

A meeting of the Township of Hamilton Industrial Commission was held on the above date with Chairman Robert RaVell presiding. Members present were Eric Aiken, Gordon Craig, Carmen Fichetola, Ariane Newman, Rocco Policarpo and Charles Pritchard. Also present were Robert Sandman, Solicitor, and Harvey Kesselman, Township Committee Member and Township Committee Liaison to the Industrial Commission

Compliance with the Open Public Meetings Law was acknowledged.

Approval of Minutes – Mr. Pritchard moved, seconded by Mr. Aiken, to approve the minutes of the meeting of January 6, 2010, as published. SAID MOTION CARRIED WITH ALL MEMBERS VOTING “AYE”, NO “NAY”, NO “ABSTAIN”.

Mr. Policarpo moved, seconded by Mr. Fichetola, to approve the minutes of the Executive Session conducted on December 2, 2009, as published. SAID MOTION CARRIED WITH SIX MEMBERS VOTING “AYE”, NO “NAY”, ONE “ABSTAIN”.

Transfer of Deposit Checks – Mr. Sandman reported that he had received two separate checks from the former Commission Solicitor, representing the deposits that were escrowed involving the Agreement of Sale with Hamilton Business Park Associates, LLC, (Summit Associates) and the Agreement of Sale with Magic Sports and Health Complex, LLC. He stated that he would be placing the money in an interest bearing account, pursuant to the terms of the Agreements.

Summit Associates – Mr. RaVell asked Mr. Sandman to review the Summit Agreement that had been delivered to him by the former Solicitor so he would be prepared for the discussion that would need to take place in the very near future involving Phase II.

Real Estate Representative – Mr. RaVell informed those present that he had been contacted by a representative of NAI Mertz, who expressed an interest in being the Commission’s Real Estate Representative during 2010.

Mr. RaVell commented that there was no urgency to select someone to represent the Commission, and that the Commission could conduct interviews when it decides to consider the appointment.

Discussion - Dr. Kesselman prefaced his remarks by emphasizing that he was speaking for himself and not on behalf of Township Committee.

Dr. Kesselman referred to an article in the “Atlantic County Record”, and stated that his comments were not directed to any individual on the Commission, but that he was of the opinion that the need for an industrial commission that may have existed in the past no longer exists. He stated that Township Committee was in the process of looking at all of the commissions and

boards in an effort to reduce costs, and that he was hoping to convince at least two other Township Committee members that the Industrial Commission should be abolished and that an economic advisory committee should be established in its place. Dr. Kesselman commented that he would like to see present Commission members serve on that body.

Dr. Kesselman advised of his experience involving access to information related to an application before the Planning Board, and he expressed the opinion that the process should not be that difficult for residents who are looking for basic information. Dr. Kesselman commented that there should be a better way of doing things, so people would be able to know what is happening in their neighborhoods.

Dr. Kesselman stated that Township Committee had begun the process of reviewing all of the budgets of the various boards, commissions and authorities serving the Township. He referred to the Commission's budget as an example of money being budgeted that was not used for its intended purpose, but was unavailable for other uses.

Dr. Kesselman, also, mentioned the ten percent of the net proceeds from sales that is set aside for capital improvements to the Business Park and referred to it as a past luxury.

Mr. RaVell pointed out that the purpose of the money being set aside was to have funds available to take care of any problems within the Park that may arise that hadn't been foreseeable when the budget was prepared, and to fund future improvements. He noted that the Commission did not have direct access to the money, as Township Committee had control over how, and if, the money would be spent, and that Township Committee could rescind the resolution providing for the set-aside if it so chooses.

During a discussion that took place with regard to available land for sale within the Business Park, Mr. RaVell pointed out that all of the remaining property may be under contract to sell, but it would not be considered sold until it was actually conveyed at settlement. The way the Industrial Commission could sell land was compared with the way Township Committee could sell land, and the advantages the Commission had and the benefits to the Township were pointed out.

Dr. Kesselman described the function of an Economic Development Council and stated that most municipalities have those models in order to assist with retention of business and economic development of the overall municipality.

Mr. RaVell advised as to the reason industrial commissions are created.

