

**MINUTES
COUNCIL WORK SESSION/PUBLIC HEARING
TOWNSHIP OF MONROE
APRIL 13, 2015**

A.) OPENING CEREMONIES & ROLL CALL

The regular scheduled Work Session Meeting of the Monroe Township Council was called to order by **Council President Frank J. Caligiuri** at approximately **7:03 PM** in the Conference Room on the first floor of the Municipal Complex, located at 125 Virginia Avenue, Williamstown, New Jersey.

This meeting was advertised pursuant to the New Jersey Open Public Meetings Act (*NJSA 10:4-6 thru 10:4-21*). Notices were placed in the official publications for Monroe Township (i.e.: South Jersey Times, Courier Post and the Sentinel of Gloucester County). A copy of that notice has been posted on the bulletin board at the Municipal Complex.

SALUTE TO OUR FLAG – **Cncl. McIlvaine** led the Assembly in the Salute to Our Flag.

ROLL CALL OF PUBLIC OFFICIALS

Cncl. Walter Bryson	Present	
Cncl. Marvin Dilks		<i>Excused</i>
Cncl. Rich DiLucia	Present	
Cncl. Bob Heffner	Present	
Cncl. Bart McIlvaine	Present	
Cncl. Cody Miller	Present	
Cncl. Pres., Frank Caligiuri	Present	
Mayor, Daniel Teefy	Present	
Business Admin., Kevin Heydel	Present	
Solicitor, Charles Fiore	Present	
Engineer, Dave Cella, ARH	Present	
Dir. of Public Safety, Jim Smart	Present	
Dir. of Code Enforcement, George Reitz	Present	
Dir. of Public Works, Bob Avis	Present	
Deputy Mayor, Andy Potopchuk	Present	
Municipal Clerk, Susan McCormick	Present	

B.) MATTERS FOR DISCUSSION

- **Towing – Lake Avenue Auto Body**

Also in attendance for this matter was **Mr. Tom Weeast, Owner of Lake Avenue Auto Body, along with Mark Shoemaker, Attorney representing Mr. Weeast**

Solicitor, Charles Fiore noted by way of introduction, in the past you received information on issues relating to Lake Avenue Towing. He added that at a point in time council members were provided with documentation from my office as well as from the Director of Public Safety, Jim Smart. Mr. Fiore then distributed that information to all council members and mayor referencing a letter dated February 19, 2015 that was forwarded to Mr. Smart from his office setting forth certain complaints received by the Monroe Township Police Department. Mr. Fiore then introduced Mark Shoemaker, Attorney for the tower (*Weeast*). For the record and for the purpose of making the record clear the correspondence dated February 19, 2015, email received from Mr. Smart to mayor and council dated March 6, 2015 as well as a correspondence dated March 12, 2015 from Mr. Fiore's office to Lake Avenue Auto Body were all introduced into the record and marked as the following:

- "Monroe Township 1" – Correspondence dated February 19, 2015
- "Monroe Township 2" – Email dated March 6, 2015
- "Monroe Township 3" – Correspondence dated March 12, 2015

Mr. Fiore then noted just by way of a procedure and process as the code (*Chapter 262 Towing*) is silent on a particular procedure and process however based upon fundamental due process anyone who has a proprietary interest or legal interest in something they have the legal right to be heard. There will be no action unless/until all the facts are ascertained so there can be an informed decision. An individual has the right to be heard with respect to

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their position with the township. The solicitor then advised that Mr. Weeast has elected to retain Mark Shoemaker a local attorney from Woodbury, NJ to represent his respective interests. Under §262 of the Code of the Township of Monroe the procedure when action is taken is addressed. Complaints are directed to the Director of Public Safety he reviews everything then gives a recommendation to the Township Council and Mayor as to what, if any, action would be taken. He then indicated, for the record, there is an email from Mr. Smart dated March 6, 2015 ("*Monroe Township 2*") which sets forth what his findings and recommendations are. He then referred to reports by Sgt. Mark Burton as well as Sgt. James Kelly of MTPD Traffic Division (*both in attendance*).

At this time, **Director of Public Safety, Jim Smart** identified himself and Solicitor Charles Fiore administered an oath and requested Mr. Smart to elaborate on his findings and recommendations. Mr. Smart referred to "*Monroe Township 2*" and two incidents that took place adding he updated council and mayor on it. He noted that Mark Burton did a pretty thorough investigation into both incidents, which included talking with an expert and based on his findings is what sparked both the email and the recommendation. Solicitor Fiore requested that Mr. Smart elaborate on the incidents that gave rise to his recommendation as set forth in the email. Mr. Smart noted the first one was a complaint in response to a crash and in loading the vehicle during the clean-up there was a little bit of a discrepancy as to the vehicle clean-up and tossing stuff around as well as the vehicle smoking. He added this was dealing with the tow truck being operated by Lake Avenue and it was smoking up the area pretty intensely. Mark's (*Sgt. Burton*) findings on that ended up being a mechanical breakdown so we didn't put a lot of weight on that one. Mr. Smart continued and noted basically the unsafe acts were the board being used to hold the accelerator down and more importantly the board being used to hold the brakes in place or the vehicle in place by holding it between the seat and brake pedal (*not anything that we would condone*). Mr. Smart added there are pictures that are not very clear and it is hard to tell but there is a board wedged between the seat and under Mark's investigation Lake Avenue did not deny using it and they consider it to be a safety and a help, however we see it more as a safety hazard. Mr. Smart then noted that was pretty much the basis, the smoking of the vehicle and mechanical breakdowns can occur at any time so we really weren't a whole lot focused on that, even though it did send two (2) police officers out of service for a short time. This was from smoke billowing from underneath of what was considered a flatbed during the clean-up process. Then the operator became agitated with a request as to the sweeping (*inaudible*) and debris on the shoulder which then put it into the lane of traffic. All of this was kind of compiled into one that said discipline for actions unbecoming. So again, Mark spent quite a bit of time and I am sure he will have a chance to go through his findings and his whole work of what he ended up doing to reach the conclusion or assist me in reaching the conclusion we came up with. Mr. Smart added you can see by the dates involved nothing was rushed into. Mark (*Sgt. Burton*) being as thorough as he is and we went down many a roads with Mark and his ability to check up on and follow up stuff for me has been phenomenal. **Solicitor Fiore** then said based on your findings, obviously your recommendation is contained within the email but it is important you place that recommendation on the record and why you feel it would be an appropriate remedy at this point. **Director of Public Safety, Jim Smart** then noted at the very least it comes down to the safety issue and that is 100% what we are behind. Again speaking with the expert we have the right to put, at least a suspension, if not a complete removal but at this point in time other than the corrective action that has been taken on the vehicles this is why we were going for the suspension. **Solicitor Fiore** then noted for the purposes of keeping the record somewhat distinct and clear he explained to Mr. Shoemaker again there is no procedure contained within our code perhaps you may wish to introduce yourself and direct any questions to Mr. Smart.

Mark Shoemaker then questioned Mr. Smart and if he was familiar with the report Sgt. Burton prepared? Mr. Smart responded, yes. And that included the hearsay comments from the NJ State Police, you went to them to ask them about whether this was a safety concern. Mr. Smart responded, yes. Mr. Shoemaker questioned if he was correct in that synopsis of the state police officer's statement that he believed that the wood pole against the brake pedal would not be unsafe? Mr. Smart responded, yes I read that. Mr. Shoemaker then said, so the state police's opinion was the accelerator in hold may be unsafe but the wood block was not, correct? Yes.

