

**TOWNSHIP OF PARSIPPANY-TROY HILLS
TOWNSHIP COUNCIL AGENDA MEETING**

October 1, 2013

Public Invited – Public Participation

MEETING CALLED TO ORDER by Council President Stanton at 7:00 p.m.

FLAG SALUTE

Roll Call:	Mr. Carifi	-	Present
	Mr. dePierro	-	Present
	Mr. Ferrara	-	Present
	Mr. Nelson	-	Present
	Mr. Stanton	-	Present

OTHERS PRESENT: Mayor James R. Barberio; Jasmine Lim, Business Administrator; Paula Cozzarelli, Assistant Business Administrator; John Inglesino, Esq., Township Attorney; and Yancy Wazirmas, Township Clerk.

The purpose of this meeting is to set the Agenda for the Regular Township Council Meeting of October 8, 2013 and to continue the Public Hearing for Ordinance 2013:28.

FORMAL ACTION MAY OR MAY NOT BE TAKEN.

STATEMENT OF COMPLIANCE

Adequate notice of this meeting has been provided in accordance with the requirements of the Open Public Meetings Law by filing the notice in the Office of the Township Clerk and by posting the meeting notice on the bulletin board at the Municipal Building on December 10, 2012 where it has remained posted since that date. A legal notice appeared in both the Daily Record on December 14, 2012 and the Star Ledger on December 13, 2012 and was forwarded by fax to other local newspapers and local radio stations on December 10, 2012.

In addition, adequate notice of the location and time change of this meeting has been provided in accordance with the requirements of the Open Public Meetings Law by filing the notice in the Office of the Township Clerk and by posting the notice on the bulletin board at the Municipal Building on September 23, 2013 where it has remained posted since that date. A legal notice appeared in the Daily Record on September 24, 2013 and was forwarded by fax to the Star Ledger, Parsippany Life and local radio stations on September 24, 2013.

Note: Council Meetings are videotaped and aired on Cablevision, Public Access Channel 21, at 12:00 p.m. on Sundays and are also available for viewing at www.parsippany.net.

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CLOSED SESSION

RESOLUTION

WHEREAS, the Open Public Meetings Act, P.L. 1975, Chapter 231 permits the exclusion of the public from a meeting in certain circumstances; and

WHEREAS, the Township Council is of the opinion that such circumstances presently exist; and

WHEREAS, the Township Council wishes to discuss: Attorney/Client Privilege, On-Going and Threatened Litigation and Contract Negotiations.

AND, WHEREAS, minutes will be kept, and once the matter involving the confidentiality of the above no longer requires confidentiality, the minutes can be made public.

NOW, THEREFORE BE IT RESOLVED by the Township Council of the Township of Parsippany-Troy Hills that the public be excluded from this meeting.

Motion To Adjourn Into Closed Session by Mr. Ferrara Seconded By Mr. Nelson.

ROLL CALL:

YES – Council Members Carifi, dePierro, Ferrara, Nelson and Stanton

Motion To Reconvene Into Open Session by Mr. Carifi Seconded By Mr. Nelson.

ROLL CALL:

YES – Council Members Carifi, dePierro, Nelson and Stanton

ABSENT – Council Member Ferrara

ORDINANCES – SECOND READING(S) AND PUBLIC HEARINGS(S)

Status of Adopted Ordinances:

<u>Ordinance Title and Number</u>	<u>Adopted Date</u>	<u>Mayoral Action</u>	<u>Effective Date</u>
An Ordinance of the Township of Parsippany-Troy Hills, in the County of Morris, New Jersey, Providing for Various Sewer Utility Improvements for the Township of Parsippany-Troy Hills and Appropriating \$4,400,000 Therefor, and Providing for the Issuance of \$3,325,000 in General Improvement Bonds or Notes of the Township of Parsippany-Troy Hills to Finance the Same (2013:24)	9/17/2013	9/18/2013	10/14/13

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An Ordinance of the Township of Parsippany-Troy Hills, County of Morris, State of New Jersey Authorizing the Acquisition of Real Property Known as Block 315, Lot 12 Pursuant to the Local Land and Buildings Law (2013:25)	9/17/2013	9/18/2013	10/8/2013
An Ordinance Amending and Supplementing Chapter 169 Fire Prevention, by the Addition of a New Section 169-19.2 Identifying Emblems and Light Weight Construction and Establishing a New Fee in 169-18, of the Revised General Ordinances of the Township of Parsippany-Troy Hills (2013:26)	9/17/2013	9/18/2013	10/8/2013
An Ordinance of the Township of Parsippany-Troy Hills, in the County of Morris, New Jersey, Amending the Township of Parsippany-Troy Hills Code Chapter 372 Taxicabs and Limousines (2013:27)	9/17/2013	9/18/2013	10/8/2013
An Ordinance of the Township of Parsippany-Troy Hills, in the County of Morris, New Jersey, Amending the Township of Parsippany-Troy Hills Code Sections 4-34 Fees Governing Services Rendered By Off-Duty Police Officers, and 405-7 Traffic Controls for Street and Highway Construction and Maintenance Operations for Municipal Roads (2013:29)	9/17/2013	9/18/2013	10/8/2013
An Ordinance of the Township Council of the Township of Parsippany-Troy Hills, Morris County, New Jersey Amending and Supplementing Chapter 430, Zoning, of the Code of Township of Parsippany-Troy Hills Establishing Prohibited Uses in Residential Districts and Establishing Violations and Penalties (2013:30)	9/17/2013	9/18/2013	10/8/2013

DISCUSSION/REMINDERS:

Scheduled Meetings

- 10/8/13 @ 7:30 p.m. Regular Meeting (PHHS)
Public Invited – Public Participation
- 11/12/13 @ 7:30 p.m. Agenda Meeting (Town Hall)
Public Invited – Public Participation

