

TOWNSHIP OF OCEAN
PLANNING BOARD
REGULAR MEETING
February 3, 2011

Meeting began at 7:00 PM

The meeting of the Ocean Township Planning Board was held on the above date and time. The meeting was called to order by Chairman Anepete.

Pledge of Allegiance

STATEMENT: Pursuant to the provisions of the New Jersey Open Public Meetings Act, sending copies of the notice of the meeting properly provided adequate notice of the meeting to the Asbury Park Press and the Atlantic City Press. Notice was posted on the bulletin board in the Administration Building.

ROLL CALL

Members Present:	Anepete	Lachawiec (7:03)	Tredy (7:03)
	Avellino	Sneddon	Bonamassa
	Bynoe	Sweeney	James

Members Absent: Eckert, Knowles

Professionals present: Steve Yost, Wayne McVicar and Scott Taylor.

Chairman Anepete asked for a motion to take action on the minutes of the Reorganizational Meeting of January 4, 2011. Mr. Sneddon made the motion to approve the minutes. Mrs. Sweeney seconded the motion. Roll Call: (aye) Sneddon, Sweeney, Avellino, Bonamassa, James, Anepete.

Chairman Anepete asked for a motion to take action on the minutes of the Regular Meeting of January 6, 2011. Mr. Sneddon made the motion to approve the minutes. Mr. Bynoe seconded the motion. Roll Call: (aye) Sneddon, Bynoe, Avellino, Sweeney, Bonamassa, Anepete.

Chairman Anepete asked for a motion to take action on the voucher list. Mr. Bynoe made the motion to approve the vouchers. Mrs. Sweeney seconded the motion. Roll Call: (aye) Bynoe, Sweeney, Avellino, Sneddon, Bonamassa, James, Anepete.

Correspondence is available in the board office for anyone wishing to view.

BOARD COMMENTS

An announcement was made regarding NJPO Training which will be held on March 12, 2011.

Presentation by Mr. Chris Warren of Alaimo Associates regarding Township Ordinance 2011-1. Mr. Warren approached and was sworn in by Mr. Yost. The primary purpose for the Redevelopment Plan is to develop of a complete system that is capable of converting solar energy to electrical energy in the closed landfill, called, "The Solar Project". There was one vendor interested in that project last year, but has since withdrawn. The township is now going to solicit RFP's. Prior to that a Redevelopment Plan must be adopted to conform to the statute. Mr. Warren reviewed points of the ordinance. A lease agreement is being discussed at this time. Under this Redevelopment Plan however, the Township would have the ability to pursue acquisition of the property if it were in its interest. Landfill site has 2 distinct landfill areas. Entire property is fenced and secured and had adequate access roads for maintenance and continued operation of the facilities. The landfill

was closed in accordance with 2007 consent decrees. These decrees do not allow certain uses but do not prohibit the proposed use which is the solar project. There are no wetlands on the site. There is no flood prone on the landfill site itself. Endangered species of potential concerns are grassland birds – a follow up study has been recommended for the spring. Mr. Warren went over some of the points of the Master Plan. The township would lease the property and then lease it again to a developer and either receive an annual lease payment or a revenue sharing arrangement from the power production or from the sale of what are called solar renewable energy certificates. Bulk requirements can be conformed to.

Mr. Sneddon inquired about the current police range. Mr. Warren answered that they believe the solar development is compatible with the police range. We would utilize only areas that are away from the direction of fire and most likely add a berm to ensure no stray bullets extend beyond that area. There is no plan to abandon the police shooting range. The orientation has changed recently.

Chairman Anepete asked if anyone from the public would like to speak on this proposal. Seeing no one approach, Chairman Anepete asked for a motion from the board. Mr. Yost has two resolutions prepared in anticipation of a decision. Mr. Yost advised that although it is fine for the Committee members to participate in the discussion, since it is going back to the Committee, it probably is not appropriate for the Committee members to vote. Mr. Yost asked the Committee members to abstain on this particular resolution. Mr. Bynoe made a motion to recommend this to the Redevelopment Entity with the Planning Board's approval. Chairman Anepete added that this project is a win/win for the community. Power can be generated from an area that is useless to the township for any other purpose and receive revenue and reduce taxes. Mrs. Sweeney seconded the motion. Roll call: (aye) Bynoe, Sweeney, Avellino, Sneddon, Bonamassa, James, Anepete.

