here we may run into a problem very shortly. So, that's the logic. Everybody's raised some good issues. There's nothing to disagree about. We agree to much of what was said but all I can do is explain why we put this up and we're putting it up now. Mayor did I, is it fair what I said?

Mayor Mengucci – Absolutely, everything was fair in what you said and again, you know, we can't worry about what others are doing, but what others are doing may impact our areas and our roads and with the, I'm sure you all heard of the Jaindl project possibly up in White Township. They're going to get to Rt. 57, be unable to sail through those tunnels so they make the right ago up the hill, so they're make a right going up the hill that would be the most logical way to go out to Stewartsville, I'm sure. That's not going to happen so, They make the right and go up the hill first of all, you're going to have some trucks laboring up that hill on Rt 57 and the very first left that they can make is Strykers Road, so, we're going to have traffic impact put on us possibly, with something we have absolutely nothing to deal with, so in order to, you know, protect ourselves that's why we came up with this so just kind of sit back and reset a little bit however, it's a situation where, you know, do you grab a piece of something that you think is going to last that's a line from a song. I'm sure when the people put the mall up 30 years ago, they thought that was going to last. I can't see 30 years down the road. I can't even see 30 days down the road, so, you know, do we limit ourselves and run the risk of not getting a decent tax rateable or do we, again, grab a piece of something that we think is going to last. We don't have those answers, but that's the reasoning behind the thought process from the Councils standpoint.

Member Pryor – Well I'll just go back and build on what the Mayor said. Nothing is forever and I think this puts the breaks on it a little bit gives us a chance to breath. Gives us a chance to see the impacts are on the ones that are going up, identify some of the problems and; maybe take another shot at this next year. But, if we don't act now, this year is shot and who knows what will happen.

Vice-Chairman Fischbach – Mr. Chairman, can I have a say here?

Chairman VanVliet – Yes.

Vice Chairman Fischbach – All right two things. I guess first one is a question for George because George said, that if we were to pass the ordinance that would take the current pieces of warehouses out of compliance. So, what does that do to them? What does that mean in whole? That's my first question.

Planner Ritter - Well, basically, what it would do is when and if they change tenants they would have to, basically, get clearance from our zoning officer and if there was any debate, that the tenants they were swapping in and out of there warehouse were not similar, they'd have to come back to the Zoning Board for a use variance

Vice-Chairman Fischbach – Okay, so, it looks to me like the one on Strykers Road I'm not sure if they even have a tenant yet. Because they have a sign out there that says that they're looking for a tenant. Okay, so, that would be, I guess my second question or my second statement would be would it be would it be then to some degree wise for us to maybe take this to some degree and maybe sounds like to some degree a drastic step and then just reset and relook at everything and then maybe go back and do some of the things that maybe George talked about with, you know,

heights and building coverages to actually take some time to look at all that and, you know, see what does work. Does that make sense?

Planner Ritter – Well, from a planning point of view, I would think, you know, taking the time to look at alternatives makes some sense because there's no doubt that what's being said by council is a valid concern. I mean, the bottom line is, there's no doubt that with these types of uses coming in now it will have an impact on local roads, design standards at various intersections that are not up to handling truck traffic. So, it's really a question of how do you want to look at it? You can look at just outright ban as a type of temporary thing and I'll defer to Jim on the legal issues on that and we can look at it in more depth if everybody believes that there's some merit in still having warehousing and trucking as part of our land use. The down I guess to this approach and it is difficult, I'll be the first one to admit it, but is that by outright prohibiting them, we may be spending time defending ourselves, I guess is the best way to put it but I'll defer that to Jim.

Member Pryor - I don't even have to ask Jim, anybody can sue anybody.

Planner Ritter – Well, that's true

Member Pryor - It happens and I think if we do it now, we're in a good position. I we try and do it once an application is in, it's weaker and I think it's pretty clear once the application is complete, whatever's in place, you know, stands and I don't know if I'm right there Jim, that's what I understand. All right, we'll pause and let you think about that. My other question is on this change of use. These things are owned by a landlord there're rented out to a different tenant approval is for a high cub warehouse and what difference does it really make if its Amazon or a Japanese clothing company the function, the use doesn't change, so, I mean my question, it seems to me is he only comes back to us if he wants an expansion.

Member Coyle – May I say something?

Chairman VanVliet - Please do

Member Coyle - I would just say hurry up and change it. We are bombarded with traffic there; we've got the new townhouses there. On 57, it's starting to look; I don't think you have to worry so much and be so fearful used for something else. I say change it and change it quick. That's what I think.

