

A meeting of the Township of Hamilton Planning Board was held on the above date with Chairman Gordon Dahl presiding. Members present were Harry Bilicki, Charles Cain, Richard Cheek, William Christman, Wayne Choyce, Adam Greco, John Kurtz and David Wigglesworth. Alternate members present were Jack Carson and Harry Rogers. Also present were Steven Filippone, Engineer Consultant; Vincent Polistina, Planner Consultant; and John Rosenberger, Solicitor.

Compliance with the Open Public Meetings Law was acknowledged.

Approval of Minutes – Mr. Christman moved, seconded by Mr. Cain, to approve the minutes of the meeting of April 15, 2010, as published. SAID MOTION CARRIED WITH EIGHT MEMBES VOTING “AYE”, NO “NAY”, ONE “ABSTAIN”.

Hamilton Township MUA – Mr. Christman moved, seconded by Mr. Bilicki, to adopt the resolution prepared by the Solicitor for Hamilton Township Municipal Utilities Authority, Application No. 2010-002.

ROLL CALL VOTE ON THE ABOVE MOTION:

Mr. Bilicki – Aye	Mr. Choyce- Aye
Mr. Carson – Aye	Mr. Greco - Aye
Mr. Cain – Aye	Mr. Kurtz - Aye
Mr. Christman – Aye	Mr. Rogers – Aye
	Mr. Dahl – Aye

SAID MOTION CARRIED.

Hamilton Township MUA – Mr. Christman moved, seconded by Mr. Choyce, to adopt the resolution prepared by the Solicitor for Hamilton Township Municipal Utilities Authority, Application No. 2010-003.

ROLL CALL VOTE ON THE ABOVE MOTION:

Mr. Bilicki – Aye	Mr. Choyce - Aye
Mr. Carson – Aye	Mr. Greco - Aye
Mr. Cain – Aye	Mr. Kurtz - aye
Mr. Christman – Aye	Mr. Rogers – Aye
	Mr. Dahl – Aye

SAID MOTION CARRIED.

Railroad Estates, LLC – Mr. Choyce moved, seconded by Mr. Greco, to adopt the resolution prepared by the Solicitor for Railroad Estates, LLC, Application No. 2009-005.

ROLL CALL VOTE ON THE ABOVE MOTION:

Mr. Bilicki – Aye	Mr. Choyce - Aye
Mr. Cain – Aye	Mr. Greco- Aye
Mr. Cheek – Aye	Mr. Kurtz - Aye
Mr. Christman – Aye	Mr. Wigglesworth – Aye
	Mr. Dahl – Aye

SAID MOTION CARRIED.

County of Atlantic Old Jailhouse Reconstruction (Informal Presentation) – Mr. Dahl recused himself and Mr. Wigglesworth replaced him as chairman during the informal presentation.

James Lindemon, Architect, Leslie McDonald, County of Atlantic Buildings and Facilities, and Gordon Dahl, South Jersey Economic Development District Executive Director, were present.

Mr. Dahl stated that they were present to informally present a design solution for the “old” County jail in Mays Landing to restore the building and make it useful.

Mr. Lindemon described the site location, existing conditions, the surrounding area and what was being proposed to create usable space. He stated that the exterior would be restored and there would be interpretative space, with an interesting way to enter the building.

Board members asked questions with regard to location, restoration and use of the Sherriff’s house, renovating the entire complex, use of space, presentation to Historic Preservation Commission, roof materials, drive aisle, funding, storage space, and anticipated project start date, to which responses were provided.

Mr. Dahl resumed his place as chairman.

Request of Township Committee to Review Proposed Land Use Ordinance Amendment  
- Mr. Polistina advised that the proposed ordinance was deleting a section, adding a conditional use in another section and making changes to the buffers, and he expressed the opinion that the ordinance was straight forward. Mr. Polistina stated that the Board would need to advise the Governing Body whether the proposed ordinance was consistent with the Master Plan, and if it were found to be inconsistent, the Board would need to prepare a report explaining why it was inconsistent.

Mr. Filippone added that he had reviewed the proposed ordinance, and had no concerns.

Mr. Choyce stated that he had hoped the Board’s Traffic Engineer would be present, as he had questions related to traffic infrastructure involving what was currently permitted, what was being proposed and the Master Plan.

