

MINUTES OF THE
EAST BRUNSWICK TOWNSHIP
PLANNING BOARD

January 8, 2020

STATEMENT - Open Public Meetings Act

FLAG SALUTE

ROLL CALL -

PRESENT:

Shawn Taylor, Chairman
Laurence Bravman
Joseph Criscuolo
Sharon Sullivan
Charlie Heppel
Laurence Reiss
Muhammad Hashmi
Howard Schmidt

ABSENT:

Brad Cohen, Mayor
Steve Philips

ALSO PRESENT:

Lawrence Sachs, Esquire
John Kriskowski, Engineer
James Lambert, CME
Loren Morace, Secretary

PLANNING BOARD REORGANIZATION

Chairman - Shawn Taylor nominated by Mr. Heppel,
second by Mr. Schmidt. Motion to close nominations
by Mr. Criscuolo. All in favor; Mr. Taylor
abstained.

Vice Chairman - Laurence Bravman nominated by
Chairman Taylor, second by Mr. Criscuolo. All in
favor; Mr. Bravman abstained.

Secretary - Charles Heppel nominated by Mr. Schmidt,
second by Mr. Bravman. Motion to close nominations
by Mr. Criscuolo. All in favor; Mr. Heppel
abstained.

Recording Secretary - Deborah Masterton nominated by

Chairman Taylor, second by Mr. Bravman. Motion to close nominations by Mr. Criscuolo. All in favor.

Attorney - Lawrence B. Sachs nominated by Mr. Heppel, second by Mr. Criscuolo. Motion to close nominations by Mr. Bravman. All in favor.

Engineer - CME Associates nominated by Mr. Criscuolo, second by Mr. Bravman. Motion to close nominations by Mr. Hashmi. All in favor.

Conflict Engineer - Remington & Vernick Engineers nominated by Chairman Taylor, second by Mr. Schmidt. Motion to close nominations by Mr. Schmidt. All in favor.

Conflict Attorney - Shamy, Shipers & Lonski nominated by Chairman Taylor, second by Mr. Criscuolo. Motion to close nomination by Mr. Schmidt. All in favor.

NEW BUSINESS

Application #16-37V - Tongbu - Extension of tome for 223 Route 18, block 6.02, lot 6.20, in the HC-2 zone. Mandatory date March 1, 2020. Motion to deny by Chairman Taylor, second by Mr. Hashmi. Application denied.

ADJOURNMENT

Motion to adjourn by Mr. Schmidt.

MR. SACHS: This is the January 8, 2020, East Brunswick Township Planning Board meeting. In accordance with the Open Public Meeting Law, on December 17, 2019, notice of this meeting stating the time, date, and location was sent to the Home News Tribune, filed with the township clerk, and posted on the bulletin board in the lobby of the municipal building. A copy of this notice will be incorporated into the minutes of this meeting.

The Chair reserves the right to call any application in an order different from that appearing on agenda. On each application, the Chair will give the public an opportunity to comment.

The planning board will entertain no new business after 10:30 p.m. and will close all proceedings at 11 p.m.

The doors outside the courtroom are the exits to be used in case of fire or other emergencies.

Can we please rise for the pledge of allegiance.

(Flag salute)

MR. SACHS: Loren, can we please have the roll call.

MS. MORACE: Mr. Schmidt.

MR. SCHMIDT: Here.

MS. MORACE: Mr. Hashmi.

MR. HASHMI: Here.

MS. MORACE: Mr. Philips. Mr. Reiss.

MR. REISS: Here.

MS. MORACE: Mr. Bravman.

MR. BRAVMAN: Here.

MS. MORACE: Mr. Criscuolo.

MR. CRISCUOLO: Here.

MS. MORACE: Councilwoman Sullivan.

MS. SULLIVAN: Here.

MS. MORACE: Mr. Heppel.

MR. HEPPEL: Here.

MS. MORACE: Mayor Cohen. And Chairman Taylor.

THE CHAIRMAN: Here.

MR. SACHS: All right. As required by state statute, the planning board must reorganize at its first meeting of the year, that being this evening, so at this point, I will entertain a nomination for chairman for the planning board for the 2020 calendar year.

MR. HEPPEL: I nominate Shawn Taylor.

MR. SACHS: Is there a second?

MR. SCHMIDT: I'll second.

MR. SACHS: Seconded by Mr. Schmidt. Any other nominations? Can we have a motion to close nominations.

MR. CRISCUOLO: Motion.

MR. SACHS: All in favor? All right, so there's been a motion to nominate Mr. Taylor as chairman and a second. If we can have a roll call vote on that, Loren.

MS. MORACE: Mr. Schmidt.

MR. SCHMIDT: Yes.

MS. MORACE: Mr. Hashmi.

MR. HASHMI: Yes.

MS. MORACE: Mr. Reiss.

MR. REISS: Yes.

MS. MORACE: Mr. Bravman.

MR. BRAVMAN: Yes.

MS. MORACE: Mr. Criscuolo.

MR. CRISCUOLO: Yes.

MS. MORACE: Councilwoman Sullivan.

MS. SULLIVAN: Yes.

MS. MORACE: Mr. Heppel.

MR. HEPPEL: Yes.

MR. SACHS: All right, Mr. Chairman,
congratulations.

THE CHAIRMAN: All right, thank you. I
will abstain officially from my vote, but --

MR. HEPPEL: At the same salary, Shawn.

THE CHAIRMAN: Yeah, at the same salary.
Yeah, I was just talking with Joe. First of all, thank
you all the very much for once again electing me to be,
not our leader because we are all equals on this board,
but just a guy who gets to talk the most, which
probably would be the case no matter where I was
sitting, but it really is a great honor to serve here
with all of you and with all the people who have served
on this board over the 20 some odd years that I've
chaired the board. John and I were just talking. It's
been a couple of decades. You know, I remember when
his boys were just kids, you know, going to scouting
events and camp-outs, and now they're wonderful grown
men that he and Cathy have raised. So my point is that
we really are a family here, and sometimes, you know,
members come and members go and -- but we continue on
as a family, and the Township of East Brunswick is
better for having had all of your input. I am very
proud of the work that we have all done here. I often
say, only because it's true, that I'm the dumbest guy
up here, and you all make me look good, and I
appreciate that, too, and we've been very fortunate in
East Brunswick that at least at the planning board
level and the mayors that we've had over the years, be
they Democrats or Republicans, I think that they
genuinely had the good intentions and the good -- and
wished good things for this town and all worked very
hard to get that.

Before we move on, my first order of
business is to welcome Councilwoman Sharon Sullivan to
her first meeting. Welcome, Sharon.

MS. SULLIVAN: Thank you.

MR. CRISCUOLO: It's also her birthday.

THE CHAIRMAN: It's also her birthday. I
saw that. So happy birthday.

MS. SULLIVAN: I get extra money.

THE CHAIRMAN: You double your regular

rate. So we do welcome you, and I think that you will find during this exciting time in East Brunswick with all the redevelopment issues going on and just all -- as -- the healthier and healthier our town gets, the more exciting the work is on this board. I think you'll find it rewarding. I think you'll find us a pretty good bunch. And if you have any questions, anything at all, don't ask me because I don't know. Ask Larry, ask Larry Bravman, ask Steve Philips, or ask our professionals. We are blessed -- we are blessed to have wonderful professionals. You know, Larry and I have been friendly since the 7th grade so I can't count that, but we have terrific professionals, and we have -- we happen to also have a business administrator who has -- is well versed in planning issues and has in this town and in prior towns, you know, waded in chest deep into the planning waters. So welcome. Feel free to ask questions, and I hope you enjoy yourself.

I would like to take a chairman's prerogative for the next nomination. We are all saddened that Jeanette could no longer continue on as our vice chair. She was my right arm for I think all of those 20 years and really did love East Brunswick and loved planning, and we are saddened that she could not continue, but I would like to nominate Larry Bravman as the vice chair. Larry I think brings a very unique perspective, always a level head, and has just been a wonderful member of this board, and I could think of no -- although all of you could do an able, capable, and terrific job, I think that I am, you know, if I --

MR. CRISCUOLO: Like to second that nomination.

