

# MINUTES

**MAY 12, 2015**

## **PLANNING BOARD**

## **LONG HILL TOWNSHIP**

### CALL TO ORDER AND STATEMENT OF COMPLIANCE

Chairman Pfeil called the meeting to order at 7:30 p.m. He then read the following statement: Adequate notice of this meeting had been provided by posting a copy of the public meeting dates on the municipal bulletin board, by sending a copy to the Courier News and Echoes-Sentinel and by filing a copy with the Municipal Clerk, all in January 2015.

### MEETING CUT-OFF

Chairman Pfeil read the following statement: Announcement is made that as a matter of procedure, it is the intention of the Planning Board not to continue any matter past 10:30 p.m. at any Regular or Special Meeting of the Board unless a motion is passed by the members present to extend the meeting to a later specified cut-off time.

### CELL PHONES AND PAGERS

Chairman Pfeil read the following statement: All in attendance are requested to turn off cell phones and pagers as they interfere with the court room taping mechanism.

### PLEDGE OF ALLEGIANCE

### ROLL CALL

On a call of the roll, the following were Present:

Excused:

J. Alan Pfeil, Chairman  
Brendan Rae, Mayor  
Gregory Aroneo, Member  
David Hands, Member  
Ashish Moholkar, Member  
Guy Piserchia, Member (7:40 p.m.)  
Guy Roshto, Member  
Timothy Wallisch, Member

Suzanne Dapkins, Vice-Chr.

Kevin O'Brien, Board Planner  
Thomas Lemanowicz, Board Engineer  
Cyndi Kiefer, Board Secretary

Daniel Bernstein, Bd. Attny.

Ms. Kiefer advised Chairman Pfeil that he had a quorum and could proceed.

EXECUTIVE SESSION – It was determined that there was no need to hold an executive session.

### APPROVAL OF MINUTES

Chairman Pfeil asked if there were any comments or corrections to the minutes of December 9, 2014. Hearing none he asked for a motion to approve. Mr. Hands motioned approval and Mr. Moholkar seconded that motion. A **ROLL CALL VOTE** was taken. Those in Favor: Mayor Rae, Mr. Hands, Mr. Moholkar, Mr. Wallisch, Chairman Pfeil. Those Opposed: NONE. The minutes of December 9, 2014 were unanimously approved as written. Mr. Aroneo and Mr. Roshto were ineligible to vote since they were absent from that meeting.

Chairman Pfeil asked if there were any comments or corrections to the minutes of February 24, 2015. Mr. Hands pointed out on page 6, paragraph 8, there was an incomplete date "199." Mr. O'Brien said that according to his recollection, it should read "1996" which was the date of the Master Plan zoning ordinance which changed that zone. Mr. Roshto advised Ms. Kiefer that it had been a quote from Mr. Stroh and that she should review the tape to see what he had actually said. Ms. Kiefer agreed.

Mr. Lemanowicz noted on page 10, paragraph 6, it should read "*ground water*" not "brown water." He also questioned a comment attributed to him at the bottom of page 16. He did not feel that it was something he would question or say. Ms. Kiefer advised that she would listen to the tape and make any corrections necessary.

Ms. Kiefer noted that Mr. Piserchia had arrived at 7:40 PM.

Mr. Wallisch moved to approve the minutes of February 24, 2015 as amended. Mr. Hands seconded the motion. A **ROLL CALL VOTE** was taken. Those in Favor: Mayor Rae, Mr. Hands, Mr. Moholkar, Mr. Roshto, Mr. Wallisch. The minutes as amended were approved unanimously. Chairman Pfeil and

Mr. Aroneo were ineligible to vote since they were absent from that meeting.

### **RESOLUTION OF MEMORIALIZATION**

JOEL H. & ROBERTA L. GOLDBERG  
47 Overlook Road  
Block 12502, Lot 8

#15-01P  
Minor Subdivision

Chairman Pfeil asked if there were any corrections to the resolution. Hearing none he asked for a motion. Mr. Wallisch moved approval of the resolution as written and Mr. Aroneo seconded the motion. A **ROLL CALL VOTE** was taken. Those in Favor: Mr. Aroneo, Mr. Piserchia, Mr. Roshto, Mr. Wallisch, Chairman Pfeil. Those Opposed: NONE. The Resolution of Memorialization was approved by unanimous vote. Mayor Rae, Mr. Hands, and Mr. Moholkar were ineligible to vote since they were not present at that meeting.

Chairman Pfeil asked if there were any questions or comments from the public on any items *not* on the agenda that evening. Seeing none, he closed the meeting to the public.

### **DISCUSSION**

TIFA, LTD. PRESENTATION – “STREET FRONTAGE IMPROVEMENTS”

Present: David C. Roberts, esq., Attorney for Tifa Realty  
Gregory Perry, P.P., Supervising Planner, Morris County Planning Board

David C. Roberts, attorney with **Norris, McLaughlin & Marcus P.A.**, Bridgewater, New Jersey, stated that he was present and representing Tifa Realty. He noted that he had represented them for quite a few years and was familiar with the history. He added that he had represented Tifa when it was owned by Arnold Livingston. He characterized Mr. Livingston as “not a very good citizen to the community.” Mr. Livingston died several years ago and his two (2) daughters had inherited the property. Both of them lived in Colorado and could not be present.

Mr. Roberts said that he understood that there was a requirement that Tifa install a sidewalk and that Mr. Livingston had not complied with that. He stated that both of the daughters very much wanted to sell the property and it was currently under contract for over a year-and-a-half. There was a point in time when they had met with the Township and assured everyone that the sidewalk would be installed by the new owner upon sale and that would not be long. At that time no one could have foreseen how long it would take for the sale to become final. There were several months where they were fighting with the buyer because the buyer was fighting with the Department of Environmental Protection (D.E.P.). Everyone was aware that there was an asbestos problem that was remediated in the early 2000’s but as part of the resolution of that case, the D.E.P. must approve any sale. There was no way around that. Mr. Roberts stated that the D.E.P. had put unreasonable restrictions upon its approval. The buyer had indicated that they were comfortable doing the limited amount of environmental testing that they had done because in the contract it specifically stated that they were buying the property as-is. The D.E.P. said that if the buyer found anything during its testing, it would have to be cleaned up immediately. Mr. Roberts stated that, in his opinion, the D.E.P. did not have the right to say that however his clients did not have the money to take this to court and fight the D.E.P. over that condition. Instead they entered into an amendment with the buyer allowing more testing within a specified time period. If the testing showed less of an environmental issue than a specified threshold, the buyer would go ahead with the purchase. If the results were above that threshold, the buyer would have the right to withdraw from the purchase. That timeframe would end during the first week of June. He cautioned that he could not guarantee that the D.E.P. would not place additional restrictions on the sale so he could not guarantee that the property would be sold during the first week of June.

Mr. Roberts said that the fact that the owners had not installed the sidewalk as required had caused the Planning Board to adopt a resolution prohibiting the issuance of any further C.O.’s on this property. That had created a devastating hardship because every time a tenant moved out, the vacancy could not be filled with a new tenant. He said three (3) things could happen at the beginning of June: (1) the sale would go forward and the buyer would be given the money to install the sidewalk; (2) the buyer could withdraw from the sale; or (3) the buyer would request additional time to negotiate with the D.E.P. If either of the last two options occurred, Mr. Roberts cautioned that within a couple months the owners would be unable to pay for basic services such as real estate taxes or snow removal. He added that for years his clients had put personal money into this property just to keep it going however they were at the point where they just could not do it anymore.