Solicitor Fiore then administered an oath to **Sgt. Mark Burton**. Sgt. Burton then identified himself. Solicitor Fiore requested that Sgt. Burton summarize his report dated

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February 12, 2015 and forwarded to Director Smart (*contained within Monroe Township #1*). **Sgt. Burton** explained that on January 30, 2015 he received an email from Sgt. Kelly, actually we spoke a day or so before and he kind of discussed a few issues with me as it was pretty detailed I asked him to put it on paper, either email or memo form, which he did. This was extremely detailed and thorough. With that information I tried to sort it out and do a check-up of the calls, which I did, with vehicles and everyone on location. I spoke to all the officers who were on the scene, and are addressed in the initial email that came from Sgt. Kelly. Sgt. Burton continued and noted everything from what was alleged to have been seen to the incident with filling out some paperwork on the inhalation. With that I had a meeting with Mr. Weeast and his driver a few days after that, I received this email on the 30th, I spoke with the officers and Sgt. Kelly that next day (31st) then called Mr. Weeast (*on the 1st*) and went and spoke to him about every individual issue that was brought to me. The solicitor then noted perhaps for the record just identify each issue as you are summarizing, he then noted the email referred to from Sgt. Kelly is attached to ("*Monroe Township #1*"). Sgt. Burton then noted his synopsis of the events that he discussed with Mr. Weeast was involved with a crash on the 29th (*January*), with the case number noted in the report. While attempting to load a Cadillac Escalade, the tow operator decided to wedge a piece of wood between the brake pedal and driver's seat, adding that Sgt. Kelly could fill you in better on that. Sgt. Burton then noted he thought he was notified by a junior officer on the scene that as it was attempted to be pulled the tow truck was actually moving back toward the towed vehicle. The junior officer believed this to be unsafe and notified Sgt. Kelly who was at another location. He (*Kelly*) then went down to check out what was going on and it appeared unsafe to both of those officers and Sgt. Kelly took photos of the wood lodged on the brake pedal. Burton continued, the next day there was a crash Lake Avenue responded and on the scene there was a good bit of smoke coming from under the flatbed with some type of an issue. Again, the wood was placed as well as a metal bar on the accelerator. There was video taken of that and that was done to produce RPM's to load the vehicle on to the flatbed, Sgt. Kelly was on that scene again and documented that with some photos and/or video. Mr. Fiore questioned if it was able to be ascertained where that billowing smoke was coming from, the tow truck? Sgt. Burton responded, yes it was. After the last scene, when it happened again it was documented again and that was an issue with the driver that was addressed for clean-up. When I spoke with Mr. Weeast he told me on the scene of the first crash there was an issue with the truck, I believe an injector failed on the scene so there was no control of it at that point. At the second crash, later that evening, it was still happening. When Sgt. Burton spoke with Mr. Weeast on the 1st he advised the problem had been corrected. I did see the truck, it was running and it seemed to be corrected, it definitely was not the same issue from video. Sgt. Burton noted when he spoke to him (*Weeast*) on the other issues for the vehicle moving and for the brake and the accelerator he clearly stated to me that neither one was an unsafe practice and said they are not necessarily needed to do but it's not unsafe. He said the one was done to try to make the scene cleared faster which is what his driver also said, to make the process quicker to get the vehicles loaded and as an extra precaution with the brake. Again, he clearly said it is not unsafe although not necessary. Lastly, all that was summarized somewhat on a phone call to heavy truck enforcement from the state police. Sgt. Burton noted he wanted to go outside of just our area to get another opinion and I was advised that clearly the one issue, the accelerator was unsafe and should not happen without a body in the driver's area. This came from the trooper in the heavy truck enforcement unit. He said on the other issue, that he wouldn't call it unsafe but definitely not a good practice and shouldn't be used, there are other methods that should be used. That was pretty much a synopsis of what I did on the complaints and where we went with it. Sgt. Burton added all that information was passed on to Director Smart.

Cncl. Pres., Caligiuri questioned if this was a manual transmission. The response was yes. He then questioned why wouldn't you just turn it off and just drop it into gear. Mr. Weeast noted, for what reason, the emergency brake worked fine. They did not retain the keys to the Cadillac, the Cadillac's wheels were turned and very heavy so when we go to pull it on the truck it pulled through and moved the truck a little bit, kind of like moves it back. Mr. Shoemaker questioned, does the hoist, the rope or chain that pulls the vehicle up onto the flatbed, can that operate with the ignition off. Mr. Weeast responded, no. **Solicitor Fiore** then noted perhaps for the purposes of making the record clear, he questioned if Mr. Shoemaker had any questions for Sgt. Burton.

Mark Shoemaker, Attorney for Mr. Weeast then questioned Sgt. Burton, you received a report from Sgt. Kelly is that correct? Sgt. Burton responded, yes sir. Mr. Shoemaker then noted the two events we are talking about one occurred on January 29th and

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two on January 30th, correct? Sgt. Burton responded, yes sir. Mr. Shoemaker questioned on the first of the two events/days, that is the one involving the Cadillac Escalade, yes sir. Mr. Shoemaker noted as far as Sgt. Kelly's report is concerned the wood block was used to push the brake pedal down but there was no use of the pole on the accelerator. Sgt. Burton responded, on that call, correct. Mr. Shoemaker continued, however on the second day, January 30th, both instruments/tools were used. Sgt. Burton responded, yes. Mr. Shoemaker then noted he thought he missed something during Sgt. Burton's testimony, you mentioned somebody said that neither the accelerator, the pole with the accelerator nor the block of wood with the brake were unsafe practices, who were you referring to when you said that? Sgt. Burton noted, I don't believe I said that. The only person I spoke to outside of our agency was a trooper from the heavy truck unit who said it was clearly unsafe to have the accelerator pressed with no one in the cab of the vehicle. Mr. Shoemaker, were those his words, clearly unsafe? Sgt. Burton noted he said it was unsafe, the quote was it was definitely unsafe. Mr. Shoemaker, but the use of the block of wood to depress the brake, that was not unsafe. Sgt. Burton noted he said it's not a good practice, he wouldn't recommend it. I asked him if he would go so far as to say that it is totally unsafe and he said I won't go that far but it definitely shouldn't be a practice and said there is plenty of other ways to handle that issue but he did not say that specifically was unsafe. Mr. Shoemaker, at least as far as relayed in your report the trooper made no comment on the smoking conditions on the second day? Sgt. Burton, I didn't bring that issue to him, the issue was taken care of. I saw the video of that, I had reports from officers on the scene, I didn't need to address that with him as the problem was resolved.

Solicitor Fiore then followed up with Sgt. Burton questioning if the smoking issue was for one tow or were there two separate instances involving the smoke. Sgt. Burton responded, there were two tows, two on the same day of the 30th. Mr. Weeast and his driver told me the actual failure happened on location of the first tow. The second tow it was still a problem. Mr. Fiore then noted the complaints regarding officers with inhalation fumes from the vehicle, was that as a result of the first tow or the second tow? Sgt. Burton responded, I'm not sure, I think the same officers were on both tows. **Solicitor Fiore** then noted, on behalf of the township that is all we have.

Mr. Shoemaker then requested to mark some photographs into the record and they were pre-labeled from 1A, B through 4A, B and distributed copies to council, mayor, solicitor, etc.

Thomas Weeast gave his full name for the record and Solicitor Fiore administered an oath. Mr. Shoemaker then questioned Mr. Weeast if he has been a tow truck driver for some thirty years. Mr. Weeast responded, at least thirty years, yeah. Do you own Lake Avenue Auto Body? Mr. Weeast responded, I do. What is the extent of your experience over that thirty year time frame? Mr. Weeast responded, many, many (*inaudible*). Mr. Shoemaker, can you qualify that yearly. Mr. Weeast, I really don't know how many per year but many over the years. Mr. Shoemaker, has it been relatively consistent throughout that thirty years? Pretty much. Mr. Shoemaker, you have employees, correct? Yes. As far as these two days we are talking about, you had an employee driver on the scene? Yes. Are you familiar with what happened at both those scenes? Yes. Mr. Shoemaker then questioned on January 29th there was a tow called for a Cadillac Escalade, correct? Correct. Was that as a result of an accident or a breakdown? It was an accident. Where, to your knowledge was the Escalade located. I think it was in the middle of the roadway or at least blocking part of the roadway. Does that change any of the considerations of a tow truck driver where the vehicle is located? Mr. Weeast responded, you try to hurry up a little bit more if it is blocking traffic. This particular car owner, did she leave the vehicle open with keys in it? No, she took the keys. Did she turn the ignition off? The ignition was off and the steering wheel was turned so everything was locked up. Was it in park? It was in park. What happened when your tow truck driver hooked up to the Escalade and tried to pull the Escalade up onto the flatbed? Mr. Weeast responded, well with all four (4) wheels locked up and the steering wheel locked and the wheels turned, it drove the truck back a little bit. Is an Escalade known as a relatively heavy vehicle? Absolutely. So it physically was pulling your flatbed. It pulled it somewhat, yes. Mr. Shoemaker questioned in that situation what is a tow truck driver to do? Mr. Weeast responded, there a lot of things you could do, this particular driver had made a precise tool, Officer Kelly called it a block of wood but it is not a block of wood, it is a tool that is made out of wood. Mr. Shoemaker questioned Mr. Weeast on page 4A and 4B of the photos circulated and explain to council what they are looking at. Mr. Weeast responded, that it was the block of wood in question, as you can see part of it is beveled so you can put it on the