THE CHAIRMAN: If I want to start taking some time off, I know the board's in good hands. Thank you, Joe. Any other nominations? Seeing none, any discussion on Larry Bravman for vice chair?

Loren, please call the roll.

MS. MORACE: Mr. Schmidt.

MR. SCHMIDT: Yes.

MS. MORACE: Mr. Hashmi.

MR. HASHMI: Yes.

MS. MORACE: Mr. Reiss.

MR. REISS: Yes.

MS. MORACE: Mr. Criscuolo.

MR. CRISCUOLO: Absolutely.

MS. MORACE: Councilwoman Sullivan.

MS. SULLIVAN: Yes.

MS. MORACE: Mr. Heppel.

MR. HEPPEL: Yes.

MS. MORACE: Chairman Taylor.

THE CHAIRMAN: Yes.

MR. BRAVMAN: I want to thank everyone. I'm not looking to be -- replace Jeanette in any way nor be your right hand, so I'll be your left hand, and maybe I'll stay on the left side of the dais.

THE CHAIRMAN: That's your prerogative.

MR. BRAVMAN: If you want me to move over, I'll move over. Move Larry Sachs out of the way. But thank you, everyone, and I do look forward to serving as the vice chairman.

THE CHAIRMAN: Thank you, Larry. Next, who's going to nominate Charlie for recording secretary?

MR. SCHMIDT: I'll nominate Charlie.

THE CHAIRMAN: Thank you.

MR. BRAVMAN: I'll second.

MR. CRISCUOLO: Close the nomination.

THE CHAIRMAN: There you go. Loren, please call the roll.

MS. MORACE: Mr. Schmidt.

MR. SCHMIDT: Yes.

MS. MORACE: Mr. Hashmi.

MR. HASHMI: Yes.

MS. MORACE: Mr. Reiss.

MR. REISS: Yes.

MS. MORACE: Mr. Bravman.

MR. BRAVMAN: Yes.

MS. MORACE: Mr. Criscuolo.

MR. CRISCUOLO: Yes.

MS. MORACE: Councilwoman Sullivan.

MS. SULLIVAN: Yes.

MS. MORACE: Mr. Heppel.

MR. HEPPEL: Abstain.

MS. MORACE: Sorry. Chairman Taylor.

THE CHAIRMAN: Yes. Congratulations, Charlie.

MR. HEPPEL: Thank you very much.

THE CHAIRMAN: I have to have a Yankee fan and somebody who does a great job in that seat, so you fulfill both of those requirements.

MR. HEPPEL: Thank you.

THE CHAIRMAN: We're doing attorney and engineer tonight, Larry?

MR. SACHS: Yes.

THE CHAIRMAN: Okay. Then we should get a little more serious here I suppose. Are there any nominations for attorney to the planning board?

MR. CRISCUOLO: I guess we have a recording secretary.

MR. SACHS: Recording secretary, Shawn.
 THE CHAIRMAN: Oh, that's right. I guess we should do that.

MR. SACHS: That would be Deborah Masterton.

THE CHAIRMAN: Deborah, right, yeah. Okay. So Deborah's been moved. Do we have a second on Deborah?

MR. BRAVMAN: Second.

THE CHAIRMAN: Moved and seconded. Any discussion?

MR. CRISCUOLO: Close nomination.

THE CHAIRMAN: Okay. Seeing none, Loren, please call the roll.

MS. MORACE: Mr. Schmidt.

MR. SCHMIDT: Yes.

MS. MORACE: Mr. Hashmi.

MR. HASHMI: Yes.

MS. MORACE: Mr. Reiss.

MR. REISS: Yes.

MS. MORACE: Mr. Bravman.

MR. BRAVMAN: Yes.

MS. MORACE: Mr. Criscuolo.

MR. CRISCUOLO: Yes.

MS. MORACE: Councilwoman Sullivan.

MS. SULLIVAN: Yes.

MS. MORACE: Mr. Heppel.

MR. HEPPEL: Yes.

MS. MORACE: Chairman Taylor.

THE CHAIRMAN: Yes. Congratulate Deborah. She does a terrific job figuring out what the hell we're saying.

Next is the attorney. Any nominations for an attorney?

MR. HEPPEL: I'll nominate Larry Sachs.

MR. CRISCUOLO: Second.

THE CHAIRMAN: Moved and seconded. Do I have a motion to close nominations?

MR. BRAVMAN: Close.

THE CHAIRMAN: So moved. You know, like I said, we've been friends since the 6th or 7th grade so I'm not going to say anything other than glad to see you back.

And, Loren, please call the roll.

MS. MORACE: Mr. Schmidt.

MR. SCHMIDT: Yes.

MS. MORACE: Mr. Hashmi.

MR. HASHMI: Yes.

MS. MORACE: Mr. Reiss.

MR. REISS: Yes.

MS. MORACE: Mr. Bravman.

MR. BRAVMAN: Yes.

MS. MORACE: Mr. Criscuolo.

MR. CRISCUOLO: Yes.

MS. MORACE: Councilwoman Sullivan.

MS. SULLIVAN: Yes.

MS. MORACE: Mr. Heppel.

MR. HEPPEL: Yes.

MS. MORACE: Chairman Taylor.

THE CHAIRMAN: Yes.

MR. SACHS: Thank you, Shawn; thank you members of the board. Look forward to providing my guidance again for another career. Thank you.

THE CHAIRMAN: It's invaluable. Next is an engineer. I always try to make a joke here, but I just said nice things about John and his family so I'm going to keep my mouth shut. Do I have any nominations for engineer?

MR. CRISCUOLO: CME Consulting.

THE CHAIRMAN: Okay. We have -- is there a second?

MR. BRAVMAN: Second.

THE CHAIRMAN: Moved and seconded. Is there a move to close nominations?

MR. HASHMI: Move to close.

THE CHAIRMAN: Okay. Loren, just call the roll.

MS. MORACE: Mr. Schmidt.

MR. SCHMIDT: Yes.

MS. MORACE: Mr. Hashmi.

MR. HASHMI: Yes.

MS. MORACE: Mr. Reiss.

MR. REISS: Yes.

MS. MORACE: Mr. Bravman.

MR. BRAVMAN: Yes.

MS. MORACE: Mr. Criscuolo.

MR. CRISCUOLO: Yes.

MS. MORACE: Councilwoman Sullivan.

MS. SULLIVAN: Yes.

MS. MORACE: Mr. Heppel.

MR. HEPPEL: Yes.

MS. MORACE: Chairman Taylor.

THE CHAIRMAN: Yes. Congratulations, John, and, you know, your whole crew is good. Every -- we've never been let down by a member of the firm CME. You've always been there for us and --

MR. KRISKOWSKI: On behalf of CME, I appreciate the opportunity to continue to serve the board. Look forward to it. It's a good board, and look forward to another year.

THE CHAIRMAN: Absolutely, and, you know, I saw David last night. He knows you're my favorite. All right. Moving on, we adopted -- do we need to do anything with the calendar that we adopted?

MR. SACHS: Conflict engineer.

MR. CRISCUOLO: Conflict attorney and conflict engineer.

THE CHAIRMAN: Oh, yeah. Okay. Conflict engineer. Joe, do we have a nomination here? Is it Remington Vernick?

MR. SACHS: Remington Vernick. I think the recommendation's Remington Vernick, Mr. Chairman.

THE CHAIRMAN: Okay. That's been moved. Is there a second?

MR. SACHS: I didn't move it so someone has to move it.

THE CHAIRMAN: I moved it.

MR. SACHS: You moved it.

MR. SCHMIDT: I'll second it.

THE CHAIRMAN: Okay, moved and seconded. It's been moved to close nominations.

MR. SCHMIDT: Moved.

THE CHAIRMAN: Okay. Loren, please call the roll.

MS. MORACE: Mr. Schmidt.

MR. SCHMIDT: Yes.

MS. MORACE: Mr. Hashmi.

MR. HASHMI: Yes.

MS. MORACE: Mr. Reiss.

MR. REISS: Yes.

MS. MORACE: Mr. Bravman.

MR. BRAVMAN: Yes.

MS. MORACE: Mr. Criscuolo.

MR. CRISCUOLO: Yes.

MS. MORACE: Councilwoman Sullivan.

MS. SULLIVAN: Yes.