Minutes for Approval:

- None

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MAYOR

- None

ADMINISTRATION

Bid(s)

Taken:

- 9/11/2013 @ 11:00am One (1) New 2014 Peterbilt Model 320 Tandem Axle Chassis Garbage Truck with a 40 Yard Front Loader Eject Refuse Collection Body or Approved Equivalent **NOTED**
- 9/19/2013 @ 11:00am Upgrade/Resurfacing of the 85' x 185' Asphalt In Skate Rink on Parsippany Boulevard for Parks and Forestry **NOTED**
- 9/26/2013 @ 11:00am Roof Replacement at the Child Day Care Center **NOTED**

Ms. Lim reported that the award for the front loader will be tabled until next month's meeting. If it can be resolved by next week they are asking that it be placed on the Consent Agenda for award. Ms. Lim also reported that no bids were received for the skating rink refurbishment and they will re-bid the project. Ms. Lim further reported that the bids received for the roof replacement at the child care center are under review and they are asking the council to award the contract next week.

To Be Taken:

- 10/3/2013 @ 11:00am Supplying Service and Parts for the Sewer Utility Komline-Sanderson Beltpress, Gravabelt and Pumps **NOTED**

Quotation(s)/Proposal(s)/Qualification(s)

Received:

None

Requested:

- 10/24/2013 @ 11:00am Lease ± 32,500 square feet of Building and Grounds located at the Township's Wastewater Treatment Plant for the Processing of Fats, Oils and Grease ("FOG") **NOTED**

ORDINANCE(S):

- None

RESOLUTION(S):

- Resolution of the Township Council of the Township of Parsippany-Troy Hills Confirming the Appointment and Awarding a Contract for Professional Engineering Services to Associated Technology, Inc. **ON***
- A Resolution of the Township Council of the Township of Parsippany-Troy Hills Concurring with the Recommendation of the Planning Board that Ordinance 2013:28 Should be Adopted and Further Explaining the Reasons for Adoption Notwithstanding

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the Fact that the Ordinance is Partially Consistent and Partially Inconsistent with the Master Plan **REMOVED**

- Resolution of the Township Council of the Township of Parsippany-Troy Hills, County of Morris, Supporting the Transparency in Government Legal Bills Act (2013-A4370) **ON***
- Resolution of the Township Council of the Township of Parsippany-Troy Hills, Morris County, New Jersey Authorizing the Reimbursement of Legal Fees **ON***

TOWNSHIP OFFICE REPORTS

Resolution(s):

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Engineering Report of October 2013

Status of Road Resurfacing-Puddingstone Area

The Developer has installed a water main and sanitary sewer line on a portion of Puddingstone Road. We have been working with the developer and will make temporary improvements until the sanitary sewer line is turned over to the Township. A meeting has taken place with the developer but there has been no resolution at this time. **(No Change) NEXT AGENDA**

Revisions to Escrow Requirements in Connection with Residential Sidewalk/Driveway Repairs

The Lau's have expressed their unhappiness with the Township over the escrow fee and their belief that it is unnecessary and onerous on residents. Former Township Engineer Michael Pucilowski wanted to review the ordinance and draft changes to reduce the amount of escrow required for work performed between the property line and the edge of pavement in the Township right-of-way however this was not accomplished before his retirement.

We recently received a letter from Mr. & Mrs. Fraga also expressing their displeasure with the escrow requirement and with the burden on the property owner to request the return of escrow funds. Many people do not request their escrow back after one year. In an effort to help residents the Engineering and Finance offices have been compiling a list of right-of-way escrows that have not been returned.

I met with Michael Pucilowski and asked for his aid in reviewing the ordinances and making recommendations. Recommendations will be presented. **(No Change). NEXT AGENDA**

Canterbury Estates Vacation of Lots 26 and 77 in Block 98

The applicant of Canterbury Estates has requested the vacation of Lot 26 in Block 98. This lot was apparently created as an access route to Lot 77 which was reserved for a future water tower. I take no objection to the vacation of the entire Lot 26 from Foote Lane to Lot 77. Please refer to my May 5, 2009 memo on this subject. The metes and bounds descriptions have been reviewed

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and were sent back to the attorney for revisions. Once acceptable an Ordinance will need to be adopted by the Township Council to vacate this right-of-way. (No Change) **NEXT AGENDA**

CHIEF FINANCIAL OFFICER

Resolution:

- None

ATTORNEY

- None

TOWNSHIP OFFICES / COMMITTEES

- None

COMMUNICATIONS

- None

APPLICATION(S)

- Resolution of the Township Council of the Township of Parsippany-Troy Hills Authorizing a Person-To-Person Transfer of Plenary Retail Distribution License for Wine Amphorae Wines And Liquors, LLC. **ON***

***Consent Agenda Items**

ORDINANCES - SECOND READING & PUBLIC HEARING

ORDINANCE 2013:28

AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 430, ZONING, OF THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF PARSIPPANY-TROY HILLS, ADDING A NEW ARTICLE XLIX, ESTABLISHING A RCR-PLANNED RETAIL/COMMERCIAL/RESIDENTIAL OVERLAY DISTRICT AND DESIGNATING CERTAIN ZONE BOUNDARIES IN THE TOWNSHIP

PUBLIC HEARING 2013:28

Motion to Re-Convene the public hearing for Ordinance 2013:28 by Mr. Carifi, seconded by Mr. dePierro.