Dr. Kesselman responded that he was aware of the Commission's mission, but he was uncertain as to whether he was as concerned as to the final outcome as was Mr. RaVell. He questioned how long the Commission had been in existence.

Mr. Policarpo pointed out that the Commission has the ability to negotiate the price of the land and how the land would be developed to ultimately benefit the Township by creating tax ratables, providing employment opportunity and opportunity for satellite development. He

commented that land sold by the Municipality could remain vacant for a long period of time, as the Township could not require the same things that the Commission could require.

Dr. Kesselman asked Mr. Sandman if the Township could require minimum bids when selling land, and Mr. Sandman replied in the affirmative. Mr. Sandman reminded those present that he represents both the Industrial Commission and Township Committee, and stated that, any opinion he would render to the Industrial Commission would be identical to the opinion rendered to Township Committee.

Dr. Kesselman stated that he was very focused on outcome, and he expressed the opinion that the concern that the Park would be left undeveloped is not that significant of a concern since seventy-five percent of the Park is undeveloped and it had been in existence for over thirty years.

Dr. Kesselman stated that he could not find the Commission's web site, and Mr. RaVell advised as to how the site could be accessed.

Dr. Kesselman questioned what would happen if all the land in the Business Park had been sold by the Commission. Mr. Craig pointed out that it is within the purview of the Commission to do many things to promote economic growth other than sell land within the business Park, and he commented that he didn't see any difference in that respect from that which can be done by an economic development council.

As an example of why the Township should not be involved in selling Business Park property, Mr. RaVell related what had transpired involving the property within the Business Park that had been conveyed by the Township to Shore Memorial Hospital and his involvement with the Township getting the property back. Mr. Kesselman commented that what Mr. RaVell had done was about an individual and not about an entity, but he acknowledged the value of the individual's memory.

Mr. RaVell asked Dr. Kesselman why he believed the Commission was an impediment to development, and Dr. Kesselman responded that he believed it was another layer that an entity has to go through in order to get approvals in the Township. Mr. RaVell stated that the Commission had nothing to do with the approval process, and its only involvement with developers is through the sale of the land.

Mr. Sandman advised that the Commission had the ability to enter into contracts directly, thereby providing the ability to provide conditions subsequent that survive settlement, such as when the property has to be developed and what has to be developed, and that those provisions are enforceable by the Commission.

Mr. Craig stated that previous solicitors to the Commission have advised that, very rarely, will those types of conditions survive settlement. He asked Mr. Sandman if his opinion was different than that of previous opinions.

Mr. Sandman advised that, if a contract specifically has provisions to survive settlement, there are remedies under the contract and remedies in equity, and a well written contract would

set forth the remedies. He further advised that, in the absence of a contract provision, there would be nothing but the zoning laws to control.

Mr. Policarpo expressed the opinion that what Dr. Kesselman was proposing was not appropriate at this point in time, as there were two very large contracts pending. He referred to his years as a real estate broker and mortgage banker, and expressed the opinion that anything that happens when an agreement to sell property is pending can jeopardize that agreement. He suggested that Dr. Kesselman pursue his idea to create a different body to replace the Commission after all of the property has been conveyed. Mr. Policarpo pointed out that the Commission only spent approximately half of its budget in 2009, and commented that it was a very small amount compared with the amount of money generated from the sale of property.

Mr. Craig pointed out that the legal fees associated with land sales, which is the biggest expenditure in the Commission's budget, would be incurred no matter which body makes the sale. With regard to the budget appropriation related to the Business Park entrance maintenance, Mr. Craig pointed out that a request had been made for Public Works to handle it, but the Commission was told that Public Works did not have the manpower to accommodate the request. He commented that it was much more economical to hire someone to maintain the entrance than it would be to hire an additional Public Works employee. Mr. Craig expressed the opinion that the only expenditure within the budget that could be eliminated entirely without being accommodated in a different budget would be the appropriation for advertising.

Dr. Kesselman stated that the ten percent of land sales would, also, be eliminated.

Mr. Fichetola referred to his years serving as a Commission member and the effort throughout the years to convince Township Committee to set aside a percentage of Business Park land sales for improvements. He pointed out that the cost of improving the entrance to the Business Park could have been taken out of the ten percent set-aside if it had been authorized by Township Committee prior to the improvement being done, but, instead, it had to be funded in a different manner. Mr. Fichetola commented that the Park entrance improvement was an example of the type of project for which the ten-percent set-aside was intended to be used.

Ms. Newman noted that, assuming all of the land in the Park was conveyed in accordance with the present contracts and there was no more land in the Park to sell, the Commission still had the ability to promote economic development and assist in seeing that land, such as the Atlantic City Race Course, is not sold just for speculation. She questioned what an economic development council could do different from that which an industrial commission could do.

Dr. Kesselman stated that it would depend on the by-laws of the economic development council that's created, and he pointed out that there are many throughout the State, and outside of the State, that could be reviewed to determine which had been most successful.

Mr. RaVell referred to Egg Harbor City's experience with regard to the land not being developed within its Industrial Park after it had been sold, and the success it experienced after it created an industrial commission.

Mr. RaVell stated that the Commission should be abolished if it no longer serves an appropriate public purpose, but it was his opinion that the Commission had achieved a lot throughout the years of its existence, especially considering that the sale of land within the Park had been affected by the economy and competition that could offer property tax abatement and other incentives that the Township could not offer.

Mr. RaVell stated that the Commission's goal was to sell land so buildings could be developed to generate property tax revenue and job opportunity, and it had always taken the position that the selling price of the land is not as important as what would be placed on that land. He stated he was having a hard time understanding how an advisory board, such as that suggested by Mr. Kesselman, could achieve what an industrial commission could achieve.

During further discussion regarding the powers and objectives of economic development councils, Dr. Kesselman stated that their powers could be as broad or as limited as permitted under that structure, and their purpose was to promote economic development in various ways to attract and retain businesses throughout an entire municipality. He expressed the opinion that too much time is spent focusing on a small area of the Township and that there are other areas that have potential that may have been overlooked.

Mr. RaVell expressed the opinion that abolishing the Industrial Commission so its budget appropriation could be used for other purposes was a bad approach to further economic development, and he noted that the Commission's budget had never been called into question during public hearings. He stated that he now understood that the ten percent set aside from sales, in the amount of \$74,000.00, was the goal, and it was inconceivable to him that the way to get that money was to abolish the entity that generated it.

Mr. RaVell referred to a certain contract purchaser's experience with the approval process, and expressed the opinion that sometimes the approving boards are perceived as the enemy, while the Commission had always been the ombudsman for those with which it has entered into contracts, and has always been business friendly.

Mr. RaVell expressed the belief that no member of the Commission would object to Township Committee abolishing the Commission if a determination was made, after looking at different models, that the Commission was no longer viable and a different body could do what the Commission could do.

Mr. RaVell pointed out that, if the Commission were disbanded, the pending contracts would have to be assigned to Township Committee, and he questioned whether anyone thought beyond the next step.

Dr. Kesselman stated that, because the Township is facing a significant budget shortfall, it can't keep doing business the way it has been doing business, and difficult decisions would have to be made. He stated that Township Committee is looking at where every dollar is going, as layoffs are being threatened.

Mr. Pritchard referred to the two, pending contracts with the Commission, and noted that Magic Sports and Health Complex, LLC, has posted a total of \$100,000.00 as a non-refundable payment for extensions of its contract. He commented that it has been stated that here is an obvious intent as to why abolishing the Industrial Commission is being considered, and he asked Dr. Kesselman if he hoped that the pending contract with Magic Sports comes to fruition.

Dr. Kesselman stated that his answer would be "yes", the way it currently exists. He added that he had no problem with fields, and even the hotel, but he had a problem with the proposed Vine Building and the associated parking.

Mr. RaVell stated that it appeared there would be a conflict if Magic Sports' contract were assigned to Township Committee, as two members of Township Committee were objectors to the application before the Planning Board, and he assumed they would have to recuse themselves. Dr. Kesselman stated that the issue would be addressed at the time it is presented.

Mr. Sandman advised Dr. Kesselman not to say anything to the extent that he had not previously, publically stated.

Mr. Pritchard stated that he had been questioned about the issue, and that was why he had raised it. Dr. Kesselman stated that it was expected that people would speculate, but when the series of other things that may occur are seen, it would be put into context.

A discussion took place with regard to whether an economic development council would be the best choice to replace an industrial commission, and Mr. RaVell questioned how many industrial commissions were disbanded within the state, how many there previously were and how many still exist. Dr. Kesselman stated he did not have the answers, but it was his belief there were very few.

Dr. Kesselman left the meeting.

Mr. RaVell referred to his letter to Dr. Kesselman within which he said he made clear that Township Committee always had control over the \$74,000.00 that had been set aside for capital projects within the Business Park, and that Township Committee could, at any time, rescind the ordinance that provided for the ten percent set aside from sales within the Park. He expressed the opinion that it would be short-sighted to use the money for budgetary purposes, but it may be perceived that the Commission may not be working to help with the budget shortfall.

The Commission's budget appropriation was briefly discussed, and Mr. RaVell stated that it appeared that Dr. Kesselman's argument was that the Commission's budget cost the Township too much money, even though the Commission spent only approximately \$15,000.00 in 2009, which was half of the budget appropriation for the year. He questioned at what point would the Industrial Commission not be too costly.

Mr. Craig pointed out that the Commission had acted prudently for the past three years by reducing its budget appropriation each year, based on what it had spent the previous year, in an effort not to reserve funds that wouldn't be used.

Mr. Pritchard questioned what would happen to the pending contracts and future extensions if the Commission were disbanded, and Mr. Sandman stated that, respectfully, he would not answer the question, and he cautioned that the issue was not something that should be placed on the record at this point in time.

Hamilton Business Park Entrance Maintenance, 2010 – The Commission considered the one proposal it received in response to its request for proposals to maintain the landscaping at the entrance to the Hamilton Business Park.

Mr. Policarpo moved, seconded by Mr. Craig, to award the contract to Puggi's Lawncare, Inc., in the amount of \$4,115.00, to maintain the landscaping at the entrance to the Hamilton Business Park for the year 2010, pursuant to the description contained within Estimate #262, dated January 19, 2010, which includes a rate of \$35.00 per hour for authorized, necessary, additional work, subject to the appropriation within the Commission's proposed budget being accepted by Township Committee.

ROLL CALL VOTE ON THE ABOVE MOTION:

Mr. Aiken – Aye
Mr. Craig – Aye
Mr. Fichetola – Aye

Ms. Newman - Aye
Mr. Policarpo - Aye
Mr. Pritchard – Aye
Mr. RaVell – Aye

SAID MOTION CARRIED.

Vouchers – Mr. Policarpo moved, seconded by Ms. Newman, that the voucher, submitted for services rendered by Randolph Lafferty, in the amount of \$850.00, be paid.

ROLL CALL VOTE ON THE ABOVE MOTION:

Mr. Aiken – Aye
Mr. Craig – Aye
Mr. Fichetola – Aye

Ms. Newman - Aye
Mr. Policarpo - Aye
Mr. Pritchard – Aye
Mr. RaVell – Aye

SAID MOTION CARRIED.

Executive Session – Mr. Craig moved, seconded by Mr. Aiken, to adjourn the meeting to Executive Session to discuss the pending Agreement of Sale with Hamilton Business Park Associates, LLC (Summit Associates). SAID MOTION CARRIED WITH ALL MEMBERS VOTING "AYE", NO "NAY", NO "ABSTAIN".

It was noted there was no public present.

Hamilton Business Park Associates (Summit Associates – When Regular Session resumed, Mr. Sandman noted that no one other than he and Commission members were present during Executive Session, and that nothing was discussed but that which was announced, with

the minor exception of direction given to him with respect to his legal work, which could not have been anticipated when the reason for going into Executive Session was announced.

Adjournment – Mr. Pritchard moved, seconded by Mr. Craig, to adjourn the meeting. SAID MOTION CARRIED WITH ALL MEMBERS VOTING “AYE”, NO “NAY”, NO “ABSTAIN”.

Respectfully submitted,

A handwritten signature in cursive script that reads "Nancy Rainbow". The signature is written in dark ink and is positioned above the printed name.

Nancy Rainbow, Secretary