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seat frame, on the steel part of the frame. The other part of it is designed to go on the brake pedal. Who built that? My driver. Mr. Shoemaker questioned if there was any significance to the length of the board? Mr. Weeast responded, well it was measured to a precise length so you could put the maximum braking power. The only brakes that were initiated by engaging the brake pedal is the front brakes. Understand, that the rear brakes were already locked up solid, the vehicle was heavy and it drove/pulled the truck back. I am sure that Mr. Smart did not understand that either. It is not a block of wood, it is a tool that is made of wood. Mr. Shoemaker questioned while he did this the parking brake was on? Absolutely. Mr. Shoemaker referred to photograph 2A, this looks like the foot well of the truck. Yep. And is 2B also your truck, yes. What are you trying to depict in those photos. Well I just took the pictures to show how that block of wood fit in there and how it's designed and how safe it is. It's absolutely impossible for that to fall down when it is wedged in there, there is also a tremendous amount of pressure. I also tried to show how it fits and locks on the seat and the steel frame. Mr. Shoemaker questioned once this is installed as shown in pictures 2A and 2B how far depressed is the brake pedal. All the way down. Is that why it was built with that length. Absolutely. So the engine was on, parking brake is on and this board was placed holding the brake pedal. Yeah, even if the board fell out, so what? The emergency brake was still engaged. It is stick shift, right? Absolutely. It was not in gear? Not in gear, in neutral. So if by some means that board happened to fall out, what would happen? Nothing. Would you have to put the truck in gear to get it to move? You would have to depress the clutch, then shift the transmission into gear. So, if the stick shift somehow got put into gear with the clutch having been first depressed and the parking brake was on what would happen? Mr. Weeast responded, it would have stalled the vehicle. So, in your mind is there any way the tow truck could have moved with this mechanism in place and the driver not in the cab? Absolutely not. The Escalade was pulled up on the flatbed, is that right? Yes. Were there any incidents involved, did it fall off the bed? No. We picked the vehicle up, it was loaded on my driver was getting ready to go and Officer Kelly came up to him and said he didn't like the way the vehicle was hooked up. The driver said, I don't understand what are you talking about? He (*Kelly*) said it doesn't look safe to me. When I inspected the vehicle it was 100% safe. He continued to say, if that vehicle falls off that truck it is Lake Avenue Auto Body's responsibility. Mr. Weeast then noted, well I got news for everybody in here, the second I put a hook on a vehicle it is my responsibility. The vehicle was loaded safe and there was a little bit of a confrontation between the driver and Officer Kelly. Mr. Shoemaker indicated there may be mention of this somewhere in the documents. He then questioned what wood chocks are used for. Mr. Weeast responded, they are used to block the tires, we use them to put behind the tires and in front of tires on the vehicles we are towing a lot of times too. In this situation, if your driver had used chocks, would they have worked? I do not believe that they would have done what we had needed to have. Why do you think that? I think it would have pulled right over. Which wheels would you put them under? Well, the back wheels were already locked up so I would have put them under the front, the front wheels were spinning free so until the brake was compressed the front wheels would have just rolled right over. So, what do you use them for? I use them primarily for blocking the vehicle in tow. How about if it was off the roadway, down in a (*inaudible*) or something like that? You can use them then. Is that why you carry them in the vehicle? We carry them for both reasons, yes. Mr. Shoemaker continued, now the following day there is a claim that your driver used not just the tool he built for the brake pedal but he also used a tool he made for the accelerator, are you familiar with that? Yes. Did you take a picture of what that tool looked like? Yes, I did. Is that picture indicated as page 3B? Yes, 3B. It looks like there is a knob of some sort about $\frac{3}{4}$ of the way up the tool, am I seeing that correctly? Exactly, that's an adjustable by loosening up that rod you can slide the other rod in and out for length. Is there anything a tow truck driver has to do as far as controlling the RPM of the engine in connection with pulling a vehicle on to the flatbed? Not 100% necessary, no. What does it do to increase the RPM of the engine in relation to pulling the vehicle up? Mr. Weeast noted he was not sure of the question. Mr. Shoemaker questioned what's the idle speed of that particular truck? I think it runs around 800 RPM. Will the winch work at 800 RPM? Absolutely. If you increase that RPM to about 1200 RPM what would happen to the speed of the (*inaudible*). It goes a little faster. If you had a situation when time were important would that cause a driver to want more RPM? Exactly. This particular flatbed, did it have the ability to control RPM from the flatbed side of the truck? No, it does not. So here your driver was attempting to control RPM. Yes. He wanted to increase them. Yes. So what did he do with this tool? I think if we look at pictures 1A and 1B and you can describe what they are looking at while you tell us, what was your driver trying to do? Mr. Weeast noted 1A is the bottom part toward the accelerator pedal, as you can see it wraps around the entire pedal so that it is locked pretty much in place. 1B shows how it is locked into that seat frame. I don't have a picture

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of the adjusting rod but what it is the mechanic would loosen the rod accelerate the pedal until it hit around 1200 RPM then tighten that rod. It will then run at 1200 RPM until you take the rod out. The way that tool is designed, is there any way that the tool untouched would increase the RPM above what the driver set it for? Absolutely not. Once your driver had set that piece in place and put the board against the brake pedal, what would he do then? Then he would go back and finish hooking/pulling the vehicle up. Is your understanding that is what he did on the two events on the 30th? Yes. In your approximation, based on thirty (30) years being in the towing business, what is your opinion on the safety of your tow truck driver using these particular two tools for the use that he made them? Mr. Weeast responded, there is no safety factor involved in this whatsoever. If either of those tools failed during his pulling of the vehicle up on to the flatbed, what is the worst thing that's going to happen? Irrelevant, it would not happen, if it did happen nothing could happen. There is nothing to happen that would make it unsafe. If the accelerator became depressed all it is going to do increase the RPM, the winch is going to pull a lot faster, it doesn't put itself gear too. Can the driver turn off the winch from where he is standing next to the flatbed? Yes. Are there any safety features built into the winch that involve over-revving the engine? Not over-revving the engine but over-pulling, if you are pulling a vehicle that is so heavy you're just not getting enough tension on the vehicle, everything is hydraulic today so you have electric bypasses that would take care of that. Ok, so the vehicle is too heavy, what would happen? It would just bypass then it would stop winching then you hear a noise, kind of sounds like water rushing, you stop and you have to do something a little different. Mr. Shoemaker then said let's talk about the accelerator tool like we did the brake (*inaudible*). If that fell off what is the worst thing that would happen? I don't see anything bad happening if that fell off. Would the RPM go up or down? They should go down. Ok, and that would put less pressure on the winch. Less pressure on the winch and it would be just operating a little slower, instead of 1200 it would be operating at 800. Now there has also been talk about a smoking condition of this particular flatbed. Absolutely, we blew an injector while we were out. The first car was fine, the injectors were only about a year old. What is an injector? It's a diesel vehicle, so an injector is like a carburetor it puts a certain amount of fuel into each cylinder, each cylinder has its own injector. Like I said those injectors were less than a year old one of them failed and it just mal-functioned. I ordered one immediately and it came in the following morning around 8:00am and we installed it, we installed a whole new set. Now these records indicate the second of the two days was January 30th when did that injector fail on that truck. I'm not real good with dates so. Was it the same day as (*inaudible*). It actually failed at the scene. When did the replacement come in? The following morning about 8:00am. When was it installed? That morning, immediately. So that vehicle was not operating in the smoking condition after January 30th. Correct. Was your driver affected at all with the smoke? No, I did question him because he has asthma and I questioned if he had any burning of the eyes or anything like that. He said absolutely not, he was fine.