ROLL CALL:

YES – Council Members Carifi, dePierro, Ferrara, Nelson and Stanton

***Council President Stanton noted a three-minute per speaker limit with the Public Hearing ending at 11:15pm.**

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Members of the Public who have already spoken regarding this ordinance:

Stephen **Arnold** (4 Craven Rd, Mountain Lakes); Sigmund **Balaban** (10 Grecian St, Parsippany); Jackie **Bay** (430 Morris Ave, Mountain Lakes); Arne **Berg** (383 E. Halsey St, Parsippany); Rhonda **Brock-Pritchard** (11 Glen Rd, Parsippany); Jill **Cerullo** (4 Doremus Dr., Parsippany); Allison **Danchak** (41 Forest Dr., Parsippany); Gary W. **Dean**, P.E., P.P. (Dolan & Dean, 792 Chimney Rock Rd, Martinsville); Nancy **du Tertre**, Esq. (41 Lake Dr., Mountain Lakes); Stephanie D. **Eckert** (320 East Halsey Rd, Parsippany); Frank **Gengaro** (27 Homer St, Parsippany); Curtis **Hardenburg** (85 Red Gate Rd, Parsippany); Eileen **Hoffman** (47 Forest Dr., Parsippany); Nick **Homyak** (26 Oneida Ave, Parsippany); David **Kaplan** (263 Intervale Rd, Parsippany); Ashley **Kornreich** (70 Forest Dr., Parsippany); Philip **Kornreich** (70 Forest Dr., Parsippany); Boris **Kushkuley**, Ph.D. (116 Kenilworth Rd, Mountain Lakes); Andrew **Liput** (2 Craven Rd, Parsippany); Sree **Menon** (6 Pine Tree Place, Parsippany); Keith L. **Merl**, PE, CPESC (Princeton Hydro, 1108 Old York Rd, Ringoes, NJ); Mark **Miller** (115 Preston Rd, Parsippany); John **Mitros** (7 Sherwood Dr., Mountain Lakes); Forrest **Pawling**, III (4 Glen Brook Dr., Parsippany); Pat **Petaccia** (182 Hawkins Ave, Parsippany); Mike **Pulsinelli** (50 Parsippany Dr., Parsippany); Mary **Purzycki** (273 Marcella Rd, Parsippany); Gary **R.** (464A UFCW); Elliott **Ruga** (Senior Policy Analyst, NJ Highlands Coalition, Boonton); Manoj **Sheth** (69 Forrest Dr., Parsippany); Robert F. **Simon**, Esq. (Herold Law, 25 Independence Blvd., Warren); Andrew **Springer** (649 Littleton Rd, Parsippany); Peter G. **Steck** (Community Planning Consultant, 80 Maplewood Ave, Maplewood); Raymond **Webb** (50 Hillside Lane, Parsippany)

- Naomi Rotter, 181 Crown Point Rd: (Professor Emeritus of Management for the NJ Institute of Technology) strongly urged the Council to support the ordinance for the development.
- Marvin Crane, 181 Crown Point Rd: (Real Estate Agent) spoke in support of the development. As a real estate agent he does not see property values being lowered because of the development but rather, the profile of the Township will be raised. In addition he believes that the Township needs the revenue and jobs.
- David Polin, 300 Parsippany Rd: asked about an article in the Patch related to a Mayoral candidate. Mr. Inglesino advised him that this public hearing is related to the ordinance only. He may ask his question during the regular public hearing.
- Tracy Nagel, 3 Waverly Court: spoke of support of the ordinance giving three reasons: the need for revenue and ratables and keeping the budget balanced; keeping shopping dollars in the Township; and not knowing what may come in.
- Avery Ann Hart, 5 Cherry Tree Lane, Kinnelon (NJ State Senate Candidate): expressed concerns that the situation has created a division in the community. She stated her belief that the community is not happy about added sprawl and environmental impacts for future generations.
- Diana McElroy, 37 Intervale Road: asked the audience to raise their hands if they are not in support of the project. Mr. Stanton told her she must address the board and not the audience.
- Dawn Pawling, 4 Glenbrook Dr: expressed concerns about increased traffic the proposed development would bring.

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- Robert Bremerkamp, 50 Leamoor Dr: expressed concerns that there are too many inconsistencies with the studies, especially the cost estimates. He has concerns that a Walmart will come in instead of a Whole Foods.
- Barbara Owens, 154 Intervale Rd, Mountain Lakes: expressed concerns that the ordinance does not contain a provision prohibiting access to the development from Intervale Road.
- Paula Mondschein, 60 Redgate Rd: expressed concerns with the proposed development and the possibility of an increase in crime due to a lowered police force.
- Robert Crawford, 35 Hidden Glen Dr: expressed concerns about the impact of the proposed development of the Township and concerns whether the Council was given information to make an informed decision.
- Robin Litwinsky, 65 Forest Dr: expressed concerns with the proposed development and the effects it will have on increased crime in the neighborhoods. She also stated that while she is a union member, she does not agree with the unions who have come out to support this project since Whole Foods is anti-union.
- Julie Litwinsky, 65 Forest Dr: expressed concerns with the proposed development in regards to possible overcrowding in schools.
- Michael Sliker, 124 Camden Rd: expressed concerns that the proposed development will bring damage to the Township and asked the Council to vote no on the ordinance.
- Eileen White, 26 Winding Way: expressed concerns with the proposed development with her belief that this project is a strip mall and asked that the Council not do business with RD Realty.
- Rudy Katzenberger, 3 Cedar Terrace: expressed concerns that the proposed development will have a negative financial impact on the Township and the quality of life for the neighborhood. He asked the Council to keep the area zoned as office and to vote no for the ordinance.
- Robert Sudol, 75 Forest Dr: expressed concerns that the proposed development will be a mini-mall and will have a negative impact on the neighborhood. He asked the Council to vote no on the ordinance.
- Joi Squillace, 58 Foxcroft Rd: expressed concerns with the validity of the survey regarding the proposed development as well as negative impacts on traffic patterns, schools, and police presence. She asked the Council to vote no for the ordinance.
- Sharon Ash, 17 Maple Way, Mountain Lakes: expressed concerns about the validity of the survey and Whole Foods ad. She also expressed concerns that there is no guarantee that a Whole Foods will actually be built instead of a Walmart. She asked the Council to use the vacant space in the Township for these businesses. She also expressed concerns about the negative impact on traffic.