Mr. Roberts said, given the situation, his clients were requesting relief from the C.O. prohibition because they had people who wanted to come in as new tenants and some of the existing tenants wanted to move to larger spaces, both of which would require new C.O.’s. He had spoken to Jack Pidgeon, Township Attorney, and they had agreed to amend the agreement with the buyer to Mr. Pidgeon’s satisfaction that if the sale moved forward, the money for the sidewalk would be escrowed either in his trust account or Mr. Pidgeon’s trust account. There would be no conditions on the release of that money from his clients. If the deal fell apart and there appeared to be no end in sight, the Township could go back to prohibiting C.O.’s. He stated that he was not there to debate the merits of whether or not a

sidewalk should be installed but the fact of the matter was that his clients did not have the money-- \$130,000 to \$150,000-- required to install a sidewalk. He added that his clients could not borrow against the property because there was not enough income. He had spoken to the bank on their behalf and the bank refused the loan because they were in the red. The reason they were in the red was because they have had tenants leave and they cannot replace them because of the sidewalk. He reiterated that his clients could not get the money to install the sidewalk without tenants and they couldn't put tenants in without the C.O.'s. If the buyer came back and requested more time to negotiate with the D.E.P., his clients would have a very difficult choice to make. If his clients granted the buyer more time, they would continue to hemorrhage money and would have to consider halting basic services to the tenants. The alternative would be to terminate the contract and attempt to resell the property but there was no guarantee as to how long that would take.

Mr. Roberts summarized by saying that the Township was not wrong in requiring the sidewalk however the current penalty or incentive to install that sidewalk was creating a financial impossibility. He requested that the Board try something else. As long as Mr. Pidgeon was satisfied with the amendment that provided for monies for the sidewalk to be escrowed, Mr. Roberts felt that the Township was protected. If there was a problem with the sale and it did not go forward, he would revisit the issue and the Board could do whatever it wanted at a future date.

Chairman Pfeil asked Mr. O'Brien to review the background and history of the property. He noted that the Township Zoning Enforcement Officer, Thomas Delia, was unable to attend because of a family emergency however Mr. Delia had prepared a memo which was written in September 2014 reviewing his comments and his notes on this.

Mr. Roberts said that Mr. Delia was referring to a meeting that was held in the fall of 2014 with a representative of CB Richard Ellis (C.B.R.E.), the property manager, who indicated that the sidewalk was going to be installed. He stated that no one from C.B.R.E. had informed his office or Tifa about the meeting. He added that nobody at Tifa authorized C.B.R.E. to make any representation of any kind in the fall of 2014. He said that, had he been present at the meeting, he would have told them the same thing he was telling them now. His clients did not have the money.

Mr. Roshto asked what the relationship was between C.B.R.E. and Mr. Roberts' clients.

Mr. Roberts responded that C.B.R.E. was the property manager.

Mr. Roshto asked if they were contracted by the client.

Mr. Roberts affirmed that they were.

Mr. Aroneo asked Mr. Roberts where the escrow funds would come from.

Mr. Roberts said if the sale proceeded, the Township would not have to trust Tifa to get the money and follow through on its promise. He would ask for an amendment to the contract that would say to the buyer "You are to give whatever the dollar amount is... directly to Jack Pidgeon's trust account and then the rest to us."

Mr. Hands asked what would happen if the sale fell through.

Mr. Roberts said that if the sale fell through, there would be no money and his clients would be in the same position they were in now. They would not have the money to install the sidewalk. If they could get some tenants currently in small spaces into larger ones and bring in some new tenants, it would help alleviate a certain amount and then the ban could be re-imposed.

Mr. Piserchia asked when the current owners inherited the property.

Mr. Roberts responded that it was some time during 2006 or 2007.

Mr. Piserchia asked how long the C.O. prohibition had been in place.

Mr. O'Brien responded that it had been in place for approximately one (1) year.

Mr. Piserchia said, given that, any space that had been available for a year had not been able to be filled.

Mr. O'Brien stated that according to Mrs. Wolfe, there might be tenants located in the building who did not have prior approval.

Mr. Piserchia asked how many empty spaces there were in the complex.

Mr. Roberts said that seven (7) sounded about right but he could not be sure.

Mr. Piserchia asked how many spaces there were in total.

Mr. Roberts responded that there were four (4) buildings and some of the spaces were very tiny.

Mr. Piserchia said that he was trying to determine what kind of financial burden this had been for the past year.

Mr. Roberts said that he could represent to the Board that that figure was within a few dollars of a six (6) figure differential in that much lost rent.

Mr. Piserchia asked how much the property generated in total.

Mr. Roberts responded that he thought it was somewhere around a quarter of a million.

Mr. Aroneo asked if Mr. Roberts' clients were granted relief from the prohibition, would they come forth with a plan to actually do the sidewalk themselves.

Mr. Roberts said that he would not misrepresent to the board members that if his clients got relief, they expected a flood of people to come into that complex which would generate a positive \$150,000 net in order to install the sidewalk. If this worked to the point where they not only plugged up the hole, but then had a surplus because it was 100% occupied and the only way they could keep it going was to install a sidewalk-- since the two daughters had inherited the property, "there had never been a point in time where there had been any intention to not put in the sidewalk." They just had not had the money. He noted that since the board members lived in the Township, they were all aware that the property needed money. There were roofing, plumbing, bathroom, and operation issues. The upkeep alone was a significant amount of money. There had not been an extra \$150,000 to put in a sidewalk. At any point in time when they had indicated that they would install the sidewalk, it had always been as a result of a sale. There had never been one misrepresentation by anybody since the new owners took over. They had always been upfront and stated that this was as the result of a sale.

Mayor Rae asked if it was correct that whenever the building was fully rented, it would generate \$250,000.

Mr. Roberts said no, that was what it was now without being fully rented.

Mayor Rae asked if the expenses were more than \$250,000.

Mr. Roberts replied, "Significantly."

Mayor Rae asked if Mr. Roberts knew what the taxes were.

Mr. Roberts responded that he did not know.

Mr. Roshto asked if they had been operating at a loss for the past six (6) or seven (7) years.

Mr. Roberts answered that they had been operating at a "manageable loss" since they had inherited the property. That gap was plugged by putting in personal money. Now they were at the point where they could no longer do that and the gap was too large.

Mr. Roshto asked if there had been a year when there had been a profit.

Mr. Roberts responded, "No. Not one." They were stuck with it and they were trying to make the best of it.

Mr. Aroneo asked Mr. O'Brien what the basis was of the Planning Board's jurisdiction in this matter. He wanted to know if it was properly before this Board.

Mr. O'Brien responded that it was. There was no doubt about that. He went on to say that in June 1989, the County of Morris affirmed a Site Plan approval from this Board which called for a sidewalk on Division Avenue to be installed by Tifa.

Mr. Perry added that it included curbing and widening.

Chairman Pfeil asked if this had been going on for 26 years.

Mr. Perry responded that it was even longer.

Mr. O'Brien continued and stated that he had become involved somewhere in 2004 or 2005 with a prior Township Engineer and Mrs. Wolfe along with County assistance. They met with Tifa in 2005, 2006, and 2007 in an attempt to get the sidewalk issue straightened out. As a result of Planning Board input, the actual Site Plan was changed to make it more advantageous to the Township in that a number

of trees were saved. The sidewalk was moved in such a way that there would not be a safety issue due to the transformer on-site and to generally improve the overall plan. It also reduced the paving.