Mr. Shoemaker then noted that Mr. Weeast is here to see what council is going to determine, whether to issue any sort of punishment (*for lack of a better term*) for the actions of your driver on the 29th and the 30th. The range of things that could possibly be done are from nothing to a suspension or removal from the tower's list. He questioned Mr. Weeast, do you feel your driver's actions on the 29th and 30th merit any punishment, whatsoever. Mr. Weeast responded, absolutely not we did nothing wrong, he did nothing wrong. He is a very ingenious young fellow, not too many people, if you look at the piece of equipment that was made for the accelerator pedal it's pretty ingenious how he made it to lock in there and fit. The piece of wood, although it is a piece of wood was thought out, measured, shaved and designed as a tool. Wood in the towing industry is used as a tool all the time, every day, every tower out there uses wood of some sort as a tool. All the particular mechanic did was do what he was taught to do his whole life, while he was towing to use it correctly, safely and promptly. Mr. Weeast you said you have been in the tow truck business about thirty (30) years. Yes. Of that 30 years about how much have you worked with or for Monroe Township? Probably thirty years or better. On the towing list? Yes. Do you tow any other vehicles outside of the towing list, in other words not for pay? I have towed some police cars. What would you say to the other members of council all sitting here, you have been towing for them for 30 years in a safe manner. What would you say to them before they deliberate about whether to issue any sort of punishment. Mr. Weeast then said, I don't know what's going on here, I really don't care what's going on here. I find that these charges are really kind of trumped up to be quite frank with you and I'm lost for words other than saying this: I have been on the township towing list for 30 years. Anything during those 30 years, it has only been in the last two did I ever get any reprimands of any sort. Anybody that ever wrote anything against Lake Avenue Auto Body or me or any of my drivers was Kelly. It almost seems like my guys

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now are more worried about Sgt. Kelly being on the scene. I don't feel like they can work safely having to look over their shoulders worried about whose taking pictures, whose writing them up for this, that and the other thing. My guys can't be out there having to second guess what's going on here. I think this needs to stop and that's why I got a lawyer, it has to stop. I want my guys safe, I've always felt they were safe for 30 years.

Solicitor Fiore then noted he has the ability to cross-examine, he then proceeded to pose questions to Mr. Weeast. Mr. Fiore requested Mr. Weeast to describe the make and model of the tow truck that was utilized. 1989 Ford Super Duty. What is the gross vehicle weight of that vehicle? F450. What is the gross vehicle weight, it has a registration. The registration I think is 17,000 lbs. Mr. Fiore noted for the record GVW meaning the weight of that vehicle and any other vehicle that could be towed on the back of that flatbed. OK, and what does an Escalade weigh? Mr. Weeast responded, I really don't know off hand. Is an Escalade considered a heavy duty vehicle? It is a heavy vehicle, yes. Usually an 8 cylinder, very large engine. Yes. Wide wheel span, if you will. Yes. Your vehicle, the tow truck is that considered a heavy or medium duty tow truck? I guess it would be heavy duty I am not really sure of that. You purchased that new when you brought it? Absolutely. Mr. Fiore continued from a local dealer, I'm assuming. Yeah. Did that come with a book, all vehicles have a book? I'm sure it did. It has limitations on what a vehicle can and can't do. I'm sure it does. And that would come from the manufacturer, correct? Yes. Your understanding of the book that comes with it is that would describe what the ability of the vehicle, is that correct, what it can and can't do? Mr. Weeast noted I don't really know on tow trucks if that comes with it. Mr. Fiore, just your understanding, you've been involved in the business for 30 years did you ever come across some manual or sort of training or certification indicating that this tool that you've utilized is something recommended by the manufacturer. Mr. Weeast responded, is it recommended by the manufacturer, no but I did bring a whole book of tools that are not recommended by the manufacturer and that are used in the towing industry. Some of those tools are used for braking. Mr. Fiore questioned is the tool a 2x4, 2x6 or 2x8. It is a 4x1. If you turn to photograph 2B where it is difficult to see and it would be nice if you had it and we could look at tonight. Mr. Fiore questioned, are there nail holes in that? It appears to be in my mind and council can ascertain what they understand it to be. No, they are not nail holes, from the board being moved around and put behind a seat or whatever, they are chips. Mr. Fiore then referred to photograph 4B there would appear to be some dark markings, are they nail holes? No. They're not nail holes? No. Now with respect to your vehicle, the GVW is 17,000 lbs. that would mean it would be capable of towing an Escalade under any circumstances? Sure. Even if the wheel is locked. Mr. Weeast responded, the wheels being locked have nothing to do with weight distribution. Or the ability to tow properly? Or the ability to tow. Do you have any official training or certification indicating that this is an acceptable practice, meaning this is an acceptable practice utilizing a metal bar that's made by one of your employees and a wood block or a wooden tool, is that something you learned at some sort of seminar or continuing education course? Mr. Weeast responded, absolutely not, do you have any that says it isn't? Mr. Fiore continued, you indicated that you do this in order to increase the RPM which would then increase the speed of the winch and that would get the vehicle off the roadway quicker, correct? Mr. Weeast responded, quicker yes. Mr. Fiore questioned are the newer trucks equipped with a button/switch something within the vehicle that you could increase the RPM with? Some are, some aren't. And are you aware of some that are? Yes. With respect to the issue with the injectors, there were two incidents on the one date in question which Sgt. Burton referenced, correct? Yes. Both times Monroe Police Officers were on the scene? Yes. And both times they were exposed to the fumes from the fuel injector. Yes. What was the time span between the first crash and the second crash that you responded to? Mr. Weeast responded, it wasn't very much time. Was it an hour, two? You would have to ask the Sergeant. Do you have any question in your mind that, other than Sgt. Kelly as you have expressed what your concerns are with Sgt. Kelly, any doubt in your mind that the other officers were being truthful about what happened when it was reported to the police department? That they were breathing in fumes and they felt (*inaudible*). Mr. Weeast then noted that he never said that, I never even implied that. Mr. Fiore questioned, after the first incident why didn't you take the vehicle off the road and use another vehicle? I wasn't aware that I could take it off the road without being pretty much taken off the list. In the past, if your vehicle, now let's use a scenario. It is my understanding in the past that if you are not capable of towing a particular vehicle it goes next on the list, right? Right. Or if your vehicle broke down it would go next on the list. Absolutely. Isn't this the same situation here where if your vehicle was not capable of towing it would go next on the list? Yes, I guess. Why didn't that happen here? Like I said, I thought I already answered that question the first

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time. I didn't realize that I wouldn't be penalized for moving that vehicle off the list for that problem. Aside from that you have expressed your concerns with Sgt. Kelly, hasn't Sgt. Burton in the past investigated or looked into issues last year with your towing practices, being late on calls, missing calls. Yes, and I believe we went to court over that and Lake Avenue Auto Body was immediately said had no wrong doing. Am I correct? Mr. Fiore questioned there were no findings by the court that you should be removed from the list, correct? That's what I thought I said. You remember testifying at the hearing, right? Yes. Ok, and you did admit that you were issued a ticket for having bald tires on a scene. That was all part of that was it a court thing, you tell me. Mr. Fiore noted in municipal court you got a ticket/summons in the local court and you plead guilty to that, right, for bald tires. Yes. And was that an unsafe condition? I'm talking about last year, I'm not talking about this year. Mr. Weeast said when it happened during a police call we must of run over some glass and cut the sidewalls of two tires. I sent the truck down to tire tech to have two tires put on. He did not have the two tires too install at the time, he ordered tow tires for me Officer Kelly saw that, took pictures of it and he gave us a ticket, at the scene I talked to Sgt. Kelly and he told me that if I went to court with the receipt of the tires that he would not (*inaudible*). Mr. Fiore noted that was all he had.

Cncl. Pres., Caligiuri noted we have two towers here that are professional towers. **Solicitor Fiore** then advised that is not the scenario, this is not the form. There is a public portion after we close this and in all fairness to Mr. Weeast this is about his particular operation, not about what other towers think Mr. Weeast should or shouldn't do.

At this time, **Cncl. Pres., Caligiuri** opened it up for questions from council members.

Many questions were posed especially those with respect to the photos that were submitted into the record (2A, 2B, 3B) along with questions on the RPM's, the tool utilized, etc. Mr. Weeast responded and explained each question that was generated by council members.

Cncl. Pres., Caligiuri announced that unfortunately this matter for discussion (*scheduled for 7:00PM to 8:00PM*) could not continue at that point as the Regular Council Meeting was scheduled and we would have to continue discussion at the next work session meeting. **Solicitor Fiore** advised our next meeting this evening (*Regular Council*) is advertised to commence at 8:00PM and we have to legally convene that meeting and perhaps continue this discussion for the next scheduled work session meeting. There was some concern posed with delaying until the next scheduled work session and **Cncl. Pres., Caligiuri** questioned if we could convene discussion after adjournment of the Regular Council Meeting. Mr. Fiore advised that could be done. Actually this is Mr. Shoemaker's decision as well as Mr. Weeast. It was noted they were fine with that as Mr. Weeast said he would like to for this to be done. It was the consensus of council members (*Bryson not in agreement, no*) in attendance to reconvene discussion on this matter (*Towing-Lake Avenue Auto Body*) after adjournment of the Regular Council Meeting.

At this time **Cncl. Pres., Caligiuri** advised he Work Session would continue on for the balance of the agenda items.

C.) PUBLIC PORTION

Cncl. Miller made a motion to open the Public Portion. The motion was seconded by **Cncl. Heffner** and unanimously approved by all members of Council in attendance.

Robert Toomer introduced himself as a resident of Monroe Township for some twelve (12) years and he saw a vacancy on the Parks & Rec Commission as well as the Open Space Committee and he wanted to personally introduce himself and speak on his job related qualities to both council and mayor. He noted he had submitted a Citizen Leadership form for consideration on the committees and also advised he was a member of the Green Team. **Cncl. Pres., Caligiuri** urged Mr. Toomer to attend some meetings of each board to familiarize himself with what they are doing.

Jim Decker - 1614 White Cedar Lane approached council members and spoke strictly on the matter of leaf collection and communicating with the residents. Collection has always been two weeks in April and two weeks in May and they changed it and the only thing they changed was the sign, they communicated with nobody and the residents are still out

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C.) PUBLIC PORTION (cont'd)

there raking their leaves and piling them out there not knowing they are not coming until next month. He continued to speak on the problems encountered during October/November of last year with leaf collection, he called the township and was advised they would come back

on a certain day, they never showed up and leaves were all over. He felt we need a window of some kind, like a three to five day window for collection time, he gave an example of how Waterford Township advertises on Channel 9 indicating collection times. Last year was the worst for leaf collection in some 25 years. **Mayor Teefy** noted to Director of Public Works, Bob Avis this is why we need a schedule and why we must have it pushed out to the people. There must be communication with the residents in regards to the schedule. The mayor added he wants to see a schedule for May and where you are going to hit and let's communicate that to our residents. Mr. Decker then spoke on a number of potholes at Holly Parkway and Buttonwood Drive and we don't know who to report them to. **Cncl. Pres., Caligiuri** noted he felt the mayor has this under control with Mayor Teefy adding he will get someone out there to look at the situation and if warranted let's get them fixed. **Cncl. Miller** noted the easiest thing you can do with reporting any type of pothole is to contact public works and they are really good at getting out, it's just a matter of calling them and letting them know. The mayor added you can also contact them via email.

Tim Brown - 327 Holly Parkway referred to the township's nuisance ordinance where it expresses how a person can and cannot have their houses looking. We have like one or two houses around our way where it looks like a pig sty. The houses look worse with the people living in them then some vacant houses. He questioned what do we do about this? Solicitor Fiore indicated that would be addressed under *Chapter 295-Nuisances*. **Mayor Teefy** then requested **Director of Code Enforcement, George Reitz** to give an update on his findings. Mr. Reitz reported three weeks ago both himself and Deputy Mayor, Andy Potopchuk went by your house early on a Saturday morning. We saw the house where the trees were leaning over the driveway, around on Red Oak there is three cars in a driveway, not registered. We started a list and we are in the process of working down that list. In addition tonight I was just handed about another dozen problems, we are working on it. **Deputy Mayor, Andy Potopchuk** noted there are some things we can do as a council and some things we can't as this is private property. Mr. Brown noted he did understand that and he respects anyone's sanctity they have to their property. But when you affect everyone else's lifestyle that is not fair. I pay taxes just like this guy does and I have already talked with this guy a few times and asked him, if you need help I will come and help you straighten things out. I don't hear anything from the guy and it has been like that for years. Now I'm wondering what exactly does it take? As you have one house affecting five houses (*at least*). Mr. Potopchuk noted some things are very hard to do and we are trying to find ways by the law where we can speak to people nicely and try to get them to clean it up. We were in the area, we have pictures and we are trying to figure out what we can do. Mr. Brown emphasized this has been this way for years and there are people trying to sell their homes and because of this one house they can't even sell their house. Mr. Potopchuk noted he does understand the concerns, it is an eyesore. Mr. Brown added he has to contact the county tomorrow and the reason why is he cannot go into his backyard due to the mosquitos from the house next door to him because the pool has been sitting open for the past seven/eight years. Mr. Potopchuk advised we are going to have both the county and the zoning official come out as well as the county board of health. There was a discussion back and forth as to the condition and problems associated with the homes in this area of Forest Hills. **Cncl. Pres., Caligiuri** advised Mr. Brown to contact him personally and he would get together with him to help sort this out.

Carol Stevenson - 921 Lois Drive approached council with regard to Phase II - Lois Drive and if this was addressed in the 2015 budget.

Cncl. Miller made a motion to close the Public Portion. The motion was seconded by **Cncl. Heffner** and unanimously approved by all members of Council in attendance.

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D.) NEW BUSINESS – None

E.) OLD BUSINESS

Cncl. DiLucia noted after the meeting of last week in terms of the Shared Service agreement that was approved, I gave it a lot more thought and separate and aside from the fact that I think it is going to turn around and bite us because if someone leaves it's going to create lay-offs and there is a lot of problems with that. However I feel, at a minimum that we ought to direct our legal department or Mr. Heydel to notify both collective bargaining representatives because I believe under the law there is a duty and under PERC there is a duty to, even if you have what is called a "*management prerogative*" you must notify the collective bargaining representative of your intent to do something. Specifically what he was talking of was the contract (*Shared Services*) which dedicates Monroe as the exclusive and the representative of the union as the exclusive representative of those employees and it also defined those jobs. This means that for those jobs they have bargaining power for everybody within that classification. I also found out, which I didn't know at the time, that Franklin also has a collective bargaining representative which is AFSCME and I think that both (*bargaining units*) ought to be notified through whatever channels you use to notify them of your intent to move bargaining unit employees in and out of one another's collective bargaining districts. Because if you don't we are going to get hit with an unfair labor practice because at a minimum PERC will want to know whether you informed them and gave them an opportunity to discuss it. I would ask that we direct Kevin Heydel or whoever the appropriate person is to make those contacts to notify them of what our intentions are. Mr. Heydel indicated he could send a letter off to Local 1360 and advise the BA in Franklinville that she has an obligation to contact AFSCME as well.

F.) COMMITTEE REPORTS

Cncl. DiLucia questioned when the Budget Committee (*Caligiuri, Miller, McIlvaine*) met what was identified as being taken out of the budget, if anything as a result of that meeting. **Cncl. Pres., & Budget Committee Chairman Caligiuri** explained at this point in time the budget was presented to the committee and then presented to the balance of council for review. We haven't scheduled a follow up budget committee meeting yet as he was hoping for some input from council members and if there were any particular line items that anybody had questions/input on. **Cncl. DiLucia** noted he raised a number of questions in that budget meeting and I think that is what I was expecting and I just didn't know what form that would take. **Cncl. Pres., Caligiuri** advised that it would be a help if you (*DiLucia*) could send out an email or jot something down, just a brief outline of things that you feel should be addressed for the benefit of the committee, so that the committee can get together and research those line items. **Cncl. DiLucia** said maybe what he'll do is to sit down with Kevin and identify what he thinks are questions and he (*Heydel*) can answer them or emanate them to the rest of council. **Cncl. Pres., Caligiuri** noted and if there are still issues after speaking with Mr. Heydel we are the checks and balances for the administration and if you still have disagreement with whatever Kevin is trying to sell you, please let the committee know. **Cncl. DiLucia** noted that is why I questioned whether the budget committee had identified anything either increase, decrease or if it was the status quo because I do know that the number presented the other night the 2.9 was the same number that I had heard that was to be recommended before the committee meeting and I was curious about whether there was any tinkering with the numbers in the budget. **Cncl. Pres., Caligiuri** advised the budget committee was introduced to the budget then a week later the budget was presented to the balance of council and before I would schedule a follow-up meeting I was hoping to get some input. **Cncl. DiLucia** noted the reason why I ask that is because on the record the other night one of the council members said that he was making an ordinance recommendation based on the budget committee meeting, that it was discussed at the budget committee meeting. I understand that and if it was and if that was an issue that was discussed and if that is coming from the budget committee as a recommendation to cut out of the budget I would like to know that. **Cncl. Miller** noted it is not coming from the budget committee. **Cncl. DiLucia** noted, ok, but you said that came as a result and I think it is a matter of record so if you want *at that time there was discussion back and forth some of which was inaudible*. **Cncl. DiLucia** then noted what you said verbatim sir was that as a result of the budget committee the other day you decided to enter this ordinance. **Cncl. Miller** then noted that I said, based off of recommendations that I had received. **Cncl. Pres., Caligiuri** then noted I respect you Rich and I understand where you are coming from and I understand

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F.) COMMITTEE REPORTS (cont'd)

Cody what you are saying too. **Cncl. Miller** again stressed that was not a recommendation from the budget committee. **Cncl. DiLucia** then said, you verified that for me, thank you. **Cncl. Pres., Caligiuri** noted he would try to help everyone out here again noting that the budget was presented as being very tight and very difficult. The budget committee as a whole was saying, what do we cut? Not that we made any decisions on what to cut or that we would recommend a cut but obviously your knee jerk reaction when you have a budget of that kind of an increase and of that magnitude you do want to take slices out of it to some degree. Ideas were thrown around thereafter not during the committee meeting but thereafter. I was not privy to those ideas at that point in time. **Cncl. DiLucia** noted he appreciated Mr. Caligiuri trying to answer the question but I believe the question was answered and the question was did the budget committee make any recommendations, the answer was no. I asked that the recommendation that came or the proposed ordinance that hasn't hit the table yet come as a result of the budget committee meeting and the answer was no. So I accept those answers and that is all I really asked.

