Municipal Building, Harmony, NJ
Regular Committee Meeting
September 2, 2014
6:00 p.m.

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, Deputy Mayor Yamrock and Committeeman Cornely.

NJSP — New Jersey State Police was present for any questions or concerns.

Girl Scouts — Harmony Township Girl Scout Troop 95082 presented their Silver Award projects. A reading area outside of the Harmony Township Elementary School. They are working on getting donations for the site. An additional project being installed at the school by Girl Scouts is a project to fix up and install new things at the "blacktop game area" at the Harmony Township School. An open house is planned for September 27th from 9-4. All are invited to attend.

Consent Agenda — Motion by Yamrock, seconded by Cornely and carried unanimously by roll call vote to approve the following items on the consent agenda:

- Engineers' Reports; Mr. Weber provided a memo regarding the Harmony Compost site. It was the start of an off tract improvement agreement which the committee needs to review. It was carried to the next meeting.

  Mr. Duveneck gave an update on the Blue Acres demolitions. He updated the committee on ENR who is contracted to do the final demolition. He spoke with Attorney Campbell who agreed she should send a letter to them.

  Mr. Duveneck indicated he received a call from Mr. Weber regarding Harmony Sand and Gravel and the earthen berm along Roxburg Station Road and any knowledge of what was to happen with that berm and if he had a recollection of past conversation with Harmony Sand and Gravel or their consultant regarding what was to happen with that area. Mr. Duveneck said to his knowledge he does not recall any conversation. He said any changes to the restoration plan really has to go back to the Land Use Board because they are the approving agency and they are the once that can change any substantial features from the restoration plan that was approved. In his opinion they would have to go there first.

- Attorney Report; Reported that the assignment of the tax sale certificate was received today so it will be recorded and foreclosure proceedings will begin. Attorney Campbell approved the ROW that was presented by Rotundi. It is going to be recorded by Mr. Norris. Reported that she received a contract from the NJCF. It was reviewed and she approved it for authorization by the Township. Motion by Yamrock, seconded by Cornely and carried unanimously to authorize the Mayor to execute this contract.

  Merrill Creek Tax Appeal will be going to trial in February.

- Zoning Officer John Fritts indicated he sent out 2 letters regarding weeds.

Resolutions:

Township of Harmony
Warren County, State of New Jersey

Resolution R:14-37
RESOLUTION GRANTING APPROVAL OF THE PURCHASE OF A DEVELOPMENT EASEMENT ON THE J&K SMITH FARM #1 BLOCK 37 LOT 17.02 IN HARMONY TOWNSHIP 49.85 ACRES

WHEREAS, the Warren County Agriculture Development Board (WCADB) has determined that the property known as the J&K Smith #1 Farm, owned by James & Karen Smith located on Block 37 Lot 17.02 in Harmony Township, consisting of approximately 49.85 (3%+) acres, has available for purchase a development easement in accordance with the requirements of the farmland preservation program; and

WHEREAS, pursuant to N.J.A.C. 2:76-17.9A(b) on February 10, 2014 it was determined by the State Agriculture Development Committee (SADC) that the application for the sale of a development easement was complete and accurate and satisfied the criteria contained in N.J.A.C. 2:76-17A.9(a); and

WHEREAS, pursuant to N.J.A.C. 2:76-17A.11, on June 26, 2014 the State Agricultural Development Committee has certified a development easement value of $6,000 per acre based on zoning and environmental regulations in place as of 1/1/04 and $2,900 per acre based on zoning and environmental regulations in place as of the current valuation date of April 09, 2014 with an estimated total value of $299,100; and

WHEREAS, the New Jersey Conservation Foundation (NJCF) has obtained a maximum grant of $72,282.50 from the USDA Natural Resources Conservation Service (NRCS) Agricultural Conservation Easement Program (ACEP) on said tract; and

WHEREAS, the ACEP grant contribution via NJCF is up to 50% of the estimated current easement value of $2,900 per acre pending Federal Certification from an appraisal which recognizes the impervious surface restriction and which current easement value may change based on new evaluation date; and

WHEREAS, the property is part of the approved Warren County Planning Incentive Grant application and is funded by the Warren County Open Space, Farmland, Recreation and Historic Preservation Trust Fund; and

WHEREAS, the tract would encourage the survivability of production agriculture in Harmony Township, and said tract falls within a predetermined County Agricultural Development Area and is in the West Project Area and property is located in the Highlands Planning Area; and

WHEREAS, the pressures from development have significantly heightened the degree of imminence of change of land use from productive agriculture to non-agriculture uses; and

WHEREAS, preliminary approval for the purchase of development rights on this farm has been granted by the State Agricultural Development Committee; and

WHEREAS, the SADC is expected to grant final approval for funding amount on said application at its September 25, 2014 meeting; and

WHEREAS, the NJCF ACEP grant funds of $72,282.50 will be applied to the County's cost share, and the County's cost share shall be $32,402.50 with the ACEP Grant applied; and

WHEREAS, in the event the NJCF ACEP grant funds become unavailable, the County's cost share shall be $104,685.00 including the 3% buffer for final surveyed acres; and

WHEREAS, pursuant to N.J.A.C. 2:76-17.13 on September 18, 2014, the Warren County Agriculture Development Board is expected to approve the funding for the development easement with estimated cost share with no cost share contribution by Harmony Township as follows: SADC $3,900 per acre, NJCF ACEP Grant $1,450 per acre, Warren County $650 per acre.

WHEREAS, the WCADB approval will include the following conditions:

a. No existing dwellings on premises
b. No existing agriculture labor housing on premises
c. One non-severable exception of 1 acre for future single family residence restricted to one residential unit
d. No Residual Dwelling Site Opportunities (RDSO's)
e. No preexisting non-agricultural uses on premises
f. Access easement to be determined in title search
g. No proposed trails
h. Maximum impervious surface limitation of 6.67 % available for impervious cover on the lands being preserved outside of the exception area
i. SADC funding from Base grant, competitive round or both
j. Warren County is requesting SADC funding for a 3% buffer on the final surveyed acreage

NOW THEREFORE BE IT RESOLVED, by the Township Committee of Harmony as follows:

The Township Committee hereby grants permission for the purchase of the development easement by the County of Warren under the Farmland Preservation Act as set forth above and will not be participating in cost share.