MS. MORACE: Mr. Heppel.

MR. HEPPEL: Yes.

MS. MORACE: Chairman Taylor.

THE CHAIRMAN: Yes. Next is our conflict attorney. I will again use Chair's privilege and nomination a very good attorney, another East Brunswick attorney -- love using those East Brunswick people when we can -- the firm of Shamy, Shippers & Lonski.

MR. CRISCUOLO: I'll second it.

THE CHAIRMAN: It's been moved and second. Motion to close.

MR. SCHMIDT: Motion to close.

THE CHAIRMAN: Loren, please call the

roll.

MS. MORACE: Mr. Schmidt.

MR. SCHMIDT: Yes.

MS. MORACE: Mr. Hashmi.

MR. HASHMI: Yes.

MS. MORACE: Mr. Reiss.

MR. REISS: Yes.

MS. MORACE: Mr. Bravman.

MR. BRAVMAN: Yes.

MS. MORACE: Mr. Criscuolo.

MR. CRISCUOLO: Yes.

MS. MORACE: Councilwoman Sullivan.

MS. SULLIVAN: Yes.

MS. MORACE: Mr. Heppel.

MR. HEPPEL: Yes.

MS. MORACE: Chairman Taylor.

THE CHAIRMAN: Yes. Okay. That completes our reorganization. Before we move into our agenda, would anyone like a -- would anyone like to say anything?

MR. CRISCUOLO: Yes. I'd like to also stress our appreciation to Loren from the planning department.

THE CHAIRMAN: Absolutely.

MR. CRISCUOLO: She came in new last year, and I would say she's done a stellar job for this board and in the planning department. So in front of this board, I'd like to express our appreciation to Loren for all the excellent work that she did, and she was a quick study. She got up to speed within about a half hour.

THE CHAIRMAN: Hear, hear. Great. Thank you very much.

MR. CRISCUOLO: We appreciate all you do and keeping us in line and reminding us what meetings are, so just appreciate from this board.

MS. MORACE: Thank you. It's been a pleasure.

THE CHAIRMAN: Same here, Loren. Anyone else? Okay. Then moving on to new business, application 16-37V, Tongbu. Mr. Himelman. Happy new year. Nice to see you.

MR. HIMELMAN: Nice to see you, Mr. Chairman, members of the board. First I just wanted to congratulate you, Mr. Chairman, for another year. It's been I think probably 23 or 24 years if I do the math perhaps, but although I'm usually on this side of the dais, it's always been a pleasure working with you and the board and your professional staff, so I congratulate all of you on your appointments and look

forward to (inaudible) with the board.

THE CHAIRMAN: Thank you.

MR. HIMELMAN: Mr. Chairman, as you're aware, this -- I am representing Tongbu, LLC, who had previously obtained approvals from this board several years ago to develop their property, and they obtained preliminary and final site plan and C variance approval to construct an addition to the existing bank building, and the specific use you may recall was designed for a specific type of Asian Hot Pot restaurant, and we are here, Mr. Chairman, on a -- seeking a 1-year extension of that. We will -- primarily because after the applicant received its approval, even before that, he had begun negotiations with a particular end user, who actually was -- they were designing this particular property for that restaurant use. Unfortunately, that lease agreement and negotiations fell through, and he -- the applicant has been attempting to market the property to try and find a similar type of restaurant end use, and I do have the applicant here this evening to put forth some limited testimony on that issue, but we believe that the board has the discretion to grant the extension under your ordinance, which is section 132-48 of your land use code, and as well as under the Municipal Land Use Law, and so if you would, I certainly could bring the applicant up just to ask some brief questions about this just to put some additional information on the record, but if you want, I'd be happy to answer any preliminary questions.

THE CHAIRMAN: Larry, yes.

MR. BRAVMAN: I guess, before we get into --

THE CHAIRMAN: And we will bring the applicant.

MR. BRAVMAN: I said before we get hearing from the applicant directly, I guess I wanted to better understand the discretion component. You indicated pursuant to I guess our ordinance and pursuant to Municipal Land Use Law --

MR. HIMELMAN: Right.

MR. BRAVMAN: This application was originally approved, and the resolution was October --

MR. HIMELMAN: -- 2016.

MR. BRAVMAN: -- 2016.

MR. HIMELMAN: Correct.

MR. BRAVMAN: So we're over 3 years since that.

MR. HIMELMAN: Right.

MR. BRAVMAN: And I guess when you reference discretion, I guess I just better want to --

better want to understand is there a time element? Is it should something be done within 1 year, 2 years, 3 years, or are we --

MR. HIMELMAN: I mean, technically 5 years from preliminary through final. It's 3 -- it's 2, 2, and 1, but the board under the Municipal Land Use Law has the discretion to extend for additional 1 year a final approval if the board believes that there are extenuating circumstances that have prevented the applicant from moving forward with its project, and so that's really the issue, and that language is strictly -- is basically right in the Municipal Land Use Law.

MR. BRAVMAN: I guess, Larry, maybe you could help us, as well. You said 5 years, but then you said 2,2, and 1.

MR. HIMELMAN: Well, in other words, the -- there's an extension period -- technically, you have 2 years protecting -- 3 years protecting zoning, so it's 3 and 2, so but under the statute and under your ordinance, which mirrors it, preliminary, we're past that because we have preliminary and final. Technically, under I think it's under C of 55: -- 40:55D-52, you would have -- the board has the discretion to grant the extension for 1 year.

MR. SACHS: Let me respond, all right, because in this scenario, they were granted preliminary and final at the same time.

MR. HIMELMAN: Correct.

MR. SACHS: So they had 3 years --

MR. HIMELMAN: Right.

MR. SACHS: -- under that scenario.

MR. BRAVMAN: Three years from October --

MR. SACHS: From October -- from the date --

MR. BRAVMAN: So we're outside of that.

MR. SACHS: We are. We are outside of that, all right, and it's section 52 of the land use -- Municipal Land Use Law.

MR. HIMELMAN: Correct.

MR. SACHS: And it's section D is the applicable section, and I'll just read it into the record.

"The planning board shall grant an extension of final approval for a period determined by the board but not exceeding 1 year from what would otherwise be the expiration date if the developer proves to the reasonable satisfaction of the board that the developer was barred or prevented directly or indirectly from proceeding with the development because of delays in obtaining legally required approvals from

other governmental entities and that the developer applied promptly for and diligently pursued these approvals. A developer shall apply for the extension before, 1, what would otherwise be the expiration date of final approval, or 2, the 91st day after the developer receives the last legally required approval from other governmental entities, whichever occurs later. An extension granted pursuant to this subsection should not preclude the planning board from granting an extension pursuant to subsection A, B, or E of this section," which don't apply here. I mean, E deals with a site plan -- a planned residential development, B deals with a subdivision, and A deals with a use variance, so -- but in any event, it's -- that's what the statute says.

MR. BRAVMAN: And I'm just trying as you were going through it. Must the request by the applicant be made within a certain time period after our approval, or can they in essence wait 3, 4, 5, 6 years and then come before the board? Almost sounded like it had to be done before a certain time period.

MR. SACHS: Well, it says the developer shall apply for the extension before what would otherwise be the expiration date of final approval, all right. The expiration date of the final approval would have been October 26 of 2019. October -- or the 91st day after the developer receives the last legally required approval from other governmental entities, whichever occurs later.

THE CHAIRMAN: I would assume that the --

MR. SACHS: So again, I guess we may need to hear testimony from the applicant to find out -- or if Mr. Himelman wants to stay on the record -- whether all the approvals have been granted, legally required approvals.

MR. SCHMIDT: Larry.

MR. SACHS: Yes.

MR. SCHMIDT: My question to you is -- the applicant's attorney is indicating that the reason they want the extension is so they can market the property to somebody else. Does that fit in with the language of the statute? Doesn't sound like it.

MR. SACHS: I don't think it does.

MR. HIMELMAN: Well, there are reasons I think -- and the applicant's prepared to testify. There are reasons why the applicant has been unsuccessful in securing a tenant, and I think the applicant is prepared to discuss that, which I think fit within the context of the ordinance -- of the statute.

MR. SACHS: All right. Anyway, that's that's the law.