Mr. Perry added said that originally they had requested 24 feet from centerline and currently they were requesting 18 feet.

Mr. O'Brien stated that after the 2005 to 2007 period, things subsided. The Township was promised by the owners that the sidewalk would get done. Apparently, according to Mr. Roberts, that was when the change in ownership occurred and it laid dormant until about 2011 when Mr. Perry and his colleagues contacted the Township and asked about the Site Plan. Again, there was a round of meetings with the owners, staff, members of the Planning Board, and the representatives of Tifa affirming that they would be installing the sidewalk. The side story to all that was that because their Site Plan was not in compliance with the Township as well as with the County, no Certificates of Occupancy were being granted to any of the tenants who were in the Tifa property. Mr. Pidgeon, the Township Attorney, had an action against Tifa on behalf of the Township asserting that because there were no Certificates of Occupancy, the tenants were not legally there and needed to be approved by the Township because the ordinance called for Site Plan approval upon change of occupancy. That was a whole other action. In 2011, Tifa agreed to do the sidewalk, agreed to come in and get their Certificates of Occupancy and give the Township a list of all tenants on site along with the location of their units. Through a six (6) month period, an Administrative Site Plan Committee went through the entire list, inspected those premises making sure that they were fit and met the requirements of the ordinance, and approvals were given. In return, Tifa promised to install the sidewalk. Mr. O'Brien had a letter from Mr. Pidgeon to Tifa dated 2012 indicating that as a result of the newfound camaraderie, the Township was abeying all enforcement of ordinance issues.

Mr. O'Brien continued. Up until a year ago, it had continued like that where the Administrative Site Plan Waiver process was reviewing and approving the applications for tenants at Tifa. In April of last spring there was a meeting and he recalled that Mr. Roberts was present along with County representatives and Township staff including Mrs. Wolfe and Mr. Pidgeon. They were to finalize the placement of the sidewalk and Tifa was going to affirm that they would install the sidewalk. Instead Mr. Roberts advised everyone that the property had been sold and that they were closing within 30 days. In the interest of fairness, the Township and County were willing to wait the 30 days. Once it was sold, the Township and County would meet with the new owners to make sure all this was completed. Mr. Pidgeon was to monitor that conveyance to make sure that the installation of the sidewalk occurred.

Mr. O'Brien said that 30 days went by bringing them to May 2014. By September 2014 there had still been no action. The property had not been conveyed and there had been no improvements made. Mr. Delia, in his letter dated September 4, 2014, referred to a meeting held on October 22, 2014 with the representatives from C.B.R.E. including Mr. Spencer and Mr. DeCarlo and Township and County staff. They told the Township and County that regardless of the sale, the sidewalk would be installed. An As-built would be provided. The County was going to issue a permit. The Township was going to go on site to ensure that the sidewalk was laid out in accordance with the plan that was approved going back to the 2005-2007 days. Nothing happened after that. The property had still not been conveyed. It was his understanding that there was a meeting at the Township level. No one in the room was present with the exception of Mr. Roberts so he had no idea what transpired during that meeting with the exception of a comment from Mrs. Wolfe stating that this was a Planning Board matter from its origination and that it should stay with the Planning Board which was why Mr. Roberts was before this Board that evening to seek further relief.

Mayor Rae said that this had been discussed years ago when he was on the Board and part of the decision was that there would be no more C.O.'s. Then there was supposed to be a sale that was imminent and that was why the Board said they would forgo the ban.

Mr. O'Brien said that because the sale was imminent, the Township wanted to get the tenants caught up. They said they would put the sidewalk in. He added that that had happened three or four times along the line.

Mayor Rae reiterated that this was not the first time the Board had heard this story.

Mr. O'Brien said that this was a very long history. Because the Site Plan had not been installed in accordance with both the County and the Township approvals, the Administrative Site Plan Waiver process had stopped because the Township could not allow this to go on. A determination had to be made that either the sidewalk would be installed which would allow them to proceed or this Board could grant some sort of relief which would allow Tifa to proceed to rent out the complex. Either way this decision would be this Board's decision. He suggested that the Board allow Mr. Perry to weigh in.

Mr. Roshto asked if there was any escrow held in 1980-something.

Mr. O'Brien said that it was promised multiple times.

Mr. Perry added that they never went ahead with the work because the owner stated he could not do the work since he was under a clean-up order. He was not allowed to do any work outside of the clean-up order although he continued to rent to people and do other things.

Mr. O'Brien added that this was in the County's right-of-way.

Mr. Perry said that the clean-up had nothing to do with the County frontage. It was all to the rear of the property but his contention was that because he was under a decree to clean up the site, he could not do any work outside of that. The County had no way of forcing the developer to do work. They had to rely on the town since the town held the C.O.'s.

Mr. Roberts said that everything Mr. O'Brien had said was accurate with the exception of a couple caveats. In 2012 when Tifa indicated that they would put the sidewalk in, it was when they had the first contract with the first buyer, a company called Advance. At that point in time, Tifa was pricing out the sidewalk and Advance said, "You are wasting your time and money. We are buying the property and anything you put in, we are ripping out because we are going to configure it differently." They told Tifa that they were working with the Township but that contract fell through.

Mr. Roberts continued and stated that the second contract started and when he indicated that if he stated anything about 30 days in the meeting, he was sure that he would couch it in some sort of lawyer language like, "We are hopeful that we can close in 30 days." The fact of the matter was that that was a true statement at the time. They thought that this would be a very simple deal because it was being purchased as-is. The D.E.P. was the one who screwed up the deal by telling Tifa that it had to meet certain conditions otherwise this would have been sold a year-and-a-half ago.

Mr. O'Brien advised the board members that the taxes for the property in 2014 were \$86,019.92.

Chairman Pfeil asked what the property was valued at.

Mr. O'Brien advised that the property evaluation of 2015 was \$2,999,300.

Chairman Pfeil again questioned whether there was ever a positive cash flow since 2006 when it was inherited.

Mr. Roberts affirmed that there had never been a positive cash flow since the property was inherited.

Chairman Pfeil said that since there were no further questions for Mr. O'Brien, he wanted to hear from Mr. Perry.

Mr. Perry stated that this actually had gone back to the 1970's when it was National Gypsum prior to Tifa. The County did not do anything at that time because they were under decree by either the State or the Federal government for clean-up. He felt it was the Federal government.

Mr. O'Brien said that they did not do Super Fund until the early 1980's.

Mr. Perry said that it must have been done through the State and the County never saw a Site Plan. They had just gotten Site Plan approval. In the 1980's, Tifa came to the County through the Township for improvements to the site and at the time the County required the standard 24 foot widening with curbing. The Township wanted sidewalks. The County did not require sidewalks however if the Township wanted them, the County would go along with it because it was in the County's right-of-way. They showed the sidewalks on the plan which was approved by both the Township and the County. Nothing ever happened. They stated that they could not do anything because they were under the clean-up decree and that they could not touch any of the property outside of the clean-up area.

Mr. Piserchia asked why.

Mr. Perry stated that Tifa was under decree through the clean-up and they would have to go back to the government for any work to be done on the property.

Chairman Pfeil asked if it was the Federal government.

Mr. Piserchia was unclear as to why the Federal or State government, whichever it was, would not allow something as benign as a sidewalk.

