

Meeting The Regular Meeting of the Harmony Township Committee was called to order by Mayor Tipton. Mayor Tipton made the following announcement: “Adequate notice of this meeting was given in accordance with the Open Public Meetings Act by providing a notice of the meeting to the Star Gazette and The Express-Times, posting a copy thereof on the Township bulletin board and filing a copy thereof in the office of the Municipal Clerk.” The Pledge of Allegiance to the American Flag was led by the Mayor.

Roll Call Present were Mayor Tipton and Committeeman Cornely.

Consent
Agenda Motion by Cornely, seconded by Tipton and carried unanimously to approve the following items on the consent agenda:

- Attorney Report
- Road Department Supervisor
- Engineer’s Report
- Received a complaint from a resident on Harmony Station Road regarding a drainage issue from the adjacent farmer’s field. There is a channel that goes under the road with a ditch. The resident states that there was a rock dam constructed in the channel which backs up the water onto the road into his property. Mr. Weber inspected the site and indicated you would need a NJDEP permit to construct anything in this location. He recommends that the Township notifies the farmer, Jim Smith, and advise him that he provides them with a NJDEP permit or he should remove the rock obstruction from the channel. Mr. Cornely asked if there was a purpose of it being built. Mr. Weber said when he spoke with the homeowner he thought it was built because the farmer was getting erosion in the field. Mr. Fritts also viewed the site, he thinks if the rock pile was maintained and kept clear of debris the water could run through it and still maintain a flow. Mr. Fritts could write him a letter and ask him to maintain it to regulate the flow. It was the consensus to have John write to him and report back next month before getting DEP gets involved.

Mr. Weber discussed communication we received from the railroad division of DOT inquiring about whether Harmony Station Road was public or private to determine if they need to maintain the railroad crossings or not. Mayor Tipton’s understanding that each parcel there owns their respective part of the road with a public right of way through it. Attorney Campbell said people always think the Township maintains the right of ways. Mr. Weber said it could be private or public. Mayor Tipton indicated the township paves and plows it, but each section is technically owned by the property owner. Mr. Weber said title lines typically go to the centerline of the road so the property owners actually own to the centerline, but there is a right of way through that area for the municipality to maintain, but the title still goes to the center. Mayor Tipton asked why are we doing the DOT’s work. It was the consensus to tell the DOT that they will have to do title work to determine whether it’s public or private.

- Zoning Officer Report
Has received about 5 residential solar array requests recently.
- Minutes dated 4/1/14

Harmony Township
Warren County, State of New Jersey
Resolution R:14-25

A Resolution Authorizing L.J. Brill & Associates, P.A., 216 Spring Valley Road Blairstown, New Jersey 07825, To Provide Surveying Services For Block 33, Lot 47 For Farmland Preservation/Open Space Purposes

Whereas, The Township has determined that there is a need to enter into a professional services agreement with L.J. Brill & Associates to provide surveying on Block 33, Lot 47 for farmland preservation purposes; and

Whereas, funds are available for this purpose; and

Whereas, the Local Public Contracts Law (NJSA 40A:11-5 et seq) requires that the resolution authorizing the award for Professional Services without competitive bid and the contract itself must be available for public inspection.

Now, Therefore, Be It Resolved, by the Township Committee of the Township of Harmony, in the County of Warren, State of New Jersey, that:

1. The Township of Harmony hereby authorizes the execution of a professional services agreement with L.J. Brill & Associates as outlined in the April 23, 2014 proposal;
2. A notice of this contract shall be printed in the official newspaper of the Township of Harmony.

I, Kelley D. Smith, Municipal Clerk of the Township of Harmony, do hereby certify the foregoing to be a true copy of a Resolution adopted by the Harmony Township Committee at a meeting held on May 6, 2014.

Harmony Township
Warren County, State of New Jersey
Resolution R:14-26

A Resolution Authorizing Foundation Title, LLC, 65 Madison Avenue, Ste. 250 Morristown, NJ 07960 To Provide Title Services For Block 33, Lot 47 For Farmland Preservation/Open Space Purposes

Whereas, The Township has determined that there is a need to enter into a professional services agreement with Foundation Title, LLC to provide title services on Block 33, Lot 47 for farmland preservation purposes; and

Whereas, funds are available for this purpose; and

Whereas, the Local Public Contracts Law (NJSA 40A:11-5 et seq) requires that the resolution authorizing the award for Professional Services without competitive bid and the contract itself must be available for public inspection.

Now, Therefore, Be It Resolved, by the Township Committee of the Township of Harmony, in the County of Warren, State of New Jersey, that:

1. The Township of Harmony hereby authorizes the execution of a professional services agreement with Foundation Title, LLC as outlined in the April 18, 2014 proposal;
2. A notice of this contract shall be printed in the official newspaper of the Township of Harmony.

I, Kelley D. Smith, Municipal Clerk of the Township of Harmony, do hereby certify the foregoing to be a true copy of a Resolution adopted by the Harmony Township Committee at a meeting held on May 6, 2014.