MR. CRISCUOLO: I'm confused. It's not the first time. Call it perplexed. Did you read the section about circumstances on approval from other --

MR. SACHS: Yeah. Let me --

MR. CRISCUOLO: I recall the county, the state, the federal government --

MR. SACHS: Yeah, let me -- I'll read it. Mr. Criscuolo, I'll read it again, and basically, the language I think you're talking about is: "If the developer proves to the reasonable satisfaction of the board that the developer was barred or prevented directly or indirectly from proceeding with the development because of delays in obtaining legally required approvals from other governmental entities."

MR. CRISCUOLO: So the fact that he couldn't find a tenant isn't --

MR. HIMELMAN: Again, and I think in all fairness to the applicant, I think -- I mean, that's the conclusion, but that's not necessarily why there was difficulties in obtaining and securing a tenant. So I think I'd rather have the applicant testify to that.

MR. CRISCUOLO: But that's not -- that's not my question.

MR. HIMELMAN: No, no, but --

MR. CRISCUOLO: That's a business problem.

MR. HIMELMAN: No, no, no, but there are reasons why matters outside of the applicant's control that necessitated and --

THE CHAIRMAN: Why don't we hold --

MR. HIMELMAN: So I understand your comment.

THE CHAIRMAN: -- our concerns until we hear the whole story --

MR. HIMELMAN: Right. Okay.

THE CHAIRMAN: -- including from the applicant, and Larry --

MR. BRAVMAN: I apologize.

THE CHAIRMAN: Mr. Vice Chairman.

MR. BRAVMAN: I just wanted to make sure that, Mr. Himelman, do you agree that, the applicant attorney, that that is the standard that we're looking at the way Mr. Sachs read it and that that's the base -- let me -- that's the basis upon which this board will then be considering the testimony of the applicant and what we're going to base it upon?

MR. HIMELMAN: Mr. Sachs correctly read

the statute, and I don't think (inaudible) I think the applicant has the burden of proof to be able to demonstrate that he meets the elements of the extension request per Municipal Land Use Law, so absolutely.

MR. BRAVMAN: Okay. Thank you.

MR. HIMELMAN: Mr. Chairman, do you want me to bring up the applicant?

THE CHAIRMAN: Sure swear him in. Good evening. Please raise your right hand to be sworn. Do you swear to tell the truth, the whole truth, so help you God?

MR. XU: Yes.

THE CHAIRMAN: State your name, spell your last name, and tell us your connection with this application, please, and then sit down.

MR. XU: Okay. My name is Chong Xu, C-h-o-n-g, last name X-u. I'm the manager of the Tongbu, LLC.

THE CHAIRMAN: Please.

MR. HIMELMAN: He's the manager. For the record, I'll call you Chong if that's okay.

THE CHAIRMAN: Sure.

MR. HIMELMAN: Make it easier for everyone. It's my understanding, Mr. Chong, that Tongbu, LLC, received and obtained preliminary and final approval for developing your property and that was done a resolution from October of 2016; is that your understanding?

MR. XU: Yes.

MR. HIMELMAN: Okay, and after you received approval, or even before that, what was your intention in terms of developing the property? If you could just refresh the board on that even though the board heard the application.

MR. XU: First go expand the building, then bring in the some restaurant. This is our original plan.

MR. HIMELMAN: Okay, and so your original plan was to develop, and the site plan was geared towards the proposed restaurant use that I described to the board; is that correct?

MR. XU: Yes.

MR. HIMELMAN: Okay, so after you obtained your preliminary and final approval from this board, what happened then in terms of trying to develop the property?

MR. XU: Something changed -- something change why we get approval because some, you know, situation it's more clear of we got approval.

MR. HIMELMAN: What situation are you

referring to?

MR. XU: It's a redevelopment plan.

MR. HIMELMAN: I'm sorry. You have to repeat that.

THE CHAIRMAN: The redevelopment plan in the town; is that what you -- you said redevelopment plan, correct?

MR. XU: Yes.

MR. HIMELMAN: Okay, so what about the redevelopment plan that's relevant to your property?

MR. XU: Because my business is office and (inaudible) space rental, so also business is (inaudible) it's a you're really looking for a longer term rental. So say cannot take a risk for uncertain. So yet make us very difficult to bring in the tenants and also some tenants say can take such a risk, but, you know, so that's why it take us a long time. We are make -- we tried to maximum our property, and we -- I always continually talking with some broker and ask them to help me to market my property, but, you know, say just want to wait until something is more clear.

MR. HIMELMAN: So, Mr. Chong, if I understand your testimony, so you're indicating that you were marketing the property --

MR. XU: Yes.

MR. HIMELMAN: -- and you were looking to secure a long-term tenant.

MR. XU: Yes.

MR. HIMELMAN: And there was difficulty in doing that because of the uncertainty involving the potential redevelopment of your property by the township; is that correct?

MR. XU: Yes.

MR. HIMELMAN: Okay. So at this point in time, where do you stand in terms of any discussions with any prospective tenants? Is it still the same situation that you've been unsuccessful because of the -- what you're saying about the uncertainty of the redevelopment; is that correct?

MR. XU: Yes.

MR. HIMELMAN: Okay, so my understanding is that after you obtained approval in -- your entity obtained approval in 2016, that revised plans were submitted to the town per the resolution of approval; is that your understanding?

MR. XU: Yes.

MR. HIMELMAN: Okay, and what's the status of that -- of that site plan and meeting the conditions of that? In other words, are you -- you have the fully -- are you fully compliant with the

conditions of the resolution?

MR. XU: Yes, and also, we, you know, we also put down everything in, you know, (inaudible).

MR. HIMELMAN: Well, what I'm asking is are there certain other aspects of the conditions -- for example, there were certain -- there were outside agency approvals that were required. To your knowledge, did you obtain all those, or there still some that are remaining outstanding?

MR. XU: To my understanding, we (inaudible) everything. We try -- we do our best.

MR. HIMELMAN: Okay, but is it your -- is it your testimony that because of the uncertainty of the redevelopment and your inability to secure a tenant because of the uncertainty of the redevelopment and what the future of the property will be that you were reluctant to complete all the required conditions of your prior approval; is that a fair statement? In other words, you don't have a final signed site plan by the town, correct?

MR. XU: No.

MR. HIMELMAN: No, correct, okay. So in addition -- so are you -- with regard to the redevelopment, are you a -- are you involved in that matter at all?

MR. XU: Yes.

MR. HIMELMAN: Okay. How are you involved?

MR. XU: I -- okay, I am involved all (inaudible) to (inaudible).

MR. HIMELMAN: What I'm asking, are you involved -- are you -- have you participated or are you involved in the challenge for the redevelopment?

MR. XU: What do you mean, challenge?

MR. HIMELMAN: Are you -- have you challenged -- are you involved in any litigation? Are you a plaintiff in any litigation challenging the redevelopment?

MR. XU: I think, you know, I'm not challenge it.

MR. HIMELMAN: Let me ask you, sir. Are you -- your entity, are you currently a party to any litigation concerning the designation of your property within the redevelopment area? Are you in court now on that matter?

MR. XU: Yes.

MR. HIMELMAN: Your entity, okay, and that matter is still pending.

MR. XU: Yes.

MR. HIMELMAN: So at this point, what is

the status of your efforts to secure tenants? Is it pretty much the status quo because of the uncertainty with the redevelopment?

MR. XU: Yes, yes. I can say it's very hard to bring in the tenants, and also, I needed to do my best to keep my tenants.

MR. HIMELMAN: So let me ask you this. What -- when you say the prospective tenants are concerned about the risk of a long-term lease, what's the risk concern that they have?

MR. XU: Because, you know, I have -- I, in fact, I have two tenants move out. Very long-term 1 year at that address for (inaudible) 30 years (inaudible) group, and they move out, and another person is 20 years, 15 year, eye doctor.

MR. HIMELMAN: No, I understand that, but with the tenants that you referred to, potential tenants that you testified to with regard to the proposed restaurant use, you said they were unwilling or they were concerned about entering into a long-term lease because of a risk, correct? What's the risk? Why were you having difficulty? You said of the uncertainty with the redevelopment. What's the risk that they're unclear about?

MR. XU: The risk is almost certain. They say don't know (inaudible) spend money. It's a lot of money, but, you know, they don't know. They continue to do the (inaudible). This is the risk.