Mr. Yost prepared a resolution in anticipation of a vote this evening. Chairman Anepete added that because we want to move this project forward, we had the resolution prepared and also had a negative resolution prepared if the project was not approved this evening. Mr. Avellino made the motion to approve the resolution, seconded by Mrs. Sweeney. Roll call: (aye) Avellino, Sweeney, Bynoe, Sneddon, Bonamassa, James, Anepete. Abstain: Lachawiec, Tredy.

OLD BUSINESS

Resolution No. 2011-02-PB – Authorization from the Planning Board to direct the execution of Contracts of Agreement with the following Professionals for their services for the year 2011 in the following Resolutions:

- Resolution 03-11-PB, Haines & Yost Law Firm, Board Attorney
- Resolution 04-11-PB, Eric Bernstein & Associates Conflict Attorney
- Resolution 05-11-PB, RV&V, Wayne McVicar, Board Engineer
- Resolution 06-11-PB, Birdsall Services Group, Board Conflict Engineer
- Resolution 07-11-PB, Taylor Design Group, Scott Taylor Board Landscape Architect

Chairman Anepete asked for a motion to take action on the Resolution. A motion was made by Mr. Avellino to approve the Resolution and seconded by Mrs. Sweeney. Roll call: (aye) Avellino, Sweeney, Lachawiec, Sneddon, Tredy, Bonamassa, James, Anepete.

Resolution No. 08-11-PB- Waretown Associates, Block 241.11, Lots 12.04 and 12.05, Preliminary Major Site Plan, Docket 08-10-PB. For the record the Mayor asked if the Resolution was contingent on the outside agency approvals and Mr. Yost verified that it was. Chairman Anepete asked for a motion to take action on the Resolution. A motion was made by Mr. Sneddon to approve the Resolution and seconded by Mr. Avellino. Roll call: (aye) Sneddon, Avellino, Bynoe, Lachawiec, Sweeney, Tredy, Bonamassa, Anepete.

MSC Enterprises, Amended Final Major Subdivision, Block 57, Lot 13 (now Lots 13.01-13.06), Morey Place Road, Docket No. 06-10-PB, CARRIED from the January 6, 2011 meeting.

Mr. Yost clarified with the board secretary who could vote on this application. Secretary verified that Mr. James cannot vote because he left the meeting in December, Mayor Lachawiec was not present at the December meeting. Mr. Bonamassa has listened to the tape and reviewed the file so he is eligible to vote.

Mr. Shea approached and spoke regarding housekeeping issues. A request had been made by Mr. Yost for a brief relative to the case. A brief was sent dated January 27, 2011 which described the applicant's legal position. Mr. Shea reiterated the legal points regarding the \$75,000 and the lighting. Mr. Shea's letter was marked into evidence as A-11 by Mr. Yost.