Sustainable Economic Plan Element Township Planner Fred Heyer distributed to the committee the draft Sustainable Economic Development Plan and the Draft Farmland Preservation Plan for their review. He recommended the committee review the farmland plan and mark it up. He said there is a link between the Farmland Plan and the Sustainable Economic Development Plan. At this time he is asking the Township what direction they would like to see Harmony go. He said the Sustainable Economic Development element requires certain policy decisions and it is important for them to be guided by the community in making some of those key decisions. He said in the simplest term it means most of local government is funded by the property tax, a sustainable community from an economic perspective is one that does not have to regularly raise its tax rate. He said it is a noble objective and a reasonable thing to do. Mr. Heyer said in looking at our community we are a small community at around 2700 population, we are just above the threshold of communities that can live at that size. He gave examples of other types of communities and discussed the economy of scale according to size. At 2700 population we are a small town but not a tiny community, our level where this kind of scale can be self-sustaining without having to take any extraordinary measures. He said communities wrestle with the decision to chase rateables and grow or to try to control their development and try to manage the cost side of their equation. In Harmony we have relatively few jobs and with the exception of Merrill Creek relatively few rateables, but we are fiscally healthy in comparison to most other NJ municipalities. Our cost for service delivery at the Municipal Level is very good. He said our educational costs from the tax levy are relatively high but our contribution in terms of school age children is relatively small. The average value of a home in the township is approximately \$320,000. They looked at the per capita cost of providing services to the home and the per capita cost of educating children and if you assume new development will follow the pattern of old development the breakeven point, the point at which your services tip your housing value, where the house just starts to pay enough taxes to cover the costs is about \$470,000-\$500,000 so Harmony is doing very well because the costs of delivering services to a home, the home would have to be valued at \$470,000, the average value is actually \$320,000 so Harmony is very healthy in that regard. Mr. Heyer said decisions have to be made because depending on which path is followed, you can either do well or get in trouble. Without extensive water and sewer, the options to do intense dollar rich rateable development are virtually nil since most economic development would be confined to buildings that could live on a 2,000 gallon septic tank or less there is a finite building size and you can't get that intense type of development. Also, once you do start chasing rateables it's not necessarily a "free lunch" either. When your assessed value per capita goes up the school aide also goes down. Harmony does not receive a lot of school aide as it is right now. As employment goes up and as relative wealth goes up the obligation to the community to provide affordable housing those numbers go up. The council of affordable housing just released their new housing numbers and Mr. Heyer spoke

with the director of urban policy research who was in charge of preparing the numbers and he said almost across the board the numbers are as low as they are going to get and the Township should be very happy with the numbers, Mr. Heyer then went through the numbers and saw that a rapidly developing town in Monmouth County with lots of development that had an obligation of 12 units and Harmony aggregate number in this current round is 62 units. He said they are looking at now delivering housing with a 10% set a side. In theory to satisfy that number, if it is not a mistake, with a 10% set a side that number would take 620 units to satisfy which would increase the population by 30-50%. He said it is an absurd number especially given the fact that there is no significant infrastructure with no rateable base and all of the highlands land and all of the preserved farmland. He is hoping some of the numbers are in error because some of them are grossly high and some grossly low. He said regardless of what the numbers are, when you start getting into that rateable quest where you are going to have a high value dollar rateable with a relatively small and affluent population those affordable numbers go up. His advice for the community is "it seems to be working pretty well right now". He mentioned there were properties in town that warrant development, the redevelopment area that warrants investment and it is a logical thing to do and it's good planning so good planning shouldn't fall to the wayside to avoid doing rateables, nor should you chase rateables and do bad planning. Mr. Heyer said they were looking at opportunities and a lot of opportunities are to capitalize and expand in the agricultural industry on the tourism industry and some of the natural resources we have in terms of ecotourism. There are some opportunities on an incremental scale on a relatively small scale to do things like B&B's in the villages, etc. With respect to the redevelopment areas a number of options were looked at, it's a very tough place to do business because of its accessibility, its environmental constraints and compatibility with a lot of housing. They have reached out to a few potential developers and are waiting for responses on things they thought might work. The initial thought in terms of the contaminated areas would probably be to do things like flex space and small scale rural industrial ag park where there would be relatively modest buildings and less than 15,000-20,000 sq. ft. probably mostly storage, an opportunity for a local business to expand, the home contractor would get a place to store equipment, etc., those types of rural businesses could capitalize on this space. They are not big employers, or high rateables, but they provide the opportunity to get businesses started and will and can have impervious coverage to act as a cap for any contamination and it's probably the simplest foot in the door to get something started. They are not high quality buildings, they are generally the industrial and storage site buildings. The one good thing about that is if there is every is a shift in the market and the sites do become more attractive it doesn't cost much to take them down and do something higher quality as the sites evolve over time. There are some opportunities along the major roads and in the villages to do things one or two at a time and probably should be doing that but the idea of any kind of wholesale large scale economic development is either not likely to happen because of the market and infrastructure and it probably shouldn't happen give our economic balance because we are ahead of the curve now and can probably stay there for the foreseeable future if we manage the fiscal situation with some degree of caution. If there are things happening in the community, opportunities they are not aware of, assets that are not being fully utilized, and any suggestions about what they should be doing to promote other things Mr. Heyer would like to hear about. Mr. Cornely indicated that the township has been going in both directions as mentioned at the same time so he is not sure of what kind of rateables we should be looking for and the areas were put into redevelopment because primarily because the township owns them and currently they generate no tax