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- Paula Danchak, 44 Winding Way: expressed concerns about what she perceives as skewed reports showing favor for the proposed development. She also expressed her belief that the proposed development will have major negative impacts on traffic and the loss of the natural resources associated with the watershed area.
- Ann Marie Jetton, 30 Forest Drive: expressed concerns about the proposed development and the impact it will have on the future of the Township.
- Dana Sudol, 5 Trouville Dr: expressed her support for the proposed development because Whole Foods gives back to the community's athletic programs. She asked that the Council vote to support this project.
- Bernadette Kopec, 5 Virginia Dr: expressed support for the proposed development and her belief that there will not be overcrowding in the schools since the school board just laid-off teachers for low enrollment in the schools.
- Paola Rodriguez, 240 Knoll Rd: expressed support for the proposed development for the school funding and healthy organic food choices that will be provided to the community. She asked that the Council vote yes for the ordinance.
- Roseann Humphrey, 72 Forest Dr: expressed confusion as to why the Township Council would vote against what is recommended in the Master Plan. She also expressed concerns about the environmental impact and lower buffer zones from the proposed development. She asked that the Council vote no for the ordinance.
- Dr. Daniel Kahn, 87 Ball Rd, Mountain Lakes: expressed concerns that the aquapher will be paved over and that it will have a negative impact on the health of the children.
- Angela Piegari, 10 Winding Way: asked the Council to not support the ordinance and the proposed development and to listen to the residents who have expressed their disapproval of the project.
- John Gribbin, 10 Winding Way: expressed his belief that, as an engineer, the project is ill-conceived and violate the Master Plan and spot-zoning laws. He also stated his belief that there is a 200 foot buffer that exists on the land that is embedded in the land by a filed map in the hall of records in Morristown which is restriction to the development of the land and cannot be overturned by a new ordinance. He asked the Council to vote no for this project.
- Lawrence Kahn, 12 Hillcrest Road, Mountain Lakes: as an environmental professional, urged the Council to vote no for the project. He expressed concerns with the paving over of the aquapher and truck access that will not make the project attractive to high-end customers.
- Rebecca L. Lubetkin, 15 Robinhood Drive, Mountain Lakes: expressed concerns about the impact of the project on the neighbors, school children, traffic, water and the destruction of the wildlife habitat.

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- Mary Alosio, 6 Scarborough Rd, Mountain Lakes: expressed concerns about the ad that was run in the paper by RD Realty and the environment. She asked if the union workers are guaranteed jobs if they reside in Parsippany.
- Thomas Hovronich, 21 Yorke Rd, Mountain Lakes: stated that RD Realty is the national developer for Wal-Mart and that taxes will increase and not decrease from this project.
- Ron Owens, 154 Intervale Rd, Mountain Lakes: expressed his opposition to the project for what he believes to be a negative impact on the community from “big business.”
- Bernard Earls, 233 Intervale Rd: expressed his opposition to the project for what he believes is overdevelopment of the area that has brought in increased traffic.
- Stacey Deubel, 95 Intervale Rd: expressed her opposition to the project in her belief it would have a negative impact on the community.
- Kaylie, 70 Forest Dr: asked the Council to not cut down the trees.
- Dinora Kornreich, 70 Forest Dr: expressed her belief that the project will not be as beneficial as stated.
- Robin Herbison, 161 Intervale Rd: asked the Council to vote no for the overlay zone and development.
- Laura McCluskey, 136 Lake Shore Dr. (Chairperson of the Parsippany Environmental Advisory Committee): Requested that the Council do further studies on the following: aquaphor recharge, stormwater run-off, noise and light pollution, the decrease of the buffer zones and its effect on the wildlife in the area, non-point source pollution, threat to groundwater, water restrictions, and green or sustainable buildings.
- Kevin Edwards, 12 Vale Rd., Mountain Lakes: asked the Council to pay attention to the Environmental Committee’s recommendation and vote no on the project.
- Jonelle Ferentinos, 65 Intervale Rd: expressed the following concerns relating to the project: increased crime, loss of community feel, environmental issue relating to drinking water and wildlife displacement.
- Joe McLaughlin, 6 Ball Terrace: expressed his belief that the zoning of the area should not be changed since the original zone was created there for a good reason.
- Nancy Choffo, 5 Glenbrook Dr: expressed concerns with increased crime and traffic.
- Michele Danchak, 44 Winding Way: expressed her opposition to the project and her belief that it will take away from the neighborhood feel.
- Felix Demicco, 3 Laurel Dr: expressed concerns with the project in his belief it will require additional police presence and will increase traffic.
- Todd Cieri, 11 Stockton Court: stated that the word Parsippany means place where the rivers come together. He expressed his opposition to the project since it would pave over land.

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- Joyce Hardwick, 1 Lakeview Ave: asked the Council to vote no for the ordinance. She expressed her belief that the project will increase drugs in the community.
- Roberta Chopko, 93 Intervale Rd: expressed concerns regarding the letter from the Fire Chief to the Planning Board regarding access to the development, the purchase of a new fire truck, and that this is paving the way for a paid fire department.
- Robert Garver, 151 Intervale Rd: expressed concerns that the traffic impact study did not include the peak selling season, morning commute and traffic safety.
- John Pritchard, 11 Glen Rd: expressed his belief that the area does not to be rezoned and should remain the same. He also spoke about the economy and revenues and the burden of the expenses on the Township.
- Les Wu, 161 Intervale Rd: expressed concerns about increased traffic and safety issues. He asked the Council to vote no for the ordinance.
- Ella Koeber, 109 Intervale Rd: expressed concerns about increased traffic.
- Gary Koeber, 109 Intervale Rd: expressed concerns about traffic and its impact on the safety of the children and concerns about fire response.