Mr. Yost spoke that a subpoena was issued to JCP&L as a request of the applicant. Mr. Timpinaro would come in response to the subpoena, but could not make this meeting because of a problem within JCP&L. Mr. Yost suggested as an alternate that Mr. Timpinaro send documentation he had and he would provide to Mr. Shea and perhaps it may not be necessary for Mr. Timpinaro to come in. Those documents were received and they were provided to Mr. Shea's office. Correspondence since then had been exchanged between attorneys. Mr. Yost didn't feel it would be necessary to require Mr. Timpinaro to appear. Mr. Yost, after speaking with the Chairman, offered a stipulation to the applicant which he felt addresses the problem. Within the JCP&L files there is a letter from Mr. Timpinaro to Mr. Mosca dated July 5, 2009 and also a letter dated July 30, 2009 from Mr. Timpinaro to Ms. Garofalo that Mr. Mosca did advise that he wanted the subject revised street lighting installed. That is reflected in the JCP&L correspondence. The lighting they are referring to is the lighting that was installed. Mr. Shea did provide a letter that summarized a letter he had with Mr. Timpinaro. Mr. Yost has a hearsay objection to that. Mr. Yost suggested it could get marked for identification as A-12. Mr. Shea brought up the hearsay objection to PB-2 previously marked. Mr. Yost had instructed the board that they were not to consider that in evidence. Therefore on both hearsay objections, both PB-2 and A-12 were marked into evidence instead of identification. Mr. Shea read the letter into the record. Mr. Shea spoke about the letter from Mr. Yost's office to Mr. Shea dated February 1, 2011. Mr. Shea disagreed with this letter. He did not feel the case cited in the letter applied. He also noted that he was surprised to get a response because the applicant was requested by the board to set forth what their position was. Mr. Shea did not feel it was appropriate to get a brief in opposition to their brief.

There was a possibility of an escrow issue that had been previously raised by the board secretary; however, after discussion with legal council it was not an issue. Mr. Shea wanted this put on the record.

Ms. Garofalo approached. Mr. Shea continued with his questioning. The lights installed are not unique to the township. Mr. Garofalo took photographs of the same style lights installed on Morey Place. Mr. Yost marked into evidence the photographs as A-13 through A-18. Three photos are from Oceannaire. Three photos are from Morey Place. A resolution of approval was obtained for Gregory Wagner and Charles Reilly for a parcel across from Morey Place in 2009 from the Board of Adjustment, marked as A-19 by Mr. Yost and the map marked as A-20. Ms. Garofalo testified that the Board of Adjustment made no requirement to have the applicant install lighting fixtures or any sort of off-site contribution.

Chairman Anepete asked Ms. Garofalo is she was aware that the acorn light fixture with the ornamental pole and concrete foundation was our standard in town? Ms. Garofalo answered "no".

Mayor Lachawiec suggested the board be able to review exhibits A-19 and A-20.

At this time Mr. Yost called Mr. Miller. Mr. Miller gave his background. Mr. Miller was the Township Engineer during the time of the MSC project. He prepared the bond estimate and did inspections of improvements. Mr. Yost inquired about the email chains. Mr. Miller testified that he had considerable contact with Ms. Garofalo during the course of the inspections for the site. Mr. Yost started his inquiry with J-13

(premarked). Mr. Shea's office received a copy of all the pre-marked emails. Mr. Miller spoke that Ms. Garofalo requested a field change. Mr. Miller indicated that the approved lighting was the acorn light and if she wanted to have a change, it would have to go back to the board. He indicated that it was part of the resolution in the email. Ms. Garofalo again asked for a field change and wanted the quantity reduced from 6 to 4 lights. Moving to J-14, Mr. Miller indicated to Ms. Garofalo that he had no authorization to make a substitution from the ornate light to the colonial light. She was still asking for approval of the colonial post, despite the previous email that said she had to go back before the Planning Board. He indicated that he had no authorization and kept indicating that a change could be made but could only be made through the Planning Board because it was part of the Resolution of approval. Moving to J-16, Mr. Miller testified that in these emails he indicated that the approved plan was for 7 lights and Ms. Garofalo thought it was 6 and wanted 4 lights. Moving to J-15, Mr. Miller testified that there is an email from Mr. McVicar in this chain. Ms. Garofalo had spoken with Mr. Mosca, and Mr. Miller indicated that Mr. Mosca didn't have the right to make the change and that the change had to go through the Planning Board. Mr. McVicar confirmed this in his email. Later in the J-15 email chain, Ms. Garofalo indicated that she felt that a fancy fixture was not required in a rural area and Mr. Miller testified that his point was that if it was approved by the Planning Board, then you would have to go to the Planning Board to get it changed. She also indicated in the note that she was going to address/correct some of the first 900' of roadway. Moving to J-17, Mr. Miller testified on the 3rd page that he and Ms. Garofalo are discussing Morey Place Road and the fees and she indicated that the installment was due based on the C.O.'s. She references the section of the Resolution and provides a copy as back-up. Mr. Miller testified that as far as he knew the road was never intended to be paved and at this point they were just discussing the contribution. Moving to J-18, discussing the maintenance again, Mr. Miller had checked with the DPW and they do routine maintenance on the roadway. Ms. Garofalo responds (copying Mr. Mosca) please advise if you will correct the issue for the first 900' feet. Paving of the road was never discussed with Mr. Miller by Ms. Garofalo. Mr. Miller never signed off on any changed lighting. The letter was sent to JCP&L approving their acorn ornate light. Mr. Miller did see the letter with Mayor Kraft's signature sometime after the C.O. inspection for the new lot that was established. Mr. Miller didn't hold up the C.O. for the substituted light because he felt that the light was a bonding issue and not a construction issue. Mr. Yost if this is the proper procedure and the way things are suppose to be done? Mr. Miller testified that it was my opinion and my direction to Ms. Garofalo all along the line that it was suppose to be an Acorn light and that if it was going to be changed, it would have to come back to the Planning Board. Mr. Millers estimate is that he expressed that numerous times. Mr. Chairman asked him to quantify that "numerous" and Mr. Miller answered after thought it would be 20-30 times throughout all their emails. Mr. Miller further explained that she indicated she understood the procedure and it was going to cost her a lot of money to go back to the board to change the lights. The money issue is the reason why she wanted to change the lights. The Acorn Style Lighting versus the Town and Country Lights were approximately three times the cost.