Roll Call Vote: Ayes: Tipton, Cornely, Yamrock. Nays: None

I hereby certify the above to be a true copy of a Resolution adopted by the Township Committee of the Township of Harmony on the date above-mentioned.

_____
Kelley Smith, Municipal Clerk

Township of Harmony
Warren County, State of New Jersey

Resolution R:14-38
RESOLUTION GRANTING APPROVAL OF THE PURCHASE OF A DEVELOPMENT EASEMENT ON THE J&K SMITH FARM #2 BLOCK 37 LOT 17 IN HARMONY TOWNSHIP 53.56 ACRES

WHEREAS, the Warren County Agriculture Development Board (WCADB) has determined that the property known as the J&K Smith #2 Farm, owned by James & Karen Smith located on Block 37 Lot 17 in Harmony Township, consisting of approximately 53.56 (3%+) acres, has available for purchase a development easement in accordance with the requirements of the farmland preservation program; and

WHEREAS, pursuant to N.J.A.C. 2:76-17.9A(b) on February 10, 2014 it was determined by the State Agriculture Development Committee (SADC) that the application for the sale of a development easement was complete and accurate and satisfied the criteria contained in N.J.A.C. 2:76-17A.9(a); and

WHEREAS, pursuant to N.J.A.C. 2:76-17A.11, on June 26, 2014 the State Agricultural Development Committee has certified a development easement value of $5,500 per acre based on zoning and environmental regulations in place as of 1/1/04 and $2,500 per acre based on zoning and environmental regulations in place as of the current valuation date of April 09, 2014 with an estimated total value of $294,580; and

WHEREAS, the New Jersey Conservation Foundation (NJCF) has obtained a maximum grant of $66,950.00 from the USDA Natural Resources Conservation Service (NRCS) Agricultural Conservation Easement Program (ACEP) on said tract; and

WHEREAS, the ACEP grant contribution via NJCF is up to 50% of the estimated current easement value of $2,500 per acre pending Federal Certification from an appraisal which recognizes the impervious surface restriction and which current easement value may change based on new evaluation date; and

WHEREAS, the property is part of the approved Warren County Planning Incentive Grant application and is funded by the Warren County Open Space, Farmland, Recreation and Historic Preservation Trust Fund; and

WHEREAS, the tract would encourage the survivability of production agriculture in Harmony Township, and said tract falls within a predetermined County Agricultural Development Area and is in the West Project Area and property is located in the Highlands Planning Area; and

WHEREAS, the pressures from development have significantly heightened the degree of imminence of change of land use from productive agriculture to non-agriculture uses; and

WHEREAS, preliminary approval for the purchase of development rights on this farm has been granted by the State Agricultural Development Committee; and

WHEREAS, the SADC is expected to grant final approval for funding amount on said application at its September 25, 2014 meeting; and

WHEREAS, the NJCF ACEP grant funds of $66,950.00 will be applied to the County's cost share, and the County's cost share shall be $32,136.00 with the ACEP Grant applied; and

WHEREAS, in the event the NJCF ACEP grant funds become unavailable, the County's cost share shall be $99,086.00 including the 3% buffer for final surveyed acres; and

WHEREAS, pursuant to N.J.A.C. 2:76-17.13 on September 18, 2014, the Warren County Agriculture Development Board is expected to approve the funding for the development easement with estimated cost share with no cost share contribution by Harmony Township as follows: SADC $3,650 per acre, NJCF ACEP Grant $1,250 per acre, Warren County $600 per acre

WHEREAS, the WCADB approval will include the following conditions:

a. No existing dwellings on premises
b. No existing agriculture labor housing on premises
c. One non-severable exception of 1 acre for future single family residence restricted to one residential unit
d. No Residual Dwelling Site Opportunities (RDSO's)
e. No preexisting non-agricultural uses on premises
f. Access easement to be determined in title search
g. No proposed trails
h. Maximum impervious surface limitation of 7 % available for impervious cover on the lands being preserved outside of the exception area
i. SADC funding from Base grant, competitive round or both
j. Warren County is requesting SADC funding for a 3% buffer on the final surveyed acreage

NOW THEREFORE BE IT RESOLVED, by the Township Committee of Harmony as follows:

The Township Committee hereby grants permission for the purchase of the development easement by the County of Warren under the Farmland Preservation Act as set forth above and will not be participating in cost share.

Roll Call Vote: Ayes: Tipton, Cornely, Yamrock Nays: None

I hereby certify the above to be a true copy of a Resolution adopted by the Township Committee of the Township of Harmony on the date above-mentioned.

_____
Kelley Smith, Municipal Clerk

Tree Trimming

The DPW supervisor received a call from the school bus company regarding trees hitting the buses on Country Club Lane. He recommends that they be trimmed. Mr. Cornely recommended that we notify the residents and the trees in the ROW will be

trimmed. Mr. Cornely asked the Municipal Clerk to notify the residents that the work will be performed in the next few weeks.

DOT Grants — New funding round available. Discussed applying for Ridge and Millbrook which were denied last year. It was the consensus to authorize Finelli to re-apply for these two roads this year.

Parking/ Speed Limit — Attorney Campbell updated the Committee on her recommendations for the speed limit on Merrill Creek and her parking in Brainards recommendations after she did a thorough inspection of the roads in Brainards and speaking with several residents in the area.

Attorney Campbell also recommend changing the "Nemeth property" to allow some parking for people accessing the river through the green acres properties. It could be posted as no access after a certain time and the NJSP would be able to enforce the area better and also be able to access the area better. It was the consensus of the committee to restructure this area as recommended.

Rick Cornely will look at the area with Jim Fox and plan on doing the work in the spring.