Mr. Polistina stated that the Board should look at the transportation element of the Master Plan to determine if certain improvements were identified in order that the Township can require a pro rata share toward the improvements. Mr. Cheek pointed out that hotels were already permitted, and Mr. Polistina stated that they were now being proposed as a conditional use. Mr. Rosenberger pointed out that the resolution of Township Committee, at the bottom of the Township Clerk’s memorandum, indicates that the proposed ordinance term “conditional Use” would be changed to “permitted use”.

Mr. Cheek expressed the opinion that the proposed ordinance was inconsistent with the Master Plan, as it was eliminating twenty-eight potential uses, which were primarily outdoor recreation. He pointed out that many of the malls and shopping centers are developing outdoor areas to encourage patronage. He expressed concern that there would be no opportunity to develop a “Fun Flex” in the Business Park, like that which was developed in Cherry Hill, if the uses proposed are eliminated, and stated that removing the opportunity to develop those types of uses would force business to develop in another municipality. Mr. Cheek questioned why the Township was seeking to decrease opportunity for development, when it is trying to develop the Business Park, but does not provide tax abatement like some municipalities in the area offer.

Mr. Cain stated that Mr. Cheek’s statement wasn’t entirely true, as there was property to be developed outside of the Business Park that could develop those uses.

Mr. Cheek pointed out that the Township would generate revenue from the sale of property in the Business Park, and the property in the Park was being sold at a reasonable price. He stated that a developer would need to seek a use variance if he wanted to develop one of the uses in the Business Park that were being eliminated.

Mr. Polistina advised that the ordinance proposes to remove one use indicated as “Planned recreation and entertainment complexes”, which provides for a minimum lot size of fifty acres, and lists twenty-eight different potential uses if that development option is chosen.

Mr. Choyce stated that he was concerned with regard to the type of traffic those uses generate, and he expressed the opinion that the highway system around the Business park could

not support all of that development. Mr. Choyce commented that the Township needed to be careful with regard to the type of development it chooses to permit within the Business Park.

Mr. Cheek pointed out that the remaining permitted uses, such as a large office building, would generate as much or more traffic on a daily basis, and that traffic is taken into consideration when going through the Planning Board process, as applicants are required to pay a pro rata share contribution toward improvements.

Mr. Choyce, again, stated he would like more input from the Board's Traffic Engineer with regard to the traffic impact of what is permitted to be developed, what improvements would be needed and how the improvements would be made.

Mr. Cheek responded that he would agree if the ordinance were proposing to add the permitted uses, but it was proposing to eliminate twenty-eight potential uses.

Mr. Polistina pointed out that the twenty-eight uses are permitted only as a planned complex and they were not permitted unless they were developed as a planned complex. He stated that the Board may want to consider permitting some of them individually, in which case the traffic impact of the uses would be considered.

Mr. Rosenberger advised that the Board's focus should be on whether the proposed ordinance is inconsistent with the Master Plan and not whether the uses are wise for the location, as that would be a determination of the Governing Body.

Mr. Carson asked Mr. Polistina if he felt the proposed ordinance was more consistent with the Master Plan than what currently exists.

Mr. Polistina responded that what was existing and what was being proposed were both consistent with the Master Plan. He advised that all the Board has to consider is whether the proposed ordinance is consistent with the Master Plan.

Mr. Choyce read the recommendation for the IBP Zone contained within the 2006 Master Plan Re-examination Report.

In response to Mr. Carson's comment that the proposed ordinance was going in the other direction, Mr. Choyce stated that the ordinance was eliminating the uses in a planned complex, but the Board could consider re-establishing some of those uses as individual permitted uses

Mr. Carson stated that he didn't see the proposed ordinance being proposed from a planning perspective; that he saw the ordinance being proposed from a vindictive perspective. He stated that there were people on the Board and on Township Committee that testified against a use just like the use that is being proposed to be eliminated, and he commented that it was a funny coincidence that now there was a recommendation to change the ordinance. Mr. Carson referred to the tape that officials were required to view that provided advice with regard to what should be done when a member of a governing body had before him or her a matter that he or she had been actively opposing prior to being elected. He expressed the opinion that those persons should recuse themselves, and stated that he saw this as a bad way to do planning.

Mr. Cain stated that Mr. Carson was missing one point, as the ordinance was sent to the Board as a recommendation from Township Committee and was unanimously voted on by Township Committee. He further stated that the majority of individuals of Township Committee were not involved with that process, but they read through the recommendations put together by the Township's Economic Development Director, Phil Sartorio, and they agreed with them, and that's why they sent it to the Board.