Attorney Bryce – Chairman can I jump in? Okay, Lori, can I ask just to take that down that just so I can see my fellow people on zoom, there we go. Okay, I just want to, there's a few points I want to make so that everybody knows what their role is tonight and it's really not, it doesn't have anything to do with a policy debate on my end, Councilman Pryor, I don't want you to misunderstand this. The ordinance that's now before the board tonight, that you're looking at, is for you to determine whether the ordinance is consistent with the current master plan. That is the

primary question about it. It's nice to have the debate. you should have the debate about the right way to do things, perhaps changes about it, that's certainly appropriate, but the primary job of you as planners tonight, is to come to one conclusion and that is whether or not the ordinance, as proposed, is consistent with the Master Plan. Now, the process is, is that if it is determined not to be consistent with the Master Plan and I'm going to say even if you determine it to be consistent with the Master Plan, it goes to the governing body, they certainly have every right to adopt it if it is determined not to be consistent with the Master Plan, whether by this Board or by the council itself, they have to adopt it with a super majority vote and a separate resolution of reasons why they are deviating from the Master Plan. So, I want to be clear is that your job tonight is not, nothing that you will do tonight is fatal or in any way obstructs what the governing body's going to do, what it does is it requires the governing body to have a super majority vote if it is inconsistent with the Master Plan and adopt special reasons as to why it's deviating from the Master Plan and that's perfectly within the jurisdiction of the Council. So, from the first instance, I just want to underscore it is not about doing it as fast as possible, the questions primarily tonight is whether it is consistent with the Master Plan and I think fairly what you heard Mr. Ritter testify to tonight, is that it's really not consistent with the Master Plan because this has been a historical use that's always been envisioned. The other thing, and I just want to put out there, which is something that our Council our Mayor and Councilman who at this point has to be aware of, is that any type of major change outside of and you have to understand, the periodic Master Plan review which happens every 10 years not an amendment in-between, tweaked to the land use side, but if it is a change that is not coming out of the periodic Master Plan Reexamination Report and it is substantial in its affect and I can assure you because I've litigated this, removing a use within a zone is considered substantial classification change and every property owner within the district and within 200 feet, has to receive personalized certified notice of the ordinance and the hearing on the ordinance, so, that's just an aside, I just don't want you to think, you know, that there very strict procedures within the Land Use Law when you start altering substantially zoning ordinances in-between periodic Master Plan Re-examinations and you just have to be aware of them, so tonight, and Mr. Chairman thank you for letting me jump in here. I don't I certainly encourage all the policy debate, but I just want to make sure that the Board members are aware that tonight their job is primarily to say whether this is consistent with the Master Plan. That's the job tonight.

Member Pryor – Jim, I was aware of that. I didn't want to get into what the council may or may not do, but you explained that. I would still argue you're looking at consistency. I would go back to the last reexamination report. it did not mention high cube warehouses and that is a special classification of warehouse. We approved one as part of a redevelopment. So, we've basically, approved one here under the ROM ordinance and it came on us all of a sudden. that's a recent development and the county did study; these things they are massive, they generate a lot of traffic and I would not be so quick to say it's inconsistent there's no mention in the reexamination report of warehousing or high cube warehousing and, again, high cube is a special classification of warehouse. Completely different than that thing at the corner of 57 and Strykers Road. Well, that's my opinion today; it may change if I get more input, but that would be what I

offer tonight. If we envisioned it as a use, we would have mentioned it seven years ago. That was written with a data center in mind.

Chairman VanVliet – I agree with what you are saying Joe, I have not much argument. I still think that, you know, this would be a drastic change in what the historic portion of Strykers Road was. We always envisioned it as, you know, maybe everybody thought it would be something different, but it has come into and we just approved a warehouse across the street from what we're talking about here. I don't see how we can say it is not in conformance with the Master Plan and I'd take it from there. We can go ahead and, you know, limit building height and setbacks and the whole thing and try and control it, but to absolutely eliminate it I think would we'd be making a mistake for the future of the Township as far as a good balance in income. Every one of the things that we're trying to avoid we've been set upon court decision that forced us to build it. The latest Autumn Ridge one, down on the Piazza property, that was a court forced us to do it. We lost all the way around the board. I'm just trying to sit back here and say what is a good balance in the tax ratio that we're going to be looking at here in the future like you say, nothings forever. These warehouses go up pretty quick and they can come down pretty quick?