O:14-6 — Motion by Yamrock, seconded by Cornely and carried unanimously by roll call vote to introduce by title only the following ordinance:

ORDINANCE NO. 14-6
HARMONY TOWNSHIP
WARREN COUNTY, NEW JERSEY

ORDINANCE OF THE TOWNSHIP OF HARMONY, COUNTY OF WARREN, STATE OF NEW JERSEY TO AMEND, REVISE AND SUPPLEMENT CHAPTER 156 "VEHICLES AND TRAFFIC," SECTION 14, "PARKING PROHIBITED AT ALL TIMES ON CERTAIN STREETS," SECTION 33 "SPEED LIMITS" AND SECTION 39 "HANDICAPPED PARKING," OF THE CODE OF THE TOWNSHIP OF HARMONY TO ADDRESS PARKING ISSUES IN BRAINARDS AND LOWER THE SPEED LIMIT NEAR MERRILL CREEK.

WHEREAS, the Committee of the Township of Harmony has received numerous complaints from the residents of the Brainards section of the Township to assist with parking issues;

WHEREAS, the Township Committee has received a request from Merrill Creek to set a 25 mph speed limit on Merrill Creek Road; and

WHEREAS, the Committee of the Township of Harmony, County of Warren, State of New Jersey, has determined that Chapter 156 "Vehicles and Traffic," of the Code of the Township of Harmony shall be amended, revised and supplemented to address all of these requests.

NOW, THEREFORE, BE IT ORDAINED by the Committee of the Township of Harmony, County of Warren, State of New Jersey that Chapter 156 "Vehicles and Traffic," of the Code of the Township of Harmony shall be amended, revised and supplemented as follows:

Section 1:

§ 156-14. Parking prohibited at all times on certain streets.

No person shall park a vehicle at any time upon any streets or parts thereof described:

Name of Street	Side	Location
Alpha Street	Both	Entire length
Brainards Road	Both	From Harmony Station Road to a point 2,250 feet southeast thereof
Front Street	Both	Entire length
Harmony Station Road	Both	From Brainards Road to a point 2,600 feet southwest thereof
Pine Street	Both	Entire length
Railroad Avenue	Both	Entire length
Third Street	Both	From Broad Street to Alpha Street
Third Street	West side only	From Alpha Street to a point 150 ft. from the end of the roadway.
Third Street	East side only	From a point 150 feet from the end of the roadway to the end of the roadway.

Section 2:

§ 156-33. Speed limits.

A. The speed limits for both directions of traffic along the streets or parts thereof described below and made a part of this chapter are hereby established at the rate of speed indicated.

B. Regulatory and warning signs shall be erected and maintained to affect the designated speed limits.

Name of Street	Speed Limit (mph)	Limits	Approval Date
Buttonwood Lane	30	Entire length	6/10/88
Esposito Road	30	Entire length	6/10/88
Fiddler Elbow Road	35	Entire length	2/28/86

Fox Farm Road (Zone 1)	35	From southerly Harmony Township-Lopatcong Township line to 5,280 feet north of the southerly Harmony Township-Lopatcong Township line	5/2/90
Fox Farm Road (Zone 2)	50	From 5,280 feet north of the southerly Harmony Township-Lopatcong Township line to Richline Road	5/2/90
Harmony Station Road	40	Entire length	6/10/88
Merrill Creek Road	25	Entire length	10/7/14
Wester/Decker Road	25	From Fox Farm Road to Harmony- Brass Castle Road (County Road 647)	8/22/90

Section 3:

B. Handicapped parking on streets for private residences. In accordance with the provisions of N.J.S.A. 39:4 197.6, the following on-street locations are designated as handicapped parking spaces in front of private residences occupied by handicapped persons. Such spaces are for use by persons who have been issued special identification cards or plates or placards by the Division of Motor Vehicles, or a temporary placard issued by the New Jersey State Police. No other person shall be permitted in these spaces.

Street	**Permit Number**	**Location**
Broad Street	TBD	1047 Broad Street

Section 4:
Severability. The various parts, sections and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder off this Ordinance shall not be affected thereby.

Section 5:
Repealer. Any ordinances or parts thereof in conflict with the provisions of this Ordinance are hereby repealed as to their inconsistencies only.

Section 6:
Effective Date. This Ordinance shall take effect upon final passage and publication as provided by law.

NOTICE

NOTICE is hereby given that the foregoing Ordinance was introduced to pass on first reading at a regular meeting of the Committee of the Township of Harmony held on September 2, 2014, and ordered published in accordance with the law. Said Ordinance will be considered for final reading and adoption at a regular meeting of the Township Committee to be held on October 7, 2014 at 6 p.m. or as soon thereafter as the Township Council may hear this Ordinance at the Municipal Building, 3003 Belvidere Road, Phillipsburg, New Jersey, at which time all persons interested may appear for or against the passage of said Ordinance.

O:14-7 Motion by Tipton, seconded by Yamrock and carried unanimously by roll call vote to introduce by title only the following ordinance:

Harmony Township
Warren County, New Jersey

ORDINANCE NO. 14-7

AN ORDINANCE OF THE TOWNSHIP OF HARMONY, COUNTY OF WARREN, STATE OF NEW JERSEY AUTHORIZING THE LEASE FOR AGRICULTURAL PURPOSES OF CERTAIN PROPERTY OWNED BY THE TOWNSHIP AND NOT REQUIRED FOR PUBLIC PURPOSES AND MORE COMMONLY KNOWN AS A BLOCK 45, LOTS 2, 3 & 24.

WHEREAS, the Local Lands and Buildings Law, N.J.S.A. 40A:12-14 authorizes the lease by municipalities of any real property, capital improvements or personal property or interests therein, not needed for public use to the highest bidder by open public lease at auction or by submission of sealed bids after the required newspaper advertisements; and

WHEREAS, the Township of Harmony is the owner of certain real property known as Block 45, Lots 2, 3 & 24; and

WHEREAS, said property is not needed for public use, and is currently leased to a local farmer for agricultural purposes; and

WHEREAS, the Township Committee has determined that it is in the best interest of the Township continue to lease the property for agriculture purposes; and

WHEREAS, the property known as a portion of Block 45 Lots 2, 3 & 24 was offered for lease to the highest bidder at an open public auction, pursuant to N.J.S.A. 40A:12-14. The auction was held on September 2, 2014 at 4:30 p.m. at the Municipal Building, 3003 Belvidere Road Philipsburg, New Jersey.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Committee of the Township of Harmony, County of Warren, State of New Jersey, that:

The lease of the subject property was offered for public bidding and the highest responsible bidder was Down 2 Earth Farms of Harmony, New Jersey with a bid of $150 per acre per year for a total of five years.

BE IT FURTHER ORDAINED that the property shall be leased in accordance with the terms enumerated in the form lease advertised and a copy of the signed lease shall be available for inspection at the Township Municipal Building.

Section 2:
If any section or provision of this Ordinance shall be held invalid in any court of competent jurisdiction, the same shall not affect the other sections or provisions of this Ordinance, except so far as the section of the provision so declared invalid shall be inseparable from the remainder or any portion thereof.

Effective Date.

This Ordinance shall take effect upon final passage and publication as provided by law.

NOTICE

NOTICE is hereby given that the foregoing Ordinance was introduced to pass on first reading at a regular meeting of the Township Committee of the Township of Harmony held on September 2, 2014, at 6:00 PM and ordered published in accordance with the law. Said Ordinance will be considered for final reading and adoption at a regular meeting of the Township Committee to be held on October 7, 2014, at 6:00 PM, or as soon thereafter as the Township Committee may hear this Ordinance at the Municipal Building, 3003 Belvidere Road, Phillipsburg, New Jersey, at which time all persons interested may appear for or against the passage of said Ordinance.

_____
Kelley Smith, Municipal Clerk

O:14-5 Public hearing and consideration of Ordinance 14-5; An ordinance Appropriating the sum of not more than $4,600 from the capital improvement fund of the general capital account in connection with the costs attributable to the replacement of computer equipment which includes a HP server and hot swap backup system.

Motion by Tipton, seconded by Yamrock and carried unanimously to open to the public for comments.

There were no comments at this time.

Motion by Tipton, seconded by Yamrock and carried unanimously to close to the public.

Motion by Yamrock, seconded by Tipton and carried unanimously to adopt ordinance O:14-5.

Emergency Services Discussion on the Emergency Services Donation Distribution was carried to October.

Sustainable Economic Plan Element Discussion on the Sustainable Economic Plan Element was carried to October.

HS&G Municipal Clerk stepped down as recording secretary. Courtney Morrow will be recording this portion of the meeting. Engineer Weber referenced his August 28, 2014 report. Mr. Weber reviewed his comments. There were some minor items he would like to see on the plan. Items 5-9 are significant things he would like to see on the plans. Mr. Weber would like the delineation of top soiling, and fertilizing and seeding must take place. He would like to see the topsoil piles for restoration of pit 2. Mr. Hummer indicated to Mr. Weber that he would like to use borrow from an area on site rather than from somewhere off site. This should be designated on the plan. Mr. Weber also would like to see on Pit 2, Roxburg side of the pit, since last set they amended the slopes coming down to Roxburg Road that vary between 2-2.5:1 as opposed to the 3:1. Mr. Weber commented he hasn't seen anything in the previously talked about restoration plan that would make him believe that the slopes should be anything other than what the Township Ordinance says which is 3:1 to do the restoration. This

section of Pit 2 should be redone to show the 3:1 slopes. This will require more fill and is already in his bonding estimate that he has done. He said he did not think that any of this would prevent the committee from acting on the permit tonight if they were considering it. Mr. Weber said the one problem related to the bonding is based upon what he was provided he was able to develop a bonding estimate for restoration of the front pit (3 sides of it) and for pit 2 (3 sides of it) but not for the haul road which would be the 4th side of both pits. The information in the plans that were provided on the haul road is the same information that was previously provided where they are proposing to actually lower the elevation of the haul road which would limit the slopes they would have to provide, but as it was indicated to them in the past, that is not possible at this time until the litigation over what can be done with the haul road is resolved. With that being the case there is no bonding estimate for that part of it. Mr. Weber said the choices are, since the information that was asked for was not provided, the Committee could choose not to issue the permit at all or the Committee could request that information, not issue the permit for another month until the information is provided that is needed for the estimate of the haul road for the 3:1 where the haul road exists, or move forward with the permit and require the bond for the front pit and for pit 2 and have no bond for the haul road. The Committee would have to assess what the risk might be for not doing that. Mr. Weber said he does not see it as a huge risk to the Township if they didn't want to go for the bond on the haul road at this stage and could be addressed at next year. Mr. Weber said the previous estimates for bonds took into consideration the fact that they could reduce the elevation of the haul road. Mayor Tipton asked Mr. Weber if he had any discussions with the applicants engineer or the applicant regarding all of the items in his report. Mr. Weber said no because his report got out late because he met with the applicant last Wednesday. He has not spoken with them since he issued the report. Mayor Tipton asked the applicant to address Mr. Weber's report at this time. Mr. Wilhelm, representing Harmony Sand and Gravel, stated "first off", he was in the hallway and heard Mr. Duveneck say something about Harmony Sand and Gravel to the Committee and he did not hear what was said so he asked what was said. Mayor Tipton indicated Mr. Duveneck is a Township Engineer, has been for several years and is authorized to do work and was asked to attend tonight. Mayor Tipton indicated he does engineering work for our Blue Acres program, and he was referred to as someone who had a conversation with Harmony Sand and Gravel during the time he was the only Township Engineer. Mr. Duveneck was asked about a conversation he may have had with HS&G engineer regarding the berm along Roxburg Station Road. Mayor Tipton said that HS&G indicated that the engineer at the time had agreed that the berm would remain. Mayor Tipton clarified with Mr. Wilhelm that Mr. Duveneck indicated he did not recall having that conversation. Attorney Campbell said Mr. Duveneck also stated that if that conversation was ever held, he also stated that the Land Use Board was the correct forum to make those changes if approved, not the Committee. Mr. Fritts asked if there are trees planted on the berm. He remembered years ago there was a discussion about how many trees to plant because the berm was going to be removed. Mayor Tipton asked Mr. Weber if the berm was an issue of contention. Mr. Weber said as far as he can gather, the purpose of the berm was to protect that side of the quarry. In about 2005 it was determined that evergreens should be planted on that berm so the berm is still in place and there is a 50' wide strip with evergreens planted, the issue is the degree of slope that needs to be maintained for the restoration beginning at where that berm stops. He said there is 2005 correspondence that he saw that referred to a restoration plan that was developed and he looked at that plan and it has some inaccuracies in it and it is not definitive and does not sway him one way or the other whether the berm was meant to be 3:1 or 2:1

coming down from Roxburg Road. Mr. Weber is deferring back to what the ordinance says that the restoration slopes are to be 3:1 in all cases. He said in this case it appears that it was started a few feet down below the elevation of Roxburg Road which is at 300 ft. Mr. Webers commented that he thinks 3:1 restoration slopes should be started at about that elevation down into the water. Mr. Wilhelm said that the applicant's engineer can address the report items #1-9 and work them out. He thinks the primary issue today he feels is the bonding issue. The last time HS&G was here the committee indicated that today a bond amount would be set today. Mr. Wilhelm said they received Mr. Weber's proposed bond requirements and he commented that he doesn't think the committee can just go ahead and accept what Mr. Weber says and just say that is the number that has to be put there. Mr. Wilhelm commented he is sure Mr. Weber use good professional judgment in coming up with the numbers but he thinks there are a couple problems. Mr. Wilhelm stated first the contingency of 20% is a problem, is a big number, and he thinks it's arbitrary. If Mr. Weber has checked the industry resources and is confident with his numbers he doesn't know why they need a 20% contingency. A 20% contingency is over $100,000 on the two bonds. Mr. Wilhelm said if Mr. Weber is confident in his numbers he doesn't see 20% contingency being necessary. He suggested maybe 5% contingency. Mr. Wilhelm stated it is a very small company, employs around 10 people and does not have a large gross revenue. Mr. Wilhelm said "quite frankly" to get a bond near $800,000, if Mr. Hummer requests a bond in this amount, he will get audited, ask a lot of questions, visit the site, look at the profit and loss statements for the last few years, look at tax returns, and have a lot of questions as to why this bond is being 5-6 fold. Mr. Wilhelm said this is a big thing so just to throw in a 20% contingency is problematic. Mr. Wilhelm said that the Committee indicated that they would ask that an increased bond be obtained soon, but give that they just got this information, it cannot happen over the next few weeks. Mr. Wilhelm said he's already reached out and they are going to be auditing and asking for documents and wanting to know why the Township is increasing the bond by 6 fold. Mayor Tipton commented that he understands that and he doesn't think anyone wanted it to come to this but there is an obvious reason why it's being increased, because there has been a change in what you can and can't do as the law stands now. In the past, it was lower because you were assuming the haul road could come out, which is not the case anymore and as they sit there today they cannot approve an application that takes it out with the current litigation. Mayor Tipton said there is a justification as to why the numbers are going up. Mr. Wilhelm commented there is no dispute on them going up, but by 6x's. Mayor Tipton stated this is a big change and it has been talked about for a long time. Mayor Tipton said he is starting to grasp why it's a big change and maybe mistakes were made in the past. Mayor Tipton asked Mr. Weber why 20% was used. Mr. Weber said all the bonding amounts for HS& G have been established this way. Attorney Campbell said 20% contingency was used when building Merrill Creek at the time and every dime was used. Realizing that is a totally different project, when she saw the 20% on Mr. Weber's report she assumed it must be the industry standard. Attorney Campbell reminded the committee that this is only 3 sides of both pits and she thinks that is why Mr. Weber is saying he's okay with the Committee not dealing with the other piece, even though, technically they did not give what was asked for because they were told to estimate as if they lost the lawsuit. HS&G was supposed to give those numbers and that was not what was given. The other numbers were given so Mr. Weber was able to do ¾ of the work. Attorney Campbell's opinion is even though the number is high, that is not a bad thing at this time because there are still the unknown numbers. Attorney Campbell said the Mr. Weber actually purchased the latest updated 2014 version of the

treatus that uses RS means to calculate the costs. HS&G engineer is using 2011 version so that may be why there is discrepancy in some of the numbers but in Attorney Campbell's opinion if you are going to allow this permit based upon what Mr. Weber says you have to have atleast that amount and as far as their bonding company saying they can't give them a bond, they have known for two months that this bond was going to go up significantly. Attorney Campbell noted if HS&G gotten things to Harmony Township sooner, the numbers could have been provided sooner. HS&G should have warned the bonding company and get things started. Attorney Campbell sent them a letter dated July 9th with the deadlines of September 16th for the bond. August 22nd is when the paperwork was supposed to be given to Mr. Weber, which they were a week late with and that is why Mr. Weber only had one day to put the numbers together. Mr. Wilhelm stated he thought he made it clear that Mr. Hummer has reached out to the bonding company. Mr. Wilhelm said until a number is set the bonding company would not start the process because it's not feasible and it is impossible to happen in a short period of time. Mr. Wilhelm said back to the point of the contingency, he said to Mr. Weber to correct him if he is wrong, but it is his understand that for #2 Excavation as a unit price of $5.00, he said he believes the RS means said for 2014 that should be $1.75. Mr. Weber said it may but there are other factors and criteria that go into it. The excavation HS&G engineer is using is bulk excavation by a dozer in an open field area. Mr. Weber said there is a lot of engineering judgment that goes into it as well. Mr. Wilhelm said that is just a sample of the point he is trying to make. The RS means says $1.75, Mr. Weber reported at $5.00 based on his judgment, Mr. Wilhelm said on top of that another 20% contingency so he is basically saying it should be $6 when RS means says it's $1.75 so it's more than 3x. Mayor Tipton said Mr. Weber said that the $1.75 is based on open field/easy excavation, where this is dealing with slopes and he had to factor in the subjective factor. Mr. Weber said that the excavation numbers also include cuts and fills, but the fill typically doesn't get a unit cost but it usually goes with the cut. Mr. Weber said some of the filling that has to go in is going to be difficult so to use a bare bones number for excavation in an open field is not enough, it is not arbitrary and he has put a lot of thought into what the appropriate number is. Mr. Wilhelm said he didn't say it was arbitrary but what he is saying he has built in a contingency then to just throw in another 20% surcharge on top. Mayor Tipton said that's not fair because a contingency is a contingency and it's not supposed to be part of the number that you think does it it is the overall putting a little % on the top and it is done in many situations, but his greater concern is Mr. Weber mentioned his numbers are already conservative because he is ignoring the haul road issue. Mayor Tipton said he knows it's been talked over and over about trying to put the issue off but they as a Committee are taking a risk by not addressing that if you are wrong with your lawsuit. Mr. Weber has already compromised his position and has only given a partial of what he thinks is the restoration numbers. Mr. Cornely stated that they have to defer to the professionals and it all comes down to the haul road. Mr. Cornely said even though he likes everyone in the room they have to do what's best for the township it's not just for any one person or one business. Mr. Wilhelm said they are not asking for any special favors. Mrs. Yamrock stated it's gone on for so many months and every time HS&G is back it's not getting anywhere and she thinks it's time that the committee has to do something. The people of the township have to be protected. Mr. Panicucci of LAN said there are 3 main items that he feels there are differences in the numbers. The berm which leads into the slope of Roxburg Station Road, the question of the topsoil and the haul road because he was always under the assumption that the material would be used because the site was always approved which included the removal of the haul road or perhaps lowering the elevation of

the haul road and that material was always used as part of that reclamation. Regarding the berm what the plans have included since 1997, or before, was to plan an evergreen tree buffer to protect that part of the pit. Mr. Panicucci stated that excavation began in pit 2 initially it was a 25ft deep cut down to the 260 elevation where the original approval was and the north face had a soil bermed positioned across the top to protect the slope. The mining operation moved north and the berm moved with it. Around 2003 the excavation reached Roxburg Station Road and the berm was at the road and that is when the pit was exhausted by digging down to the 260' elevation. HS&G went to the Land Use Board and spent about 2 years to get approval to dig deeper into the lake. The plans throughout including the landscaping plan that was part of the 4 drawing set which was the reclamation plan approved by the Land Use Board for doing the lake included the tree buffer along Roxburg Station Road of evergreen trees. Then HS&G came before the township committee in the spring of 2005 and according to his notes HS&G indicated that the soil in the berm was not needed for reclamation, and the Committee said leave the berm, and plant the trees on the berm. Mr. Duveneck had a review letter of 2005 which says that the applicant has retained the earthen berm along Roxburg Station Road and planted the required evergreens, so Mr. Panicucci said that is where the berm came from, and that's what existed ever since. He referenced the 4 drawing set as a reclamation plan submitted to the Land Use Board that showed the final plan of the lake that shows the final grading contours of the lake and those drawings show that those plans show a steeper slope from Roxburg Station Road so at Roxburg Station Road it drops down to about 2.5:1 to a lower level then it goes 3:1 out to where the water was. Mr. Panicucci went back and it has always been abit steeper than a 3:1 slope. Mayor Tipton said he remembers them coming before the Land Use Board for the application to dig deeper, but he was not on the committee at that time. He said if the Committee determined that should stay that is a significant issue. Mr. Weber said he is certain that the berm is okay, but he is not sure what is supposed to take place after the berm to the slopes. Mr. Panicucci said that the plans he has that it shows a cross section of the slope that is steeper than 3:1. Mr. Weber said he has looked at the 2004 restoration plan. Mr. Panicucci said that the cross sections were approved back to 1989, which had 3:1 and steeper along Roxburg Station Road. Mayor Tipton said he is concerned if a committee approved or the Land Use Board did approve a steeper slope on one side. Mr. Weber said that was his concern too and he made a special effort to find the 2005 plans that were referred to and he had a copy available. Mr. Weber said there are inaccuracies in the plan, such as they show a restoration slope as 3:1 but if you scale them off it comes off as 6:1. Mayor Tipton said if that plan was approved by the Township he has concerns. Mr. Weber said based on conversations and correspondence he had with Mr. Duveneck, December 2005 letter, he mentioned a restoration plan that says something like this restoration plan should be made part of all future yearly permit applications so he takes that to mean that is the restoration plan but when you look at it is very confusing and he couldn't really find anything definitively out of it that is going to allow steeper slopes. It basically just shows some existing slopes that are there and then shows something that is recorded as 3:1 but are really 6:1, it just doesn't make a lot of sense and he is deferring to what the ordinance says and it recommend it be 3:1 unless the plan can be looked at further and decipher what was supposed to happen back then. Mr. Panicucci said Mr. James Dodge (who worked for Dough Mace as the Land Use Board Engineer at the time) wrote a letter and it read that they accepted everything that was submitted except some of the trees were changed. He showed how he determines the slopes. He said the buffer and trees were put in for safety reasons. Mayor Tipton asked what the difference in the bond would be if it's not 3:1. Mr. Weber said it would have a pretty big impact but can't

give an actual number. Mr. Duveneck asked if that is the contention about the change in slope, why then #8 on sheet S-6 talks about the north side of the pit and that it will be sloped 3:1 on the plans. It is on the 2014 set of plans. Attorney Campbell said if you can define and adjust in figures, it could always be approved subject to taking that piece out. Mr. Panicucci stated that X-1, sheet 11 of 15 shows the 3:1 reclamation slope from the floor elevation up to the existing slope and it goes up. Mr. Duveneck asked if they are looking at sheet 7 of 15, under the notes, they indicate that 2014 proposed mining activities for HS&G. Comment 6 talks about the north side of the pit along Roxburg station road and it clearly says that it will be regarded to 3:1 and the notes have been in the plans for quite a while and he thinks it goes back to the ordinance and everything on the proposed mining activity and the reclamation is 3:1 everywhere. Mr. Duveneck thinks it's a safety factor and it is always has been. He is not sure why the cross section now shows that and if you go back a few years you will see the same. Mr. Weber asked how do you respond to what difference is from what the note says vs. if you look at the old restoration plan which in essence show little or no restoration on the north face until you get way down into the elevation. Mr. Panicucci said it shows a reclamation slope up from the base to a certain point where it meets the existing slopes. Mr. Fritts said his recollection of this conversation was that restoration plan was always going to be 3:1 when it was all said and done. When the creek blew out they went in to fix it and they couldn't get all the way down to do the restoration to the roadway, either they didn't have the material, or they were going to use the material out of the road but if you search all the records the discussion was always that the town committee always assumed there was going to be a 3:1 slope when it was done. Mr. Fritts recollection was that before the trees were planted that that dirt was going to be part of the 3:1 slope whether they choose not to push it in, or not, he's not sure if that is what they planned on or not. Mr. Fritts said as a zoning official he just remembers everything was going to be a 3:1 slope to meet the code.

Attorney Debra Nicholson representing Star D Farm (the Smiths'), adjoining property owner and owner of half of the haul road, addressed the committee at this time. Mrs. Nicholson stated she senses the Committee's frustration is starting to parallel what ours has been. The committee since January has seen the frustration because things never happen. The Township Attorney wrote a very detailed letter with timeframes on what to be done and when it was to be done by and that they were facing a stop work order if they didn't comply. Attorney Nicholson stated they didn't comply and even on August 1st the Township Engineer said they weren't on schedule. Attorney Nicholson commented it is disingenuous to say that they haven't done their auditing to get the bond situation started because there was no question they had to present the bond after the amount was determined tonight by September 16th so if they haven't started the audit how much longer can this town and her clients be at risk that this bond isn't happening. The fact that this was a rubber stamped type of approval for years and years because nobody said anything, and the plans that got submitted year after year didn't really even get modified, just because it was done that way doesn't mean that the light of day is shining on the inaccuracies in the plans and their representations that it has to be addressed. Mr. Nicholson noted that the other situation is that the Land Use Board approval that they got to take the quarry deeper required them to return to the Land Use Board once a year with whatever they were submitting to the Township Committee, and their own attorney who was the board attorney at the time, Lyn Aaroe, sent them letters for compliance, because they hadn't been back to the Land Use Board. The Land Use Board is the one who sets the slope, reclamation, etc. as part of their variance approval to do this. They haven't gone back one time and

that goes back to 2005 that the requirement was in the resolution. HS&G was supposed to have the full DEP permit filed for, and they were prepared to say they asked her client to sign it and he hasn't signed it. What a surprise, and is it just coincidence, they gave her client a blank application for and asked if they would please sign it. Her client asked to see the maps and the submission before he signs it. Mrs. Nicholson looked at it for the first time tonight, and the first page says that the haul road is being removed. They wanted to sneak by one more thing, get an admission against interest, that the haul road was going out and have it approved by her client. She asked how many times this trickery and this misrepresentation has to happen before somebody in this town says enough is enough. Mrs. Nicholson stated the Township Attorney wrote a letter detailing step by step the dates and times. She has a hard time now convincing her client that she shouldn't be joining the Township in the action that is now going. Her client shouldn't have to be paying her for 2 years to come before the Committee and say there is something wrong with these plans, with the bond, there is something wrong with them saying they are going to do something and they do something else. They don't have a 2013 or 2014 permit and they have been given a pass. Mrs. Nicholson stated that it was a wild goose chase when there was a joint meeting, and they said Mr. Duveneck said they didn't have to do the slope and they thought everything was fine. Mr. Duveneck is sitting here tonight saying he has no recollection and the ordinance is 3:1 and that's not something he would agree to. Mrs. Nicholson said that the games being play are at the Town's expense and her client's expense and it's got to stop. HS&G needs to be shut down because they don't have a permit, and she bets the bonding company will respond very quickly because they will cooperate and provide all kinds of numbers to get here in time but they haven't done the correct plans, slopes are wrong, estimates are less and they object to 1.20% because of the contingency which in Land Use is standard bonding requirement and anyone else is doing it at 1.20. She noted that they are not complying with the Land Use Requirements, the Township Attorney letter is not being complied with and wrong information continues to be submitted and then the smoke and mirrors start and they act like they don't know what it means. She said it means they are trying to delay and not do what they are required to do under their ordinance, variance and previous approvals. Mrs. Nicholson submits to the Committee that they have given indifference to this Township Business time and time again.

Mayor Tipton asked if there was any other information or questions of the applicant or committee. Mr. Cornely asked how long it typically takes to achieve a bond. Mayor Tipton said not that long when you're a business. Mayor Tipton is inclined to agree with the numbers as recommended by the Township Engineer because it's been left go long enough. It's been reviewed for many months. Mayor Tipton recommends they require the two bonds as requested by the Township Engineer. If work is done for restoration, they can come back and request a reduction. The restoration process is in their hands and they can control it. Mayor Tipton said as far as the haul road goes, they are compromising by not requiring the increase bonding there and giving there but holding to the Engineers numbers. Mayor Tipton asked the Attorney Campbell and Engineer Weber for guidance on when the bonds should be presented to allow them to keep operating. Attorney Campbell said the deadline was originally September 16th, which they said they could meet. Mr. Wilhelm denied that statement. Attorney Campbell restated that they did not object. Mr. Wilhelm said for the record he is objecting to everything that is happening today. Mayor Tipton asked when they received the letter with the numbers. Mr. Wilhelm stated last Friday, and Attorney Campbell said that was because they submitted their stuff a week late. Mr. Wilhelm said September 16th

was not feasible. Mayor Tipton said he doesn't understand why it's not feasible because he has done enough of this work to know. Mr. Wilhelm asked if he has run a quarrying operation that has had to produce all their financial documents. Mayor Tipton said no he's not saying that but he has asked for quarrying operations to give bonding when they needed it and he's gotten it pretty quickly when they are facing deadlines. Mr. Wilhelm that this is a significant increase on a bond that has been in place for a long period of time which raises lots of questions for the underwriters requiring a lot of documentation and inspections. Mr. Wilhelm said it's not going to happen in two weeks. Attorney Campbell suggested they provide a copy of their litigation to the underwriter and that will help explain why there is such a dramatic change that there is litigation and you cannot lie on old information that you had before. Mr. Wilhelm said that they will provide anything they want but it's not going to happen. Mayor Tipton asked what is feasible. Mr. Wilhelm said 60 days. Mayor Tipton said that is not reasonable. Mrs. Yamrock said this has been going on for months and her feeling is by the end of September. She does not recommend 60 or 30 days, this has gone on long enough. Mr. Wilhelm again said the numbers were just provided last Friday. Mr. Weber said he didn't get numbers until last Thursday, and they got their numbers on Friday. Mr. Cornely said by the end of the month the bond should be provided. Mayor Tipton said they need finality to protect the Township.

Attorney Nicholson asked if that means if the bond is not delivered by the close of business on September 30th that the Zoning Officer can issue a stop work order. Mayor Tipton and Attorney Campbell indicated it would. Attorney Nicholson asked how long they have to submit the plans and the calculations for the haul road because one of the specific assertions in the Township's Attorney letter and the directions of the Committee were that they were to calculate that out as if Star D was successful in the litigation and that hasn't happened. Mayor Tipton said that should be provided by September 30th as well so Mr. Weber can review it in sufficient time for the October 7th meeting. Attorney Nicholson asked to be put on the record stating that Star D has filed an answer and counterclaim in the litigation and also a notice of frivolous litigation. She has requested HS&G counsel tonight to agree that the action can be bifurcated so they can get the Township an answer quickly on the legal question on the haul road and then do discovery and handle the damages question. Mr. Wilhelm agreed that that was an appropriate mechanism for this and she requested him to put on the record that he will cooperate in requesting the Judge to bifurcate and to handle the declaratory judgment on a summary judgment fashion so the answer can get expedited to the Township. Mr. Wilhelm stated he will not make any representation before this board for a Superior Court matter. Mrs. Nicholson asked he could just indicate that is what he told her he would do. Mr. Wilhelm stated he was not going to indicate anything.

Attorney Campbell commented she thinks at this point they are being asked to put up an $800,000 bond so it is in their best interest to do it quickly because that bond is going to stay and if the plans come in and Mr. Weber says it's higher than that will have to be addressed as well and obviously no decreases are coming before every other number is finalized.

Attorney Campbell they would be approving the permit finally conditioned upon the delivery of bonds in the amount as indicated in Engineer's Weber's letter of August 28, 2014 and all of the conditions in the letter of the same date.

Mr. Weber reviewed that by the end of September they are supposed to provide quantities leaving the elevation of the haul road as it is right now

which would generate more fill and higher numbers, and at the same time they are to come up with the bond by the end of the month.

Mayor Tipton said what was agreed to were Mr. Weber's figures on the three sides, understanding that they are not asking for them to give the bonding for the 4th side which is an open legal issue, and for the quantities of the 4th side.

Attorney Campbell said they are going to do the maps and whatever they need to do as if the haul road is staying so Engineer Weber can do the numbers for the other two sides of the pits. Mr. Wilhelm said that is the way they understand it.

Attorney Nicholson commented that they are going to leave the Township and her clients at risk right now without any restoration money for that when they were directed to have that and it was to be bonded and they done come with the maps so now they have an extra 30 days to get the maps in and let the Township and her clients exposed pending the outcome of the litigation.

Attorney Campbell reviewed for the Committee, that by October meeting, a bond for approximately $800,000 will be in place, they should have all the documents that Mr. Weber asked for regarding the haul road. Gene can then calculate the numbers and Gene may come to the Committee as say that the Township needs more money, the Committee still has the authority to say they need more bonding. That is part of the condition of the permit.

Attorney Nicholson asked about HS&G fulfilling their obligations to the Land Use Board. Attorney Campbell said you can make it a condition of their permit that they continue to meet anything that is part of their original approvals. Attorney Campbell will speak to the Land Use Board Attorney.

Mr. Weber stated one other thing that should be addressed is a recommendation in his letter about the timing of the restoration for when the restoration of pit 2 has to occur. He recommends it be complete 1 year from the time they obtain their DEP flood hazard area permit. Attorney Campbell asked if they have applied yet. Mr. Wilhelm said that Mr. Hummer provided the application to Mr. Smith as Mrs. Nicholson stated. They weren't satisfied with it, and didn't let us know they weren't satisfied until today and wouldn't sign it until they saw some other documents where were provided today and expect them to sign it and they will submit as soon as it's signed. Mrs. Nicholson stated that was another misrepresentation and there are communications going back and forth between her client and Mr. Hummer when he asked if he would sign a blank application and Mr. Smith asked for the maps and he would sign it. Mr. Wilhelm said "he never told him that and Mr. Smith is alittle bit of a storyteller so it's not true". Mr. Wilhelm said he never asked for the maps and for the first time tonight they were asked for the maps so we gave it to them. Mayor Tipton asked if the communications can include the Township Attorney with respect to the DEP applications so she knows what is happening. Mrs. Nicholson indicated Mr. Smith has the text message where he requested a complete copy of the application from Mr. Hummer. Mr. Hummer said at first he gave just the signature page for the application and he requested the whole application. Mr. Hummer stated he gave them everything that he personally had from Ron and there were not maps in it. Mr. Wilhelm said the map was provided tonight, Mr. Panicucci will do a revised letter and provide it to Mrs. Nicholson and hopefully they will return the signed permit. Mr. Panicucci asked for

clarification on the permit. He stated that the application included a paragraph or so description of the operations at the site and it said that the overall plan included removing the haul road but that would be done at some future date. What was being submitted in the application it says for the restoration on the west, north and east sides and that is what is addressed in the application. Mayor Tipton asked that all of that gets done by September 30th as well and give 1 year to restore after DEP approval.

Motion by Mayor Tipton, seconded by Yamrock to conditionally approve the 2014 operating permit with *all conditions* as referenced above (including a new bond in the amount as indicated in Gene Weber's, August 28, 2014 letter, new drawings with reclamation calculation figures providing the haul road to remain in place, submission to the DEP for a flood hazard permit) as well as all other various conditions of Engineer Weber's August 28, 2014 letter being met by September 30, 2014.

Roll Call: Ayes: Cornely, Tipton, Yamrock. Nays: none.

Vouchers

Motion by Yamrock, seconded by Cornely to approve payment of bills submitted by the CFO at this time. Roll Call: Ayes: Tipton, Cornely, Yamrock.

Public Comment

Adjourn

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

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Kelley D. Smith, Municipal Clerk