revenue and they need to have some value attached to them. He indicated the Township did purchase the “Dow” development project which stopped a huge development that would of drastically changed the Township and the Committee has tried to keep their fiscal responsibilities as low as possible as far as employees, etc. Mr. Cornely thinks the school budget is more than 2/3’s of what is spent in the township if not more. Mr. Heyer said the municipal budget is less than 11% of the total which means at the local level we are doing very well with how services are delivered from a municipal perspective. Mr. Cornely indicated the Transmix site is being worked on and has about 12-14 acres of usable land there. It is fairly secluded, there has been some people interested but the whole economy has a lot to do with what’s going on. Mr. Heyer cautioned to do things that “naturally” happen here, to start thinking larger scale where you would be looking at perhaps a fairly intense mixed use project with its own wastewater treatment facility you will enter into the next level of development that you have to be careful of especially if you have an unmetable affordable housing obligation because the traditional logic was to provide the sewer allocation to affordable housing units on a priority basis so that brings you into a whole different realm. They are suggesting that any kind of industrial park that can be done on lots that are 1-2 acres with 15,000-40,000 sq. ft. flex space buildings and a single septic that comes in under the gallonage allocation, that would make sense and easier to do. Mayor Tipton asked if he could take time to read through the drafts. He said they recognize the redevelopment strengths and weaknesses. He said mixed use projects are not what they are looking for because of several reasons. The 519 corridor is a good place to pack rateables but the Highlands create a problem on the East side of Rt. 519. He would like to reach out to the local Chamber of Commerce’s for help. Mr. Heyer noted that it appears there are 560 jobs in the Township and 468 of those are done by people who do not live in Harmony. He wondered where these jobs are. Mayor Tipton stated they are not here, must by bad records. Other than the school there are not any businesses that employ that many unless that includes self-employed. These numbers will have to be looked at again because part of the affordable housing calculation includes this number. Mr. Heyer said since we don’t have water and sewer to any large degree we are not as likely to be vulnerable to be affected by the builders remedy because they are looking at much higher densities. Mr. Cornely said any help on the affordable housing is greatly appreciated. Mr. Heyer said the number should be negotiated down. Mayor Tipton said the Township has had higher numbers all along but he doesn’t understand how they think it could be done in Harmony. The committee will look at the plans and make suggestions. Mayor Tipton asked for their help reaching out to potential developers for the redevelopment areas. Mayor Tipton recommended Mr. Heyer discuss the tourism element with resident Julia Iantelli who was present in the audience. Gene Weber recommended talking about the Wastewater Treatment issues at this time to include Mr. Heyer. Mr. Weber distributed additional information to the committee. Gene said we received an additional grant to complete the Wastewater Management Plan. The \$14,000 scope of work that was submitted was in Finelli’s mind sufficient to complete everything. The DEP is saying for them to actually adopt and approve the wastewater plan they need to have something in the scope of work in the grant agreement to guarantee that the Township is going to put in place necessary ordinances required. Mr. Weber said we are mandated to have a wastewater plan, and the planning area and a septic system density that does not violate the nitrate concentration. They want to make sure the Township has funds committed to do this work. He said the densities being talked about is on the paperwork he distributed. He reviewed the calculations with the Committee. He said it comes out to about 270, close to the 260 the Mr. Heyer referred to as a maximum buildout. Mr. Weber

indicated when the wastewater plan was first submitted a map of the future wastewater service area was included. The committee received copies to review and Gene described the areas on the map. When the plan was first submitted designating larger areas for septic systems the DEP said under the current statute they don't allow you to designate wastewater areas anything greater than 2,000 gallons per day, then a 2nd map was submitted and the majority of the areas were removed because they couldn't provide 2,000 gallon per day septic. Mr. Weber said recently there was another statute adopted that does allow Township's to designate areas greater than 2,000 gallons per day on a lot. Mr. Weber needs to know from the Committee does it make sense to go back and designate these areas that could be developed or not. Mr. Heyer said unless you have a large scale developer on board, because it will require a NJDEPES permit, it may make sense if you take a project and digest it into bits of multiple buildings. It was discussed that this could be an incentive for developers and Mayor Tipton would like to look at the maps again. Mr. Weber said the other thing this leads to is the zoning ordinance that would have to be adopted to accomplish this. This was discussed briefly with different scenarios that could be considered. Mayor Tipton asked if this affects the existing lots or is it for subdivisions. Mr. Weber said it's for vacant lots or remainder lots that is considered developable land. He said the first option is you treat everyone the same, the second option is to do a more thorough look at rezoning to do something different in the zoning with the densities allowable. Mr. Weber gave examples of what you could do. Mr. Heyer asked if it applies to homes and commercial properties, which it does. Mr. Weber said the DEP will not approve our scope of work until there is something included in that scope of work that you are going to do something. The Committee will review things and advise Mr. Heyer and Mr. Weber as to what direction they want to go.

Farley
Preservation Motion by Cornely, seconded by Tipton and carried unanimously to adopt the following resolution:

**Harmony Township
Warren County, State of New Jersey
Resolution No. R:14-24**

A Resolution Authorizing Harmony Township To Participate in the Acquisition of Development Rights Of Farley Acres

WHEREAS, property owned by Scot and Norma Stern, known on the official tax map of Harmony Township (the "Township") as Block 33, Lot 47 ("the Property"), consisting of approximately 107.9 acres, was designated as a property to be protected under the Township Farmland Preservation Plan; and

WHEREAS, the owner of the Property are willing to sell their development rights to the Township and County; and

WHEREAS, the State of New Jersey, Department of Agriculture, State Agriculture Development Committee (SADC), provided Harmony township with a grant under the Municipal Planning Incentive Grant (Muni PIG) Program to purchase development rights on active farms within the Township; and

WHEREAS, two fair market appraisals were obtained by the Township to establish the value of the development rights on this property; and

WHEREAS, the SADC certified a market value of \$5,200.00 per acre for the development rights; and