Member Pryor – Well, I also know what these things are 80-million-dollar investments and they're not going to come down that quickly and they do try and get long terms leases out of them, but again, I go back to the one we just that was just approved. It was conforming and we had absolutely no choice and I'll go back to 2013 and I don't think anybody envisioned a town full of high cube warehouses, so, Jim's raised some good points, so, the Council will certainly discuss them and take them into consideration, so, as Jim said it is a vote tonight; does it conform or does it not conform?

Vice-Chairman Fischbach – Well, that's the question. Right, that's the question. Does it conform with the right, with the, with the, you know, (inaudible)?

Chairman VanVliet - ROM Zone.

Vice-Chairman Fischbach – Right, the Master Plan, you know.

Member Pryor - The Master Plan

Chairman VanVliet – Well, we just approved one there so how do we say that it doesn't approve with the Master Plan.

Member Pryor - Because it met the zoning and the zoning, it conformed; we had no choice, but when that re-examination report was drafted, there was no such thing as a high cube warehouse.

Member Weeks - How do we deal with what Jim said?

Vice-chairman Fischbach – Well, here's what I think. I think Joe, Joe, I think what you're doing is you're trying to specify it as a high cube warehouse, a warehouse is a warehouse, is a warehouse.

Member Pryor – No, that's not true.

Vice-Chairman Fischbach - Yeah well,

Member Pryor – That's not true. The one that got approved got approved as a high cube warehouse.

Vice-Chairman Fischbach – Right, I understand that but again, all it is, is a shell what happens is what happens inside, whatever is going on inside. That determines if it is high cube or whatever is going on inside. That's actually what's

Member Pryor – No, it's the dimensions of the building actually

Vice-Chairman Fischbach - And what the process is inside. How everything happens. Whether things come in and they're put together whether they're just in and shipped out. That's actually how many people are inside doing the work. That's what

Member Pryor – Well, I'll argue with you there a little bit that the high cube, basically, means the dimensions. It's generally a large foot print and a high height and it's made to accommodate a lot of automation

Vice-Chairman Fischbach – That's correct.

Member Pryor –and, it can move a lot of material quickly.

Vice-Fischbach – Quickly, that's right.

Member Pryor - and that's why the one on the other corner is it's almost like a contractor's yard with the roof on it. They assemble materials, they assemble equipment and when it's ready, to go, it goes.

Vice-Chairman Fischbach - I get it. Again, I think, when we looked at the warehouses, even the one in Ingersoll, we looked at it as how many people are going to be there and that's what made it a little bit more because, again, to your point, a lot of automation, so, we didn't think there was going to be a lot of people you know technically in there doing work cut down on traffic not truck traffic. I'm talking about employee traffic. Right, so, we looked at all that.

Member Pryor – And I want to get back to what Jim said, it's consistent or its not but the truck traffic is the problem if you had a shopping mall, you'd have cars moving in and out but take one

large tractor trailer and, you know, try and get him on Rt 57 you are going to go through one light cycle. I mean those are the issues. If these were just cars, I think you would get a lot fewer complaints the mass of these things you add another 1.6 million square feet, that's three-times, you know, what Perrucci's is. and then take a peek at it and all you're going to see is walls and roof top.

Vice-Chairman Fischbach – I agree.

Member Weeks – You have to ask yourself though, like Jim Bryce said, does it go with the old Master Plan that we have and one of the other concerns I had was, if we vote on that tonight, we haven't done what the lawyer said and that's send out letters and change things.

Member Pryor – No, that's not us right Jim?

Attorney Bryce – No, that's town council.

Member Weeks – That's council.

Attorney Bryce - The only role that the Board plays in this process is to determine whether the ordinance is consistent with the Master Plan but don't let that fool you I'm just putting it out there even if the Board there's a piece out there that the Planning Board found an ordinance consistent with the Master Plan and it went to the governing body they adopted it and the courts quickly overturned them and they said the Board was playing a game and the governing body ought to know better basically It's clearly not consistent with the Master Plan. They Board didn't do it right so there's an obligation at the Board level but also at the Council level for consistency with the master plan and it's you guys that determine and George is the professional and you have Adam, but at the end of the day it's your determination whether it's consistent with the Master Plan. That's why you guys are paid the big bucks, so.

Member Pryor - Yeah, we're here for free, Jim.