***Council President Stanton called for 15 Minute Recess.**

Motion by Mr. Carifi seconded by Mr. Ferrara to Re-convene the Meeting.

ROLL CALL:

YES – Council Members Carifi, dePierro, Ferrara, Nelson and Stanton

- Diane Milligan, 8 East Brooklawn Drive: asked the Council to vote no for the ordinance.
- Patrick Milligan, 8 East Brooklawn Drive: asked the Council to vote no for the ordinance.
- Jennifer Garcia, 7 Main Drive: asked that if this ordinance is approved, will this set a precedent for other developers to request zoning changes for their projects.
- Judy Foster, 16 Long Ridge Road: asked what the Governing Body has to gain or lose from this project. She also asked that they change the form of government so that there is better representation throughout the Township.
- James Hyson, 23 Ronarm Drive, Mountain Lakes: expressed concerns about the buffer area, traffic congestion during non-rush hours, and money for road improvement. He asked the Council to vote no for the ordinance.
- Ed Chu, 53 Forest Drive: asked that the Council absorb all the information presented before making a decision on the ordinance. He expressed concerns about the validity of the studies, the potential for growth, traffic, spot zoning, Master Plan inconsistencies and financial impact of the project.

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- Jeff Swanson, 37 Forest Drive: asked that the neighborhood be kept the way it is and expressed his belief that the project is inappropriate for the area.
- Suzanne Tice, 22 Upper Rainbow Trail: asked that the council take the time to reflect deeply and vote no for the ordinance.
- Jerry Manning, 30 Oakdale Rd: stated that he believes in the project and asked that the ordinance be approved. He expressed his belief that the project will generate revenue and create jobs.
- Lorrie Cancillieri, 242 Pitman Rd: asked where she can obtain reports about the heavy metals, toxic chemicals, PCB's and mercury that will be shed by all the trucks and any kind of commerce going in and out of the development.
- Tracey Meonier, 18 Forest Dr: stated that she is against the re-zoning and asked the Council to vote no for the ordinance the same way they voted against the energy ordinance.
- Gretchen Fry, 74 Ball Rd., Mountain Lakes: spoke about the "Myth of Ratables" study done by Rutgers University and revenues versus expenses. She expressed concerns about the increase in service costs, lower property values and decline in lifestyle.
- John Beehler, 51 Intervale Rd: expressed his opposition to the proposed development and asked the Council to vote no for the ordinance. He also expressed concerns about propaganda, outside influences, neighborhoods, over-spending, increased crime and the environment.
- Chris Westington, 2 Crescent Dr., Mountain Lakes: as a CPA, expressed concerns about the fiscal impact study and what he believes to be missing key factors. He also expressed concerns about the ramifications of the destruction of the watershed.
- Andy Choffo, 5 Glenbrook Drive: asked the Council to consider what is best for the community and vote no for the ordinance.
- Mary Comora, 10 Hennion Dr: expressed concerns with the inconsistencies with the Master Plan and asked the Council too vote no for the ordinance.
- Chris Stitt, 3 Larchdell Way, Mountain Lakes: asked the Council to renovate the vacant buildings in the Township so that the union workers can have jobs.

Motion to close the public hearing for Ordinance 2013:28 by Mr. Carifi, seconded by Mr. Ferrara.

ROLL CALL:

YES – Council Members Carifi, dePierro, Ferrara, Nelson and Stanton

Council Statements/Questions

Mr. dePierro stated that he has expressed his opinion several times at prior meetings during the Planning Board stage, but will repeat them for those that were not present then. After Bellmead developed the Waterview office complex, they realized there is no future demand for office space in Parsippany or Morris County, so they sold the land. The current owner came to the same realization and is willing to sell the property to anybody who will give him his price. About six years ago, an application, called Application #1, was presented for approval. The proposal was for a town center with cobblestone streets, a little island in the center with trees and lampposts, little offices and boutiques on the first level and residential units and professional offices on the second level with a 400 foot buffer to the neighboring residential area. Some of the same residents who are present this evening, vehemently opposed the project and asked the Township to listen to them so it was turned down. A few years later, Application # 2 for that property was submitted. The proposal was for age-restricted housing at 6 units per acre. It would have produced no school aged children, access would have been only through Waterview Blvd and it would have had a 350 foot buffer to the neighboring residential area. The residents, some of whom are here again this evening, vehemently opposed this project for the same reasons given tonight so it was rejected. This is Application #3 which has not gotten any better. He contends, if this ordinance is rejected, Application #4 will more likely be worse. Low-income housing has been mandated by the courts again by ordering the Governor and the Legislature to re-address low-income housing rules. The main concern is for clusters of low-income and moderate housing which may be a possibility for the Waterview property.

Mr. Inglesino addressed some of the legal questions that have arisen during the process.

Those legal issues can be categorized in two general categories. One is the substantive issues such as spot-zoning and contract zoning. It is his view that if the Council were to pass this ordinance and the adjoining statement of reasons resolution and based on the record that has been established during the course of these hearings that both spot-zoning and contract zoning claims would not prevail.

There are several procedural issues that have also been raised. The counsel for the Citizen's Group, Mr. Simon, has raised a conflicts issue with whether or not the Burgis firm and the RBA firm have a conflict because Burgis is the town planner and also the planner for the Planning Board and RBA is the traffic engineer for both the Township and the Planning Board. Mr. Simon has argued that both Burgis' and RBA's representation of the Township and the Planning Board creates a conflict or appearance of impropriety. The authority given by Mr. Simon to support that argument is NJSA 40:55D-24 which prohibits the Planning Board from appointing the municipal attorney as its counsel. That statutory provision is unique to lawyers. It does not prohibit planners, traffic engineers or other professionals from serving both the Township and the Planning Board. Case law also provides that municipalities are expressly permitted to engage the same professional with the exclusion of the municipal attorney. This makes it clear that the planners and the traffic engineers do not have an inherent conflict by working for both the Township and the Planning Board.