MR. HIMELMAN: You mean at your property.

MR. XU: Yeah.

MR. HIMELMAN: Okay, because of the potential redevelopment.

MR. XU: Yeah.

MR. HIMELMAN: Okay. I understand. Okay. I don't have any other questions, Mr. Taylor.

MR. CRISCUOLO: I certainly have a lot of questions.

THE CHAIRMAN: Yeah. Larry, do you want to --

MR. SACHS: Yeah, let me just -- I have a couple questions. Is it Mr. Chong?

MR. XU: Yes.

MR. SACHS: Mr. Chong, you -- Mr. Himelman asked you a question or the question was whether or not you have finalized or had your plans signed off on your final site plan, and your answer was no. Certainly, there are issues of resolution compliance. Have you complied with all of those issues of resolution compliance? I'm assuming the answer is no and that's why the final plan is not signed, right?

MR. XU: Uh-huh.

MR. SACHS: Yes or no?

MR. HIMELMAN: Do you understand the question?

MR. XU: Can you repeat?

MR. SACHS: I'll repeat it. In other words, I think the -- your attorney asked you if your final site plan has been signed off on, and the reason it has not been signed off on I'm assuming is because you have not complied with all of the resolution compliance issues; is that correct?

MR. XU: Yes.

MR. SACHS: Okay.

MR. XU: But --

MR. SACHS: Well, let me -- go ahead. You can give me your but. That's fine. I don't want to cut you off.

MR. XU: Because, you know, the middle so on the potential tenants say (inaudible)

MR. SACHS: Okay, I understand. So basically, it's been economic reasons have prevented you from getting a tenant and from marketing this property, and that's the reason why you haven't at least complied with all the resolution issues.

MR. HIMELMAN: Well, I don't know that that's exactly --

MR. SACHS: All right.

MR. HIMELMAN: -- what he testified.

MR. SACHS: All right. That's fine. I don't want to put words in his mouth.

MR. BRAVMAN: Well, then what is he, because that's why I heard.

MR. HIMELMAN: I think, Mr. Chong, let me just ask you this. The reasons that you have not -- are the reasons you haven't perfected your site plan approval is because in part it's economic, correct, but also -- is that a fair question or fair statement, in part economic?

MR. XU: Yes.

MR. HIMELMAN: Okay. Let me ask a follow-up question. And also, is it because you were reluctant to complete the site plan and its conditions required because of the uncertainties that you described regarding the future of your property for the redevelopment activities; is that a fair statement?

MR. XU: No. Yeah, you know, before we submit our application, in fact, we have a potential tenant. They like to take over the (inaudible) so that's why we submitted our application to convert that building.

THE CHAIRMAN: So you're kind of sitting on the approval waiting for a tenant; is that -- that's not how lawyers might say it, but is that how common folk might say it?

MR. HIMELMAN: Is that a fair characterization? I mean, in other words, you had -- you were in the process of securing that tenant for that purpose, correct?

MR. XU: For --

MR. HIMELMAN: For the restaurant, for the restaurant use that you sought the approval. Okay, why did that potential tenant back out?

MR. XU: Because they heard something about redevelopment.

MR. HIMELMAN: All right. Thank you.

MR. SACHS: All right. So let me just ask you a few more questions. If you recall when you submitted your application and when you were here several years ago, I guess because this is located on State Highway 18, which is a state highway, you received a letter of no interest from the NJDOT. In other words, the Department of Transportation did not require any specific improvements to be done on the property; is that correct, Mr. Chong?

MR. XU: Letter from the township?

MR. SACHS: Well, all right, I'll state for the record that there was no requirement for any DOT approval on this project. Would you agree with that?

MR. HIMELMAN: You understand the question? In other words, because your property is on a state highway, the question is were you required to get an access permit from the New Jersey DOT for your proposed use to develop the property per the application for site plan approval? Because you need a permit from the DOT. That's what Mr. Sachs is asking. Yes or no?

MR. XU: No.

MR. SACHS: All right. That's not accurate.

MR. HIMELMAN: I will represent on the record that a DOT access permit was not required.

MR. SACHS: Correct. Okay. All right. All right. Just a few more questions and -- did you submit any plans to the construction department in the Township of East Brunswick to undertake the site plan work?

MR. XU: Sorry. Because sometimes I not (inaudible) understand it clearly, the term, the use. So when I submit this plan, David is my attorney --

MR. SACHS: I understand.

MR. XU: So I believe in thing so everything, all the stuff I just, you know, ask his advice.

MR. SACHS: Okay.

MR. XU: So because I am not very clear about all these little issue, so all the solution I just depend on him.

MR. SACHS: Okay. All right. So you can't answer for me whether or not you submitted an application to the Township of East Brunswick construction department to build your site -- to build your project. You can't tell me -- you don't know whether you did or not?

MR. XU: To --

MR. HIMELMAN: To the construction department.

MR. SACHS: Did you every submit construction plans? I'm the sure the answer is no, right?

MR. XU: No.

MR. SACHS: Okay, fine. Did you ever submit an application to the Freehold Soil and Conservation District to get approval from Freehold Soil and Conservation to do any earthwork moving on this property?

MR. XU: I think no.

MR. HIMELMAN: I believe the answer is yes, they were certified by Freehold.

MR. SACHS: All right, so they were certified already.

MR. HIMELMAN: Yes.

MR. SACHS: Okay, because my -- the reason I'm asking these questions, Mr. Chairman, is as I see it, the only outside agency approvals that would have been required outside of the Township of East Brunswick would have been Freehold Soil, which, if Mr. Himelman represents that it was granted, that's fine, and from --

MR. HIMELMAN: Middlesex County.

MR. SACHS: Right, and the DOT, but I just wanted to get that on the record.

THE CHAIRMAN: Mr. Criscuolo, you have a question? Larry.

MR. CRISCUOLO: Let Larry go first.

MR. BRAVMAN: I just have an initial question that might cause Mr. Criscuolo, as well. Mr. -- I'm sorry, Chong?

MR. XU: Yes.

MR. BRAVMAN: Mr. Chong, you indicated

that in October of 2016, when you were before this board on the application, there was a tenant or an end user, a restaurant, that was going to come into the site, correct?

MR. XU: Yes.

MR. BRAVMAN: And then I believe you testified that after October of 2016, in other words, after our approval, the redevelopment plan that the township was looking at was in issue maybe for the tenant, and that tenant I guess broke his lease or broke the intent to lease.

MR. XU: Yes.

MR. BRAVMAN: But when you were before the board in 2016 on your application, the subject property, the area, had already been designated as an area in need of redevelopment by the township council in October of 2015. So I guess I'm trying to understand how that is a circumstance that arose after the resolution as testified to by you as to why the first tenant left and now you're having difficulty getting a new tenant when it existed before you were -- came before this board.

MR. HIMELMAN: Okay. You want me to -- you understand the question?

MR. XU: Yes. So because, you know, at the beginning, the plan is, you know -- I'm sorry about that -- I was some property in East Brunswick, but I'm still I would not allowed for, you know, clear about our, you know (inaudible) so I have no idea about our redevelopment, but, you know, and also my tenant have no idea about -- when we got -- after we got approval, the plan is (inaudible) because, you know, the township had done more work after that. So the tenant, you know (inaudible) information about it.

MR. HIMELMAN: Let me see if I can ask -- Mr. Bravman, if you would allow me.

MR. BRAVMAN: Sure.

MR. HIMELMAN: So what Mr. Bravman is indicating is that when you came to the board with this -- your project in 2016, you would agree that the redevelopment plan had been already in progress; is that your understanding?

MR. XU: Uh-huh.

MR. HIMELMAN: Okay. Are you aware of what changed, though, in the redevelopment plan from the time you got your approval and subsequent to that time, about a year after that, to your knowledge, did anything change with regard to the redevelopment that you're aware of?

MR. XU: After get approval and we, you

know, I am aware of our redevelopment plan so I talking with my neighbor about this plan so I get more and more information.

MR. HIMELMAN: Let me see if I can help you, guide you a little bit. What I'm specifically trying to get an understanding is, after you got this approval, were you aware that the Township of East Brunswick modified the redevelopment ordinance and plan to permit the town to potentially condemn your property, to take the property by condemnation? Were you aware of that after you got your approval?

MR. XU: Yeah.

MR. HIMELMAN: Okay, and prior -- when we came in -- when you came in in 2016, were you aware that the plan and the ordinance for the redevelopment permitted potential condemnation?

MR. XU: No.

MR. HIMELMAN: So, Mr. Bravman, I think that may help clarify.

MR. BRAVMAN: So the condemnation component is what the applicant is contending changed from 2015, when it was designated, which was before he was here or the entity was here, 2016 the approval, there was no condemnation component?

MR. HIMELMAN: Correct.

MR. BRAVMAN: And that's the component that he's saying is now making it difficult to obtain a long-term tenant.

MR. HIMELMAN: One of the aspects because the tenants are -- my understanding, Mr. Chong, is the tenants are reluctant to enter into a long-term lease because it's potentially that the town could condemn the property; is that your understanding?

MR. XU: Yes, and then, you know, we have (inaudible) signed 10-years' lease. Because (inaudible) building, it's not a -- you know, it's this restaurant, so say you have to spend a lot of (inaudible) money, so the lease we try to sign 10 years' lease.

MR. BRAVMAN: Mr. Criscuolo wants to follow up.

MR. CRISCUOLO: But you're well aware that it was in an area in need of redevelopment, right? Your attorney advised you in 2006 when you got this.

MR. SACHS: Sixteen, Joe.

MR. CRISCUOLO: Sixteen. That clearly the master plan had the subject property as designated in an area in need of redevelopment by the town council the prior year. Were you aware of that? Did your attorney discuss that with you when you brought your

application to this board?

MR. XU: No.

MR. CRISCUOLO: Your attorney did not discuss that with you; is that what you're saying? Who was your attorney for this application, because it's printed right here in the comments --

MR. HIMELMAN: Mr. Criscuolo, there's no -- we'll stipulate that that was -- it's in the staff report so --

MR. CRISCUOLO: Are you saying you didn't get the staff report.

MR. HIMELMAN: No, no, no, I don't think there's an issue there. I don't think the applicant is disagreeing with what you're saying.

MR. CRISCUOLO: Okay. And so you had approximately 18 months to 2 years before the condemnation interest came into effect; is that correct?

MR. HIMELMAN: Do you understand the question? I'm not sure he understands the question.

MR. CRISCUOLO: Well, you've been answering most of his questions so why don't you answer.

THE CHAIRMAN: I understand.

MR. SACHS: That's all right. We'll give you the leeway.

MR. HIMELMAN: Trying to extract the information from him, but --

MR. CRISCUOLO: But I'd like to get the truth from the applicant.

MR. HIMELMAN: Sure. Why don't you rephrase the question.

MR. CRISCUOLO: First of all, you're the owner of this property.

MR. XU: Yes.

MR. HIMELMAN: Well, this entity.

MR. SACHS: His LLC.

MR. CRISCUOLO: Want to make sure this is not like a contract purchaser agreement or some of these other agreements that we see. We got Habit Burger coming. We've got this coming. So but at that particular time, when you put this application in front of this board, it was in an area of redevelopment, and your attorney should have discussed with you what that meant. That's all I'm saying. I want to go on the record to say that. It's a statement. It's not a question.

So at the time of the application, you came in, you knew that. Your attorney knew that. And you're looking to market this place for this type of

establishment in an area of need redevelopment, okay, and so for 2 years you couldn't find somebody to rent the place before it was put in an area of need of redevelopment with condemnation, correct?

MR. XU: Uh-huh.

MR. CRISCUOLO: Okay. Just want to make sure I had my --

THE CHAIRMAN: I just have --

MR. HIMELMAN: Sorry.

THE CHAIRMAN: I just have a quick question, and maybe the -- so the -- we all recognize that the ability of the township to condemn was added, but from your narrative as you explain this to the board, it sounded to me like you had and lost a tenant prior to that condemnation clause being added to the redevelopment plan. Do you follow what I'm saying?

MR. XU: Uh-huh.

THE CHAIRMAN: So is that true? So you had a tenant, lost a tenant, all while condemnation was not part of the redevelopment plan.

MR. HIMELMAN: Mr. Chong, do you understand? In other words, what the chairman is asking, did you lose the tenant, but you never had a lease agreement, correct? You never entered into a lease agreement, correct?

MR. XU: I --

MR. HIMELMAN: You had a letter of intent, no, but you said -- when you said you lost a tenant, he never had a tenant.

THE CHAIRMAN: Well, he represented that he lost a tenant and could then -- subsequently could not find a tenant.

MR. HIMELMAN: Well, I think -- let me --

THE CHAIRMAN: I'm not an attorney, so whether it was a letter of intent, whether it was strong interest, to whatever degree that initial tenant had made a -- what interested in the property in a serious way, that tenant, that person, that potential tenant was in and out of the deal all while condemnation was not part of our redevelopment plan.

MR. XU: Can I say something?

THE CHAIRMAN: Sure, of course.

MR. XU: You know, as a businessman, for (inaudible) not everything is certain that you go ahead. A lot of uncertain that you have to go in order to take some action. So at the beginning, we had (inaudible) our township (inaudible) just a plan. So, you know, but sometimes you take a lot of -- a long time, you know, the plan can be better, too, can be better go through. You take a long time. But as a

business person, you know, we have no time to waiting -- for waiting 1 year or 2 years or 5 years or maybe 10 years. Some plan, you know, you know we have to wait 20 years, maybe over 20 years. So as a business person, we just cannot waiting so long time, and we cannot waiting everything is, you know, that go through. So because of this some uncertain, we still have (inaudible) to get -- try to get tenants, try to get -- property tax for my property right now is \$91,000, but my gross income is only about 200,000. Maybe, you know, my almost -- my high for gross income, not net income, to pay the tax, to pay the property tax, so (inaudible) so even, you know, it's uncertain, I still try to bring in some good tenant. We have to survive, or, you know, I cannot survive.

So I still, you know, they come fast, so say there's a good location. We want to have a restaurant, you know. So as a landlord, I will do everything I can do to bring in this tenants to, you know, to get a deal. So chance is very small, I still want to do that. So this is why, you know, I know it's (inaudible) plan, but I still want to get (inaudible). But after I had approval, you know, the picture for redevelopment plan is a (inaudible) here than previous.

THE CHAIRMAN: I understand, I understand. You made that point very -- you made the very well. Good point.

MR. XU: So this is my situation. And tonight I bring in, you know, (inaudible), you know. I still want to, you know. Okay, the other thing is as of this night, my strategy as you know right now (inaudible) clear picture for redevelopment plan. You know, as a landlord, I'm not like to fighting with the township. That's not my principal. My principal to business is just both side. This is my principal. But, you know, up to now, you know, to me, you know, right now we have a very (inaudible) redevelopment plan picture, but, you know, it's still not 100 percent. Can you promise the redevelopment plan can go through 100 percent? Nobody can promise that.

THE CHAIRMAN: That is true.

MR. XU: So in such a situation, I still want to, you know -- maybe, you know, I still need to keep this approval as a business person, because, you know, I still have chance to -- I had to go, you know, further. This is why we come here.

THE CHAIRMAN: Mr. Heppel.

MR. HEPPEL: You know, I can certainly understand the difficulties the applicant has had, and my thoughts, okay, I always a try to look at things

from the other person's viewpoint, okay. If I was the applicant -- I'm going to ask Mr. Sachs, okay, this. I'm the applicant right now, and I've tried everything under the sun, okay. I, myself, I don't believe that I'm going to be able to get a tenant, but assuming that I were to be able to get a tenant, what would have to be completed before that October 26 date, which is the longest that the extension can go, before this will be over anyway? I mean, is it possible, or is it really not going to happen unless he finds somebody tomorrow?

MR. SACHS: I don't think that's even the issue. I mean, I think everyone is somewhat sympathetic with his plight. We understand that. But the statute's quite clear. I mean, the statute is very specific as to the reason why an extension can be granted, and it has to deal with delays in obtaining legally required approvals from other governmental entities and that the developer applied promptly for and diligently pursued these approvals. So the scenario you would encounter with under that statute would be you applied to the DOT, you applied to Middlesex County, and they just -- the application was gathering cobwebs in the office.

MR. HEPPEL: By the way --

MR. SACHS: And that's --

MR. HEPPEL: I was asking because, you know, if the applicant were to understand -- and I agree with you, they had opportunity. They didn't meet the deadline. There doesn't appear to be justification for that, at least to me, but maybe for -- for him to understand that even if this was okay, and maybe the board feels it is, but even if it was okay, it wouldn't matter anyway, and, you know, he wouldn't know that, then he can save himself from paying Mr. Himelman, you know, more fees and things, but, you know, he could come to a conclusion that I'm throwing good money after bad because it wouldn't happen anyway.

MR. SACHS: Yeah, I think in this scenario, he didn't even require any other outside agency approvals. That's why I asked those questions. I mean, he got his Freehold Soil Conservation District approval. He got his Middlesex County approval. He didn't require any DOT approval. So the only approvals that were necessary were from the Township of East Brunswick, which he had, all right. So it's a real technical issue here, and you can feel very sympathetic for this man, and I think we all do, but the statute is quite specific.

Now -- and Mr. Himelman, I don't know if you're representing him on the lawsuit.

MR. HIMELMAN: No.

MR. SACHS: No, okay. It's possible he may have raised this issue in his lawsuit as part of his challenge to the redevelopment plan, all right. So, you know, he may have -- listen, if he wins his lawsuit and it's in there, he may have protected rights that way, but at this point, he's here requesting an extension under section 52 of the statute. His approval has lapsed as of October. And from what I've heard, I don't think I've heard anything that would deviate from the statute which would give this board reasonable satisfaction that the developer was barred or prevented directly or indirectly from proceeding with the development because of delays in obtaining legally required approvals from other governmental entities and that the developer applied promptly for and diligently pursued these approvals.

And by the way, I don't think the time -- the time issue is really not the issue here, all right. You know, it talks about the expiration date of the final approval or the 91st day. I mean, those clocks have ticked already, all right.

MR. HEPPEL: You know, when the condemnation was added, okay, I believe -- I could be incorrect -- that was 2018.

MR. SACHS: Seventeen, might have been '17.

MR. HEPPEL: Was it '17?

MR. CRISCUOLO: Condemnation was added (inaudible)

MR. SACHS: Probably '17.

THE CHAIRMAN: Seventeen I think.

MR. HEPPEL: But the point is it's been years now, you know.

THE CHAIRMAN: Right.

MR. HEPPEL: You have at least a couple years since then that it hasn't been rented, and it just to me --

MR. SACHS: I understand --

MR. HEPPEL: -- very unlikely, sir, you know, and that's -- I'm just trying to be helpful in that way, but I agree, it is past the deadline, and he didn't meet the requirements.

MR. SACHS: Didn't -- there's certain criteria necessary to request the extension.

MR. CRISCUOLO: Also, certainly, my fear is when a board -- and I've been involved in boards in other towns -- when you grant extensions on these types of circumstances -- I understand the financial burden that this man has gone through -- then you set a

precedence, and then the next applicant that comes in is going to say you gave it to this facility, now it's my turn, and now it's my turn.

I do have a concern with the time, too. It's a 3-year as our esteemed attorney wasn't that concerned about it, but they probably should have been here in the summer asking for the extension.

MR. SACHS: They probably should have, but you know what, I don't think it would have made a difference because --

MR. CRISCUOLO: I don't think so, either, but what I'm saying is, you know, statutorily, I'm always held to dates --

MR. SACHS: Right.

MR. CRISCUOLO: -- and hearings and times and so on, and when I meet them, I still wind up in court, you know. We all, you know, have to bear the cost of that as taxpayers and representing the town, so another one of my concerns is simply I don't want to set a precedence for granting these types of extensions that don't meet the statutory requirement that Mr. Sachs has stated.

THE CHAIRMAN: And that's my --

MR. CRISCUOLO: And I've seen this happen in other places.

THE CHAIRMAN: And that's my big concern is that this is a lot of time, and while I understand the upheaval that the redevelopment plan may have caused some property owners, I think that the applicant had a tenant, had an interested party, and lost an interested party when nothing changed, when it was simply the redevelopment plan, you know, without the ability of the town to go to condemnation and eminent domain, and, you know, so deadlines are something that are very important I think, and I've been on this board for a very long time, and when we look at an application and look at approvals, you know, if I can help an applicant with the curb radius or, you know, a shrub or two, I am very willing to do that, and I think I would be very -- viewed as someone who is very pro business and pro applicant, but on deadlines that set precedence that can affect applicants that I'm not even going to be voting on when I'm shuffled off to -- I'm not going to buffalo, but wherever I end up -- those really concern me, and I really tend to look at the details on those.

MR. SACHS: Before you go down, Shawn, let me just add one more thing. Again, I don't think the deadline is the issue. The issue that this board needs to focus on is whether or not this applicant was

-- and I'll read it again -- "barred or prevented directly or indirectly from proceeding with the development because of delays in obtaining legally required approvals from other governmental entities."

THE CHAIRMAN: And I guess that's what I meant by --

MR. SACHS: Right. All right, "and that the developer applied promptly for and diligently pursued these approvals." That's what the focus needs to be on, okay?

MR. REISS: So my question is what are the next steps. I agree with you. I mean, it's -- the situation is what the situation is. What is the applicant's step?

MR. SACHS: What is his recourse. Well, the next step is eventually this board's going to have to take a vote this evening on whether to grant him an extension.

MR. REISS: It sounds like what we're saying is it's not going to be approved.

MR. SACHS: Right.

MR. REISS: So what is --

MR. SACHS: What is his next recourse?

MR. REISS: Yes.

MR. SACHS: He's got several recourses as I see it. First of all, he owns the property, all right, so he can come back to this board with an application under the current ordinance that's in effect right now and submit a plan for approval, all right, or he can discuss with the township what possibility exists with respect to this property vis-a-vis the current redevelopment plan, so he's got some options.

MR. REISS: So my point is if you're having trouble getting a tenant, and let's say it's an expense, you come back, you get approval again, are you still going to be able to get a tenant. I mean, I don't know.

THE CHAIRMAN: I think that's the point.

MR. SACHS: Right. I mean, he's not going to be -- he's not sitting with a building necessarily that's just going to be vacant. Certainly, it's his initiative -- and I think Mr. Himelman would agree -- his initiative to do something with this property, but it's going to have to be in accordance now with the redevelopment plan --

MR. REISS: Right.

MR. SACHS: -- all right, or, as he's indicated, he's also filed a lawsuit, and he can see how the chips fly on the lawsuit.

MR. REISS: Put the lawsuit aside, but as his attorney, have you explained to him what his options are on what he can do? Maybe that's the next step.

MR. SACHS: I'm sure he will --

MR. REISS: Right. That's outside the box.

MR. SACHS: -- pending the decision this evening.

MR. HIMELMAN: Yeah, I think after tonight I'll be able to --

MR. REISS: Exactly.

MR. HIMELMAN: The only -- I'm sorry.

MR. BRAVMAN: I'm just going to ask the question because we haven't voted yet. Let's assume we give him the extension. He's asking for a 1-year extension. Is the 1 year from October of 2019, or is it from today or when the resolution --

MR. SACHS: It would be from the date of the lapsing approval.

MR. BRAVMAN: So he would only have in essence 10 months or 9 months to obtain a tenant who he's testified or shared insight that tenants are very reluctant because of the redevelopment with condemnation, the tenant wants to sign a long-term lease and doesn't want to be cut out of -- using the word cut out of -- land use term, Mr. Chairman said before -- so again, I'm going to ask where does that, which is I guess what Charlie was asking and what Larry was asking, where does that get the applicant if he was to get what he's asking for and we afforded him in essence a 9 or 10-month -- it's a 1-year, but 9 or 10-month -- other than maybe seeing him again asking for another year and then another year. I'm wrestling with his testimony that he shared with us that people are very reluctant to do it anyway.

MR. HIMELMAN: Well, one of the options Mr. Sachs referred to was potentially an option the applicant can have further discussions with the municipality. Potential that -- and again, I'm not handling litigation, but potential that that matter will be resolved, and then he could move forward and implement his -- and get -- secure a tenant and move forward with the project, so -- but you don't even get there if the approval lapses. That's the concern.