Member Pryor - I took everything you said what everybody said. I just wanted to say I listened to all the comments tonight. Everybody offered good comments. I can't even argue with them. I just presented what Council said When I go back to consistency, I keep going back to 2013 and I am pretty certain you could have put high cube warehouses in there. You didn't. Nobody was thinking of that that was done hoping the land the data center Strykers and it conform. We had a 60-foot height because you know the data center needed it. we're going to have and my concern, again, is we don't do something, and maybe it's not possible maybe what Jim explained tonight, makes it impossible. every reorganization is a new administration and things start over so we get into the readings and all of that and we are into probably March and who knows what's going to happen put breaks on the things and o the thing, take a breadth and maybe look at the things discussed tonight but we really didn't want to see things coming this

coverage and this height right now. I offered council's thinking and wait to hear the Board's determination.

Member Clymer – I think from my standpoint we need to heed what Jim said and go to George and say is this with the Master Plan that's what we have to decide tonight. Our role is to decide Master Plan

Member Pryor – and I'm going to build on that real quick. George has been with us a long time. George, you wrote that document. Did anybody ever mention high cube warehouses?

Planner Ritter - Back when the data center was being kicked around?

Member Pryor - When this in 2013 drafted

Yes

Member Pryor - Had you given examples

Planner Ritter – No, we did not discuss high cube warehousing, we did not. We did not look at that tissue because the general feeling at that time, there were acceptable uses for that district so we did not make an issue of high cube warehouses because look and you know this as much as I do everybody felt this was the Industrial District in town appropriate uses at the time, at the intensities you know do I think the ordinance should be worked on and tweaked the Nasser I yes. It does produce buildings that are quite large and intense Master Plan basically that's a hard one as it's drafted because the Master Plan envisioned these areas would have warehousing.

Member Pryor - amplified by Covid

Could not figure out why no one built in the Industrial District Master Plan just talking about consistency just went through a revision could be developed intensely because they had original mapped out 15% disturbance so we just went through that revision on and promote having that removed I would say that my thing about saying it is not consistent is we never identified in the Master Plan any problems related to any type of warehouse use at any level through zoning ordinances, through amendments that's all that's all I'm saying we do have concerns and sure but in terms of consistency, really it's a stretch to say total repeal of the warehousing and trucking terminals is consistent with our master Plan.

Member Pryor just to go Study downsizing conditional use. It is going to take time so we don't have an application next month. And the next thing you know somebody's asking for completeness January. I can't express it anymore honestly.

Vice-Chairman Fischbach – Don't disagree with you Joe.
Everybody today spoke very good eloquently

Mayor Mengucci – Cut down the size. You know this is going to be a lawsuit.

Member Pryor – I think that if we do there's going to be a lawsuit maybe that can become part of

Just as an aside isn't there some limited sewer capacity that would also be development of that area.

Mayor Mengucci – About out of it.

Engineer Wisniewski – agreement and arguments going on with metering and capacity so we're right there. Actually, Strykers Road warehouse to increase allocation by 5 manufacturing facility or something leaves basically no capacity left.

Member Pryor – wild card there is P'burg if they have excess capacity that they are always willing to sell. Those things can also be solved contractually and Adam I think you would agree that in terms of contractual, we're just about there

Okay any further comments from anybody. Hearing none, I will defer to Mr. Bryce here and we'll take a vote

Attorney Bryce – That is really what you should do governing body has to adopt with super majority vote and resolution.

Motion to find this consistent or inconsistent with the Master Plan by Member Clymer, seconded by Vice-Chairman Fischbach.

Roll call vote:

Inconsistent vote no: Members Clymer, Coyle, Weeks, Mayor Mengucci, Vice-Chairman Fischbach, Chairman VanVliet.

Consistent: Members Pryor, Samson

Resolution – Remote Meetings – Motion to adopt by Vice-Chairman Fischbach, seconded by Member Pryor. All in favor.

R 20-06

RESOLUTION OF THE PLANNING BOARD 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 Planning Board (“Board”) desires to adopt such a resolution in compliance with the emergency regulations.

NOW, THEREFORE, BE IT RESOLVED by the Planning Board 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 Board 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 Board will accept comments by electronic mail or in written letter form on matters on which the Board 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 Planning Board secretary by 4:00 p.m., not less than 48 hours prior to the meeting. The Board will not accept any text-based comment at anytime, nor will the Board 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 Board 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 Board 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 Board 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 Planning Board of the Township of Lopatcong at its meeting of November 23, 2021.

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 at the Planning Board Reorganization Meeting held on Wednesday, November 23, 2020.

Beth Dilts, Secretary
Lopatcong Township Planning Board

Adjournment – Motion by Member Weeks, seconded by Vice-Chairman Fischbach.

Respectfully submitted,

Margaret B. Dilts
Planning Board Secretary