An additional issue raised is with regards to the Planning Board. Mr. Inglesino stated that he represents the municipality and not the Planning Board, but if there was a defect with respect to the proceedings before the Planning Board, then that could potentially taint the zoning process. On that basis, Mr. Inglesino reviewed the tapes of the Planning Board proceedings at which the

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concept plan was provided. To be clear to everyone, there was never a site plan submitted. Procedurally, a site plan application is submitted to the Planning Board after the zoning ordinance is adopted by the Township Council. Many of the concerns that have been raised, particularly environmental concerns, flooding and those kinds of issues are addressed at the Planning Board stage for site plan approval. These are not issues that are relevant to the governing body in consideration of a zoning ordinance. The process that the Planning Board utilized in terms of a concept plan is different than a site plan process. The concept plan process is not regulated by the Municipal Land Use Law, though concept plans are entertained by Planning Boards routinely. The review of concept plans is not prohibited and is a technique that is used by Planning Boards working with municipalities to vet the potential for a particular zone change. Mr. Inglesino stated that he did not see any defects, nor problem, with the concept plan process that would taint the zoning process in any way.

The last issue is the one that concerns the protest petition that was filed. Under the existing law, the governing body may adopt a zoning ordinance or amendment which is somewhat or is very inconsistent with the Master Plan but only by the affirmative vote of the majority of the full Council, and also with reasons of the Governing Body set forth in a resolution. There is a resolution prepared and listed on the agenda which is called a "Statement of Reasons" Resolution and his recommendation to the Council is that if they do pass the ordinance that they must also pass the Statement of Reason Resolution since this is a legal requirement. The number of votes required to adopt the ordinance is three since the Council is made up of five members. However, there is another law which gives property owners within a certain distance of an affected property which is subject of the zone change the power to change the number of votes required to pass the ordinance from a majority to a 2/3 majority (NJSA 40A:55D-63). This would increase the number of votes from three to four in order to pass the law. The relevant provision of that law provides that the petition would need to be signed by the owners of 20% or more of the lots or lands extending 200 feet in all directions therefrom inclusive of street space, whether within or without the municipality.

A protest petition was submitted in connection with this re-zoning and included the Borough of Mountain Lakes as a signatory of the petition. Mountain Lakes has taken the position that because Intervale Road is a municipal road in the Borough of Mountain Lakes that they own the road, and as an owner of lots or land, they have protest rights the same way that someone who owns a home, business or property within 200 feet of the affected property has protest rights. On this issue, he has spoken with both the legal counsel for RD Realty and the legal counsel for the Citizen's Group and has invited legal argument from them both because there is no case law that is directly on point with this issue. His office has also conducted extensive research and analysis of this issue because if it is litigated he wants to take the position that he believes is the right position and a position he could defend legally if it is challenged. The question of whether a municipality, by virtue of "owning a public street", has protest rights is yet to be addressed by the courts. The Jennings case, which was cited extensively by both counsel discusses ownership in the context of the common elements of the condominium regime, and the court's opinion expands that discussion to include other types of ownership, such as mortgage rights, contract purchasers, tenants, etc. The court in the Jennings case, which is an Appellate Division decision, has taken a very narrow view of ownership and tied it to dominion and control over the property. Ownership interest less than a fee simple title does not give protest rights. With respect to roads owned by a public entity, one could argue that the public entity would lack the same dominion and control over the property that somebody has by owning their home. A municipality cannot

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control who goes on the public road since the road is there for the benefit of the public. A decision on this issue will not be made tonight.

Mr. Simon in his correspondence points out that Mountain Lakes owns Sherwood Road by virtue of the fact that there is a bargain and sale deed for the road. Mr. Simon also points out that Parsippany owns Waterview Blvd. by virtue of the fact that a bargain and sale deed can be located in the public record giving vested title to Parsippany for that road. Record ownership is thus established and protest rights are arguably established if you wish to accept that argument for this purpose. If this is the case, then you have to establish that the municipality actually owns a road and talk about what ownership means. The interesting question becomes whether or not Mountain Lakes owns Intervale Road. Mr. Murphy, the attorney for Mountain Lakes seems to have an issue with the notion that Mountain Lakes owns Intervale Road because there is no deed. Mr. Simon has not produced a deed demonstrating that Mountain Lakes owns Intervale Road either so a title search was ordered by us. Our title search concludes that there is no evidence of fee title having been conveyed to the Borough of Mountain Lakes for Intervale Road. Our title company concluded that it's actually the owners on either side of Intervale Road that own up to the center of the street, then there is a public dedication, which is Intervale Road. By not producing a deed demonstrating ownership of Intervale Road by Mountain Lakes, the question becomes whether Mountain Lakes owns Intervale Road. Mr. Simon concluded Intervale Road is a dedicated road and is therefore owned by Mountain Lakes, though no authority was cited for this position.

Case law is not very instructive on this issue, so after much research, they found a 1961 Rutgers Law Review article written by Cunningham and Tischler titled "Dedication of Land in New Jersey." After further review, they were able to conclude that this article is still good law. Mr. Inglesino then read some passages from the article that demonstrated that there is a legal distinction between a dedicated public road and fee ownership of the road. Based on these findings, his opinion is that Intervale Road is a dedicated public street. A dedicated street and ownership of the land is not synonymous. No deed has been produced demonstrating that Mountain Lakes owns Intervale Road and ownership is a requirement to have protest rights. Since the subject statute only provides owners of lots and lands with protest rights and the Citizens Group has not demonstrated that Intervale Road is owned by Mountain Lakes, then Intervale Road is not to be included for purposes of protest rights. On that basis, it is his legal conclusion that three votes are required to pass the ordinance.