Mr. Carson commented that it could be totally independent and a coincidence, but it just didn't seem that way to him.

Mr. Greco stated that he had heard the charge about vindictiveness at least once or twice, and he asked if those who had opposed the application submitted by Magic Sports and Health Complex, LLC, had reacted by throwing bricks through a window or had taken revenge on anybody when the project received approval by the Board, or did those individuals engage in the

local process and become part of the local government. He questioned how that could be considered vindictive.

Mr. Polistina stated that all the background on the ordinance was really not the purview of the Board, as the Township Committee adopts laws and the Planning Board's role is to determine consistency with the Master Plan. He referred to the provision of the Master Plan Mr. Choyce had read, and stated that it encourages broad industrial office-type uses, and he believed that the proposed ordinance was consistent.

Mr. Carson pointed out that he would not be eligible to vote on the ordinance, as all regular members were present. He stated that he wasn't mad about it, or vindictive about it, but he didn't think it was a good way to do planning.

Mr. Polistina advised that all that was being done was removing the opportunity for planned recreation and entertainment complexes, and if the Board felt some of the uses that were included under that category are suitable for the IBP Zone, then the Board would be free to make a recommendation to the Governing Body to look at the uses after the issue presently before the Board is addressed.

Mr. Dahl expressed the opinion that the IBP Zone should be revisited to have a concept as to what it should be, and to develop a more-business friendly environment, as there are many additional uses that would provide recreation activity and compliment the uses that are already permitted, which would encourage people in the Park to stay there and not get into their cars to go elsewhere for recreation or to visit restaurants during their lunch breaks. He commented that, if the uses could be tied together into a master plan for the Business Park, then the next ten years would have been addressed, pedestrian activity would be encouraged, and a lot of traffic would be removed from Route 40, Route 322 and side roads.

Mr. Filippone voiced the opinion that Mr. Dahl's idea was good; that he was right about the change in economic conditions; and that there are now uses that were never thought of when the original ordinance was drafted. He suggested that a subcommittee of the Planning Board, along with its traffic consultant and planning consultant, be formed to review the issue in an effort to make a recommendation to the Board for consideration.

Mr. Dahl commented that there are transit uses that should be blended in and made more viable, and that there were a lot of things that could be done to make the Business Park a success within the next ten years. He stated that he didn't think that could be accomplished by "tinkering on the margins". He referred to the Harrison Beverage project, and noted that it was a state-of-the-art facility, which took into consideration its employees health, as well as efficient operation.

Mr. Bilicki asked Mr. Polistina if the ordinance before the Board was just to remove recreation and entertain complexes as a permitted use. Mr. Polistina explained that the ordinance proposed to remove that as a permitted use, but it also proposed to establish hotels and conference center hotels as a permitted uses, add some additional accessory uses and make some changes to landscaping and buffers.

Mr. Polistina advised that the Board could recommend whatever it wants, and could make changes to its Master Plan, if it so chooses, but the Governing Body enacts the ordinances.

Mr. Bilicki questioned when the Master Plan would be updated. Mr. Polistina responded that master plans are supposed to be reviewed every six years, and the Board should undertake that review during 2011, as the last Re-examination Report was adopted in 2006. Mr. Bilicki questioned whether it should be coordinated under one cover if the Board were to propose changes to the Business Park portion of the Master Plan. Mr. Polistina responded that the proposed ordinance would remove one section, but the balance of what would remain would still be consistent with the Master Plan; and that the Board could proceed with the recommendation, and would still be entitled to discuss amendments to the Master Plan during reexamination, but it would not be necessary to discuss the issue concurrent with what it is presently doing. Mr. Bilicki questioned whether the provision for planned recreation and entertainment complexes could be removed without hindering any future planning consideration, and Mr. Polistina replied in the affirmative.

Mr. Cain volunteered to be part of any subcommittee that would be formed to consider changes to the IBP Zone.

Mr. Bilicki commented that it would be advisable to direct the Board's traffic engineer to be part of any subcommittee formed, as it appeared he would be a key player.

Mr. Choyce commented that the proposed ordinance did not provide for any outdoor recreation or any small recreation-type activity. Mr. Polistina pointed out that only indoor recreation would still be permitted and he read some of the uses that are presently permitted within the IBP Zone.