Mr. Perry responded that the County did not argue the point.

Mr. Robert said that he did not want his silence to be misconstrued as acceptance of that. He didn't think the point was that it was actually required. The point was that that was what Arnold Livingston (owner of Tifa at that time) was saying. He was not there to say that that was an actual truth.

Chairman Pfeil asked if he was correct in saying that in 1989 everyone was in agreement that there was going to be a sidewalk.

Mr. Roberts affirmed that that was correct.

Chairman Pfeil noted that it was 26 years later and there was still no sidewalk.

Mr. Perry said that both the County and the Township agreed that something had to be done. No work had been undertaken yet new signs kept appearing on the side of the property. New businesses were moving in and old ones were leaving. The County wanted to have that improvement undertaken. That was when the Township told Tifa that they had to submit a list of all of their tenants. Mr. Perry noted that he was not involved in the original meetings in the early 1980's but everything was agreed that they would go ahead with the improvements. Tifa came in with a new site plan in 2005 or 2006. The Long Hill Township Environmental Commission wanted to preserve the trees. The Township and the County met on site and came up with the idea for the sidewalk to go around the trees. During those discussions, reducing the width of the pavement was discussed. Ultimately the County agreed to go with the lesser width of 18 feet.

Mr. O'Brien added that the last time it was looked at, the traffic members had been reduced from those high numbers back in the 1990's. Traffic volumes were lower.

Mr. Perry stated that the County had changed its philosophy on the size of the roads which gave Tifa more opportunity to move the sidewalk around especially by the transformers which was a big concern of the Board and the County since they did not want the sidewalk abutting the transformer. Tifa agreed to everything and advised that they would go to the Township and the County to get the appropriate permits and do their bonding. Two (2) years later, nothing happened. In 2011 there was a Planning Board meeting to discuss this. Prior to that they had been in discussions with Tifa for quite a while. The Planning Board decided that it would no longer give waivers if Tifa did not comply with the improvements. Everyone was told again that Tifa would bond for the improvements so that if the sidewalks were not installed, the Township could use the bond money to install them. Nothing happened again. That was where it stood today. There had been promises made since 1989 that the improvements would be done at some point but 26 years later there it was still no curb or sidewalk.

Mr. Hands asked, putting history aside, if this situation occurred today, what issues would the County have.

Mr. Perry answered that the County would still require improvements along the County frontage.

Mr. Hands asked if that would be purely curbing and not the sidewalk.

Mr. Perry responded that the sidewalk was purely a Township request. The County agreed with the Township on the need for a sidewalk for that section of town.

Mr. Hands asked that if it was purely curbing, would that satisfy the County.

Mr. Perry said that, as far as the County approval, yes.

Mr. O'Brien added that it would not match the approved Site Plan from the County and the Township.

Mr. Perry added that they would have to amend the Site Plan. The Township had approved the Site Plan with a sidewalk.

Mr. Hands said that he wanted to separate the two jurisdictions here. He knew that they were in sync about what they *wanted* to have happen however he wanted to know what the minimum was.

Mr. Perry said that the County did not require sidewalks. That was not within their purview. That was a municipal issue. The County would go along with the towns on this as long as it would not cause a safety issue.

Mayor Rae said that curbing might satisfy the County however he did not feel it satisfied the residents of the Township who used that as a means to go back and forth to the train station especially during the winter. Whenever this was discussed a number of years ago, this was one of his main concerns.

Chairman Pfeil said that that was the driver for the sidewalk.

Mr. Perry added that not only do people walk to the train station in that area; there was also a pizzeria, the bank, and other things in the neighborhood.

Chairman Pfeil asked if it was the County's position that the Site Plan as submitted should be completed.

Mr. Perry affirmed that it was.

Chairman Pfeil asked Mr. O'Brien if he had any recommendations. He wanted to know what actions the Board could take at this time.

Mr. O'Brien answered that the Board could continue the current course of action and not allow any Certificates of Occupancy (C.O.'s) to be written unless and until the Site Plan had been performed on. Another course of action would be that this Board could put the Site Plan issue in abeyance pending some date or action certain in the future and allow the Administrative Site Plan Waiver process to proceed. Those were the two (2) options that came to mind immediately. He asked Mr. Perry if he had any other thoughts.

Mr. Perry said that the County was not of the opinion that the Township should change its course of action because they had been dealing with this for 26 years. He reiterated that the County did not recommend that the Township change its current course of action. For 26 years, Tifa had promised that the improvements would be undertaken. The choice was up to the Township however the County felt that after 26 years and the improvements had not been undertaken, they were not comfortable. He added that Tifa had brought this hardship upon itself because they had never done the improvements. Even if there had been no money available during the past six (6) years, the work should've been done sometime during the prior 20 years. But they never did.

Mr. O'Brien said that he had given the Board some alternatives and Mr. Perry had given the board members a recommendation.

Mr. Lemanowicz suggested that the Township began granting C.O.'s under the condition that the rents from those new C.O.'s go directly to an escrow account until sufficient escrow was collected to build a sidewalk and complete the improvements.

Mr. Piserchia asked if the Township could actually do the improvements and place a lien on the property as part of the sale.

Mr. Lemanowicz said Tifa would have to sell the property in order for the Township to get its money back. That could take years. The Township could keep track of the C.O.'s. By reversing itself, the Township would allow rents to be collected which would then be deposited to the escrow account.

Mr. Piserchia noted that the owners stated they had lost over \$100,000 last year. If the estimate for the sidewalk was \$150,000, it would take approximately year-and-a-half to accumulate that money.

Mr. Perry stated that it was his belief that it would not cost that much to do the sidewalk and the curbing.

Mr. Lemanowicz asked for the length of the sidewalk. Mr. O'Brien said that it went from Stone House to the railroad tracks. Mr. Lemanowicz calculated that it was 532 feet.

Mr. Hands asked, under this plan where the escrow would begin to build up immediately, what would happen if the sale went through.

Mayor Rae said, had it not been 26 years, he might be more sympathetic. There had been 26 years' worth of excuses for ignoring the town. He felt it was time that the Township did something. During the times he had been on the Board, it had been discussed and the board members decided that something should be done. But nothing ever happened. He felt that now was the time. He also felt that Mr. Roberts was putting a gun to the Board's head by stating that if C.O.'s were not granted, basic services would not be kept up. He was not giving the Board much of a choice.

Mr. Roberts said that the point was that there was no money to do it.

Mayor Rae added that Mr. Roberts had said that Tifa would stop paying its taxes. This was a threat that had struck home.

Mr. Robert said that this was not a threat. If there was a budget shortfall there would have to be something that did not get paid.

Mayor Rae stated that this was an obligation that had been outstanding for 26 years that had to be satisfied. How the owners went about doing it was completely up to them. The Township had been more than patient and in his opinion, it was a dangerous situation there especially whenever it was dark.

Mr. Roberts said he was not saying that it was not a bad situation. He was not saying that there shouldn't be a sidewalk there. He was not saying that they were not going to comply. He said that the Township could not force someone to spend money that they did not have. His clients had already put in all the money that they could personally. The bank had also denied them. He reiterated, "There is no money." His clients were extraordinarily motivated to get rid of this property. They had spent a lot of money negotiating this contract. There had been several amendments to the agreement and meetings with the D.E.P. He stated that this would sell one way or another at some point which would be the only



way that the sidewalk would be installed. The sidewalk would be installed when the property sold. There was nothing that anyone could do to change that. The only discussion left was since the sidewalk was not going to be installed right now because there was no money, what would be done to this company in the interim. He asked if the Township was going to continue to punish the daughters for the sins of their father. The father was the one who had ignored it for 20 years, not the daughters. He wanted to know what the Township was going to do to this property until it sold. If the Township wanted to put a lien on the property, they would welcome it.