WHEREAS, the Property will include two exception areas; (1) one 2 acre non-severable exception area for a future house site and (2) one severable 0.16 acre around an adjoiners septic encroachment, resulting in a net acreage of the easement of approximately 105.74 acres; and

WHEREAS, the Township has negotiated a purchase price of \$5,200 per acre for the development rights on the Property, or a total of approximately \$549,848.00, the exact compensation to be determined by a final survey; and

WHEREAS, the SADC will provide a grant through the Muni PIG program in the amount of \$3,500 per acre, or a total of approximately \$370,090 for the development rights; and

WHEREAS, the County of Warren will provide a grant in the amount of approximately \$850.00 per acre for the development rights, for a total of approximately \$89,879 and will handle the closing of the easement and will own the easement; and

WHEREAS, contingent upon the aforementioned grants from SADC and the County of Warren being made available for the acquisition, the remaining funds for the purchase of the development rights are available in, and will be paid from the Harmony Township Open Space Trust; and

NOW, THEREFORE BE IT RESOLVED by the Township Committee of the Township of Harmony, County of Warren, State of New Jersey that it hereby authorized participation in the purchase of the development rights for the Property, as follows:

- 1) The Township authorized up to \$5,200/acre the precise amount to be determined after completion of the survey to be paid from the Township's Open Space Trust.
- 2) The above being contingent on grants from the County of Warren and The State of New Jersey through the Municipal PIG Program to cover the balance of funds needed to purchase the development rights.
- 3) Due diligence for the acquisition will be completed by the Township with the assistance of The Land Conservancy of New Jersey. It is anticipated that the cost of due diligence will be funded from the Township's Open Space Trust Fund, and authorized under a separate resolution. It is anticipated that 50% of the cost of due diligence will be reimbursed by SADC from the Township Municipal PIG grant.

BE IT FURTHER RESOLVED by the Township Committee of the Township of Harmony that it hereby authorized the Municipal Clerk, Township Attorney and The Land Conservancy of New Jersey to take all action necessary and appropriate to effectuate the intent and purpose of this resolution.

I, Kelley D. Smith, Municipal Clerk of the Township of Harmony, do hereby certify the foregoing to be a true copy of a Resolution adopted by the Harmony Township Committee at a meeting held on May 6, 2014.

Tablet Purchase Motion by Tipton, seconded by Cornely to purchase (2) tablet type computers from Jewell Computers per their quote up to \$1000.00 for the committee to use for meeting documents among other things. They will be property of the Township. Roll Call: Ayes: Cornely, Tipton. Nays: None.

Shandor's Junkyard Motion by Cornely, seconded by Tipton and unanimously carried to adopt the following resolution:

HARMONY TOWNSHIP
WARREN COUNTY
RESOLUTION NO. 14-23

RESOLUTION MEMORIALIZING THE RENEWAL OF
THE ANNUAL JUNKYARD LICENSE (2014 - 2015)
ISSUED TO JOSEPH SHANDOR, SR. D/B/A
SHANDOR'S USED AUTO PARTS

WHEREAS, Chapter 107 of the Code of the Township of Harmony requires the annual licensure of individuals or firms maintaining, operating or conducting junkyards within the Township of Harmony; and

WHEREAS, Joseph Shandor, Sr. d/b/a Shandor's Used Auto Parts (herein after "Shandor") has previously been issued permits to maintain a junkyard upon Lots 23 and on a portion of Lot 24 in Block 47.01 on the Harmony Township Tax Map, and has now applied for renewal of said license for the 2014 - 2015 term; and

WHEREAS, the Township Committee duly considered Shandor's application at its regular monthly meeting held on April 1, 2014; and

NOW, THEREFORE, BE IT RESOLVED that on this 1st day of April 2014, Joseph Shandor, Sr. d/b/a Shandor's Used Auto Parts is hereby granted a junkyard license effective April 1, 2014 through March 31, 2015 subject to Shandor's compliance with the following terms and conditions:

1. The actual junkyard area shall be confined to Lot 23, Block 47.01 and a portion of Lot 24, Block 47.01 (previously designated as a "staging" area);
2. The area licensed shall be confined to the area heretofore fenced in by a board fence in compliance with Section 107-12 of the junkyard ordinance in order to adequately screen all stored vehicles from public view. The Municipal Engineer's report dated March 28, 2014 noted that several junk vehicles were located in the field on the south side of the property and visible from River Road. Mr. Shandor, who was present at the hearing, agreed to immediately remove the vehicles from view;
3. The only vehicles permitted to be located in front of the fence as aforesaid shall be a maximum of five (5) vehicles awaiting resale as used motor vehicles;
4. No vehicles awaiting disassembly shall be placed in front of the fence as aforesaid;
5. In all other aspects, unless otherwise amended by the conditions contained herein, Shandor shall comply with all requirements as set forth in Chapter 107 of the Township Code;

BE IT FURTHER RESOLVED that while the Township Committee recognizes that used car sales have been conducted by the

applicant at the location for some time of undetermined duration, and that the applicant has obtained a license from the State of New Jersey in order to conduct that aspect of the operation at the subject premises, the Township Committee specifically makes no finding or determination as to whether the sale of used cars or vehicles is in compliance with the Township Zoning Ordinance requirements in as much as that issue may only be properly determined upon proper application to the Harmony Township Land Use Board and, accordingly, the actions of the Township Committee in reviewing the junkyard license shall not be construed or implied in any fashion with regard to that issue, and;

BE IT FURTHER RESOLVED that while the Municipal Engineer's March 28, 2014 report noted that NJDEP has advised that they continue to find this site to be in violation of the NJPDES General Stormwater Permit for Scrap Metal Processing/Automotive Recycling which was issued for this property the Township Committee finds this violation to be an NJDEP enforcement issue.

I hereby certify the foregoing to be true copy of the Resolution duly adopted by the Harmony Township Committee at its regular meeting held on May 6, 2014.

Kelley D. Smith, Municipal Clerk
Township of Harmony

Harmony
Sand and
Gravel

Courtney Morrow, assistant to the Clerk, took position of recording secretary at this time due to a conflict of interest with the Clerk and Harmony Sand and Gravel.

Mr. Scott Wilhelm, Esq., was representing Harmony Sand and Gravel at this time. Mayor Tipton gave the floor to Mr. Wilhelm at this time. Mr. Wilhelm commented before turning the application over to their Engineer. Quoting Mr. Wilhelm, he stated that it seems to him that this application has gone a little far afield than where it was supposed to be. He continued his statement by saying "as you know, they filed an application for a quarry operating permit in accordance with the Harmony Township ordinances and a revised application was submitted on April 17, 2014 which addressed the Township's Engineers January 31, 2014 comments. The Engineer has now made comments dated May 2, 2014 to the April 17th revised application. Quite frankly, before Mr. Weber and Mr. Panannuci get into the specifics, their position is that this letter is really just a position paper on behalf of the adjacent property owners. All that the letter seems to do is address the haul road and the restoration near the haul road and spends little time address the rest of the Township's ordinance. Going back to 1989 when the property was owned by the Hartung's, Harmony Sand and Gravel got a license agreement with the Hartung's and they got approval from the former Land Use Board in 1989 which addressed the haul road. In 2004 Harmony Sand and Gravel went again before the Land Use Board and received a variance which again addresses the haul road. So this contention by the adjacent property owners that the haul road should not be touched without their consent, quite frankly I think is a moot point. It is addressed in the 2004 variance of the Land Use Board. In years past the application of Harmony Sand and Gravel has been pretty much "pro forma", this Township has been very cordial and very gracious in working with Harmony Sand and Gravel and have given them every benefit of the doubt and they appreciate that, but the approval has been "pro forma" because Harmony Sand and Gravel has been doing the job that they needed to. It's not until the Hartung property was sold to Star D Farms that now all of the sudden things are different and it's reflected in the Engineer's review and which quite

frankly again we think is more of a reflection of the adjacent property owners position than it is an objective review on behalf of the Township. Harmony Sand and Gravel has been ready willing and able to make restoration to the adjacent property owners property to the pit but they have been denied permission onto that property for more than a year now so there are a number of comments regarding restoration to the property by the Engineer but Harmony Sand and Gravel has been expressly denied access to that property. I also want to note that the Township Committee has been gracious for more than a year trying to see if the parties can come to some resolution and we are very appreciative of that. I cannot express my appreciation for the latitude that this committee has given them to see if they can address things that are essentially property rights issues that this body doesn't have any jurisdiction to address. We have attempted to do that, we have made offers to purchase the property, we have made offers to mediate this matter with an independent mediator, to mediate this matter in conjunction with a lawsuit that has been filed by Harmony Sand and Gravel regarding a minor subdivision that was approved last year and they have been flatly rejected. That invitation has been made repeatedly made to the Star D Farm counsel's attorney it has been made clear that that invitation to mediate is open and will remain open to try to address all of these matters but again that has been rejected. So with that said I again suggest to you that this is nothing but a property dispute, the Harmony Sand and Gravel has a licensing agreement with the prior owner which is binding upon the current owner and this issue really comes down to has Harmony Sand and Gravel complied with the ordinance regardless of what the adjacent property owner is attempting to say. They purchased the property subject to the public records, easements, rights, variances, everything that went with that property they were aware of what is going on with that property they bought it subject to licensing agreement by the prior owner and now they have turned what is really a pro forma application into a property dispute that quite frankly this body doesn't have the jurisdiction to resolve. While this body cannot direct the parties to do certain things I again on behalf of Harmony Sand and Gravel state to the committee that Harmony Sand and Gravel is ready, willing and able at any time to mediate any and all disputes with their adjacent property owners at any time at the request of the Township Committee".

Mayor Tipton thanked Mr. Wilhelm and asked a couple of questions before the technical side was reviewed. Mayor Tipton asked if before last year's submission was the haul road part of the plan to be removed for 2013. He did not recall it being in the plans. Mr. Panicucci replied yes. Mayor Tipton asked for how many years. Mr. Panicucci stated 2004 was the resolution, and said going before that the haul road was going to be revised as the original plans down to a lower elevation. There was a 260' elevation of the entire operation north and south of the road and it was all to be one big pit with a finished elevation of 260' so the road would of come in dropped down and then go back up. He said in 2004 they got permission to a deeper site. Mayor Tipton asked if they always had consent of the Hartung's for all the prior applications up to 2013 that would changed from 2012 to 2013. Mr. Wilhelm said to his knowledge, he's only been involved a couple of years, the Hartung's gave consent. Mayor Tipton stated that the problem that they face is for a year now we don't have that consent and it is a requirement of the ordinance. That is the complicating part Mayor Tipton stated, he doesn't mean to try to simplify it because he understands they have been through a lot trying work things out but the problem they face is, as Mr. Wilhelm said correctly, this is not their jurisdiction to determine private property rights issues and as with any Land Use Application, Licensing Application, or whatever you want to call it property owner consent is a requirement of the ordinance and that's what they don't have here. Mayor Tipton

recognized there is a dispute whether you need consent because of other documents, documents of record, license agreements, which Mayor Tipton will ask Township Counsel to comment on because he doesn't want to play Lawyer tonight, he is playing Mayor and this is the legal side of it. Mr. Wilhelm said that is their question, what are the bases for the new property owner who knows what the public records are, or who should do due diligence to know what they are and who should be made aware from the seller about licensing agreements if the Township has gone through extensive efforts as far back as 1989 and as recent as 2004 to address these, how does the new property owner just come in and say take it all away because we are not interested. Mayor Tipton indicated they have never looked at any of that stuff until 2013 because you always had the consent of the property owner so it never really got to the level of review and it wasn't until the last year, and frankly, after reading some of the documents and talking about it with counsel, he is at the point that he doesn't know who has what rights and they are not going to make any determinations on that front. Mayor Tipton said luckily everyone has worked with us in saying "we all agree to disagree and we'll work it out" and a year and a half later it's not worked out and we are back at square 1 with the same issue still in dispute. Mayor Tipton asked Attorney Campbell to give some feedback on the situation at this time. Mr. Cornely had no comments. Attorney Campbell indicated that Mayor Tipton addressed most of the concerns, it's just that it's been so long there has been consent so the Township never had to look into whether you had the rights to do what you did so when you provided a restoration plan, as long as the restoration plan addressed restoration, then the Engineer would sign off on it. It wasn't always Mr. Weber, it was Mr. Duveneck in the past, but in 2013 when the property owner said they can't do what the restoration plan says because we have these legal rights, it's not for the Township to say if they are correct or if you are correct, at this point the Township needs to see a plan that provides restoration that they know can happen. At this point, with the dispute still pending, the Township cannot say for sure that the restoration plan can actually be done. The Smith's have documents, Harmony Sand and Gravel has documents, and the Township is not going to take that position but it's almost like you are filing a summary judgment, you have to view the facts in like most favorable to the other side. You have to provide the Township with a plan that says even if the Smith's are right, here is what we can do to reclaim the property because the Township can't take the position that either party is wrong. Mr. Wilhelm commented that they are faced with an obstacle because they are being expressly prohibited from entry upon the property to even address the reclamation. Mayor Tipton said that is a different issue. Ms. Campbell said there is the reclamation of the one pit on their property but for example your plan presented 3 things that you suggested that you would do, and according to Mr. Weber's report #1 he said two involve the haul road, and one involves restoration of the pit. Mr. Weber said that third part about the restoration of pit #2 is possible, he just wants some things changed. Mr. Weber is saying that #1 and #2 at this time, with the Smith's raising the objections they are raising, we don't know that it's possible because you could go to court tomorrow and the judge could say they are right and then the township is stuck with what are we going to do, do you have enough material to base your plan on. If you are basing your plan on something the Township isn't sure it can happen or not, the Township cannot take position on either party so they have to provide us with a plan, or resolve the issues, that doesn't involve their disputes. Ms. Campbell said that is what the Engineer said when he said it was unexcusable, and what he meant at this time if their position is you can't touch the haul road, we aren't saying you can't, but we need to see a plan that doesn't provide for the haul road to be removed until it's worked out, get a court order that says you can, there is something important to

keep in mind that Mr. Weber indicated in his letter and she agrees, if you provided the Township with a plan that did something else, didn't involve the haul road and six months from now it's worked out or you get a court order that says you can touch the haul road, you will not be barred from coming back next year with the plan that has been provided today. It is her recommendation that it can be put into the resolution giving assurances to Harmony Sand and Gravel. Mr. Cornely stated that as a committee there are 2 things they don't want to do, they don't want to shut down Harmony Sand and Gravel and they don't want to have an unresolvable situation going forward. They are in limbo just as much as anyone is. Mayor Tipton said he thinks if they approve it as is they are walking into litigation themselves. It may be they are at a point, since a year ago, it time that a dec action or expedited discovery or limited discovery or immediate summary judgment is the only avenue. The Committee's concern is if they agree with Harmony Sand and Gravel they get sued by the Smith's as a defendant and they are not saying they can't keep mining, but to find a way you can do it or side step the critical dispute. Mayor Tipton said restoration of pit #2 is something he thinks can be worked out if a group sat down and looked at everything and worked it out. He thinks the consent issue is a problem. Mr. Wilhelm agrees with Mayor Tipton it's going to be up to someone to file an action against the other and get it resolved. Mr. Wilhelm said the invitation to mediate remains available until such time someone files an action. Mr. Wilhelm it's the Township's call if they want to push this off and give them an opportunity to file a dec action that is what they will have to do. Mayor Tipton asked Mr. Weber if there was any technical issues he wanted to discuss. Mr. Weber said the main ones were covered, but he summarized his feeling is with regard to restoration of pit #2 he gets the sense that it is a self-policing thing, if he was the owner of pit #2 he would want to have it restored to some extent it is problematic for the town if slopes are steep and not safe, but he sees more of a problem for whoever owns that pit if it doesn't get restored so to him he thinks getting a group together and discuss a reasonable way to do the restoration of pit 2. Mayor Tipton thinks this is helpful to continue to process and nobody disputes that it has to happen as it's been lingering longer than it has to and a practical way should be figured out to get it done. Attorney Campbell commented that the committee cannot keep putting it off and there is a concern the Township doesn't want to stop Harmony Sand and Gravel from mining, however there is a concern that there is material that is going to be needed, if the Smith's prevail, and she thinks there needs to be a tight leash put on it, and deadlines should be set to do some things. One concern is where are they going to get the materials if the haul road cannot be removed. Mayor Tipton asked if that was given any thought. Mr. Panninucci said it has always included the haul road coming out and excavation has occurred on both sides of the haul road up to it to a point that it's stable enough to remain but never with the intent of sloping that back off again, since the approval in 2004 to go deeper the same situation has occurred so the practicality to going back to reslope both sides of the haul road he couldn't even begin to put a number on it. He said they have always included an interim restoration plan to say should whatever reason should operations cease tomorrow, that there would be material in the haul road to help reclaim the rest of the site. The haul road would remain but it would be lowered in elevation to use some of the top material to help reclaim the slopes. Mayor Tipton asked what is recommended to come up with an interim plan. At this time, Ms. Debra Nicholson, attorney representing Star D Farm asked to be heard. Mayor Tipton stated that the application was continued from last month, Attorney Campbell said there needed to be a public portion on the application and she said at this time it is up to the applicant if he wants it to be heard now or during public comment. Mr. Wilhelm indicated "no". Ms. Nicholson advised the

Committee that she was representing Pat and Kelley Smith who are owners of the property. Ms. Nicholson commented it was all very nice to hear the hearts and flowers here, but you have been sitting here for the past year and you have witnessed what counsel has said isn't factually accurate. You were here when we were here a year ago January for the first instance when that very day this license agreement shows up so the hearing could not be affectively conducted and had to be carried and that license agreement turned out to be for another pit on a different area of the property that had been fully mined out. After months and months of saying where is this agreement you finally got a copy from them that we just got that day that was for another piece of the property. We have heard counsel refer to their reliance upon variances as entitlement to a property right. She continued by indicating municipal government can grant variances but it doesn't necessarily mean you can build it out or construct it if you don't have the underlying property right to do it. They there was the issue going forward with the survey. Interestingly enough, we are here for the February 2104 meeting and this survey drops out of the sky for the first time that day, so we can't go forward, had to go back to the drawing board, and as it turns out their survey was wrong and their own deed that they had for all this time that the center line of the haul road is the property line. This has been a constant game going forward. Their counsel said we denied them access to the property to do restoration/reclamation, nothing could be farther from the truth. We asked for a plan that was viable that showed the slopes that the ordinance required that the ordinance requires. Last summer emergency measures had to be done because what their engineer testified to at the earlier 2013 hearing, said yes we have our plans here and we have met all the 3:1 slopes and we proved it wasn't the case, then there was the issue of dumping construction material as part of the fill to restore and there has been no topsoil on things claimed to be already restored. So there has been continual issues, we have asked for a plan that can be done that will show us what you're going to do, when you are going to do it, and how it's going to be done. And a certificate of clean fill was requested for the material coming onto the property and none of that has happened. There has been no denial, there has only been a request for the rights and entitlements my clients have under your ordinances for the restoration to happen in a legal fashion. We have been continually seeking whatever information they have that would indicate that this application can go forward based on their contentions. You have been provided with the purported license agreement, you've all seen it and it doesn't apply to this piece of property. You have heard them testify that they are relying on variances that were granted by this municipality as an entitlement to take out the haul road but we've now given you their deed that shows that they only own half of the haul road. My clients purchased the property, met with the previous owner, were told and shown that there was no existing license agreement on the property, that the property had been mined out and that restoration should be occurring and that's what their expectations were. None of that has happened, yet being here a year ago, all this came up and we've worked this entire year to try to get some truths and fact's understood and now we are back here again, and as a result of this survey issue I wrote to counsel, we resolved the survey and their engineers have conceded that the deed says that the centerline, and they submitted to the municipality a revised survey showing where the property line is. Those are the facts, whether they want to go to a judge to have those facts, but they keep saying they offer to mediate, mediate, mediate. There isn't anything to mediate and that is a factually situation that's capable of summary judgment, they have an inaccurate application in front of you again. You have a copy of my correspondence when they submitted it previously that they had just taken a copy of the previous year's plans, hadn't updated the owner's list, didn't have our consent to file the

application, used product that is on our half of the road on our property to show that they can do restoration. Their bonding is wholly inadequate, and right now if this operation shut down, the town has extraordinary exposure as does my client because there is no money on deposit with this bond to restore even our property let alone their property. The municipality has an obligation to itself and to the landowners and tax payers of this township in addition to my clients under your ordinance to make sure restoration is thoroughly and appropriately bonded for. We do not have any calculations that show there is material on site, it's clearly not been in their budget or cost estimates throughout this and there has been an intentional tactic to delay, delay, delay because they know #1 they didn't own the haul road, #2 they know they don't have enough product left and #3 they don't want to expend the million dollars it's going to take to restore our property and bond for that let alone what they have to restore on their own. Enough is enough, this is a problem and you have an obligation to not allow to remove any more product until they can prove to you that they are in compliance with the ordinance and they are capable of doing this restoration both economically and with the necessary material. Those facts have been put in front of you by your own engineer. Their numbers submitted with this application are not correct, the plans they have submitted are not correct and this can't continue. They need to be stopped. We've been the ones that have been the greater fool theory, okay, we can just give them this document and delay them for 3 months this hearing, and we can give them this survey and delay them for 3 months of this hearing, and we can submit a couple of revised plans but nothing subtenant on the revised plans and we can still say we are going use all this material on this property and we can still give bogus numbers on a bond. The municipality has a huge exposure in this beyond what my clients are facing and to allow them to remove one more cubic yard of material without assurances, without calculations, confirmed by the engineer that they conform and protect the municipality, I think you've got a bigger problem. I put that in front of you, you all say very happily we don't want to stop you, but for a year and a half they have done it to themselves by willful planned thought-out deceptions, no if's ands or buts, but we have the documents to show the continuing course of conduct. Bad faith cannot be rewarded. Ms. Nicholson thanked the committee at this time.