Mr. Shea asked Mr. Miller questions regarding off-site improvement ordinances and calculations regarding off-site improvements. Mr. Miller stated that the township does not currently to his knowledge have an ordinance in place for either. Mr. Miller said he did have conversations with Mr. Mosca and Ms. Garofalo regarding the lights. Mr. Shea questioned Mr. Miller concerning a previously marked document A-8 and what his basis was for sending this fax to Mr. Mosca. Mr. Miller answered he was indicating that the King Lummainaire light was the ordinance light, JCP&L no longer serviced the ordinance and they had substituted the Ornate Acorn light. The approved light was the King Lummainaire light. JCP&L would also service the Colonial light. Mr. Shea then moved questioning to a letter previously marked as A-7 regarding a letter to JPC&L to Germain Salazar. He is the contact for the installation of the lights. Mr. Miller explained the process of how JCP&L installs a light. Mr. Miller did not have any conversations with any one from JCP&L about the installation of the Colonial lights. Mr. Miller stated the first time he saw the lights was during a C.O. inspection after they were already installed. Mr. Miller mentioned to Mr. Mosca that he was surprised the letter was issued, it put Mr. Miller in a hard place, but he did not follow up on it any further then that. Mr. Miller was not involved in any installation process. Mr. Shea then questioned Mr. Miller about a document previously submitted into evidence as A-6. Mr. Shea spoke to Mr. Miller regarding the roadway improvements and possible paving. Mr. Miller stated you would have to go through the permit process. Mr. Miller never looked into the matter. Mr. Miller

stated that he knows that the Colonial lights in his term as Engineer, were not installed in any other residential development other than Greenbriar. Mr. Miller reviewed A-15. Mr. Miller reviewed previously submitted A-3.

Chairman Anepete asked for confirmation that Mr. Miller's testimony was that he spoke to Mr. Mosca with an inquiry about the lights. Mr. Miller stated that his letter to JCP&L was for the ornate light. After the letter came from Mayor Kraft to JCP&L to make the change, I had no recourse. My only recourse I felt was that when they came to get off the bond, it would be brought up then. Mr. Miller indicated to Mr. Mosca that he thought the lights were suppose to be the Acorn and he indicated back that the Mayor wanted the Town & Country lights and that was it. Mr. Miller felt it was out of his hands at that point. Chairman Anepete asked Mr. Miller if he felt it was obvious that this ornamental lighting is typically what is used in town and is there any reason why someone would be confused. Mr. Miller was under the definite understanding that the Acorn light was the intended to be the standard light. Mr. Miller added he was taken back by the letter from Mr. Kraft but it was out of his hands after that. After a question from Chairman Anepete, Mr. Miller clarified his previous statement that his conversation with Ms. Garofalo was the lights were expensive and that coming back to the Planning Board to have it changed would be more expensive. Mr. Miller reviewed the quality of the Acorn light and in his opinion is a more substantial light and it is a heavier light requiring a heavier foundation.

Mr. Avellino inquired about Mayor Kraft's letter and Mr. Miller said he was aware that the Mayor did not have this authority and the only way to get the lights changed was to go back before the Planning Board.

Mr. Shea spoke again and asked if at any point was it put in writing about the lights. Mr. Miller answered that he never put anything in writing. Mr. Shea produced bills from Alaimo which Mr. Yost marked into evidence as A-21 and A-22. Mr. Shea discussed these bills with Mr. Miller. Throughout August 09 though December 09 there were site visits. From January 2010 through June 2010 there were also site visits. In all of 2009 no letter was written by Mr. Miller in objection to the lights.

A break was taken at 8:59 PM. Meeting resumed at 9:12 PM.

Mr. James left the meeting at 9:12 before the meeting resumed.

A-23 is a series of invoices from Alaimo 5/26/2009 – 3/19/2010. Mr. Shea reviewed these invoices and site inspection visit dates with Mr. Miller. Mr. Miller stated that Mr. Mosca knew of the problem with the lights the entire time. Mr. Miller stated that there has been a recommendation for a bond reduction. Chairman Anepete inquired about site visits regarding the poles. Mr. Miller explained that there were two issues going on. One had to do with the lights; the second issue had to do with the service pole relocations on the opposite side of the street. The realignment of the road caused concerns with JCP&L.

Mr. Yost asked Ms. Garofalo to come forward and began his questioning. Ms. Garofalo stated that MSC is her husbands company and she followed up on this issue for him. She stated that she has no position with MSC. MSC is a real estate developer. They have other projects, but nothing is pending right now. Other projects have been done in town. Ms. Garofalo testified that she had no involvement with MSC in 2005 which this application first came in. Mr. Williams and Mr. Butensky have previously represented MSC. Ms. Garofalo does not know any of the issues that went along with the lawsuit that was filed in 2005. She stated she was not involved. Anything she knows was reiterated by her husband and is not by personal knowledge. Ms. Garofalo's testimony in December was that it was her understanding that the \$75,000 was given to the town in a settlement in 2006 for purposes of having Morey Place Road paved. It is not Ms. Garofalo's understanding that the \$75,000 was to maintain the roadway with grading, stone, etc.. She had read this in the minutes and it was her understanding that the township was to pave the road from the development out to Route 532. Ms. Garofalo also stated that Mr. Mosca said it would be paved, it was out for bid. Childers came back with the lowest bid. Mr. Yost clarified that Mr. Mosca was not the Township Administrator in 2005-2006.

Mr. Yost left the dais and addressed Ms. Garofalo at the podium so they could review emails together. Mr. Yost identified and inquired about J8. Mr. Mosca notifying Ms. Garofalo on April 1 that a field change cannot be made, she must go back before the Planning Board. Mr. Yost identified and inquired about J9. Ms. Garofalo she testified that this probably went to Michael, but she has seen it before when Mr. Shea shared it with her. Mr. Yost identified and inquired about J10. This is a letter dated April 27, 2009 from Mr. Yost to Mr. Butensky explaining that MSC would have to come back before the Planning Board to make this change for the lights. Ms. Garofalo was not aware of this letter at the time, she just read it. She does not recall being told about this letter at the time. Mr. Yost identified and inquired about J11. Ms. Garofalo has seen this email which is an email chain that Mr. Miller testified to. It is from Ken Mosca to Ms. Garofalo copied to Martin Miller stating that you have to go back before the board. Ms. Garofalo said this email is in regards to putting two lights on two poles. Mr. Yost quoted the referenced email. Mr. Yost identified and inquired about J12. Mr. Mosca took himself out of the loop and told her to work with Mr. Miller. Mr. Yost identified and inquired about J13. Ms. Garofalo testified to this email chain. Mr. Yost identified and inquired about J14. Emails reviewed by Ms. Garofalo and Mr. Yost. Mr. Yost identified and inquired about J16. Ms. Garofalo asking if six lights can be installed, Mr. Miller states the plan is approved for 7. Mr. Yost identified and inquired about J15. The email chain was reviewed. Mr. Yost asked Ms. Garofalo is she was aware that at the time the application was first brought before the Planning Board in 2005 we had an ordinance on the book that said you needed a variance to build on an unimproved road. Mr. Shea objected. Mr. Yost clarified that he was only asking Ms. Garofalo that she was aware to which she said she wasn't. Mr. Yost identified and inquired about J17. An email from Ms. Garofalo to Mr. Mosca regarding the grading of the road, however Ms. Garofalo said she cannot be sure this was from her because of the placement of the email chain which covers two pages. Mr. Yost, Mr. Shea and Ms. Garofalo discussed this email further whether the referenced attached portion of the resolution applied to paving or improving the roadway. Mr. Yost read the paragraph that was attached and then read further into the email chain from Mr. Miller to Ms. Garofalo regarding maintenance of the road. Mr. Yost identified and inquired about J18. Email from Ms. Garofalo asking if the road issue will be corrected.

Mr. Yost clarified the position of the applicant regarding the request for the \$75,000 waiver.

After discussion, Chairman Anepete asked Ms. Garofalo that after she received the answer to come back before the Planning Board continuously, why you didn't act on that. Ms. Garofalo answered because Ken Mosca opened the dialog and told her that he met with Planning Board members and committees and there was no need. He told me lets change to cobra, let's go low sodium. He opened up the dialog to me; I didn't open it to him.

Mr. Tredy asked Mr. Yost whether we should hear from Mr. Garofalo since Ms. Garofalo said in her testimony she was not there for the initial application. Mr. Tredy also inquired to the board's engineers if there is a system in place within the town where an applicant would be required to do paving on a road such as Morey Place? Mr. McVicar read the ordinance that applies to building on an unimproved road. Mr. Tredy asked about the statement Ms. Garofalo made about Mr. Mosca having meeting with Planning Board members. Ms. Garofalo replied that in one email he indicated this. Mr. Tredy wanted to indicate that as member of the board consistently for 21 years and Mr. Mosca never came to Mr. Tredy with any of this. Mr. Shea referenced the courtesy copies from the Kraft letter.

Mr. Yost addressed the cost of the paving calculation that was performed by Mr. McVicar's office and provided to Mr. Shea. Chairman Anepete had asked for this. In the interest of completing the record, Mr. McVicar was asked to speak on this. Mr. McVicar explained how he arrived at his calculation – he did not include permit fees in his calculation. There would definitely be permit fees for CAFRA because the length of road exceeded 1200 LF and Wetlands because you are within a buffer area to the adjacent creek. Mr. McVicar stated paving the road was discussed during the original application but it was never required. It could have been required. In 2005 it was discussed as a possibility that the applicant pave in front of their property but not plausible to pave only the immediate frontage and then not pave out to Route 532. Mr. McVicar does not have a calculation for only the frontage of MSC property. Mr. McVicar recollects from the original application a figure of around

\$60,000 and there was an adjustment at some point that brought it up to \$75,000 which was based upon a property with a similar frontage that was being paved at the time. However, that property length was shorter and it was about \$50,000. Mr. Yost offered Mr. McVicar's calculation report into evidence as PB-4. Mr. Shea verified with Mr. McVicar that he never actually did a calculation during the original application and there is nothing in the ordinance that would give a formula for calculating that. The Township Engineer generally does the bond calculation on the road for improvements on the property or in front of the property. That is based upon the approved plans. We do indicate in our ordinance what the required thickness would be for improving in front of the property. There is a way to calculate it if you are talking about paving directly in front of the subdivided units. Our ordinance in place at the time had a way to calculate that. No formal calculation was done in 2005 or 2006.

Mr. Yost spoke in detail about his brief he prepared in answer to Mr. Shea's brief dated February 1, 2011 that he offered as PB-5 into evidence. Mr. Yost expects the board to vote on the evidence. Mr. Shea objected as he feels it goes beyond an opinion and feels it goes towards a direction for the board to take. Mr. Shea went into detail stating the applicant's position again. Mr. Shea stated it is inappropriate to charge something when there is no justification for it. Mr. Yost quoted Mr. Williams from the transcripts of March 3, 2005.

Chairman asked for a motion to open to the public. A motion was made by Mr. Avellino and seconded by Mr. Sneddon. All in favor: (aye).

PUBLIC COMMENT OPEN

Mr. Shawn Denning, 145 Morey Place approached and was sworn in by Mr. Yost. Mr. Denning thanked the board for their time. He felt the specifics have not been overlooked and appreciates that. Mr. Denning feels the applicant is trying to get exactly what she was denied for originally. Mr. Denning spoke about the lights and the \$75,000 road improvements.

Chairman asked for a motion to close to the public. A motion was made by Mr. Sneddon and seconded by Mrs. Sweeney. All in favor: (aye).

PUBLIC COMMENT CLOSED

The board discussed the application. Each board member had the opportunity to speak and ask questions. Mr. Yost would need the clarification that if the board were to grant the waiver on the lighting would it be on the basis that MSC did justifiably rely upon the July 30, 2009 letter or a situation where the board feels that it is a matter of economic waste to make MSC remove and replace the lights. There would be more than one reason to grant that waiver and Mr. Yost would need clarification in order to prepare the resolution accordingly.

Mr. McVicar asked for a break so that he and Mr. Taylor could speak with Mr. Yost.

A break was taken at 11:02 PM.

Chairman Anepete called the meeting back into session at 11:12 PM. He turned the floor over to the board's engineers who came up with another alternative which they had discussed during the break. Mr. McVicar spoke that in regards to the \$75,000, the board may want to consider if they were to approve the waiver of the \$75,000, that it be required that the frontage of the property be improved to township standards for the width of their frontage. As an alternate to that, the applicant would be required to post a performance guarantee in accordance to the ordinance that we have in place for the improvements and this would be based upon a calculation that would be prepared by the Township Engineer.

Scott Taylor added there was concern about the calculation that the \$75,000 may have been baseless. So the opportunity would be if the board was so inclined to give the applicant the option. The applicant can either

pave their entire frontage up to township standards or in the alternative, modify the contribution amount for whatever the Township Engineer determines the cost of paving their entire road frontage would be. Our ordinance does have a provision for this, lots fronting on an unimproved street and that way the \$75,000 number is really clarified and based on what they would have actually spent to pave their entire road frontage. If the applicant had a concern about the calculation, it was suggested to carry the application one month so the Township Engineer could do the calculation and then report back to the applicant and to the board so we know exactly how far off from the \$75,000 we might be.

Mr. Yost clarified that the law is that if someone comes in for a variance that the board doesn't have to necessarily grant the same variance that is asked for. They can grant some other alternative form of relief. The applicant would need to be able to speak on this.

Chairman Anepete did not think at the lateness of the hour it would be prudent to make a decision. It would be better to wait and see what figures the Township Engineer came up with.

Mr. Yost clarified that if the applicant wants a vote then they can get a vote. If it were to be carried, it would have to be done with their consent. The applicant's council was then given the opportunity to at least if they want to address this other potential solution that was raised by the board engineers.

Mr. Shea addressed the board that he has not had the opportunity to speak to his client about this and asked to take a few minutes to do so.

The board took another break at 11:19 PM. Upon resuming at 11:28 PM, Mr. Yost wanted the record to reflect that he and Mr. Shea had the opportunity to talk about posture. The applicant would really like to have a vote this evening instead of carrying the matter. The only reason we had raised the issue was this is a new wrinkle brought up by the Township Engineers offering an alternative way to couch the resolution where the applicant would be given the alternative of either abiding by the agreement to pay the \$75,000 road maintenance contribution or in the alternative be required to pay for the roadway improvement per current township ordinance for the area directly in front of the subject properties and that would be a calculation that has a basis set forth in the resolution that would be determined by the Township Engineer. We have heard the applicant complain about the no rational basis for the calculation for the one roadway and this alternate approach would give another alternative which sounds like it would have a rational basis in calculation. The applicant has indicated that they do want the vote this evening.

Mr. Shea added that it is our position that this still might be an issue with respect to the calculation even under that particular ordinance. If the board is inclined to put that in a resolution, certainly perhaps see what that number may be as an alternative but I can't represent that that would be acceptable as to a resolution of the issue at this point in time. If that were in the resolution as an alternative we would certainly take a look at it.

Mr. Tredy asked for clarification. Mr. Yost stated that if a motion is made, I can articulate it but I need to know whether the board intends to grant either waiver or not. The complaint from the applicant is we did not have this ordinance in place which is a calculation for an off tract improvement. That is the defect that renders the prior settlement void in the applicant's position. The board engineers have suggested as part of the resolution if the board did not want to grant that waiver, that they either allow the applicant to pay the \$75,000 as per the settlement or in the alternative, require that the applicant make the actual road improvements that would be required by a current township ordinance for the area directly in front their property. We have an ordinance that requires that improvement right in front of the applicant's property. What had happened back in 2005 was there was the argument that it made no sense to pave right in front of these houses and then have this large section of unimproved road and then the dialogue shifted from in front of their houses to Morey Place Road and everybody kind of forgot about the requirement of paving, curbs, etc.. directly in front of the applicant's property. If the board grants the waiver, we don't have to have this discussion. If the board didn't want to grant the waiver, they can couch the resolution to either require the applicant to abide by the settlement where they

agreed to appropriate \$75,000 toward road maintenance which is what the resolution states, or in the alternative require them to pave and improve – whatever our ordinance requires – which does have a component capable of being calculated by the Township Engineer.

Mr. Taylor then added, in lieu of them paving for that amount, to modify the contribution from \$75,000 to whatever the Township Engineer would calculate that cost to pave. Mr. Yost added get the figure of what it would cost for improvements directly in front of the property per our current ordinance and make the contribution that amount.

Mr. Sneddon made a motion that the application be denied. Mrs. Sweeney seconded the motion. Mr. Yost asked for clarification on the motion and the reasons for denial. Mr. Yost asked if the reason for the motion to deny the lights is because the applicant did not carry the proofs on the estoppel action. Mr. Sneddon answered “yes”. Mr. Yost then spoke about the road maintenance. You want to enforce the settlement by the motion? Mr. Sneddon answered “that’s correct”. Mr. Yost asked Mr. Sneddon if he intended by his motion to give the applicant the alternative of what was suggested by the engineers to pay \$75,000 and honor it or be required to pay the cost of the improvements per our current ordinance for what would be required right in front of them and then apply that to the improvement of Morey Place Road. There then was further discussion on the motion by members of the board. The argument of the applicant is that there was no rational basis to support the calculation of \$75,000. You can require them to pave what is directly in front of them, quantify that, and then apply that towards road maintenance. Mr. Sneddon after a brief discussion agreed to incorporate that into his motion. The Chairman reiterated that the motion is to deny both and also offer the option as stated previously. Roll call: (aye) Sneddon, Sweeney, Avellino, Bynoe, Tredy, Bonamassa, Anepete.

Mr. Shea spoke so the record would be clear that the chairman had met with the attorney, and also the engineers to discuss this issue outside of the scope of the hearing during the break. There was no testimony offered relative to that secondary issue at all except for the brief conversation that took place. Under no circumstances was the applicant ever willing to go with an alternative, the applicant came here to seek two waivers only.

PUBLIC COMMENT

Seeing None.

A motion to adjourn was made by Mr. Bonamassa, seconded by Mrs. Sweeney. Meeting was adjourned at 11:42 PM.

ADJOURN

Respectfully submitted,

Beth O’Connor
Secretary