Cncl. Bryson noted I know you had a budget committee meeting and then I also know because I attended the budget meeting presentation to council. At that meeting several items were brought up and questioned because I brought up quite a few of them. If you do need other inputs then I will take those inputs that are already on public record and hand them to you. **Cncl. Pres., Caligiuri** said what he is looking for are line item reductions. **Cncl. Bryson** noted that is what I did. I believe there were some thirteen items to complete and they were relative to quite a few more specifics. At this point many people were speaking at once and it was hard to discern the discussion. **Business Administrator, Kevin Heydel** advised that he presented the budget in full to the budget committee and then I presented that exact same budget to the full council. In my presentation I expounded on the issues of the revenue, I didn't say that the expenses were tight, although expenses are tight we always keep the expenses tight. The issue was not with the expenses, the issue has always been with the revenue, the revenue cannot support our budget because we are not replenishing our surplus balances and that is where I identified our budget problems. I have not been given any direction to change any appropriations or to make any changes to the budget. If council wants to make any then we have to meet through committee and take those recommendations in because the public hearing on the budget is scheduled for our next meeting (April 27th).

Cncl. Bryson then noted maybe I misunderstood at that meeting but you just got done saying we have a problem with the surplus, you increased the surplus, did you not? Mr. Heydel explained what I did say was I posed the issue that we have a revenue issue, in that revenue we are not replenishing our surplus and the surplus is diminishing and as the surplus diminishes we have no way to plug a number other than taxes.

Cncl. DiLucia wanted to correct one thing, yes there is a question of income but you can always, and there is nothing to stop you, to make a recommendation to cut expenditures. For instance, there is one line item that I calculate to go up a half a million dollars and I don't know if that is something I want to cut but certainly half a million dollars to me represents 2 pennies, it represents over 2% of the tax money which would almost hypothetically eliminate the municipal (*inaudible*). So there is always a question when you are looking at a budget that if you can't increase revenue, and I don't know if we can't increase revenue because there has been a lot of ideas raised over the last couple years that have sort of fell by the wayside that were attempts to raise revenue. At some point in time if your income doesn't match your expenditures, you have to cut your expenditures and if that is the problem now then we may have to look at expenditures and cut them.

G.) QUESTIONS REGARDING RESOLUTIONS SCHEDULED

Cncl. Bryson spoke with regard to a letter that was circulated relative to tax appeals and how they are handled. The way they are handled right now is the township eats the tax appeal and everybody sitting here must understand that. The township eats the cost of the tax appeal, the school district and the county do not share in the money that is lost. So I would like to see that be drafted as a resolution in support of this bill.

H.) QUESTIONS REGARDING ORDINANCE SCHEDULED - None

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I.) **ADJOURNMENT** – Work Session to re-convene at the conclusion of the Regular Council Meeting

Cncl. Miller made a motion to adjourn the first portion of the Council Work Session/Public Hearing of April 13, 2015. The motion was seconded by **Cncl. Heffner** and was unanimously approved by all members of Council in attendance.

The work session will reconvene upon adjournment of the Regular Council Meeting to further discuss and continue the Public Hearing on the towing issue regarding Lake Avenue Auto Body.

Cncl. Pres., Caligiuri re-convened and called the Council Work Session back to order at 9:27PM to continue discussion on Towing – Lake Avenue Auto Body. He then opened it up for questions from council members.

Those in attendance for the re-convened Work Session were: Council Members (*Dilks-Excused*), Solicitor Charles Fiore, Director of Public Safety, Jim Smart, Director of Code Enforcement, George Reitz and Municipal Clerk, Susan McCormick

Cncl. DiLucia noted it was his perception there were four (4) issues before council. I am under the impression that three (3) of those issues are now a non-issue. I understand the smoke issue is one of a non-penalty, that the cleaning of the street is something that is also one of a non-penalty and that the tool used per the state trooper couldn't be deemed as being safe (*although he would not recommend*). I assume that the issue is down to the accelerator and the tool that depresses the accelerator, is that correct? **Cncl. Pres., Caligiuri** did not know if that was necessarily correct because there are varying opinions on that as well. Some people say it was a non-issue, other people say have said that it was perfectly safe. There were two opinions on that, if I am not mistaken. **Solicitor Fiore** for clarification purposes then referred to a report generated by Sgt. Burton where on 2/11/15 he spoke with Jeff Reitz of the NJSP Heavy Truck Enforcement Unit, for an opinion of these safety issues. After I explained the safety complaints, he advised me that his opinion is that the accelerator should not be depressed without a body in the driver's seat. He believed that action to be unsafe. **Cncl. Pres., Caligiuri** questioned was it not the opinion of the state trooper that that was a non-issue. Mr. Fiore noted he said it was a non-safe issue, the other one he couldn't deem it to be unsafe (*could not deem it to be unsafe*). **Cncl. DiLucia** then noted so at least the professionals have different opinions on that. Really the thing that is in dispute, that there is no opinion on that says its good, its bad or otherwise is the accelerator (*the tool that depresses the accelerator*). **Cncl. Miller** then noted that is the issue. **Cncl. DiLucia** thought no it wasn't, adding from my memory (*and I could be wrong*) it was the wood tool that adjusts and goes on the accelerator or throttle that goes against some piece of bar that holds it in place so it assumes a certain RPM. Mr. Fiore noted that was in Burton's report. **Cncl. DiLucia** noted that is what he understands is at issue and whether that tool creates unsafety. I asked some questions that I quite honestly don't know whether or not I got an answer to. I asked if it accelerated more what would happen and if it de-accelerated more what would happen. I really think, from my perspective, nobody has answered that. If it is unsafe what is the thing that would make it unsafe. If it is not unsafe what is the thing that makes it not unsafe? I mean from a layman's point somebody needs to answer that. **Cncl. Pres., Caligiuri** the only thing we have at issue here is these are not the original tools that came with the vehicle or the methodology that is apparently supported by best practices. I mean, all that being said, I think we got an explanation from the tower an experienced tower and I've used a piece of wood against my brake pedal in that past and it's very safe, in my estimation. It doesn't go anywhere but is it best practices for towing, is it an acceptable towing practice? That's the issue. It doesn't come with the tow truck, it's not an accessory of the tow truck. When you look at the accessory list you may see power windows, power door locks you don't see a piece of a 2x6. **Cncl. DiLucia** indicated that the gentleman had a book, which we never got to see that says these are all accessories. **Cncl. Pres., Caligiuri** noted he also alluded to wood chocks, these are blocks under the wheels that is a perfectly acceptable practice. Unfortunately I happen to know that is acceptable practice in fact didn't know that there is an acceptable practice that involves jamming a piece of wood on the brake pedal or the accelerator and that is a question. **Cncl. DiLucia** then posed a question to Mr. Weeast. Your truck is an older vehicle, if you had an up to date truck or a much newer truck would that eliminate the need for those devices? Mr. Weeast responded, there is no need to do either one of them, to be quite frank with you. The only reason it was done is to speed up the process so we could clean up the road quicker. **Cncl. DiLucia** questioned but if you had

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a newer truck are they equipped to generate more RPM? Mr. Weeast responded, there are different ones, some have a pull rod inside the truck where you can regulate it and watch your RPM, other ones have a pull rod outside the truck where you can pull them and you can't tell what the RPM are you have to count by your ear.

Cncl. Miller noted his only concern is regarding the wood pole against the brake pedal, he (*trooper*) would not call that action unsafe but explained that wood chocks would be preferred but not essentially needed. However the issue I have is that the accelerator should not be depressed without a body in the driver's seat, he (*trooper*) believed that action to be unsafe. So, is that standard practice that someone has to be in the vehicle to do that? Mr. Weeast responded, no if you want to increase the RPM on some trucks, like I said, they may have a truck where there would be a (*inaudible*) like something you would pull out and it could run that way, to increase it. Then you could leave the truck and go do what you are doing. Mr. Weeast then noted, if I may and I guess we are really talking about the accelerator, if the accelerator rod fell off what damage is that, what concerns would you have? It's in neutral, the emergency brake is applied. If the accelerator rod fell off for some unknown reason, an act of god shook the truck, or an earthquake and it fell off what would happen? Absolutely nothing would happen except instead of it going from 1200 RPM it would drop back down to 800 RPM. **Cncl. Miller** then noted that potentially we face an issue if we do not act on the state trooper deeming the action to be unsafe, so that puts the township in a bad position as well. Solicitor Fiore then suggested that perhaps, if it is not necessary than perhaps in the future you won't utilize the 1x4 and the metal rod, if it is not then you would just agree not to use it in the future, just a suggestion.

Cncl. Bryson then posed a question relative to the smoke. Did anybody ever tell you (*Weeast*) when you pulled the first car out, hey Tom you better take this vehicle back. Mr. Weeast responded, no. Are you still using the 1x4 and also using the accelerator, did anybody tell you not to use them. Nobody has told us not to use them but I told my drivers not to use them.

Cncl. McIlvaine questioned if the vehicle was deemed unsafe, and I wish the officers were still here, why wasn't it put out of service immediately? I also believe that the issue with the board isn't that it falls off and de-accelerates it's that something should happen where the vehicle, god forbid, jumps into gear if you have a pull throttle out there by the controls it has a red button that you hit and it kills the throttle. It brings it right to idle, so I am assuming, and this is just an assumption, that's the concern there. Now the driver has to run up, the trucks moving and he is trying to get into a moving vehicle and knock the board off the accelerator. Mr. Weeast replied in a lot of situations those throttle body controls are inside the truck. **Cncl. McIlvaine** noted my whole picture is, if the vehicle was that unsafe it should have been put out of service right on the spot. Absolutely. I am just trying to explain to the folks here possibly what the officer was thinking when they made the issue about the board. Not that it would kick off and de-accelerate that the vehicle would pop into gear and the operator would have to run into the vehicle and try to knock the board out. **Cncl. McIlvaine** questioned if the vehicle was re-inspected after the repairs were made? Mr. Weeast responded, yes it was. **Director of Public Safety, Jim Smart** indicated that Mark Burton went back out especially over the smoke conditions and I believe it was the following day or two days later and did an inspection on the vehicle and the smoke problem had been taken care of. **Cncl. McIlvaine** questioned if he (*Burton*) checked to see if the emergency brake worked and all that. Mr. Smart noted, that he could not speak on. **Cncl. Pres., Caligiuri** noted that the emergency brake, from he understood, was functioning and functioning for the rear tires and not the front tires. Mr. Smart noted there was never any information that stated otherwise. **Solicitor Fiore** noted it was not the emergency brake it was the regular brakes, there was never an issue with the emergency brake, it is the regular brake. **Cncl. McIlvaine** noted if the emergency brake was not holding properly the vehicle would tend to move and when the operator was pulling the two of them would come together and therefore you would have to put more pressure on it, even if it is operating properly. Like Mr. Weeast said sometimes if you get a heavy enough vehicle, especially if they are locked up you can't get enough pressure on the emergency brake and the vehicle will roll back and I can see that happening.

Cncl. Heffner noted he actually towed for some seven years and we didn't have a piece of new equipment. The practice that he is talking about is quite common with some of the older trucks. We thought we died and went to heaven when we actually got a flatbed that had a throttle outside. He did not see where it is a big issue, he couldn't see where anybody

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could possibly get hurt. Is it the safest practice in the world? Probably not, but there is nothing that says you can or you can't do that. The bigger issue he had was that this is the first time this has come up, you want to take him off the list for a week. Like Bart said, we didn't take the truck off the road, what happens if it happens again?

Take him off for 2, 3 weeks I mean there is nothing in the ordinance that says, everything is at our discretion we pick and choose when we are going to or how much we are going to penalize you. So every time someone else comes in with another issue we are going to decide what the punishment is, every single time?

Cncl. Pres., Caligiuri questioned Mr. Smart, historically what have we done? Mr. Smart advised we have suspended individuals mainly over not making calls. That was done on a weekend basis at one point in time so history has it, yes there have been suspensions implemented and in most cases they have been put in place until council could make a ruling based on the fact that, I don't even remember who it was, but they were getting out on a weekend and they missed two back to back calls and they were suspended for the remainder of their week. The ordinance does give us the ability to do that. If the police had followed the proto call that was put in place at the tail end of last year, then there should have been a phone call made immediately to go out and do the check of the vehicle. Mr. Smart continued had it been smoking on the first call and people called then we probably would have taken the truck off the road for a hazard before the second call was able to go out there and basically get the two police officers (*inaudible*) twice. We have since revisited the memo that was put out from the Chief and made sure that it was reiterated that phone calls of at least the Sergeant or Captain on call would be notified of an unsafe condition, then it would trickle down. At that point, the vehicle can be taken off the road, at that time. If there is a second vehicle he would be free to use it, that wouldn't suspend the tower, it would suspend the truck. **Cncl. Heffner** noted that he appreciated what Kelly and Burton and you have done but the big issue still comes down to the fact that we deemed or what we think we deemed as an unsafe condition and yet we allowed it to go out a second time. So if I am the operator of the vehicle I am going out the second time because nobody said it was wrong. So now, we want to suspend somebody or take him off the list just because basically we didn't follow our own procedure. **Cncl. Pres. Caligiuri** felt what happened here and it all happened pretty quick and believe me I'm empathetic to the tower because I feel very confident that his make-shift equipment works and there is nothing wrong. He has presented a really good case for that and I being an old farmer myself, I know that all that stuff works and it works fine. We've been advised by professionals that this has created what they deem to be an unsafe condition. Now, we have a choice as the governing body to ignore the advice of professionals or not and that is the problem. My feeling is this stuff works and there is nothing wrong with putting a board against a brake and the seat as there's no place for it to go. He added he has taken a look at the accelerator rod and I couldn't have engineered something better myself, it works fine there is nothing wrong with it.

Tom Weeast noted I am sure that the professional state trooper with whatever qualifications that he has, did not see the device. He doesn't know what went into it, how it is adjustable and how safe. **Cncl. Pres., Caligiuri** again noted I saw a picture of it and I am with you, I know it works and I see nothing wrong with what you did as a human but unfortunately we got some advice from professional people that we have to decide whether to adhere to that advice or not. This put us in a precarious position.

Cncl. DiLucia then said I learned a long ago sometimes you have to find a mid-ground. The thing that I see is that in all good conscious everyone is here saying is it safe, is it unsafe and I think if you really look at it nothing happened and probably nothing would have happened. Maybe the answer to the whole situation is if we don't want that practice to continue on the advice of the police that we put it in the ordinance that in the future no tower can tow with the assistance of things that aren't equipped on the truck. Perhaps we should draw a line of demarcation about what is acceptable and what is not acceptable. This is such a gray area and when you listen to everybody speak, nobody is really speaking with conviction that this poses an eminent danger. Even the report from the police officer is kind of gray in terms of whether he thinks it is totally, as there are second opinions that it is not good practice but its not dangerous. There is a lot of confusion involved and I am just wondering if we couldn't avoid this. I would be willing to agree to amend the ordinance to include (*verbiage*) these specific devices that are not permissible in forms of towing in the future. Then there is a clear directive that you don't use them. **Cncl. Pres., Caligiuri** noted you are saying by virtue of the fact this information wasn't included, by virtue of the fact that the professionals have allowed him to go out on a second tow and did not prohibit him from using

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that vehicle that he really is the victim here, which is fine as I see the same thing. **Cncl. DiLucia** advised he was not casting dispersions on anyone, we now on council based on all the input and recommendations we have to make a decision. He felt this was such a gray area in terms of is it really an eminent danger. The worst case scenario if everything happened wrong that could have happened, I'm not convinced that it would have. Let's err on the side of caution and readdress the ordinance to prohibit the use of these two devices. **Cncl. Pres., Caligiuri** noted he agreed but that is for later, what to do we do now. **Cncl. DiLucia** noted I don't think there is a subscribed penalty for this infraction.

Solicitor Fiore indicated there isn't and if you want to fashion a remedy you have to look at progressive discipline. The extreme would be expulsion, the mid-range would be a week. Maybe it is a written reprimand with conditions or you do nothing. **Cncl. DiLucia** noted only someone who has been involved with progressive discipline when you develop progressive discipline normally what you do is the first stage is a warning stage and that would go into some form or file and made part of a permanent record that you were disciplined and going forward if you do it again there will be further discipline. He did think, aside from the discipline given out and his feeling would be that it is a warning, he felt that we as council should incorporate in that ordinance specifically the prohibiting of these two devices. **Cncl. Pres., Caligiuri** noted we are prohibiting anything that is external to the vehicle safety (*inaudible*). **Cncl. DiLucia** noted I do not know, if someone is an expert and is willing to do that, I don't know if I know enough about towing that I want to make that broad brush.

Cncl. Miller felt his question was kind of answered, there is really nothing on the books in terms of what we're supposed to do with an issue like this. Did the township actually issue a warning? **Solicitor Fiore** responded that he did not believe so. **Cncl. Miller** then questioned why can't we issue the warning now and then the next time this happens or occurs that we put together some type of a fee structure or schedule that says one you would either be fined or even lesser than that you would be removed from the tow list for a certain period of time.

A member of the public (*Simmermon*) who for the record did not identify himself began to speak in a boisterous manner, adding that he did not care who says he can or can't speak this is a public safety issue and I am speaking. **Mr. Fiore** attempted to advise him that this was not the forum in which he could speak. He (*Simmermon*) noted fine then when you guys open it up to the public portion. **Mr. Fiore** advised it will not be open for the public to speak that portion had already been open previously, no it's not open to the public, this is a hearing as to this gentleman's issue. **Cncl. Pres., Caligiuri** cautioned the individual. He responded I don't care call the cops by the time the cops get here I'll say what I got to say. You got a public safety director here, you've got plenty of guys in this room that have spoken. **Mr. Shoemaker, Attorney for Mr. Weeast** noted an objection, stating he as was poisoning the hearing and he has a vested interest in the outcome. **Solicitor Fiore** then noted that everybody has a handle of what is going on, you have heard the testimony from all parties involved. The procedure is not to open to the general public, it is a public hearing and **Mr. Weeast** could have had the option of having it in a closed hearing, he choose to have it at a public hearing, you know what your options are. **Cncl. Pres., Caligiuri** made the offer if the governing body would like to open it up to the public I would like to give them the option. **Mr. Fiore** strongly advised this is such an issue and again you can do what you want to do however I am going to recommend you not do it there is going to be legal ramifications to the municipality. I am not talking specifically about **Mr. Simmermon** there is another party here who is a tower that just filed another action dealing with the township. We are putting ourselves in (*inaudible*) and I want to be fair, and my job is to be the referee and be fair. **Mr. Fiore** stressed the focus is **Mr. Weeast** and Lake Avenue Auto Body and everybody understands the issues. He felt the next best step would be to make a motion if it's appropriate, do you want to do nothing, suspend, whatever the options are and perhaps a closing comment.

Mark Shoemaker, Attorney for Mr. Weeast spoke and noted that **Mr. Weeast** already made an impassioned plea to this township that he has worked with for thirty years. I don't expect a gentleman like this to come close to tears like he did tonight because that is how much this means to him. The one thing I would like to stress is we are putting a lot of emphasis on a three or four sentence hearsay comment from a state trooper, who we don't think ever saw the devices that were used. We don't know what information was relayed to him upon which he based his opinion and we don't know the exact words he used because he didn't write his own report and he is not here. I find glaring in its omission that there is no

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reference to a municipal standard that has been violated because there is none. The ordinance lays out numerous factors which you can take somebody off the list for or penalize them for, this isn't one of them. I understand rules and regulations can be promulgated, I'm going to assume because they haven't been produced that there are none. That there is nothing internal to the police department other than what has been set out in testimony today. So there was nothing to place this tower on notice that this practice that has been going on for decades was in any way injurious to the public health and welfare or they would in any way upset this governing body who he has worked for in good stead for thirty years. I understand the olive branch that has been extended, I would like to think that this gentleman's permanent record will not be blemished by a written reprimand even, a warning is different than a reprimand. Going forward we know the township's feelings on the matter that there is a quote unquote expert that gave a somewhat mealey-mouthed response in his report and he is not here to testify on his own. So, I would stress to you this is a standard practice, we don't have a full trial to expand upon on this and Chuck if you and I were doing this in a court of law we would each have combating experts, etc. I don't think there is enough in this record to show it was an unsafe practice at all and the only thing the trooper refers to is the accelerator and if that tool feel off, so what, it dropped down to 800 RPM. I know its late and I won't go any further I would ask that you issue no more than a warning, because there is no reason he should have known this would be upsetting to the township or violate any standard regulation. Thank you.

Cncl. Pres., Caligiuri questioned council members on what they wanted to do.

Cncl. Bryson – in this case I'll go for the warning right now, and on top of that that those two tools not be used again, whatsoever.

Cncl. DiLucia – I'm not going to agree that a warning is not anything other than a warning. So however to the attorney, in all deference to you, you want to interpret the word warning you can interpret. A warning to me is that it is the first step, if there is a furtherance of unsafe practice that it is not the first time, it is the second time. So a warning is a warning not to violate the ordinance again.

Cncl. Pres., Caligiuri noted that in this case this isn't covered in the ordinance but we are saying a warning is not to use these particular devices since they have been placed into question by these professionals.

Cncl. Miller - I was thinking the same exact thing, again my issue lies with the fact that we do not have something on the books, that is my biggest concern right now and to my knowledge you did receive some form of reprimand. You were not allowed to operate until you had corrected the problem, am I correct? Mr. Fiore noted he corrected the smoke issue. Cncl. Miller then noted again the bigger problem here is in terms of what was used because I'm not an expert in towing, I don't know what equipment should or should not be used so I am in favor of a warning. Then we need to put something together in an ordinance that establishes a set guideline or standard because if we have nothing on the books right now how can we sit there and make a determination based on something that we essentially don't have.

Cncl. Heffner – pretty much the same thing I just have some problem dictating what tools that can and cannot be used. We all have jobs, we all are supposed to be experts in what we are doing and we've all been known to fabricate things to get our jobs done. I'm good with the warning unless we are going to clearly define what tools can and can't be used. Again, the words factory authorized, I didn't see anything where the expert said that this was an unsafe tool. If you want to move forward I'm fine with what we are going with.

Cncl. McIlvaine – if it was up to me nothing would happen. Every police officer has the ability to deem any vehicle unsafe and if the vehicle was unsafe adding that both of those guys are very knowledgeable guys, I worked with them for twelve years, I respect every word that they say. They should have taken the vehicle out of service on the spot and not allowed him to continue to tow, not even the Escalade. They have the authority to do that they don't need council's authority, they have the authority and each officer has the authority to do that. It should have been done if it was that unsafe. Secondly, nowhere in the ordinance does it say that this gentleman cannot use these tools.

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Solicitor Fiore advised a motion should be made and taken to a vote, so there is a record on file.

Motion to consider this a warning, advising the tower that this governing body is not in favor of using peripheral tools like that to operate the accelerator or brake and again we will address the entire ordinance.

Cncl. Miller made a motion to approve the above. The motion was seconded by Cncl. DiLucia and was unanimously approved by all members of council in attendance with the exception of Cncl. McIlvaine who voted Nay. *(Dilks - Excused)*

Mr. Weeast along with his attorney Mark Shoemaker thanked council members for their time.

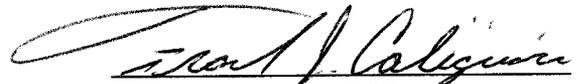
ADJOURNMENT

Cncl. Bryson made a motion to adjourn the final portion of the Council Work Session/Public Hearing of April 13, 2015. The motion was seconded by Cncl. McIlvaine and was unanimously approved by all members of Council in attendance.

Respectfully submitted,



Susan McCormick, RMC
Municipal Clerk



Presiding Officer

These minutes were prepared from the tape-recorded proceedings and the hand written notes of the Council Work Session/Public Hearing of April 13, 2015 and serves only as a synopsis of the proceedings. Portions of the official tape may be heard in the Office of the Township Clerk upon proper notification pursuant to the Open Public Records Law.

Approved as submitted _____ *Sm* _____
Approved as corrected _____

Date 5/13/15
Date _____