Mr. Wilhelm responded by saying that if all that argument by Ms. Nicholson was based on fact it would have been a wonderful argument but there are gross misrepresentations of fact, there is a licensing agreement, it does apply to the property but that is something for another body to decide so you can't take her pronouncements that because she wants it to be that way for her clients that it is true. I have emails that I am told that Harmony Sand and Gravel is not permitted on her client's property so that is a gross misrepresentation that they have not been denied access. They have been expressly and repeatedly denied access and this bond is part of the Smith's plan to try to run Harmony Sand and Gravel out of business, let's just try to get the township to increase the bond so it's not economically feasible. If they were able to get onto the property and do restoration we wouldn't have to have a million dollar bond that they think they need. There has been repeated, and she did not deny that the invitation to mediate is out there, they chosen not to. They are saying we are acting in bad faith, is laughable. We are prepared to sit down with an independent mediator to discuss each and every issue in a good faith effort to resolve this matter. That is my brief response to that grossly factually unfounded facts.

Mayor Tipton said the consent issues are for a court. Mayor Tipton asked what do Mr. Weber and Ms. Campbell recommend as options for moving

forward from today, knowing there is the consent issue which is for a court, what can be done for some sort of compromise or interim plan. Ms. Campbell had spoken to Mr. Weber and they came to a recommendation that she feels is a compromise. She does not recommend that they revoke their permit at this time, and she does not recommend that it is left to play out for ever. She recommends that it is adjourned for a month and allow Harmony Sand and Gravel to address their concerns in Mr. Weber's letter and especially the haul road issues and if the parties want to get together to work out the third issue with Pit 2 she thinks that can be done and incorporated as well but she thinks the 2 issues with the haul road that by next month the township should see a new plan that addresses that. She asks that they provide it by next month's meeting, give Gene 2 weeks to review it and he could give his comments and then the following month in July it could be addressed further. If in the interim, a dec action is filed, a lawsuit is filed they may be able to make some adjustments but the only hesitation she gives the committee is there is already one lawsuit between Harmony Sand and Gravel and The Township Land Use Board that was filed awhile ago and she is familiar with it because there are some county issues that she is familiar with and it has been lagging and was about to go into default before something else was filed so she would just caution the township not to say a lawsuits been filed and then allow 6 more months to go by. That doesn't mean you can't adjust your timelines, I would just make the recommendations that for now that is what you go with, and if more information is brought that a lawsuit has been filed, or there is a case management order that maybe you can make some adjustments to go forward. Mr. Weber agrees and with respect to the haul road he said it has to be litigated, adjudicated or whatever so we know if there is permission or not to deal with the haul road or we have to have a scenario presented by Harmony Sand and Gravel that the township could in the event that they shut down do the restoration while leaving the haul road in place. Mayor Tipton asked about the restoration bonding. Mr. Weber said since the haul road cannot be touched or disturbed at this time, the bond estimates done in the past assumed the haul road could be used there wouldn't be as much fill available so the bond amount would have to go up. If they walk away, you need to restore with the haul road in place and if a judge determines they have no rights to it there has to be funds in place to do the work. Ms. Campbell indicated Mr. Weber had recommended two separate bonds. One was for pit 2 and one was for everything else. Mayor Tipton recommended having a meeting to discuss restoration of pit 2 with representatives from each party and a committee representative. Mayor Tipton advised he cannot tell either party what to do but he would like to sit down with everyone. Each party agreed to a meeting and to discuss restoration and bonding issues. Mayor Tipton asked Mr. Weber to look at the bond and make recommendations to the Committee. A meeting was scheduled for May 12th at 5 p.m. with all parties involved.

Mayor Tipton recommended that the committee requests that either party file an action in the court and/or new or revised plans need to be submitted by the June 3rd meeting. Mayor Tipton said they will work on two tracks. Deal with the restoration on one track and the ownership issue if they don't have revised plan by the June meeting or a dec action is filed than it will have to be dealt with at that time. Attorney Campbell said if neither action is completed than either party should appear. If plans are provided then it would be heard in July.

O:14-4 Motion to open the public hearing on Ordinance No. O:14-41 was made by Tipton, seconded by Cornely and unanimously carried.

No public comment at this time was heard.

Motion by Cornely, seconded by Tipton to close the public hearing on Ordinance No. O:14-41 was carried unanimously.

Motion to adopt O:14-41 an Ordinance titled “An Ordinance Of The Township Of Harmony, County Of Warren, State Of New Jersey To Amend, Revise And Supplement Chapter 50 “Alcoholic Beverages”, Article 1 “Licensing”, Section 1, “License Fee Designated”, Of The Code Of The Township Of Harmony To Increase The Plenary Retail Distribution Licensing Fee was made by Cornely, seconded by Tipton and carried by roll call vote: Ayes: Tipton, Cornely. Nays: none

Vouchers Motion by Cornely, seconded by Tipton and carried by roll call vote to approve vouchers for payment as presented by the Chief financial Officer.

Public
Comments None.

Adjourn Motion by Cornely, seconded by Tipton and carried unanimously to adjourn the meeting at this time.

Kelley D. Smith, Municipal Clerk