Last is the issue raised with regards to the 200 foot buffer. A resident provided him with a file plat from 1986 which makes references to a 200 foot buffer and nothing else. The resident also provided him with a deed that excludes the strip buffer subject to conveyance. On the basis of that information, he was unable to determine whether or not that buffer merely reflects the zoning in effect at that time or whether or not that buffer was intended to be a restriction that runs with the land independent of zoning that would have to be respected, no matter what the zoning on the property was. An endorsement from the title company for the developer was received ensuring that the buffer was a reflection of the zoning at the time and was not a deed restriction.

Mr. dePierro added that the 200 foot buffer that was there in the original zone was to separate commercial property from residential property. In this case, townhouses which are residential, don't require a 200 foot buffer to separate residential from residential.

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Motion to vote on Ordinance 2013:28 by Mr. Carifi, seconded by Mr. Nelson.

ROLL CALL:

YES – Council Members dePierro and Ferrara

NO – Council Members Carifi, Nelson, and Stanton

Before voting, the following Council Members made the comments below:

- Mr. Carifi: thanked everyone for attending and for voicing their opinions. He stated that he sympathizes with the union workers, but he feels that making improvements to existing retail and office space is what needs to be filled. He has taken the time to reach out to other municipalities' police departments and he has no doubt that there will be an increase in crime and traffic. The Township's Environmental Committee stated that this project is not good for the town. The economic impact on local small businesses by this project may put them out of business. It is also his opinion that the negative effects of the project on the quality of life of the residents far outweigh any benefits that this project would have.
- Mr. Nelson: stated that much earlier in the year when this ordinance was discussed he paid particular attention to the overlay zoning and the requirements that were requested to be included in the ordinance. One the one side is the property owner who has a right to build on his land. The land is in question to a developer who has spent a lot of time and invested in hopes that this ordinance is passed. On the other side are a minority of the entire population of residents of township that would be directly affected on a daily basis. There has been a lot of rhetoric on both sides on whether the rights of the residents of Mountain Lakes should be taken into consideration. He was elected by the people of Parsippany and not Mountain Lakes, however he is considerate that no man is an island or in this case no plot of land is an island and the plot of land does border Mountain Lakes. When Bellemead purchased this entire tract of land they knew what they were getting into. Using rough numbers, they were given about 1.2 million square feet of office space to build on the entire lot and it was on them on how they wanted to divide it. His understanding is that there is now approximately between 250,000 and 275,000 square feet that is available to be built on this lot right now. They've had over 30 years to build on it and he is wondering why they didn't do it. The only answer he can think of is that this is the most undesirable lot, as far as building goes, on the Waterview tract. The lot is very steep, is odd shaped and has very little Route 46 frontage. He doesn't know how much this developer is purchasing the property for, but he is sure that is a lot of money. In order for this project to succeed it will have to be an extremely dense project. That can't be his main consideration because he has to vote on what's important for the entire Township. At the last meeting, they heard the fiscal review by the Township's Planner and that's what he has to go by. Our Town Planner said that this will bring in about \$142,000 in surplus revenues to the Township and about \$593,000 in school tax as a net positive. He spoke to municipal CFO's and several auditors who looked at our tax rate and what that amounts to. What that amounts to is \$6.00 in savings on the municipal tax bill to the average homeowner in Parsippany and about \$12.00 in savings in school tax per year. The bottom line is that there is too much trying to be squeezed into this plot

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of land. He absolutely believes that the developer has a right to build but this whole project from day one has been handled terribly and he hopes that the developer comes back and engages with the people that will be most affected and tries to work out a compromise that the people of Parsippany can live with and that the developer can make a profit from. Redevelopment is something that will be going on in the future of Parsippany and wishes that the developer will reconsider and not walk away, engage with the residents and hopefully in the future submit another application.

- **Mr. Stanton:** Mr. Nelson said one word and that one word meant everything. That word is compromise and it's just not there. At a meeting a few months ago introducing the overlay, Mary Purzycki stood up and made a comment: when Bellemeade purchased the property, they knew what they were buying. They knew what it was zoned for and she asked that they not vote for the overlay. The people of Intervale and the surrounding area, as well the people all over Parsippany have spoken. Only a small number of people spoke in favor of the project. The major thing to him is the Master Plan and he's not willing to open the door to change it. Once you open that door on the master Plan, then it's open forever. He still hopes that the door will be open to the builder and that the word compromise can come in.

After the vote, Mayor Barberio made the following comments: He wished to reiterate what Councilman dePierro said earlier in regards to the changes in COAH that are coming. As he said all along, he believed that the Whole Foods project was worthy to a public process to determine whether it was good for the town in support of our community. He wished to publicly commend the Planning Board, the public and the Township Council and everybody for being here for the process. Now that the Council has rejected the overlay zone, he is afraid of what is coming next. He will be making a recommendation to the Open Space Committee to purchase this property.

Motion by Mr. dePierro seconded by Mr. Ferrara to approve the Side Bar Letter of Agreement between the Township of Parsippany-Troy Hills and AFS/CME Council 52 Local 2867.

ROLL CALL:

YES – Council Members Carifi, dePierro, Ferrara, Nelson and Stanton

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**SIDE BAR LETTER OF AGREEMENT
Between
THE TOWNSHIP OF PARSIPPANY-TROY HILLS
And
AFSCME, COUNCIL 52, LOCAL 2867**

This Side Bar Agreement between the Township of Parsippany-Troy Hills and AFSCME, Council 52, Local 2867, through their representatives, states as follows:

It is understood and agreed that there shall be no changes in the existing terms and conditions of employment between the parties unless specified below.