In response to a question of Mr. Cheek, Mr. Polistina explained that outdoor recreation presently would be permitted only as a planned recreation and entertainment complex, and the other thirteen uses that are presently listed as permitted uses would still remain as permitted uses after planned recreation and entertainment complexes, with its twenty-eight use options, is removed.

Mr. Cheek pointed out that the Master Plan encourages outdoor recreation, and there would no encouragement for that if it's removed from the Ordinance. Mr. Polistina commented that an application could be submitted to the Zoning Board of Adjustment, and Mr. Cheek stated that there would be additional soft costs and "hassle" involved with that process.

Mr. Cheek mentioned several things that would not be permitted once the ordinance was adopted, and a comment was made that, maybe, the Board should be discussing adding outdoor recreational uses.

Mr. Rosenberger explained the planned complex concept, and advised that none of the twenty-eight uses presently listed under planned recreation and entertainment complex could be developed unless it was part of that complex. He stated that the planned recreation and entertain complex use had to include a hotel and that's why they're backing in and including hotels and motels as permitted uses. Mr. Rosenberger stated that he wasn't suggesting that the Board didn't need to identify additional uses in the Business Park, but the issue that was being debated wasn't permitted as it is, so the Board wasn't changing something to make it more restrictive, that it was just eliminating planned recreation and entertainment complexes as a permitted use, which was a defined term that included certain components in combination with a hotel.

Mr. Choyce expressed the desire to see a well-thought out plan, with whatever changes were made, that would be far-reaching and provide an opportunity for the Business Park to be developed with mixed uses.

Mr. Rosenberger advised that there is a thirty-five day time period within which the Board has to report to Township Committee. He advised that, if the report is received within that time period, Township Committee would be free to disregard the Board's recommendation if it so chooses, and it would be free to act without the Board's comments if it doesn't receive a report from the Board within thirty-five days.

Mr. Cheek asked if it would be better to leave the ordinance as it exists until the Board has reviewed it for changes. Mr. Polistina stated that the Board does not have that option, as Township committee passed a law, and the Board now has thirty-five days to react.

Mr. Dahl suggested that the Board's Planner, Traffic Engineer and Engineer meet to review how all the uses fit into an overall concept and the Board could then consider whether the individual uses should be considered or included. He stated that that the consultants could report their finds at the next meeting, as it would be within the thirty-five day time frame, and the Board could make its recommendation to Township Committee at that time. Mr. Dahl commented that the Board has to look at the big picture.

Mr. Greco stated that he would personally call for a vote at this meeting, but he thinks, as the Planning Board is presently "constituted", that it wouldn't take any desperate measures in the next thirty-five days so he would agree.

Mr. Polistina stated he would do whatever the Board directed him to do, but the Board could recommend to the Governing Body, right now, that the ordinance was consistent with the Master Plan and that it would like either the Governing Body or the Planning Board to take a look at the uses to see what fits in with the overall scheme in the Business Park. Mr. Polistina commented that taking two weeks to look at the uses wouldn't change the fact that what the Governing Body did was consistent with the Master Plan.

Mr. Cain stated that what the Governing Body was asking the Board to do was to make a decision as to whether the proposed ordinance is consistent, and that there would be plenty of time to do what Mr. Dahl suggests, such as look at things to make additional suggestions.

Mr. Polistina stated that he was just fearful that the consultants will come back and present what they felt would be appropriate, and there would be twelve different opinions.

Mr. Dahl commented that he just wanted to do it in a thoughtful manner and take a careful look before making a recommendation to Township Committee, as there appears to be a difference of opinion.

Mr. Cheek stated that, if the Board recommends that the ordinance provision stay in place, there would be no rush for the Board's consultants to meet within two weeks, but it would need to recommend that it be reinstated if a recommendation is made in favor of the proposed ordinance. He commented that Township Committee may do whatever it wants, but at least the Board would have made that recommendation.

Mr. Polistina advised that it was not really what was supposed to happen under the Municipal Land Use Law, that the Board is supposed to determine whether the proposed ordinance is consistent with the Master Plan. He further stated that the Board could do whatever it likes to do in addition to that, such as stating that the Board believes the ordinance is consistent with the Master Plan, but it would like the Governing Body to look because it is believed that some of the uses are necessary for the Business Park.

Mr. Carson commented that the Board did not have to endorse the ordinance, either.

Mr. Choyce asked Mr. Rosenberg if the Board's charge was to review the proposed ordinance to determine whether it's in line with the Township's Master Plan.

Mr. Rosenberger replied that the basic charge was to find whether the proposed amendment is consistent or inconsistent with the Master Plan, and the Board is permitted to comment on other areas within its interests.

Mr. Choyce questioned whether another approach could have been taken, wherein Township Committee could have directed the Board to review the existing ordinance and recommend changes instead of making changes to the ordinance and sending it to the Board to review for consistency with the Master Plan.

Mr. Rosenberger advised that, generally, a governing body introduces the ordinance or adopts a resolution sending the proposal to the Planning Board for comments.

Mr. Cain stated that it was important to note that the proposed ordinance was written by the Township's in-house economic development director.

Mr. Choyce stated that he understood that, but he thought that the Board could have had some ideas and some additional things to be included in the change to suggest to Township Committee, and that he felt the same way as Mr. Dahl, that there were some things that should be included, but if the Board's charge is to say whether or not it's consistent with the Master Plan, he did not see where it was not consistent with the Master Plan.

Mr. Cain stated that Mr. Choyce made a very valid point, and the Board could further recommend additional uses to Township Committee. He further stated that the Board should let Township Committee know what it wants and could do that at any point.

Mr. Rosenberger noted that the Board, in the past, had taken the initiative and sent recommended changes to Township Committee which were ultimately adopted. He commented that the Board can serve as the well from which ideas come, but Township Committee would not be obligated to take any action.

Mr. Carson stated that his experience with the Board in the past was that the Board would make the recommendations for changes and forward them to Township Committee for consideration. He commented that Township Committee may have referred an ordinance for consideration at some point, but he wasn't certain.

Mr. Dahl stated that he hadn't been a member of the Board when planned recreation and entertainment complexes were added to the ordinance as a permitted use, but he thought that it had been referred from Township Committee for consideration by the Board, that the Planning Board recommended it, and then everyone questioned what had happened. He stated that he wasn't sure what had happened then, but he wanted to take time to deliberate on the proposed ordinance, as the Board's charge is to look at things in a comprehensive way in an attempt to make a recommendation as to what it feels is important to the Township from a planning perspective. He commented that he hesitated to go forward with just determining its consistency with the Master Plan because he didn't want to make the same mistake twice.

Mr. Christman stated that he had been a member of the Planning Board when the ordinance was changed to permit planned recreation and entertainment complexes, and he commented that it was the craziest night he ever experienced as a member of the Board. He stated he did not know how it happened, but what the Board had agreed to was not what the ordinance ended up being. He expressed the opinion that absolute reverse psychology was used that night and the Board was led to believe that by changing the ordinance it was going to give the Township something great, and when it came to a vote, the people that advised the Board to do it, voted against it, but it carried because enough people were convinced the change would be good. Mr. Christman stated that the re-written ordinance was in front of the Board about three months later, and a lot of things that had been questioned had been changed, but when the ordinance was, again, before the Board a few months later, some members questioned its provisions and were told that the Board had agreed to it. Mr. Christman commented that he was happy to see the proposed changes, but he was concerned about it being another extreme and he would like to take a little more time to review each of the uses that are being removed so there is a clear understanding. He expressed the opinion that the proposed ordinance was consistent with the Master Plan.

Mr. Cain stated that he wholly supported Mr. Dahl's suggestion to make recommendations to Township Committee as to what it feels would be appropriate for the Business Park, but that was not what the Board was being charged to do, as the Board's charge was simply whether or not the proposed ordinance was consistent with the Master Plan.

Mr. Wigglesworth stated that he appreciated the passion as it shows people care, but he didn't understand why the Board was answering a question it was never asked. He stated that the Board has been asked whether the ordinance conforms, which he considered a simple request. He further stated that the Board did not need this opportunity to recommend what uses it feels belong in the Business Park, as it could do that at any time, and he did not understand why the issue was being debated at all. He commented that a half hour of his life was lost that he would never get back for no good reason.

Mr. Greco expressed the opinion that there was too much "mission creek" going on, and he stated that the Board voted up and down for Magic Sports, it could certainly vote up and down for the ordinance.

Mr. Greco moved, seconded by Mr. Cain, that the proposed ordinance intended to amend Articles IX and X of Chapter 203, the Land Use and Development Ordinance, as referred to the Board by Township Committee, was found to be consistent with the Master Plan of the Township of Hamilton.

Mr. Christman asked if the only issue the Board was considering was whether the proposed ordinance was consistent with the Master Plan, and Mr. Rosenberger replied that was the only issue the motion addressed.

In response to a question of Mr. Christman, Mr. Polistina stated that he believed the proposed ordinance was consistent with the Master Plan.

Mr. Choyce stated that he would prefer that the motion include a comment to Township Committee that the Board would like an opportunity to review additional uses within the IBP Zone. Mr. Rosenberger advised that the Board did not need to ask to be provided an opportunity to make recommendations for changes to the Land Use Ordinance, as it has the right to do that at any time, and the Board has done it on its own initiative in the past.

Mr. Rogers commented that it didn't make sense to him that the proposed changes were consistent with the Master Plan when the changes simply eliminate a large section. Mr. Polistina explained that there were fourteen permitted uses currently listed within the IBP Zone, one of which is a Planned Recreation and Entertainment Complex, which provides for twenty-eight additional uses that could be developed under that use option. Mr. Polistina expressed the opinion that the thirteen uses that would remain are pretty varied and would be consistent with the Master Plan provision. He noted that the proposed ordinance, also, proposes to add a hotel and conference centers as permitted uses and some additional accessory uses.

Mr. Rogers pointed to the current uses that permit indoor health and exercise facilities and indoor recreation facilities, and questioned whether that activity would have to be conducted entirely indoors. Mr. Polistina advised that those uses would need to be conducted entirely within a building if they were developed as the permitted use, but may not necessarily be within a building if those uses were accessory to another permitted use. Mr. Polistina stated that an applicant would need to apply to the Zoning Board of Adjustment for approval to develop any use that was not listed as being permitted.

ROLL CALL VOTE ON THE ABOVE MOTION:

Mr. Bilicki – Aye

Mr. Cain – Aye

Mr. Carson – Not eligible to vote

Mr. Cheek – Nay, because he finds the proposed ordinance to be not consistent with the Master Plan

Mr. Christman – Aye, based on the advice of the Board's professional consultants

Mr. Choyce – Aye, because the changes include adding hotels conference centers and eateries, which is clearly set forth within the 2006 Re-examination Report of the Master Plan

Mr. Greco – Aye

Mr. Kurtz – Aye

Mr. Rogers – Not eligible to vote

Mr. Wigglesworth – Aye

Mr. Dahl – Aye, as he felt it was consistent with the Master Plan, but questioned whether the proposed ordinance was the optimum solution.

SAID MOTION CARRIED.

Public Comment – Mr. Dahl opened the meeting to public comment.

Aline Dix questioned whether the Board had any information with regard to the location and test results of the monitoring wells within the Hamilton Business Park, and she suggested that the information be considered when determining what type of uses would be appropriate.

Nelson Gaskill expressed the opinion that there was a gross misrepresentation with regard to what was sent to the Board from Township Committee. He stated that it was his understanding that the vote that Township Committee took, with five in favor and none opposed, was to forward the Ordinance to the Board prior to taking any action, as it felt the Board should review it first to determine its consistency with the Master Plan, as well as whether to make any additional recommendations. He suggested that the Board's Solicitor contact the Township Administrator to get a clear understanding of what was intended when Township Committee voted to refer the Ordinance to the Planning Board.

A discussion took place as to whether the proposed ordinance had been introduced, adopted or referred prior to action, and Mr. Rosenberger referred to the Township Clerk's memo and the resolution of Township Committee forwarding it to the Planning Board. He stated that the proposed ordinance had been forwarded to the Board pursuant to the requirements of the Municipal Land Use Law and it could not be adopted until it receives the report of the Board or until thirty-five days after that referral.

Mr. Gaskill commented that the Township needs to do everything it can to attract businesses to locate within the Business Park, and he expressed the opinion that the Township should not be putting up "roadblocks", that force developers to seek variances which add to their soft costs and makes them consider locating elsewhere.

Mr. Choyce referred to the Township Clerk's memorandum, and pointed out that it stated the ordinance was being forwarded to the Board for "review and recommendation". Mr. Carson questioned Mr. Polistina's advice that all the Board was considering was whether the proposed ordinance was consistent with the Master Plan.

Mr. Gaskill reiterated his statement that Township Committee wanted the Board to consider recommendations.

Mr. Choyce moved, seconded by Mr. Wigglesworth, to close the public portion of the meeting. SAID MOTION CARRIED WITH ALL MEMBERS VOTING "AYE", NO "NAY", NO "ABSTAIN".

Additional Discussion - Mr. Carson asked Mr. Rosenberger to clarify the issue involving the request of Township Committee with regard to the proposed ordinance.

Mr. Rosenberger stated that the Board adopted a motion that found the proposed ordinance to be consistent with the Master Plan, and he expressed the opinion that the motion was not out of order. Mr. Rosenberger advised that there was nothing to prevent the Board from making any other recommendations it may have, that would be forwarded to Township Committee, whether the recommendations were made at this meeting or at another other time the Board so chooses. Mr. Rosenberger stated that, if any Board member wishes to discuss recommendations at this meeting, the Chairman would need to return to the agenda item that lists the discussion. He noted that there was clearly a sense that some members would like to make additional recommendations.

Mr. Carson stated that he understood the Board's consultant to say that the only thing the Board was to consider was whether the proposed ordinance was consistent with the Master Plan, and that wasn't what the memo from the Township Clerk stated.

Mr. Rosenberger referred to the memorandum from the Township Clerk, and stated that it repeats a motion that was made by Township Committee at the bottom. He advised that the State Statute anticipates that an amendment to a land use ordinance would be referred to a planning board before adoption, and that is what the Board had done.

Mr. Carson stated that what Mr. Rosenberger explained was different than what he had understood before, which was that the ordinance had been passed and the Board had a certain amount of time to comment, after which it would automatically go into effect.

Mr. Rosenberger commented that he had stated that the ordinance had been approved on first reading, and he now believed that the statement was incorrect. He emphasized that the

ordinance could not be adopted until a report was received by the Planning Board or until the thirty-five days from the date of referral.

Mr. Carson stated he wasn't sure he totally understood it, but he didn't want to take it any further.

Mr. Polistina attempted to further clarify the issue, and stated that introducing an ordinance doesn't change the fact that an ordinance is required to be referred to a planning board to be reviewed for consistency with a master plan within thirty-five days. He further stated that the Board could form a subcommittee to review the land use ordinance for changes, or recommend changes at any time, including at this meeting.

Mr. Dahl stated that he felt like the Board was directed to consider whether the ordinance was consistent with the Master Plan, and he would like a clear understanding from Township Committee as to how to approach this issue, and whether it wants the Board's opinion or not with regard to developing additional recommendations, as he did not want to waste the Board's time and effort. He commented that, if Township Committee wants the Board's opinion, the Board would give it to them; but, if it does not want the Board's opinion, then there would be no opinion the Board would render that it would listen to.

Mr. Cheek expressed the opinion that the process should be slowed down, as it was moving too fast.

Mr. Bilicki stated that he had opposed the application of Magic Sports and Health Complex, LLC; that he had been appointed as a Board member to serve for four years; that he had watched the ethics video, which provided advice about respect; and that he may not agree with Board members at all times, but he would respect their opinions and would like to be treated in the same way.

Mr. Greco stated that he was on the "obstructionist list" last year; that all he had done was engage in his first amendment rights under the Constitution; that he carefully watched the ethics film because he felt something like this would surface; and that the proposed ordinance was a fitting requiem to the largest sports complex on the East Coast.

Mr. Rogers commented that the thirty-five days has not yet expired, and he suggested that a subcommittee be formed to review the IBP Zone in an effort to look at what the recommendations might be. Mr. Polistina responded that the Board already dealt with the ordinance issue, and now it would be a matter as to whether it wants to deal with other recommendations. Mr. Rosenberger added that the Board would always be able to submit whatever recommendations it feels appropriate, and if it feels it wants to create additional development opportunity within the IBP Zone, it can consider that and present its recommendation to Township Committee. He advised that developing additional provisions would be a separate issue from the proposed ordinance that was just considered.

Wal-Mart, Inc., Litigation – Mr. Rosenberger reported that the Wal-Mart litigation was resolved, and the determination completely justified and sanctioned the determination of the Planning Board. He advised that the decision was a final judgment, but there is a forty-five day period within which an appeal could be filed, which commenced on April 16, 2010.

Adjournment – Mr. Wigglesworth moved, seconded by Mr. Greco, to adjourn the meeting. SAID MOTION CARRIED WITH ALL MEMBERS VOTING "AYE", NO "NAY", NO "ABSTAIN".

Respectfully submitted,

Nancy Rainbow,  
Planning Board Administrator