Mayor Rae said that that was not an alternative.

Mr. Robert said it would have an interest rate component. Issuing the C.O.'s and putting the money in escrow was a start but it would not help to close the budget gap. It would not address their immediate concerns but it was better than nothing.

Mr. Roshto stated that it was not the Planning Board's job to close the budget gap. He thought Mr. Lemanowicz's idea was a very good one except that, in his opinion, if any new C.O.'s were granted **all** the money from those new tenants should go into the escrow account.

Mr. Roberts said that if that was the Board's decision, it would be better than nothing. His clients would have to live with it.

Mr. Roshto asked why now, if the property was supposedly going to sell within the next month to month and a half.

Mr. Roberts replied that it was his hope that the property would sell however with all of the problems they had had with this buyer-- it was his idea to plan for something if the deal fell apart. He was trying to come up with a plan to close the shortfall and the only way to close the shortfall would be to put new tenants in. At the very least, he wanted to be able to allow existing tenants who wanted to move into larger spaces to do so and have that money come to his clients. He wasn't sure that that was something that had to go through this procedure anyway although he was aware that it was the Township position that they had to do so. He said that Mr. Livingston would have just moved the tenants without advising the Township.

Mayor Rae added that Mr. Livingston always stated that he was acting on the advice of counsel. He had a problem with the concept that the lack of tenants was causing the unbearable financial burden on the present owners. Now Mr. Roberts was willing to agree that all the money generated from the new tenants would be placed into an escrow account. He wanted to know how that would solve the financial problems of the present owners.

Mr. Roberts said that it would not solve their problems but it was marginally better than what he had right now if only because it satisfied the Township that at least **something** was being done. It would do nothing to close the budget gap. If half of the money was placed in escrow and the other half went to the owners that would help.

Mayor Rae said that the nonpayment of taxes and the essential services cutoff would still happen even with Mr. Lemanowicz's plan. He did not feel that it solved the issue. The only solution would be when the owners installed the sidewalk, C.O.'s would be issued and then the owners would be able to do what was necessary until the property sold. Issuing C.O.'s would take away the only incentive that the Township had and the Township would be back in the same position it was 26 years ago. It was just one excuse after another. The sidewalk had been required for 26 years and it was a safety problem for 26 years. The Township had to watch out for the residents.

Mr. Roberts stated that he understood the situation however the fact was that they did not have the ability to install the sidewalk. It was a financial impossibility. In the past 26 years this property had not been as close to being sold as it was now. The concept of the sale did not even start until 2012.

Mr. Piserchia asked Mr. Roberts to explain to the Board **exactly** where the sale of the property was at this point.

Mr. Roberts agreed and said that the first buyer, Advance, was gone. They had an agreement with the second buyer, Prism, and the only thing they had to do was get D.E.P. approval. It was his position that the D.E.P. had no basis not to approve the sale to Prism as written because it was none of their business as to what the transfer agreement was. Prism, under the remediation statute, had the right to not clean up any of the environmental problems with the property until they actually developed it. Despite that, the D.E.P. was taking what he considered to be an illegal position by telling the buyer that they could not wait until they developed the property. The date the property closed, the buyer would be required to do a full remedial investigation and cleanup.

Mr. Piserchia asked why the new owner was required to do this immediately but not the current owner.

Mr. Roberts said that that was an excellent point. He agreed that it made no sense. He had been fighting with Prism and the D.E.P. about this for months. If his clients had the money, they would be in court with the D.E.P. on an order to show cause.

Mr. Piserchia asked if the only holdup at this point was the D.E.P. requirement in regard to the buyer, Prism.

Mr. Roberts affirmed that it was. He added that currently Prism was currently conducting tests in accordance with the level of testing required by the D.E.P. If the results were under a certain threshold, the sale would proceed. If they were over that threshold, Prism would have the right to walk away from the deal. The testing was supposed to be completed within a 90 day timeframe which would end sometime during the first week of June. He was concerned that if Prism conveyed to the D.E.P. that they had concluded their testing and that they were ready to close, the D.E.P. would then come up with more conditions to be satisfied before approving the sale.

Mr. Piserchia asked, as part of the sale, if Prism was buying the property "as is."

Mr. Roberts affirmed that that was true. They intended to run it exactly as is for the foreseeable future. At some point Prism would come before the Township to develop the property. He added that Prism did not want to be landlords however they were not committed to doing the redevelopment immediately.

Mr. Piserchia asked if there was any rezoning involved in the purchase.

Mr. Roberts stated that it was an all-cash deal with no contingencies. That was why it was thought the deal would close very quickly. The first deal fell apart because Advance wanted to develop the property with far more living units than the Township considered appropriate.

Mr. Piserchia said that the requirement was surprising to him because he did not recall that ever being discussed.

Mr. Roshto did not recall it either.

Mr. O'Brien stated that there were two (2) overriding authorities here: the Federal E.P.A. which had jurisdiction over the superfund site. They would control anything and everything that happened there. The D.E.P. would have jurisdiction over the cap over the rest of the property. There was no issue with the superfund site that he was aware of.

Mr. Piserchia thought perhaps the difference then was that the first prospective buyer was going to begin work immediately and therefore needed to clean it up immediately. That might be the reason why they had never heard that. Here there was a delay in the development phase.

Chairman Pfeil felt, given the prior discussions, the appropriate course of action at this point was to wait until the middle of June. They would have more information at that point.

Mr. Hands asked to return to the escrow plan discussion. He asked if there would be any contingencies with the escrow. If the sale went through, would that escrow money be free and clear to be used at the Township's discretion and not dependent on any redevelopment or any delays that might be imposed?

Mr. Roberts felt that he would like language that stated that the escrow would be used for the sidewalk.

Mr. Hands asked again if that would be money, free and clear, to be used at the Township's discretion for the sidewalks.

Mr. Roberts reiterated that he knew it was not the Township's problem and he apologized to Mayor Rae indicating he had never meant the potential nonpayment of taxes and essential services cutoff to be construed as a threat. However, they had a budget gap and they could not pay everything. It was just the reality of the situation. He was trying to be as open and honest as possible. He reiterated that when sellers were as motivated as his clients were, the property would sell at some point. He felt that it was desirable because a transit village of some type could be built right across from the train station. It was just a matter of getting the deal done. The Township would eventually get its sidewalk but he could not tell them exactly when.

Mayor Rae said that the plan that had been discussed would not solve the problem. Mr. Roberts' clients would still have a budget shortfall and they would not be able to pay their expenses. He did not see how it was a viable solution.

Mr. Roshto asked what would solve the problem.

Mayor Rae said that he was sympathetic, but it was not his problem. The Township had had an obligation to its residents for over 26 years and for whatever reason, it had never been acted on. He felt that the Board should continue the current course of action because with that, he felt certain that they

would have a sidewalk in place. Otherwise they really had nothing. The owners would find the money somewhere.

Mr. Lemanowicz said that after some quick calculations, he did not think the project would cost more than \$100,000 including curbing.

Mr. Perry added that during the meeting in November, they had estimated the cost at between \$80,000 and \$100,000.

Mr. Lemanowicz stated that with bonding and design, it could go over \$100,000. There had to be a survey and it had to go out for bid. He noted that Mr. Roberts had said that the owners had lost six (6) figures since the imposition of the C.O. ban. The lowest six (6) digit number was 100,000 so had they collected those rents for a year, it would have taken care of it.

Mr. Roshto wanted to know if the plan was legal.

Mr. Lemanowicz said that if there was an agreement, it would be legal.

Mr. Piserchia wanted to know how new income or new tenants would be verified.

Mr. O'Brien stated that the Township had a list of each tenant that had been given approvals as well as a diagram of the site listing all the various units. He noted that Mrs. Wolfe diligently kept track of that and had issued a memo citing two (2) tenants who did not appear to have approval.

In response to Mr. Piserchia's question, Mr. O'Brien explained that when a tenant moved into a space an Administrative Site Plan Waiver was required. There was a \$200 fee associated with that.

Mr. Roberts said that it was a \$1500 fee. He said that was the information he had gotten from C.B.R.E.

Chairman Pfeil said that the \$1500 fee was incorrect.

Mayor Rae explained that the process required that two (2) members of the Board visit the site and verify the information given. It was designed specifically to make things easy for businesses with tenants.

Mr. Piserchia said given that process, the new rents would be verifiable.

Mr. Hands asked if the rental income was included on the application.

Mr. Roshto did not feel that this should be tied to tenants coming and going. He asked Mr. Roberts if the Board were to allow the C.O.'s to start would his clients have the ability to put a certain amount, for example \$10,000 per month, into an escrow account over the next year.

Mr. Robert said that he did not want to make yet another commitment that Tifa could not keep however, if Tifa was allowed to have C.O.'s, there were at least two (2) or three (3) tenants who wanted to move to larger spaces. He had no way of knowing how many new tenants there might be because C.B.R.E. was doing nothing to market the site. Without C.O.'s, there was no use in marketing the property. He felt that it would have to be a formula based on the number of new tenants and the amount of new money. If his clients brought in \$10,000 worth of new money and then gave it all to the Township, it would be working towards what the Township wanted but it would do nothing for what his clients were trying to accomplish. If they could figure out how to get through the next year to year and a half, the Township would have the money for the sidewalk and the new money would start going to his clients. Given that, it was better than what he had now but it didn't really accomplish anything.

Mr. Piserchia pursued Mr. Roshto's question and asked if Mr. Roberts' clients could put even \$5,000 a month in the escrow account and meet the town halfway. He appreciated the fact that there was a cash flow gap but at least it was not \$100,000 which this Board could vote to require immediately. He wanted to know if Mr. Roberts could get his clients to commit to a number to show good faith.

Mr. Robert said that any money that his clients could pay would be coming out of their personal pockets.

Mr. Piserchia said that he understood the situation but it was better than what **could** happen which would be "\$100,000 tomorrow."

Mr. Aroneo said that there was a price for everything. Mr. Roberts' clients had inherited the property. It was hemorrhaging money and they wanted to sell it. If the D.E.P. action was weighing on the value of the property as is, then it was worth less than what they had inherited it for. The Board was offering solutions to try to alleviate the C.O. problem but as Mr. Roshto said a while back, the board members could not solve the budget issue. His clients were looking for ways to make money on the property at the Township's expense.

Mayor Rae added that it was also at the expense of the residents' safety.

Mr. Aroneo said that as had been stated numerous times, there were 26 years of noncompliance.

Mr. Roberts said that that was assuming that Tifa was hanging on and trying to sell the property for every last dollar it could get. He assured everyone that they had been extremely flexible in what they were selling the property for with both Advance and Prism. He noted that they had been discussing operating budgets and had not even talked about capital expenditures. The two (2) clients combined had put in half of what they were going to realize in the sale. They were already selling it for below market value. Regardless of what happened with Prism, they would continue to try to get a deal accomplished. If the deal fell through, it would not be because of the price. It would be because of the D.E.P.'s conditions. If Prism did not want to meet those conditions, they would not do it regardless of the price. This had never been an issue of price.

Mr. Aroneo said that it was speculative for Mr. Roberts to say that. Prism might say that it would cost a certain amount to meet those conditions and adjust their offer accordingly in order to move forward with the purchase.

Mr. Roberts said that that might be the case.

Mr. Aroneo asked if that the proceeds would be placed in escrow so that the Township would have its sidewalk.

Mr. Piserchia asked if Mr. Roberts had any correspondence from the D.E.P. as to what they were requiring so that the Board could contact the D.E.P. and see if there was a disconnect somewhere.

Mayor Rae said that he was unsure that that would be something the Board should do.

Mr. Piserchia said that he did not think it was a problem for the Board to contact the D.E.P. to find out exactly what the situation was regarding this property.

Mr. O'Brien added that the Township would be noticed on any determination that the D.E.P. would make. The Clerk would receive that.

Mr. Lemanowicz felt that the Board was asking for verification of what it was being said.

Mr. O'Brien added it would clarify that the D.E.P. had an issue and that it was working with the prospective buyers and sellers.

Mr. Piserchia said that it would be in their interest for a buyer with deeper pockets to purchase the property and address the environmental concerns.

Mayor Rae felt that they were way off course here. For the past 26 years, there was supposed to be a sidewalk on the Tifa property. It had never been built. The board members had heard 26 years' worth of excuses, commitments and now even more commitments that evening. It was very simple. The Township wanted a sidewalk and the only incentive the Township had was to not grant any C.O.'s. He felt that if that continued a sidewalk would appear. He said that the Board was bending over backwards by looking at the rental contracts and talking to the D.E.P.--who would follow the paper trail and make sure that everything was done according to plan? It was totally unworkable.

Chairman Pfeil stated that they had been discussing this issue for the last hour-and-a-half and from his perspective Mr. Roberts and his clients should be prepared to "horse trade" on this. If there was going to be a discussion about an escrow account funded by new rentals, it should have come from Tifa an hour-and-a-half ago. The onus was on Mr. Roberts and his clients to come back to the Board with a plan stating how this sidewalk would be funded. He wanted them to come back to the Board with something that was concrete so that the Board could vote yea or nay.

Mr. Roberts said that it made perfect sense. He suggested that if he could come back in four (4) weeks, he would have more information.

Mr. Aroneo said that after four (4) weeks, Mr. Roberts would have met with Prism.

Chairman Pfeil agreed that four (4) weeks was fine.

Mr. Roberts thanked the board members for their time and patience. He said that Tifa was trying to be a better neighbor than it had been in the past. He hoped that they realized that he had tried not to make any commitments that he could not live up to in the future. He would return with a proposal that hopefully would make sense and put it in writing to Mrs. Wolfe.

Mr. O'Brien said that based upon the Board's discussions, there were four (4) alternatives. The first was no sidewalk, no C.O.'s. The second would be to allow C.O.'s and wait for the sidewalks to be installed. The third would be to allow the C.O.'s but to collect some or all of the future rents. The fourth alternative

would be to reconsider the **entire** matter at some point in June following the discussion with Prism. He asked Mr. Roberts when that meeting would occur.

Mr. Roberts responded that the 90 day period ended sometime during the first week of June.

Mr. Hands added one more alternative: monies would be placed in escrow upon sale.

Mr. O'Brien agreed. He said the last question before the Board was Mrs. Wolfe's memo indicating that she was unable to locate the approvals of two (2) tenants who were currently in the complex. She was also of the opinion, according to Ms. Kiefer, that some of the tenants have moved within complex. He wanted to know what the Board wanted to do in terms of enforcement. Up until this point, the Township Attorney had told Tifa that there would be no enforcement pending the sale. He asked the Board if it wanted to make a recommendation. The board members could ask Mr. Delia to inspect the site to determine who was where. Or they could continue the abeyance of enforcement.

Mr. Hands asked for an explanation of the enforcement.

Mr. O'Brien said that currently no one had to come in for a C.O. because the Township would not let them. Therefore no one had the legal ability to fill a space in the Tifa complex. However, according to his knowledge, at least two (2) new tenants had moved in and former existing tenants had moved within the complex.

In response to Mr. Piserchia's question, Mr. O'Brien explained that those tenants would need a Certificate of Occupancy in order to stay or be liable for a summons from the zoning officer. The summons would be issued to the property owner. The judge would decide on the amount for the summons although there was a statutory cap. He thought it was around \$1000 per day. Each 24 hour period was an individual summons.

Mr. Roberts said in reference to the two (2) tenants in Mrs. Wolfe's memo, one was in a 253 square foot office that was \$215 per month and the other one—

Mr. O'Brien interrupted Mr. Roberts and said that the size did not matter.

Mr. Piserchia said that he wanted to know exactly what it was.

Mr. Roberts continued. The other tenant rented three (3) parking spaces at \$120 a month.

Mr. Piserchia stated that neither would pay the \$1000 summons. They would simply cancel the leases.

Mr. Roberts said that he had no understanding of how long those tenants had been there. It had just come to his attention today in an email from Mrs. Wolfe.

Mayor Rae asked if some of the renters had moved into bigger spaces.

Mr. O'Brien stated that Mrs. Wolfe was of the opinion that some renters had moved into larger spaces. Ms. Kiefer had given him that information.

Ms. Kiefer added that Mrs. Wolfe had a list of existing tenants that had moved from one space to another. She could not confirm that she had paperwork approving all those moves.

Mr. Aroneo said that this exemplified the practical problems involved in chasing new tenants.

There was general consensus among the other board members.

Mayor Rae asked who would keep track of all this in Town Hall.

Mr. Roberts said that he was not sure that Mrs. Wolfe's memo was entirely accurate because she then sent an email today at 4:03 PM where she said to the C.B.R.E. representative, "Thank you for the clarification that you sent. I did not know that Red Gate Farm Stand was one and the same as Huxster LLC" and "Thank you for clarifying the tenants in Building 4." He wasn't sure what that meant.

Mr. Hands said that he was sympathetic with Mayor Rae's view. For 26 years nothing had been done. Commitments had been made and nothing had been done. He didn't doubt Mr. Roberts' integrity however would there actually be a plan in one (1) month or was this just another delay? He liked the enforcement of the C.O.'s to remain. If, in one month's time, there was nothing concrete, perhaps the Township should start to take action.

Mayor Rae said that he did not want to see enforcement for those tenants who had moved. However, he wanted to stay the course and continue to deny C.O.'s.

Chairman Pfeil said that the Board would not have to take any action in order to continue that course.

Mayor Rae said that the Board would entertain Mr. Roberts' presence again in one (1) month.

Mr. Roberts stated that there were no thoughts on his part that the Board was making any sort of representation to him that whatever he came back with in one (1) month would be favorably received. He said that he would return with a concrete proposal and thanked the board members.

Chairman Pfeil asked if all the board members were in favor of this.

Mr. Roshto requested clarification. Mr. O'Brien had suggested that the Board could either decide to leave it as it was and wait until Tifa came back or the Board could say at some date certain it would start enforcement. They were the two (2) options that he saw. Mr. Roshto's concern with not saying that enforcement would commence at some point in the future was that maybe Mr. Roberts would not come back. He would much rather the Board to decide here and now if it wanted to enforce. If the answer was yes, then the date should be set.

After some discussion, it was decided that Mr. Roberts would present his plan at the June 9, 2015 meeting.

Mayor Rae said one way or another, whether the deal closed or not, Mr. Roberts had said he would come back with some sort of a proposal.

Mr. Roberts stated that June 9, 2015 was fine however he might not have a definitive answer concerning Prism and the sale.

Mr. Piserchia said that the plan might not satisfy everybody however it might satisfy the majority.

Mr. O'Brien questioned the worth of that without knowing what Prism was doing.

Mr. Roshto said that this was exactly what had caused this delay-- waiting to see if the property was going to sell or not. He felt that the Board should make a decision and move on that decision regardless of what happened one way or another.

Mr. Moholkar said that on June 9, 2015 there would be a plan regardless of whether or not there was a sale.

Mr. Roshto added that he would expect a plan that would fully fund the sidewalk within a year.

There was general consensus among the other board members.

Mr. O'Brien summarized by saying that the Board and Mr. Roberts would meet again on June 9, 2015 with a plan on how to proceed on providing a sidewalk as well as providing suggestions on how this Board could proceed on the issuance of C.O.'s. In the meantime, enforcement of C.O.'s would be held in abeyance until the meeting of June 9<sup>th</sup>.

Chairman Pfeil asked that that information be circulated to the board members in advance of the meeting.

Mr. Roberts thanked the board members and left.

Chairman Pfeil asked for a recess at 9:30 PM.

## **RECESS**

Chairman Pfeil reconvened the meeting at 9:37 PM. He announced that the next item on the agenda would be the Master Plan Committee Report.

### **MASTER PLAN COMMITTEE REPORT**

Mr. Roshto stated that on April 9, 2015 he had sent all the board members a summary packet of some of the work that the Master Plan Committee (M.P.C.) had been doing over the course of the past year. First, he wanted to recognize the M.P.C. members for all the work they had done.

Mr. Piserchia returned to the meeting at 9:38 PM.

Mr. Roshto continued. He said that today they had focused on a lot of conversations, collecting and organizing a lot of material, and starting the development of the background documents. The background documents were essential to start developing the actual elements. The only element that had been worked on to date was the Land Use Element. The Downtown Element had also been done

for the Planning Board last year. It was currently in Mr. O'Brien's hands and would eventually come before the Planning Board again.

Chairman Pfeil added that he and Mr. O'Brien had already discussed that.

Mr. Roshto said that the Land Use Element was in good shape. It still needed a lot of work and input from this Board on some key elements. To get to that point, a joint meeting between the M.P.C. and the Planning Board had been set up for June 23, 2015. This would be an informal meeting to start having discussions about what should be done in terms of land use. There had been a lot of analysis on the zones and particular uses-- things that had not been working for the Township for a number of years. All of that would be put on the table for discussion.

Mr. Roshto continued by saying the M.P.C. had also started working on uses. One of the things that was itemized was what was in the ordinances currently in terms of uses. Each land use in existence today was inventoried and placed in a document. The purpose was to give the members an understanding of the terminology of what was being used and what was not making sense.

Mr. Roshto said that the M.P.C. understood the state of each element and what had to be done. The goal was to have a preliminary Master Plan draft to the Planning Board in the October 2015 timeframe. He felt that was a very aggressive goal and that they were on track.

Mr. Roshto stated that the next document they would be working on was the introduction. Mr. Roshto, Mr. Hands, and Mr. O'Brien were all involved. The introduction was the foundation of everything that was being driven through the rest of the plans. In order to have a cohesive Master Plan, that document would drive it. In the packet that was given to the board members was a summary of what was in that document. Through its analysis, the M.P.C. identified five (5) principles that were things that needed to be driven throughout all of the elements. Those principles were: (1) the Township should be neighborhood oriented; (2) the distinctive village feel should be continued; (3) continue to improve Township facilities, roads and infrastructure; (4) start to connect the various locations tightly together through the use of the river, walking paths, bike paths and connecting the parks; (5) capitalize on the Township's assets such as the three transit stops.

Mr. Roshto said that from those five (5) principles, the M.P.C. moved on to determining what the qualities of the Township were or should be. It was a brainstorming exercise that was accomplished last year and helped stimulate the conversation about where the Township should be going. The 1996 Master Plan was documented and reviewed in order to pull through some continuity in terms of where these qualities came from. He noted that they were listed on the bottom of page 2.

Mr. Roshto said that when they began inventorying the goals, they found a number of goals in the 1996 Master Plan as well as a number of the elements that had been updated since the 1996 Master Plan. The current Master Plan was not just 1996; it was three (3) or four (4) other elements that had been updated since then and two (2) Re-examination Reports the last of which was two (2) years ago. They took all of the goals that were in each one of those elements and inventoried them. They were then put into a summary in the appendix. He highlighted the changes that had occurred in the last Reexamination Report (Appendix A) so that everyone could get a feel for what had changed.

Mr. Roshto asked for any comments, questions or guidance from the board members.

Mr. Moholkar asked Mr. Roshto if the M.P.C. had found any inconsistencies in the uses.

Mr. Roshto stated that they could discuss this for a couple hours however one thing the M.P.C. did find was that it tended to be less about the actual use and more about the concept. For example there had been discussions about the use of fast food restaurants. From that topic, they realized that it was not necessarily the fast food restaurant that was the issue but the driving. A lot of the M.P.C. members felt that it should be a walking neighborhood, a place where people were comfortable shopping and walking around. So it was not the fast food restaurant, it was the "walk-ability."

Mr. Piserchia asked where the committee ended up with respect to the southern part of Main as it branched out onto Valley in terms of consolidation of lots, uses, Thermoplastics in particular.

Mr. Roshto said they ended up with a Limited Industrial Zone off of Valley. Thermoplastics would not have that ability from the L I Zone anymore. Moving into Valley and Main, pressing on the south side, would be a Conservation Zone up onto the road.

Mr. Piserchia asked what was proposed for the area where Thermoplastics currently existed. He asked if it would be mixed use.

Mr. Roshto said that it would become part of the Downtown Business District, not mixed use. The "mixed use area" conversations came in when the areas of Millington and Stirling were discussed.

Mr. Piserchia asked if Mr. Roshto meant the areas near the Millington train station and the Stirling train station.

Mr. Roshto said that was correct.

Mr. Wallisch thanked the M.P.C. members all the time and effort they had put forth in creating a new Master Plan.

Chairman Pfeil asked if there were any further questions or comments about the Master Plan Report. Hearing none, he announced that there were two (2) additional items that had been added to the agenda.

#### **COUNCIL ON AFFORDABLE HOUSING (COAH) UPDATE**

Mr. O'Brien stated that the Supreme Court of the State of New Jersey had made a decision that each municipality must report to its local Superior Court on its affordable housing efforts. All of the mechanisms that were installed by the Council On Affordable Housing (COAH) had been removed. The Court gave the towns 90 days at the beginning of March to read the Court's decision and to file a "Declaratory Judgment" which will lay out the basic elements of their housing plan with their local court. That must be filed within a 30 day period. Commencing on June 8, 2015, the municipalities then have five (5) months from June 8, 2015 following the filing of the Declaratory Judgment, for the Board to adopt a Housing Element. The governing body would then vote on a resolution in support of the Housing Element. The Housing Element and Fair Share Plan are documents that this Township has consistently kept up to date. Adopting a Housing Element is a requirement of the Municipal Land Use Law (MLUL) if there is a Land Use Element. In the past, under COAH jurisdiction, the Township's governing body had passed resolutions of support of the Housing Elements on a regular and routine basis based upon the actions of this Board. What is unknown now is what the Declaratory Judgment should look like and what information should be contained in it. In early June some type of the document would be presented to the Planning Board in an effort to fulfill the Supreme Court's decision. He had to make a decision as to whether or not to base that document as the Supreme Court *seemed* to have instructed upon the Second Round Rules which had expired in 1999 and at the conclusion of which this Township was granted 70 credits of affordable housing or use the parts of the Third Round that took effect in 2005 that were not declared invalid by the State's Supreme Court. He and his colleagues knew what the last two pieces, the Housing Element and the Resolution of Support, but they still had to figure out the initial filing of the Declaratory Judgment with the local court.

Mr. Piserchia asked if it was correct that because they had to go back to the previous rules, rather than have a credit the Township technically had a deficit.

Mr. O'Brien responded that that would not be true if they went back to the Second Round which ended in 1999. The Township's figures said 103 and COAH's figures said 70. Although Mr. O'Brien had fought COAH on those figures, the discrepancy had never been resolved. Mr. O'Brien had agreed, in the Housing Element, to use the number 70.

There was discussion between Mr. Piserchia and Mr. O'Brien about affordable the housing numbers published by the New Jersey Builders Association.

Mr. O'Brien stated that this Township had gone above and beyond what had been required by COAH.

Mr. Hands asked when Mr. O'Brien completed his report, would it come before this Board.

Mr. O'Brien said that that was his understanding at this point. This would be a Planning Board document. He added that between now and June 8th he would learn more. If there were any changes, he would inform the Board.

Mr. O'Brien added that the next step, the Housing Element, was much easier. There was an established process and procedure for it as well as a statutory guide. For the resolution for the governing body, there were models going back 30 years. It was the new document that no one seemed to know anything about.

Mr. Hands asked if that ratio or percentage could change. Could that 70 number change?

Mr. O'Brien said that that would be up to the court. Instead of the Township reporting to COAH and complying with their formulas and processes, the Township would now be reporting to the judge in Morristown who would be in charge of this Township's affordable housing obligations. He would make a decision as to how much the Township had to have, if any, whether the plan was acceptable and in an acceptable form.

Mr. Piserchia asked if the municipalities could appeal if they disagreed with the judge's decision.

Mr. O'Brien said on a practical level, there was always an appeal at some point from any legal instrument. He did not know what that would be at this point.



Mr. Wallisch asked Mr. O'Brien if the Township was one of the communities that obtained certification.

Mr. O'Brien answered that this municipality was one of the participating ones. Even though the Township had filed everything it was told to file, COAH only actually certified somewhere around two (2) dozen towns before it was shut down by the State. COAH was certifying towns at a rate of about one (1) every other month. He added that there were several hundred municipalities on the participating list.

Chairman Pfeil noted that the next meeting was scheduled for May 26, 2015 which was the day after Memorial Day. He asked if any of the members would not be present. It appeared that a quorum would be available.

Ms. Kiefer advised Chairman Pfeil that the "Portable Sign" issue was tentatively scheduled for discussion at that meeting.

Mr. Wallisch motioned to adjourn the meeting. Chairman Pfeil seconded the motion. By unanimous **VOICE VOTE**, the meeting was adjourned at 10:10 PM.

---

CYNTHIA KIEFER  
Planning and Zoning Secretary

---

Date