MR. SACHS: Well, no, I guess potentially, if he worked out a settlement with the municipality, which would require future planning board approval, it would be contingent upon -- he'd have to come back.

MR. HIMELMAN: That's what the applicant is looking to avoid. The applicant is looking to get the extension so that those dialogues continue with the town, and if there's a resolution, then to Mr. Sachs's point he would not have to come back to the board for a new or amended site plan, if you will, and he could move forward with perfecting the current site plan. I think that's the applicant's --

MR. BRAVMAN: I guess getting the extension gives him a feather, a sword that he can then hold in his litigation because it's in essence showing the township risk because he would be saying I have an extension, let's talk.

MR. HIMELMAN: You may not want to have just said what you've just said.

MR. BRAVMAN: I said not at the township.

MR. HIMELMAN: No, no, no.

MR. BRAVMAN: I'm saying that as an attorney and understanding risk, balancing it with a businessman.

MR. HIMELMAN: What I'm suggesting is I don't think he can reengage with a potential tenant if the approvals lapse. He doesn't even get to have that initial dialogue and then be able to contemporaneously discuss potential resolutions.

MR. BRAVMAN: Well, your discussion with us before was not engaged in discussions with a tenant. You referenced engaging in discussions with the township.

MR. HIMELMAN: Both. It would be both.

MR. SACHS: I don't want the board to lose sight of what the ordinance says, statute says.

THE CHAIRMAN: That's exactly what I was going to say.

MR. HIMELMAN: And I happen to agree with that, but it --

THE CHAIRMAN: I am very sympathetic with this applicant, but the fact that it's difficult to rent isn't what I'm looking at.

MR. HIMELMAN: I understand. Mr. Chairman, if I --

THE CHAIRMAN: And with that, I'm going to take a 5-minute break because the chairman needs to take a break.

(Board recess)

THE CHAIRMAN: Okay, we're back. I guess -- are there any other board questions? Why don't we just open it up real quick to the public just so we can open it and close it and -- is there any member of the public wishing to be heard on this application? Seeing

none, I declare the public portion closed.

Mr. Himelman, I think you've kind of heard the board and our concerns. There doesn't seem to be anymore questions by the board. Do you have any final statement or comments or --

MR. HIMELMAN: I think that the applicant explained the situation and the circumstances, Mr. Chairman. I understand the board's response to those concerns. While I understand that the board is sympathetic to the applicant, the board expressed concerns about granting this extension. I will say, however, that I do think that it is within the board's discretion to grant the 1-year extension and that, you know, the applicant's indicated that the -- quite frankly, it was the redevelopment and the aspects of that particular condemnation that really prevented him from moving forward with this, but we don't have to hash this any further, but I think the board gets the genesis of the applicant's request.

THE CHAIRMAN: Okay. No final board questions or comments, I -- this is a very -- believe it or not, as I start my 22nd or 23rd year, however long it is, this is one of the more difficult decisions that I've had to make since my time on the planning board. Like I said, I generally -- I love my town. I know that my town is healthy when -- our town is healthy when business thrives, and I try to, as Charlie does, and Charlie spent many years as a banker here in town -- I try to see how can we help the business owner, how can we help this applicant, and if it's a tree, if it's a curb radius, I try to be flexible on those things, but on things that are going to set precedent and I think things that clearly in my mind, you know, don't meet the criteria that they are supposed to meet, that's when I have an issue. So I am going to make -- Larry we very rarely vote no so I am going to make a motion to deny this application.

MR. SACHS: Motion to deny a request for an extension pursuant to township ordinance.

THE CHAIRMAN: So a yes vote would then not grant the extension at the end of the day.

MR. SACHS: Right, and it would be a request to deny, and the ordinance is the ordinance which Mr. Himelman cited and also the Municipal Land Use Law statute, which our township ordinance mirrors, which is 40:55D-52(d).

THE CHAIRMAN: So a yes vote will result in a no.

MR. SACHS: A yes vote will result in --

THE CHAIRMAN: A denial of the request.

MR. SACHS: -- a denial of the request for an extension. And we need someone to second that --

THE CHAIRMAN: Right.

MR. SACHS: -- and then I think you should have some comment before you vote.

THE CHAIRMAN: Absolutely. I was planning that. Is there a second?

MR. HASHMI: I'll second.

THE CHAIRMAN: Mr. Hashmi seconds it. Okay. Discussion. Please if you want to start.

MR. SCHMIDT: Yes. I mean, I have sympathy for the applicant in a case like this. There's an economic hardship that has been created, but I think that the board attorney has clearly set forth that there's no statutory justification for the board to allow the extension in this case. I mean, the statute sets forth very specific language that just does not exist, and the applicant has not really shown any basis for us to grant his request, and while the applicant's attorney talks about the board having discretion, I think the board can have discretion, but there has to be a basis for the discretion. There has to be a legal basis for us to have discretion to grant him his application, and frankly, I just don't see that it exists in this case, and I would have to vote yes to deny.

MR. SACHS: All right, so actually, why don't we do this, Loren. Why don't you roll call it starting at that end and then your comment can be made. So roll call Mr. Schmidt.

THE CHAIRMAN: And if you don't need to -- you're not required to comment. I just want to give each board member the opportunity.

MR. SACHS: Start down at that end. So Mr. Schmidt's vote is.

MR. SCHMIDT: My vote is yes, and I won't restate my comments, which I just stated for the record why I am voting yes.

MR. SACHS: Okay.

MS. MORACE: Mr. Hashmi.

MR. HASHMI: Sure. So as a small business owner myself, I do sympathize with the applicant, but hearing the statutes that, you know, he is applying for as relief, I don't think the applicant satisfactorily presented a case or at least created circumstances that would permit us to consider his application. So, you know, I do feel sympathy for the applicant, but I think the -- I'm voting yes to deny the extension.

MS. MORACE: Mr. Reiss.

MR. REISS: Same comments, unfortunately. I'd have to vote yes, as well. Unfortunately, the same comments.

MS. MORACE: Mr. Bravman.

MR. SACHS: No, let's go to Mr. Heppel.

MS. MORACE: Mr. Heppel.

MR. HEPPEL: I vote yes, as well. As I mentioned, you know, I'm very sympathetic to the applicant, but there was plenty of time to come here if things weren't going well before that deadline, and there really isn't a justification for (inaudible) I'm very sorry for you, and I hope that you can work something out with the town where whatever you're going to do fits in the redevelopment, but, you know, I think Mr. Schmidt, you know, he put things as well as anybody could of the overall reasons. So I am sorry. My vote is yes.

MS. MORACE: Mr. Bravman.

MR. BRAVMAN: Similarly, the approval lapsed. The applicant did not come in prior to the approaching lapse, which would have been in October of 2019. The standard which we addressed in the very beginning and Mr. Sachs read two, if not three, times during the testimony, I don't believe that it's been met by the applicant. I, too, feel -- I approach these very pragmatically, and I really try to listen and understand, and I really wrestle when a business owner, a small business owner, is coming before this town to develop it and provide something which would be an asset to the town, but I think we have to balance that still with what the law is, and if you take the law as written and as we have to apply it, he just has not met it, so I, too, would have to vote yes to deny the request for the extension.

MS. MORACE: Mr. Criscuolo.

MR. CRISCUOLO: Also voting yes to deny. I echo my sentiments of the board members that are here.

MS. MORACE: Councilwoman Sullivan.

MS. SULLIVAN: I, too, have to vote yes to -- as everyone else has stated.

MS. MORACE: Chairman Taylor.

THE CHAIRMAN: Yes, and I'll say nothing further but yes, and I appreciate my fellow board members, and I know how difficult a vote this was for all of us. So yes. The request for an extension on the application is denied.

MR. HIMELMAN: Thank you, Mr. Chairman. Thank you, board.

THE CHAIRMAN: Is there any other business to come before us this evening?

MS. MORACE: No. Next meeting cancelled. After that February 12.

THE CHAIRMAN: February 12. So everyone bring their Valentine's candy. Motion to adjourn.

MR. SCHMIDT: Move it.

THE CHAIRMAN: We're out of here. And welcome, Sharon. We're happy to have you aboard.