1. Article XVII, *Insurance, Health and Welfare*, as contained in parties' Collective Negotiations Agreement for the term January 1, 2011, through December 31, 2014, shall remain unchanged. However, the Township, at its sole and exclusive discretion, reserves the right to assess covered employees a reduced office visit co-payment of only \$5.00 per visit, and a reduced emergency room co-payment of only \$25.00 per visit. The Township's discretion to assess these reduced co-payments, and to discontinue them, shall not be subject to review or to any grievance and arbitration procedure contained in the parties' Collective Negotiations Agreement.
2. The Township reserves the right to revert back to and enforce the office visit and emergency room co-payments as actually set forth in the parties' January 1, 2011, through December 31, 2014, Collective Negotiations Agreement, or any of its successor Agreements, at any time. Any such action on the part of the Township shall not be subject to review or to any grievance and arbitration procedure contained in the parties' Collective Negotiations Agreement.
3. This Side Bar Letter of Agreement also applies to any retiree who currently pays the office visit and emergency room co-payments set forth in the parties' January 1, 2011, through December 31, 2014, Collective Negotiations Agreement, or any of its successor Agreements, or would otherwise have been required to pay them, subject to the terms and conditions set forth herein, including but not limited to the Township's sole discretion to implement and discontinuing assessing the reduced co-payments.
4. The terms of this Side Bar Agreement are to be effective upon its full execution by both parties.
5. The parties hereto represent that they are authorized to bind their respective principals to this Side Bar Agreement.
6. The foregoing terms are agreed to this ____ day of October, 2013.

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PUBLIC HEARING

Motion to open the public hearing by Mr. Nelson seconded by Mr. Carifi.

ROLL CALL:

YES – Council Members Carifi, dePierro, Ferrara, Nelson and Stanton

- Pat Petaccia, 182 Hawkins Ave: asked/commented about the following: requested that they keep Ball and Summit Avenues on the agenda until the roads are completed; requested that the picture of the Mayor at the Fall Festival on the Township website with his campaign sign in the background be removed from the Township website; regarding the resolution which was tabled from the March agenda confirming the appointment of Mrs. Barberio to the Municipal Alliance Committee-does the Council have to approve the Mayor's appointment; regarding the three police officers standing in the back-are they on the taxpayer's time, who's manning the streets and are they being paid overtime; who gave the t-shirts to the union members who were present tonight; requested that the Mayor and Councilman Nelson have a debate.
- Mary Purzycki, 273 Marcel Rd: spoke about the resolution for the money for the Bowsby-Degelleke House, the Littleton Schoolhouse, and the Smith-Baldwin House. As the Vice President of the Historic Preservation Committee she appreciated they fact that they recognize the important and rich history that is in Parsippany by allocating money and keeping those historic sites preserved. She also asked the Council to consider the Mayor's recommendation to purchase the Waterview property with Open Space money.
- Jerry Manning, Rainbow Lakes: questioned Mr. Nelson about issues raised during the mayoral campaign.

Motion to close the public hearing by Mr. Carifi seconded by Mr. Ferrara.

ROLL CALL:

YES – Council Members Carifi, dePierro, Ferrara, Nelson and Stanton

Motion to add Resolution 2013-204 to the agenda by Mr. Nelson seconded by Mr. Carifi.

ROLL CALL:

YES – Council Members Carifi, dePierro, Ferrara, Nelson and Stanton

R2013-204: RESOLUTION OF THE TOWNSHIP COUNCIL OF THE TOWNSHIP OF PARSIPPANY-TROY HILLS REVISING THE RESOLUTION AUTHORIZING THE TOWNSHIP OF PARSIPPANY-TROY HILLS' SCHEDULE OF TOWNSHIP COUNCIL MEETINGS FOR 2013

Motion to approve Resolution 2013-204 by Mr. Carifi seconded by Mr. Nelson.

WHEREAS, at the Township Council adopted Resolution R2013-203 to revise the 2013 meeting schedule for the Regular Meeting scheduled for October 8, 2013 at the Municipal Building, 1001 Parsippany Boulevard to Parsippany Hills High School; and

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WHEREAS, pursuant to the Scheduling Resolution and the Open Public Meeting Act, N.J.S.A. 10:4-6 *et seq.*, the public is invited to attend all Regular Township Council Meetings and Agenda Meetings; and

WHEREAS, it is no longer anticipated that the number of public attendees at the Regular Township Council Meeting on Tuesday October 8, 2013 will be in excess of the permitted capacity of the Municipal Building, thereby presenting a risk to the health, safety and welfare of the public;

NOW, THEREFORE BE IT RESOLVED, by the Township Council of the Township of Parsippany-Troy Hills, County of Morris and State of New Jersey as follows:

(1) That the aforesaid recitals are hereby adopted and incorporated herein as if repeated in full; and

(2) That Resolution Authorizing the Township of Parsippany-Troy Hills Schedule of Township Council Meetings for 2013 be and hereby is revised as follows:

- Regular Township Council Meeting scheduled for October 8, 2013 at 7:30 p.m. shall be held at the Municipal Building, 1001 Parsippany Blvd., Parsippany, New Jersey;

(3) That the Township Clerk is hereby authorized to take the necessary steps to comply with the Open Public Meeting Act notice requirements.

ROLL CALL:

YES – Council Members Carifi, dePierro, Ferrara, Nelson and Stanton

ADJOURNMENT

Motion To Adjourn Meeting By Mr. Carifi Seconded By Mr. Ferrara.

ROLL CALL:

YES – Council Members Carifi, dePierro, Ferrara, Nelson and Stanton

MEETING ADJOURNED: 11:18pm

Respectfully submitted,

Yancy Wazirmas, Township Clerk

Brian Stanton, Council President

Minutes approved: