

MINUTES

PLANNING BOARD

JULY 12, 2011

LONG HILL TOWNSHIP

CALL TO ORDER AND STATEMENT OF COMPLIANCE

The Chairman, Mr. Connor, called the meeting to order at 8:07 P.M. He then read the following statement:
Adequate notice of this meeting has been provided by posting a copy of the public meeting dates on the municipal bulletin board, by sending a copy to the Courier News and Echoes Sentinel and by filing a copy with the Municipal Clerk, all in January, 2011.

PLEDGE OF ALLEGIANCE

ROLL CALL

On a call of the roll, the following were present:

Christopher Connor, Chairman
Mead Briggs, Vice-Chairman
Donald Butterworth, Member
Guy Piserchia, Member
Michael Smargiassi, Member

Kevin O'Brien, Twp. Planner
Thomas Lemanowicz, Bd. Engineer
Dawn Wolfe, Planning & Zoning
Administrator

Excused:

E. Thomas Behr, Member
Kevin Dempsey, Member
Nanette Harrington, Mayor
Brendan Rae, Member
A. J. Batista, 1st Alternate

Barry Hoffman, Bd. Attorney

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EXECUTIVE SESSION - It was determined that there was no need to hold an executive session.

APPROVAL OF MINUTES

The minutes of April 26, 2011 were approved as written on motion by Mr. Briggs and seconded by Mr. Butterworth. Mr. Smargiassi abstained as he was not present at that meeting.

PUBLIC QUESTION OR COMMENT PERIOD

The meeting was opened to the public for questions or comments. There being none, the meeting was closed to the public.

DISCUSSION (CONT'D)

TIFA LTD. DIVISION AVENUE STREET FRONTAGE IMPROVEMENTS

Mr. O'Brien said that after the last meeting, he looked into his Tifa file further and consulted with colleagues at the County. He spoke with Mr. Greg Perry, who is a planner and was involved in the original negotiations with Tifa back in 2005, 2006 & 2007 and is still handling the file for the County Planning Board. He was able to send him a number of documents dating back to about 2007 and 2008. Essentially, there were two parallels going on with Tifa between the mid 2,000's and today. One issue was that site plan review was required by the Township every time that Tifa turned over a tenant and they did not come in for site plan approvals for a very long time (approximately 20 years). The Township and Tifa had a legal battle and went to court and an agreement was made in (about) 2007 that Tifa was now going to come in with all of the non-approved uses and tenants and get their site plan waivers through the Administrative Site Plan Waiver Subcommittee. Tifa was given 4 or 5 months and we processed 30 or more tenancies. At the end of the day, the litigation was over and everybody agreed that they did what they said they were going to do and, since then, they have continually come in and received site plan waivers or site plan approvals for any changes in tenancies as required by the Ordinance. On the parallel tract, was that site plan approval was granted to Tifa back in 1988. The first documents found at his point include a County memo dating back to 1989 referring to a 1988 site plan approval and from 1989 on how the site plan approval had not been completed, in that what the County required was a widening of Division Ave. in front of Tifa and the installation of a sidewalk adjacent to Division Ave. During 2005 - 2007, while the lawsuit was winding down, this other site plan issue was still on the table, which everybody at that time knew about. In 2006, it was decided to wrap up all the loose ends and Tifa made a plan, sat with us and representatives of this Board at the site, and with the County, and drew up a plan to widen the road and put in a sidewalk that saved the trees that currently grow there and would meet County standards of being at least 2' away from the curb line and everybody thought that that worked fairly well. After the Board and everyone agreed that that was a good idea and requested Tifa to draw up its site plan, Dr. (Leonard) Hamilton came to the Board and said that we should really think about whether we want that roadway widened because this will be the *only* spot on Division Ave. with that pavement width – the rest of Division Ave. has not been improved to those County standards. The other question Dr. Hamilton raised was whether or not the sidewalk would destroy the trees that are currently there between Division Ave. and the Tifa building and suggested that we consider *not* making Tifa do it. The Board asked some people to take a look at the site plan and then the site plan never came in. He said that that is where it sat until early this year when the County wrote back on one of the standard applications for site plan approval noting that Tifa never did the site plan for the roadway widening and the sidewalk installation and it is time that somebody actually did something about that. He said that he found out from Mr. Perry that that was actually a parting shot by a retiring member of the County Planning Board staff who had been waiting 20 years for this project to be built. He said that the next thing that was supposed to happen was that they were supposed to come back with a site plan to us and they never did. So, now it is back out in the open again and the question in front of the Board, which he laid out in his memo along with the sequence of events, is what the Planning Board would like to do. He said that the County has said that they would like to have the roadway widened to their standards and that has been their position all along. They have also said at their meetings that the sidewalk could be our responsibility and, if we don't want it, the County would be happy to listen to us. The reason it was supposed to be on the plans that were made is because, at our various meetings back in 2005-2006, everybody wanted the sidewalk there because we

thought that would help the flow of pedestrians towards the train station. At this point, he said that the Planning Board has got to consider whether it wants to reopen these negotiations with the County as to the widening and the sidewalk or whether it wants the Tifa people to come back to us and provide the site plan that they are required to provide.

Mr. Piserchia thought one of the more recent memos from the County said, while they would prefer the widening, they would defer to Long Hill if we, for whatever reason, said that it would be okay not to.

Mr. O'Brien replied that that is probably a fair statement. Up until now, however, he said that the roadway was going to be widened and we all agreed on that. The sidewalk was the issue and it was left to us, the locals, to make a decision on that. But if we now, today, say that we really don't think we need to widen this road 23 years later had we had an appreciable *increase* in traffic on Division Ave. (and his guess was that there may actually have been a *decrease* in traffic).

Mr. Piserchia said that on one hand you never want a property owner to get their way simply by waiting you out for which 20 years have passed. On the other hand, he felt that we should look at this with today's reference point. It never crossed his mind turning on to that road that it needed to be widened. He wished to defer to Mr. O'Brien's and Mr. Lemanowicz's wisdom and asked why the County wants it widened other than to make it standard throughout Morris County? He said that if it is not necessary, why do it?

Mr. O'Brien replied that there are County standards and they would like them to meet those standards.

Mr. Connor asked what other parts of Division Ave. to Valley Rd. meet that standard?

Mr. Lemanowicz said that he has never driven the full length of Division Ave. looking for that.

Mr. O'Brien said it had to be widened at Tifa in order to meet the standards.

Mr. Lemanowicz agreed that it would have to be widened all the way down. He said that he was looking at the June, 1987 memo and it looked like they were compromising to go from 24' to the centerline to 20', so they narrowed it a little bit there.

In response to Mr. Smargiassi, Mr. Lemanowicz said that it is currently a lane and a piece of shoulder and estimated it to be about 15' to the centerline. He said that they typically have an 11' or 12' lane and they usually want a 5' shoulder.

Mr. Piserchia recalled that one of the County memos said that they would accept 2' on either side instead of what they usually require. So they went from whatever their standard is to where they would accept 2' on either side and he was starting to think that this seems like there would be an enormous expense.

Mr. Smargiassi said that, unless there is a safety issue and one of our consultants can come up with some logical issue as to why it should be widened, he would prefer *not* to see it widened.

Mr. Connor said that he drives that road a minimum of three times a day and there is hardly ever any traffic and there is no congestion. He said that it goes to the train station, but how many people rush and drive to the train station? He guessed very few and said that it serves the train station and a village of maybe 100 people in 5 businesses.

Mr. O'Brien felt that at one point it was seen as part of that through connector from Rt. 78 up to Rt. 287 without going out and around a big bend. He said that there are actually signs to that effect in a number of places. He suspected that, based upon the traffic counts that he did in Meyersville, which also show north and southbound traffic, those numbers were way down when he did them for the Meyersville Hamlet Plan 1 ½ year ago. He said that we are talking about *half* the volume from 2000 and 2001. The northbound traffic isn't there because the old AT&T Headquarters and some of those other large business expanses are no longer as busy as they were.

Mr. Connor said that his guess if you did it again now that Verizon is fully implemented, the numbers might be up again. He said that he also drives that route and it is much busier than Division Ave.

Mr. O'Brien said that that is what the County may have been thinking of.

Mr. Connor said that the issue is that we can tell Tifa to go ahead and widen the road and put in sidewalks, or we could go to the County and reopen the matter and essentially tell them here is what we want to do which could be something different or it could be that we don't want to see any changes. He asked Mr. O'Brien if those are our two options?

Mr. O'Brien replied that it sounded right.

Mr. Connor asked the Board members what they felt would make the most sense.

Mr. Butterworth felt it should be left the way it is.

Mr. Smargiassi said the sidewalk on the other side is partial, but it is 80% there. He recalled that just in front of the old Runyon Oil building is a driveway and there might be a small patch that is actually grass.

Mr. Connor also added across the railroad tracks to where the Blue Star Cleaners used to be.

Mr. Smargiassi agreed that there are just a couple of spots where the sidewalk is not complete on the east side of the road.

Mr. Connor added that at Runyon's they can go across and pick up the sidewalk to the train station if they have to be on a sidewalk.

To that point, Mr. Briggs felt that that is what people use noting that there is a dirt path and crushed grass from people walking straight up the eastbound side. He said that nobody even goes on the Tifa side. He questioned how the Township goes about asking or looking to put in a sidewalk, for example in front of Runyon's, since there are no tree issues there.

Mr. Lemanowicz replied that, if the Township already owns the R.O.W., just put it in.

Because of the equipment/electricity box, Mr. Smargiassi asked about having Tifa contribute funds to place the sidewalk on the other side of the road which might be more logical.

Mr. Lemanowicz replied that that could be a negotiation that you have with them.

Mr. Connor said that we could tell Tifa that they would not have to do anything except pay for a parallel sidewalk on the other side of the street.

Mr. O'Brien added that that would have to be a lot cheaper than widening the road and curbing it. In response to Mr. Butterworth, he said that *Tifa* would have to pay for the widening of the road if it is required.

Mr. Piserchia asked why a private owner would be required to widen the road.

Mr. O'Brien replied because they are on a County road and they have to meet County standards. He said that when you go for a site plan approval for something, your property is now in question and it is open.

Mr. Piserchia said that he was perplexed because it is a County road and existing property, although he recognized that it goes back 25 years just by the documents we have in front of us. He said that they can complete the landscaping and the trees that are dying because that part of it needs to be cleaned up. He said that Mr. O'Brien has to advise the Board clearly if there are any safety issues to leaving it as it is, in his expert opinion as opposed the Board members' observations.

Mr. Lemanowicz said that he went by there briefly to check with the sidewalk, trees and generator. As far as measuring out lane widths, he said that he really didn't look for that. He said that his concern is though, are we the body to request that change from the County, or is that the applicant's responsibility? He said that it is almost like we are stepping in on Tifa's behalf to ask the County for relief from the approval that Tifa got. He felt that *they* have to be doing this.

Mr. Piserchia thought that the County *asked* for our guidance on this very point.

Mr. O'Brien said that the County has indicated that they are willing to work with us on this because if we know that we wait for Tifa, it will be another 20 years before they hand in a site plan – so somebody has got to hold their feet to the fire and it is a combination of us and the County - us being the primary mover because any site plan approval has got to come through us first.

Mr. Connor asked if the next step would be to see if Tifa would consider a proposal to install a sidewalk parallel to their property across the street, plus whatever other minor matters?

Mr. Smargiassi asked if a time caveat could be included?

Mr. Piserchia liked Mr. Smargiassi's idea but felt that it should be a little stronger, such as these are your options...

Mr. O'Brien said that he did not think we should start with Tifa because there is an approval on the County books and our books and the rule is that you are supposed to do what we approve. He said that, if we want to change what is on our books, he felt that the next step is to talk to the County and say that we would like to have another conversation about this.

Mr. Piserchia asked who would write that letter, the Chairman or Mrs. Wolfe?

Mr. O'Brien replied either or together would be fine.

Discussion of a letter followed. Mr. Connor said that he would just like to draft a letter and informally send copies to each Board member for their comments. If there are no comments, we will assume it is fine and if there are comments we will take them under consideration.

Mr. O'Brien said that the letter would request that the County meet with us to discuss the Tifa approved site plan and some possible modifications.

Mr. Briggs asked if we should list the modifications.

Mr. O'Brien said that we could advise them that we would like to talk to them about the street widening and sidewalk, but we are not going to tell them what we want to do. He said that we will ask the County to sit with us, our staff, and a Board member or two to discuss the street widening and the sidewalk aspects of the approved Tifa site plan from 1988-1989.

Mr. Butterworth said that this comes back to the County widening certain sections of the road and not others and this would be the same thing because you would only be widening it there and the rest of the road will stay where it is because it is already developed and nobody is coming for a new site plan.

Mr. O'Brien replied that that is when the County gets you, when you show up.

Mr. Butterworth agreed and said that he did not see anybody else on Division Ave. coming back for a new site plan.

Mr. O'Brien said that that is why you have this checkerboard effect of wide and narrow.

Mr. Butterworth agreed and felt that that is worse than having it all the same width.

Mr. O'Brien agreed.

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DISCUSSION
SUSTAINABLE JERSEY PROGRAM

Before moving on to the discussion of the proposed new checklist, Mr. Connor wished to introduce one new item which is something that Mr. Piserchia and Mr. Guy Roshto brought to attention of Richard Scheola, Twp. Administrator, and ultimately to his attention, as well. It is a Long Hill Township sustainability project where this is a potential \$25,000 grant.

Mr. Piserchia said that it was at Mr. Roshto's behest that he brought the matter to Mr. Sheola's attention. He said that we are fortunate that Mr. Roshto is in the audience. He asked if he would mind giving an overview.

Mr. Roshto explained that the Sustainable Jersey Program is one that the Township Committee approved a couple of years ago. It is a project that is a nonprofit organization that funds municipalities in grant amounts of \$25,000, \$10,000, and some smaller grants. The project gives four \$25,000 grants and ten \$10,000 grants every year. What happens in Sustainable Jersey is that you go in and get certified as a Sustainable Jersey municipality and that certification comes from doing sustainable projects – "actions" as they call them and you get points for doing those various actions. He said that part of the certification process can be receiving a grant and the grant cycle ends July 22nd, so this is a very short quick term kind of a project if you to go through with it. He said that he sent out "feelers" asking if there are any ideas that we could leverage this to take advantage of a \$25,000 grant from Sustainable Jersey. One of the thoughts was a Sustainable Element to the Master Plan. He said that two years ago, the M.L.U.L. added in the Green Building and Sustainable Element that can be developed. He said that the thought is, why not take advantage of a \$25,000 grant and start to develop an element that we can use for the long term in Long Hill Township.

Mr. Connor said that he would also like to include the associated ordinances. He said that one of the things the Planning Board had planned for the latter half of this year was ordinances on renewable energy. He said that this is an issue that is coming before boards now with solar, wind, and biodegradable and he felt that we need to develop that. He said that he would like to wrap in the renewable energy which clearly would be a part of an environmental part of the Master Plan.

Mr. Roshto asked Mr. Connor if he had shared the application that was written?

Mr. Connor replied that he had received a copy today in the mail but had not distributed it. He said that he noticed that you have Environmental Sustainability Master Plan and he added "associated ordinances, education and public awareness actions and water resources and the impact on the community."

Mr. Roshto felt that all of those things are necessary if you wanted to develop a solid element and you would need to get the buy in from the community.

Mr. Connor asked when the application would need to be submitted? He noted that Mr. Sheola was in the audience.

Mr. Roshto replied that the application would have to be in by July 22nd and Mr. Sheola has to sign it. He thought that on July 29st, we have to have the Resolution from the Township Committee.

Mr. Piserchia said that it was put on the Township Committee agenda for July 20th and he felt that we have a Resolution. He said that Mr. Roshto was kind enough to suggest it and work on it and he thanked him. He asked if he would also be kind enough to attend the Township Committee meeting on July 20th.

In response to Mr. Piserchia, Mr. Sheola agreed that this will be the only opportunity that the Township Committee will have to vote on this particular grant application since it only has one meeting in July. He said that there will be a brief presentation by Mr. Roshto and a Resolution for the governing body to approve and then the grant will go out the door. He said that timing is everything.

Mr. Roshto said that he wrote the application in 3 hours and he asked Mr. Connor to share it and get feedback on it to improve the application and make it stronger, or change it.

Mr. Connor said that he read through it and it looked fine to him. He said that he had a minor change and might work a little bit on it on the text.

In response to Mr. Briggs, Mr. Roshto agreed to be the facilitator on any and all comments.

Mr. Sheola said that, in the interest of expediency, he would e-mail a copy to Mrs. Wolfe and request comments back.

Mrs. Wolfe advised that, after tomorrow, she would be on vacation for a week. She said that she would distribute it and request that responses be forwarded directly to Mr. Sheola.

Mr. Sheola said that he would take all of the comments and homogenize them into one final draft and he would go through it with Mr. Roshto.

Mr. Connor said that he would entertain a motion that the Long Hill Township Planning Board endorses participation in the Environmental Sustainability Project.

Mr. Briggs made the motion which was seconded by Mr. Smargiassi. All members present were in favor.

Mr. Connor said that he had started working on some of the numbers because a budget will be needed. He said that, by the end of the week, it would probably be better for him to get together with Mr. Sheola and tell him what he felt our portion of that is going to cost. He noted that this is a non-matching grant – it is just straight money.

Mr. Roshto agreed that it is a no-match grant, with no strings. He said that the one obligation that we have is to give them two reports – one in the middle and one at the end of the project.

The Board thanked Mr. Roshto.

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DISCUSSION
PROPOSED NEW CHECKLIST

Mr. Lemanowicz explained that the purpose of the proposed new checklist is to help in the review of completeness for applications that before this Board and the Board of Adjustment. He said that presently the Ordinance has somewhere around 20 pages of text that goes through each type of application and describes what is required to be complete. It could be items such as architectural plans, floor plans, architectural elevations, critical areas, or utilities. It is basically a list of all those things that a Board needs to see to intelligently act on a given application. Because of the large volume of pages, it was decided that a checklist would be a much more efficient way to do things. He said that on the left side of the proposed new checklist are all of the types of applications, with a star or dot by those items that are required to be deemed complete. On the right, the applicant indicates if he/she feels that he/she had complied with that item or if a waiver is being requested. On the far right, there is room for the reviewers to respond as to how they feel as to completeness of the item and that basically decides where we are with completeness. He said that a lot of items are common to all types of applications and there are some that are not. He said that the checklist is simply a quicker way to go through so that it is easier for the applicants to go down the list and figure out if they have everything they need, rather than go through the text and pick through. Also, by having the items next to each other, whether it is a site plan with an associated variance, it is just faster and a lot easier for the Completeness Review Committee to go through and decide if an application has been deemed complete. He said that he has seen checklists such as this where it has “complies”, “waiver”, or “not applicable”. After some discussion, he said that it was decided to take the “not applicable” out because, personally, he has seen it where they don’t want it and can’t figure a way to make an excuse for it and it just adds to the confusion. This way, if they want to ask for a waiver, we are going to be asking for an explanation. It might be a line or two. For instance, if the application is for setback for a shed, we don’t need floor plans for the house, and so the waiver request would indicate “no alterations for the house”. He said that that also forces the applicants and their professionals to think, do I really need this or not? It just helps the applicant give us a more complete application which makes the route through the Boards just a little more efficient because the applicant now has to understand a little better *why* we are looking for this and what we are looking for and they are not shocked when they get a notice of incompleteness because of all these items missing.

They are putting it down clearly and there has to be an explanation as to why they want a waiver if they want one. He said that he has found that checklists like this move the completeness process along quicker.

Mr. O'Brien said that the Board also has in front of it a new draft checklist ordinance and that goes with the checklist itself because that is the mechanism by which the Township Committee would put this in the Land Use Ordinance. He said that the draft ordinance has the added bonus of instituting a Technical Review Committee (T.R.C.) that we have been talking about for some time and makes it part of the completeness process. He said that the completeness process means that they have got to do everything on the checklist, meet with the T.R.C., and then the application is deemed complete or incomplete and that is part of our defense against the change in the time of decision rule. He said that we are presuming at this point that a completed application is an application that starts the clocks running according to the new rule on time of decision which is that the rules that are in place when the application was made are the ones that govern when the application is decided. He said that we are saying that when an application is made, it has to be deemed complete, and when it is deemed complete it is a full application and then the clock starts. He said that the Board has seen this before in various versions and this is the final version that has been cleaned up by the subcommittee. He said that he wanted to be sure that the Board has seen it to make sure it is okay before presenting it to the Township Committee. He said that it will be a referral back to the Board and then off to the Township Committee, hopefully. If the Board is comfortable with the ordinance as it now stands and the draft represents all of the changes of the Board and those that the subcommittee has made in the past, the Board can refer it to the Township Committee for adoption.

The meeting was opened to the public for comments.

Mr. Lemanowicz said that the last time we discussed the checklist there were some revisions that Mr. Batista was going to be dealing with. He said that he did not think that he had the latest copy from him on that.

Mr. Connor said that this draft refers to the checklist and the checklist is not part of the Ordinance – it is whatever the checklist is and subject to review and changes, he would assume.

Mr. O'Brien agreed that the checklist is in its own section of the Ordinance, but that will accompany this draft to the Township Committee for its review – they are both together.

Mr. Connor said that there may be more mechanical changes to the checklist and that this may not be the final copy.

Mr. O'Brien said that the wording you have in front of you will not change in the final copy. What Mr. Batista was doing was to eliminate those last two pages at the end where we double copied and to put some of the items in a different order so that they would flow better so that all the Planning Board items would be in one area and the Zoning Board items would be in another area, but the language is the same and will not change. He also said that the items in the checklist are okay.

Mr. Connor said that given the fact that we just received the proposed new checklist today and the fact that tonight's meeting is not being broadcast on television due to technical difficulties, his suggestion is that there seems to be agreement with the draft ordinance but he felt that we need a final copy of the checklist and consider its adoption at next month's meeting. He did not feel that it would make a big difference if it is adopted tonight or next month and it will give people a chance to not only look at the ordinance, but he was assuming that the checklist will be available for public review. He noted that the checklist is a more complicated piece of work than the ordinance itself.

Mr. Piserchia felt that Mr. Connor's suggestion was a good one.

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DISCUSSION

VALLEY ROAD BUSINESS DISTRICT

Mr. Connor said that he had a concern and wanted to move forward on this because we obviously need to get this up and running and back to the Township Committee so that we can take action. His concern is that there is normally 9 or 10 members here and tonight there are 5. He said that, at the Board's request, Mr. O'Brien provided some information on conditional uses and he was not saying that that is an answer, but certainly it has been an item of discussion. He said that he would initially like to ask him to discuss the material that he provided and have a general discussion on what the options might be, which does not mean that we are in agreement to do it, and the other Board members will have to listen to the discussion.

Mr. O'Brien said that, based on our last couple of discussions along Valley Rd., he made an offer to the Chairman to bring up the discussion of residential as a conditional use as part of the ordinances. Some Board members had thrown that out in some of the past discussions, so he sat down and tried to explain what a condition use is based upon the M.L.U.L. and the leading book in the field. He said that, essentially a condition use is a use that is allowed in the Zone, provided it meets all of the conditions. If it meets all of the conditions, then it is a Planning Board matter, just like a site plan that is conforming, and if everything is met, it is up to the Planning Board whether or not to grant an approval. If any one of the conditions is not met, then it becomes a conditional use that goes before the Zoning Board of Adjustment as a use variance. He said that a conditional use is one of those strange items that can exist on both sides of the ledger – Planning Board or Zoning Board. It can be permitted and *not* be permitted depending upon the specifics of the application in front of you. He said that if you were to lay out a number of conditions that would affect residential, should you decide to go down that road, and the application met all of the

conditions that you laid out, and those conditions can be among all the various topics he put on Pgs. 2 & 3 of his report, such as location, placement on property, density, height, setbacks, parking, lot coverage, and F.A.R., it goes to the Planning Board for approval, along with site plan approval. If it doesn't meet *one* of those conditions, it gets kicked to the Zoning Board of Adjustment as a conditional use variance and, as a use variance, it is one of the most difficult variances to get from the Board of Adjustment which requires a super majority of 5 votes, regardless of how many people are sitting on the Board. It is a 7 member Board, and 5 affirmative votes must be obtained in order to pass that.

In response to Mr. Smargiassi, Mr. O'Brien said that, regardless of what the variance is for, it is automatically a d variance. He said that some Board members had mentioned in the past, and he had thrown out a number of conditions that we had talked about in the past that the Board might want to use as a starting point to the discussion, and he felt that the intent was to answer a question and a need on the part of the Board, and hopefully move the conversation a little bit further down the line in terms of what the Board would like to do about residential on Valley Rd.

Mr. Lemanowicz felt that a conditional use gives the Board a little more flexibility because even though you want to call residential permitted in a zone, but there are some reservations as far as certain unique conditions, you can now condition that permitted use to make it fit just a little bit better. For instance, he said that a common conditional use are gas stations which are, generically, allowed in most business zones but he has seen a lot of towns, particularly when it came to the replacement of tanks, they said that the gas station is permitted in a business zone, but it can't be within 500' of another gas station. He said that the distance between taverns and schools or taverns and churches are common conditions – it is permitted, but there are a couple of extra things you have to deal with. He felt that it is a very good idea to look at it this way and try to get some kind of compromise as to what the Board wants to do here with residential.

Referring to the possible conditions listed in Mr. O'Brien's report, Mr. Connor said that a lot of them are issues that we have to deal with in the Valley Rd. Business District itself.

With regard to COAH and senior housing, Mr. Smargiassi asked how that would work if you were going to tie residential to either COAH or senior housing?

Mr. O'Brien replied that you could designate a senior housing zone or a senior housing area or you could designate that "x" percent of each development will be dedicated to seniors/handicapped, or "x" percentage of each development will have so many units available for COAH or their successor, whatever the State program is. He said that those *could* be conditions. He said that it is best to have those numbers from some other authority rather than to just throw your number in there, like the COAH set aside was "x" percent and then you hung your hat on that in your ordinance. He said that we don't have that right now but you could put a number in waiting for the appropriate number from the State. He said that COAH, as an office, no longer exists but all those functions have been taken over by the D.C.A., so it hasn't gone away – they just did the "shell game" and everybody is waiting for the Supreme Court to make a decision. He said that his advice to the Board is to leave COAH in because, somehow, some way, they are going to tell us we have to do something and it seems to be easier to change a number or ratio in one line of one ordinance than to rewrite an entire ordinance from scratch and start all over again.

Mr. Lemanowicz said that, because of the law of time of application now, if something like COAH comes into play and you *don't* have some type of placeholder and someone applies and says that at the time they applied the Township allowed residential without conditions, there could be a battle with COAH if they require some. He felt that a placeholder of some kind is a good idea.

Mr. Connor said that the current B-3 Zone allows 60% lot coverage and the O Zone allows 40%. He said that the members received a document from Mr. Sandow explaining that very many of our businesses are well over 60% coverage. He said that there are some concerns about lot coverage but it is also clear that, if you have a fairly small lot in the business district, even with 60% you don't have a lot of room to build and certainly with 40% you're not going to be able to build anything. He asked if there were some things there that could be done with conditional uses or other options.

Mr. Lemanowicz said that one thing that can be done is to stagger the requirement so that a smaller lot would be allowed to have a higher impervious coverage than a larger lot. He said that the reality of it is that the larger lots that exist in the Valley Road Business District probably have wetlands to them anyway. He said that if you only have a 1 acre lot and you must leave half of it green, that will be difficult to put anything on there, whereas if you have a 50 acre lot, you have more room to work with and can still do something with the property. He said that he has seen it work pretty well and we could look into that.

Mr. O'Brien said that the other piece to that is that, if residential is removed as an allowed use throughout Valley Road, all of our bulk requirements change because the assumption has been up until now that it would be shared parking, meaning for instance if you have a 2 story building and it maxed out on F.A.R., lot coverage, and building coverage for as much as they possibly could, the parking would only be half of what it would be otherwise because the commercial use and residential use each would have so many spaces and they would be combined so that you would not need new residential spaces, they would be shared. If you take the residential out of the equation and you now still have the two stories, but they are both commercial, you need double the parking that you did under the residential/commercial hybrid and that will severely limit just about every application in front of the Board, which

means that we would have to relook at those bulk standards because there is absolutely no way that anybody could meet them when they have to provide full parking.

The meeting was opened to the public for comments.

Mr. Dennis Sandow, Millington, said that he would like to make a slide presentation to the Board at its next meeting which takes the aerial photographs from the County G.I.S. site, and which the County overlays the lot boundaries, and look down at the properties and see that over 2/3 of the properties on Valley Road could not meet 60% today and clearly don't meet 40% today. He said that the diner, for example, contains 1 ½ acres and is at about 90% lot coverage. PNC Bank, brand new, except for their front lawn which is hiding a septic drain field is at about 80%-85% because they go right to their lot lines in the back.

Mr. O'Brien said that they had a dispensation from the Board.

Mr. Sandow said that he was not arguing that they are or were, at the time, legitimate. What he was suggesting was that the arguments that you hear on the street that we should not increase the lot coverage from 40% to 60% are, in fact, missing the point. He said that there are very few properties on Valley Road right now that come in at 40%. He said that the International Military Antiques building across the street (formerly Smooth On), has a beautiful front lawn, but their parking extends right to the lot line in the back. They are probably at 60%-70% total right now. He said that Shop-Rite is probably at about 85%-90% right now and the only thing that saves them is that they've got a river running through their property which cuts off Paulie's, which is also on the Shop-Rite lot. He said that Paulie is using 100% of his little fraction of that lot on his side of the river. He said that the Chase Bank and the auto shop next to it are both at 100% except for the little strip of grass along the sidewalk. He said that the bike shop is very close to 100% and the day care next to it is also very close to 100%, except for their little front lawn. He said that even the backwards liquor store would not meet 60% today, even though they have some wetlands in the back behind their parking lot and they have their front lawn. He said that for any of those business owners to attempt to redevelop and live within the 60%, they are going to wind up reducing what they have today.

Mr. Piserchia said that when Mr. Sandow does his presentation, he is probably more interested *not* in the ones that exceed the 60% today, but is more interested in the ones that are *not* developed today. He asked Mr. Sandow if he is going to identify each of the properties along Valley Road?

Mr. Sandow replied, "Yes", and said that he has a series of pictures of each property.

Mr. Piserchia asked if lot coverages will be superimposed on the slides?

Mr. Sandow replied that it is all done for you by the County G.I.S. site. He said that about the only properties that don't exceed the 60% today are the big properties on the north side which have wetlands in the back and back up to the power line. He named the Kurz property across the street; Spiro's property which has nothing on it; the Elk's property which he said is probably marginal and at about 40% right now but they've got wetlands in the back. He said that an occasional property that seems to conform is The Uncommon Thread which seems to have a big green backyard and they probably conform right now. He said that that building is a house and it's probably not exactly what we'd want on Valley Rd. 20 years from now if we are, in fact, going to redevelop Valley Rd. He said that the property which contains a salon (next to the Exxon Station) which used to be a real estate office is at 100% lot coverage. He said that, obviously, Dr. Rossi's building is very close to 100% except for the little patch of lawn in the front. He said that they also got relief for all of the setbacks and parking rules along the way. Assuming that we were serious about applying a new set of standards and applying them uniformly in order to evolve Valley Rd. into something better, he said that we probably would not want to continue to grant variances for existing conditions. He said that this is a Solomon issue for whatever Board gets it because do you really want to get a nice, pleasant looking, efficient, even setback development or do you want to let developers jump through crazy little hoops in order to preserve the amount of space they have today as, for example, Dr. Rossi had to leave a wall standing because he is only got 3' of side yard setback and had to argue that he's got the same number of parking spaces that had previously been approved for a building on that site. He said that, as long as the Board's are willing to accept those arguments and grant the variances, then we aren't going to get anywhere. He asked what the incentive is for an owner or developer to do something with his land to conform to the ordinance if, in fact, once he starts down the road – which we have said to him is going to be much easier because we have liberalized our standards – he is going to find that he has either got to go smaller or come back and fight the same arguments on variances and, depending on the nature of the Board at the time, he may have a harder fight depending on whether or not the Board really wants to enforce the new look or is willing to grant the exceptions and variances that we have been granting in the past just because they were there first.

Mr. Smargiassi asked about the thought or goal that was discussed about having lot consolidation - the idea that you set some limits on certain things which would theoretically drive lot consolidations so that we don't end up with 10,000 S.F. lots in sections of Valley Rd.

Mr. Sandow replied that the best example of lot consolidation that exists on the street right now is two 10,000 S.F. lots (less than ¼ acre), side by side, and we have (probably wrongly) set the minimum lot size on Valley Rd. at 10,000 S.F. in order to make these two lots conforming size-wise. He said that they are the boarding house 3 doors down from the bike shop and, next to it, the dry cleaner that has no front lawn. He said that those two lots are now 100% covered except for a little bit of grass in front and they are obvious candidates for consolidation because neither one of those buildings seemed to him to be contributing to the beautification of Valley Rd. He said that they

cannot be consolidated today because the boarding house is in the O Zone and the adjacent drycleaner is in the LI-2 Zone. In order to consolidate those lots, he said that you would have to move a zone boundary. He added that the LI-2 Zone has a 2 acre minimum and, somehow or other, when we drew the boundary around Thermoplastics, we put the drycleaner inside of it even though it's less than ¼ acre and no where near 2 acres. He noted that 24 of the 26 lots in the LI-2 Zone in the entire town do not meet the 2 acre minimum, so it is a moot point. He asked, if you could consolidate those two lots and get yourself a ½ acre lot, what would you do with that? He said that the answer is obvious – you would have to get rid of Thermoplastics and then those 2 lots give you more street frontage for whatever goes into Thermoplastics and now you are talking about a redevelopment scheme for that little corner of the town that makes some sense and it would give you a very pretty operation all the way from the bike shop to the gas station in front of Jaeger Lumber. But in order to do that consolidation of the 3 lots, which would mean buying up those 2 small derelict properties and also convincing Thermoplastics that their future lies in China. In order to that, he said that you have got to convince some developer to dig deep in his pocket because this town wants that, needs that, and won't give him a hard time if he comes in with a proposal for that. He said that we don't have much evidence that the behavior of the Boards is going to change or has changed recently regardless of how much we talk about being friendly to the business development in town. He said that another example of consolidation is across the street – the other half of Thermoplastics, Speedy Mart, the old Zizzors, the house on the corner, and the restaurant formerly known as Montebello's, formerly known as Orphan Annie's, which has got about 120% lot coverage, which the Zoning Board approved. He noted that their parking lot extends into the power line R.O.W. He said that there are about 7 acres, including the wetland, behind the flood wall and there is enough property that you could do something very nice with and that none of the lots by themselves are ones that you can work with, especially as the gateway from the west to the Valley Road Business District. He said that you have got to convince a developer to lay out enough money to pick up that whole thing, and everything has a price and is negotiable. He said that we are asking to put out \$6,000,000.00 of taxpayer money to buy open space (a proposal which will be on next week's Township Committee agenda). He asked if we could convince a developer to put out \$6,000,000.00 to consolidate the west end of Valley Road and pretty much guarantee him that it won't be a futile effort because he won't run into trouble from the Boards? He said that our problem is not the numbers, it is a persuasively showing that we mean business. He said that this is the reason why a couple of years ago the Board heard a proposal from Mr. William Kaufman to create a business improvement district as a separate taxable entity – to collect taxes from the businesses and actually use that money to create new business opportunity. He said that the business improvement district proposal never went anywhere *possibly* because it is hard to know what the business district really is in this town since so much of it is in the old railroad station centers. He said that it is pretty much a "hodge podge" on Valley Rd. as to whether or not you could get improvement all the way up and down the line. He said that somehow or other we've got to convert these numbers into a dream which we can get developer's to buy into. He said that one of the things that is *not* going to succeed is to tell them that 60% will mean for you more variances and more arguing before the Boards. To Mr. Lemanowicz's point of having different standards for smaller lots than for larger lots, he said that that is probably wrong because it is very clear if you study the Tax Map that there are a lot of small lots that have been hacked out of larger lots. It is not a nice symmetric soldierly lineup of lots like you have in the downtown sections of the towns that we dream about. He said that we have to reconsolidate those small lots back into the larger lots from whence they came. He felt that that has to be a goal and the only way to get to that goal is to make sure that developers are willing to put out the money to do that. But to create a 100% lot coverage for the standard for the dry cleaner and advise that they could build on their current lot if they wanted to and go to 100%, you will first run into trouble with the environmental mavens. He said that everybody has got to have trees and that would be a deal breaker even if you did go to 95% lot coverage. Those other 5% will have to have the full complement of 10 trees per acre. He said that having a different standard for ¼ acre lots won't do it – in fact, having ¼ acre lots won't do it. As you look toward the east from Shop-Rite, you have a block full a variety of things – two lots with old houses on them, one of which is a nail salon and one is The Uncommon Thread, the newly renovated diner (which is the largest lot on the block, but only 1 ½ acres) which means that, at best, you could put 12 units of housing on it plus something else, but the diner has already maxed out at 100% lot coverage in parking because restaurants have different parking rules than retail and so it has probably got as many parking spaces as it needs to operate a restaurant there even though it is nowhere near the building coverage limit – it is way over the lot coverage limit. He said that it is a juggling act here. If you take away the housing overbuild on top of retail, you might want to think about scaling back lot coverage but right now if you have on any given acre if you try to max retail plus two floors of housing, plus parking for all, you get to 60% lot coverage (in an ideal world) with the 8 housing units per acre. He said that is the one number that we have happened to have stumbled into correctly. He said that you can get two stories of housing with 8 apartments over retail with enough parking for all and still live in 60%. In that ideal world, he said that he did not know where you would put that ideal building on the street. He said that he has run the numbers on his spreadsheet that shows just how many housing units you could fit on Valley Rd. if everyone chose to redevelop and do it ideally, but that is not going to happen and so the best we can do is target the properties that we want to see redeveloped that are most urgent and make sure that we create a friendly scenario for them and that will inevitably will involve lot consolidation.

Mr. Piserrchia said that, if you take 3 properties – two are at 100% and the other is at 80% and you combine them, the only way that you would get to the lot coverage that would be proposed was with lot consolidation in that case is that all of those buildings would have to be torn down and rebuilt. He asked Mr. Sandow if that was what he was saying?

Mr. Sandow replied to look at the age of those buildings. He said that the core Shop-Rite building was built in 1952 and is 60 years old (not with the extension to the west that was added later). He said that the core Valley Mall is 40 years old. He said that this is not Jersey City where we have spent tons of money at the turn of the century to build stone ornamentation on the fronts of our public buildings. These are rather common place buildings that were built at a time when the Township wanted to allow those buildings. He said that we really don't have an awful lot down

there to preserve. He questioned if we should keep “varnishing the outhouse building” or start with something sparkling new like the medical office building down by Sunrise or even the new diner. At least it looks like it has had some thought and effort put in to making it a prettier building.

Mr. Piserchia said that, in that case, the lot coverage hasn't changed and so changing the lot coverage didn't encourage that.

Mr. Sandow said that the owner found some money somewhere to do something with and it cost him a couple of months worth of business because he chose to close to do it, with is the other issue. He said that you can't do much to any of these buildings without shutting down your business and tearing it down and, once you do that, you are talking 6-18 months and then you try to reestablish your business. He said that the only way to do that is to go out of business and the only example we have of that is Marty's which, in fact, did go out of business and was reborn from the ashes as a different building. He asked if you would ever be able to do that with one of the bank buildings or Burger King? Probably not, unless some chain swallowed up Burger King and decided it didn't want a store here in town, in which case you might actually redevelop that lot as something else, but as long as Burger King is the only drive-thru restaurant in town, they've got a nice little monopoly and there are not going to voluntarily decide that they would be better off building something else there. He said that it is the same with all the bank buildings – he did not see them as being subject to tear down. If anything, he said that banks want to move into town, not leave town. He questioned what we have left that we want to encourage development of? He said that the old houses, pretty as they may be that exist as commercial buildings, probably we could do better and so just putting numbers on paper doesn't quite do it and 60% is a disincentive for most of those lots and irrelevant for lots like the Kurz lot across the street which can only develop something like 15 out of the 70 acres anyway, so 60% is a no-op for them. He asked where the 60% limit would actually come into play for a new development – Elks, Spiro's 12 acres across from Plainfield Rd., the mess down by Speedy Mart – if you included Thermoplastics in it, otherwise he did not see nay incentive in the new ordinance to actually get on with the business of improving Valley Road. He said to remember that we never had street cars and all of the model towns that we talk about had street cars. People got on them and went into town with their shopping bags and walked from store to store and got back on the street car and went home. He said that Summit, Madison and Westfield all had street cars. He said that we never built our downtown in the *best* part of town, we built our downtown after the 1950's in the *worst* part of town – the flood land that nobody else wanted to build anything on and now we are trying to make a silk purse out of that sow's ear and the way that we have it set up right now, he did not feel it is going to do it. He said that we've got some silliness in the ordinance – inns but no more than 10 rooms, movie theaters but no more than 2 screens, and no antique car repair places. He said that we spent an awful lot of time talking about stuff that simply won't happen and we haven't spent enough time dealing with realities of what will incent people to improve. He asked that the next time the Board is full up and you get a chance to look at the pictures of the lots with 100% coverage, that you also recognize the sign ordinance which he provided drafts of and the proposal back in September which should be wrung into this because it is still a sore point with some of the businesses and is now a 6 year round of promises to come up with an off site sign ordinance that this Board has not kept. He said that we should put sign ordinance revisions into the Valley Road because that is basically where it matters. He said that he would be happy to provide a copy of his draft sign ordinance if needed.

Mr. O'Brien cautioned and said that it is very easy to take a look from overhead and see a site and say, “Wow, that is 100% covered”. In the last 10 years, to his personal memory, this Board and its sister Board have not approved *any* application allowing 100% lot coverage. So that several dozen buildings on Valley Rd. that you are looking at and saying that this has a lot, but it is not 100% and he felt that it might be useful to compare what the permitted or approved lot cover is compared to what it looks like from an overhead.

Mr. Sandow replied that he possibly agreed if somebody wanted to do that research. But the only two buildings that are new in the business district in the past 10 years are the PNC Bank and the Rossi Building. He said that we also had Starbucks and Panera, but all of there coverage and parking had been approved 40 years ago as part of the original site plan for Valley Mall, which is probably why he wasn't forced to scale back his current lot coverage which is well over 80%. He said that the only green on the Valley Mall property is back by the river behind Home Goods along the strip of wetlands along the river bank which probably gives him about 10%-15% of green at the back end, otherwise he is 100% paved over and he probably couldn't have gotten Starbucks and Panera through because the current B-3 Zone has a lot coverage limit of 60% and he is way over that with or without those two restaurants.

Mr. O'Brien said that he put those on existing lot cover so it was not an increase.

Mr. Sandow agreed. He said that he was not challenging it and he suspected that many of the buildings that exist, and the lot coverage that goes with them, predate the Zoning Ordinance. He said that probably predate 1960, the houses and the like. He said that we could get dates of construction from the Building Office and find the original dates of Board approvals and read what they said. He said that the fact of the matter is that all of those people are absolutely protected as long as they do nothing.

Mr. O'Brien said that he believed that the first Ordinance was in 1937.

Mrs. Wolfe agreed and said that it is dated December 12, 1937.

Mr. Sandow said that, either it wasn't enforced, or it was a lot more liberal considering what we have. He said that the other thing that ties into all of this is the trees. He said that a one acre lot maxed out on 60% lot coverage

(parking and building, whether the building is a 2 story retail office or retail with housing above) – once you get to 60% and count the number of parking spaces, that one acre lot has to have 14 mature (or soon to be mature) trees on it – 10 per acre plus one for every 10 parking spaces. He said that if you take a look at what you can do with 14 mature trees, excluding the front lawn and the aisles by the driveway, what you find is those trees have to be planted 30' apart. There is also a list of trees, including mandatory trees, and some of those trees have 50'-60' canopies. If you put trees with 50' canopies 30' apart, you get shade – lots and lots of shade. You get no undergrowth and, in fact, not all of those trees might not survive. Besides that, if you do plant trees 30' apart on the 40% of the one acre lot, he asked where you are going to put the stormwater treatment structures, rain garden, or detention basin. He said that you will not put them in between the tree roots. He said that it is absolutely impossible to meet the tree count and still meet the 60% limit. Not only that, he said that we have added insult to injury by saying if you plant *excess* trees, you can have an extra 15%. That means that, if you can find a way to exceed 14 trees, you might have to squeeze them into 30%, which is all that is left after you increase lot coverage by 15% and, not only that, you've got to come to the Board and convince the Board that you have got excess and that that excess is worth granting you the 15% bonus and that is simply a turn-off because for all the streamlining that says you should be able to run this thing through without Board approval if someone complies, in order to max it out they've got to come to the Board seeking permission to go over, which means essentially preparing two sets of plans in order to get past the checklist.

Mr. O'Brien said that there was an answer to the trees and this Board presented that answer to the Township Committee two years ago in the form of a Tree Ordinance wherein there was a mechanism that said that if you could not plant the trees on your site, they could be planted elsewhere in the Township.

Mr. Sandow replied that that is not what the Land Use Ordinance says.

Mr. O'Brien replied that, if the Shade Tree Ordinance had been approved, it would have. He said that he presumed that it is still under consideration.

Mr. Sandow agreed, to be supplemented by an environmental sustainability. He asked if an environmental sustainability starts and stops on Valley Road? He asked if we say a commercial district, on a lot by lot basis, has to be environmentally sustainable as long as the remaining 8,000 acres of the town are? He said that it is a hard call and is certainly going to be contentious, but it may very well be that the existing Tree Ordinance, if you tried to enforce it on a site plan by site plan basis, wouldn't work and they would have to come in for variances just because they couldn't plant the trees and would have to plant them elsewhere. Whether or not the ordinance has been pending for two years that says you can plant your trees elsewhere or whether or not that has to be approved by a Board on a site by site basis, is it part of the Land Use Ordinance or is it part of the general police powers ordinance - he did not know. However, he said that if one of our goals is to expedite the process, then we have to recognize that the current tree requirements certainly will not expedite the process. If anything, they will get in the way.

There being no further comments from the public, the meeting was closed to the public.

With regard to Mr. Sandow's comment about the tree component, Mr. Briggs felt that that is something the Board should look into further.

Mr. Connor said that the idea that a developer can pay for trees in another area made a lot of sense to him. He asked Mr. Piserchia to see where the draft Tree Ordinance is. He said that the Board spent a lot of time on it and if, in fact, a Tree Ordinance would help ameliorate this problem, then the two are tied together and it would be nice to get a Tree Ordinance under any circumstance. He added that what came out of the Township Committee was not something that the Planning Board or Shade Tree Commission concurred with and so we are sitting here with nothing at this point in time.

Mr. Briggs asked if it was possible to take a piece of it out and just fit it within the Valley Rd. ordinance?

Mr. O'Brien replied that he had had conversations with Mr. Pidgeon on it and the Tree Ordinance was only possible because of a recent Supreme Court decision that upheld a similar one, as Mr. Sandow pointed out, under police powers rather than the Land Use Element. He said that it would *have* to be an individual Tree Ordinance within the police powers and he believed that that is the one that the Township Committee looked at and made some changes to it and referred it back to the Planning Board. He recalled that the Board wrote a letter to the Township Committee saying that it did *not* agree with the changes made to it.

Mr. Piserchia said that he felt that the changes that were made at the Township Committee level essentially stripped the Ordinance of what its intent was.

Mr. Butterworth said that Mr. Piserchia did not have to be politically correct on this and said that they "gutted it".

Mr. Piserchia pointed out that not everybody on the Township Committee was happy with the changes and noted that it has not been put to a vote because there is spirited philosophical differences at the Township Committee level as to what should be in that Ordinance. He said that he could say very clearly that he strongly supported the Ordinance that this Board put forth to the Township Committee, but if it were voted on in that form he did not think that it would pass and, hence, we are at an impasse because he did not think that it would be put to a vote in the near future simply because it would fail, which he said doesn't serve any purpose. He said that, when it was sent back, it was not a different version.

Mr. Connor agreed. He said that the Board indicated, in a legally correct form, that it believes in its version and is not going to agree with the Township Committee's version.

Mr. Piserchia said that he would speak to Mayor Harrington to see where we proceed from here. He said that he was perplexed at the reluctance of the Township Committee to vote for this Ordinance. In his opinion, the Tree Ordinance that was proposed by the Planning Board is a Tree Ordinance "light". He said that all you have to do is review the ordinances in any of our surrounding towns, Chatham being an obvious one, and they state that you cannot remove *anything* – not a tree or a twig without permission. He said that the Tree Ordinance that this Board proposed was, in his opinion, light because it permitted 3 live healthy trees to be removed per year, not counting anything that was sick or a possible danger to property. He said that he did not know what can be done here to move it further along.

Mr. Butterworth asked Mr. Piserchia what the major objection was to the Tree Ordinance that the Planning Board proposed?

Mr. Piserchia replied that the clear objection was that we (the Township) do not have the right to tell people what they can and cannot do on private property. He said that Mr. O'Brien correctly pointed out that there was a Supreme Court ruling (New Jersey Shore Builders Association v. Township of Jackson) and the Supreme Court was exceedingly clear that local municipalities absolutely *do* have the legal right to tell people what they can and cannot do on private property. So what we have here is a philosophical difference of opinion.

Mr. Briggs asked Mr. Piserchia if he felt that the primary authors (Mr. Batista and Mr. Welch) never got a fair opportunity to discuss what the intent of the Ordinance was? He recalled that they both appeared twice before the Township Committee and, both times, if they got in a half dozen words that was a lot.

Mr. Piserchia recalled that Mr. Batista came on one evening and Mr. Welch came on another.

Mr. Connor said that the problem was that with the Environmental presentation, the Township Planner and authors got to make a presentation. He said that there wasn't full agreement but there was clearly an understanding resulting in working out a revised Environmental Ordinance with the Township Committee and the Planning Board which will be consistent with the comments of the Township Committee. He said that when the Tree Ordinance was discussed, its authors were given no time to inform as to the purpose of it. They didn't get 5 minutes, 10 minutes, or any minutes. He said that people started in the middle and worked backwards, picked out things, and the audience essentially made comments and the authors never had a chance to present it with the necessary background. He said that the philosophical differences that the Township Committee seems to think that if someone causes damage by cutting trees to someone else's property, that is tough and the person who incurs the damage has one alternative only and that is to sue their neighbor. He said that that is, in fact, what he was told, which he felt is *completely inconsistent* with any fairness to the people who are negatively impacted when trees are cut down and their properties are negatively impacted. He said that he did not understand it at all.

Mr. Piserchia said that maybe the right thing to do now is to get the proposed Tree Ordinance back onto an agenda as the primary subject at the start of a meeting as opposed to at the tail end of a meeting. He said that by the time Mr. Batista and Mr. Welch were able to speak, it was the tail end.

Mr. Briggs recalled that at the second Township Committee meeting it was discussed first.

Mr. Piserchia said that we have to do something and what we are doing now is to avoid a vote and it has to get put back on an agenda anyway. He asked the Board if it would suggest and then he would request that it be put back on a Township Committee agenda, otherwise he said nothing is going to happen.

Mr. Smargiassi said that, to be clear, he did not think that the Township Committee came back and said that they didn't want *any* cutting of *any* trees. He believed that they came back and asked the Planning Board to pick ¼ acre or ½ acre of how much clear cutting, or some other term along those lines, of what would be allowed. He said that they didn't come back and say that you should be able to cut every single tree if you so choose. He said that he believed, if he remembered correctly, that they came back and asked the Planning Board to pick some type of lot size that we might agree to.

Mr. Piserchia replied that he thought that was discussed.

Mr. Smargiassi said that we responded to it and did what we did, but he did not remember the Township Committee saying that it did not want any Tree Ordinance whatsoever which, by the way, is what we have currently – we have "zero". He said that, even under what was proposed by this Board, he did not believe that you would have any recourse. He said that he could cut down 3 trees along his property line every single year under that and you would have no recourse. He said that there are a million different ways to look at this. He said that he, personally, found parts of the proposed Tree Ordinance that came from the Planning Board to be overly burdensome on landowners such as the requirement to hire an arborist to certify that tree is sick. He felt that that is "ridiculous". He said that he had certain pieces that he had issue with versus the tree concept.

Mr. Connor said that he felt that a problem is not with 3 trees being cut down, but with 20-30 trees which right now do.

Mr. Smargiassi said that the Board responded as it did but he felt that what is lost here is some middle ground. He did not think that the Township Committee came back and said that they don't want *any* Tree Ordinance, they came back and basically said that they wanted to limit clear cutting to some portion of the size and basically asked us to comment on what that size should be. He said that we could've said that it would be 1/10 of an acre which could end being 3 trees, but we took a different route on our response back. He said that there may be some more common ground than maybe people think.

Mr. Briggs said that he would like to see it again. He did not seem to recall it being that pleasant of a response.

Mr. Smargiassi replied that there was other language around the Ordinance that was also taken out that wasn't probably necessary to be removed – comments about encouraging trees. He said that there was a lot of language around the concept of why trees are beneficial that was actually redlined out and he didn't think there was any reason for it to be taken out. He could not recall exactly what it was, but his memory was that it was something along those lines.

Mr. Briggs suggested that it be reintroduced so that there is actually a dialogue and discourse over it and particular items can be discussed. He said that we have to be able to present the ideas.

Mr. Piserchia believed that the discussion did have a middle ground feel to it, but what was sent back to the Planning Board in the redlined version – there was no middle ground. It stripped any meaning of it. He recalled that when he looked at it at the Township Committee meeting he said that he would not vote on it because he felt it was meaningless. He recalled that there was a discussion that lent itself to a middle ground, but the version that Mr. Pidgeon was asked to present to the Township Committee – there was no middle ground, it was stripped entirely of any meaning and it almost became counterproductive.

Mr. Butterworth recalled that Mr. Piserchia's reaction to it was just that. He said that that was the only time he has seen Mr. Piserchia angry.

Mr. Smargiassi said that he would agree with the comments in order to get it to move forward and felt that it needs to be reintroduced at the Township Committee and be discussed there again.

Mr. Piserchia said that he would present it again and have it put on an agenda and make sure that Mr. Batista and Mr. Welch are present.

Mr. Butterworth said that maybe the Planning Board should take another quick look to see if we can take some of the more onerous things out.

Mr. Briggs said that we should see what they have to say and get their comments.

Mr. Connor agreed and suggested that Mr. Batista and Mr. Welch do a presentation and they can also comment about the things that are completely inconsistent that have been recommended. He said that he would like to see if a common ground can be found.

Mr. Piserchia agreed that maybe everyone could take a step back because the tone of the Township Committee is one that is strongly in favor of the semi-rural nature of Long Hill Township. He felt that maybe it needs to be discussed again in a calmer way because that is the part that perplexed him. He did not understand what is offensive about the proposed Tree Ordinance at all. He said that Mr. Smargiassi is right and that maybe certain things were a little bit onerous, such as hiring an arborist, but those are things that can be tweaked and worked through. But he did not see what is objectionable about the general intent of a Tree Ordinance. He said that he did not get it that evening and he still did not get it.

Mr. Smargiassi said that he probably leaned more his personal feelings that 3 trees are too restrictive on homeowners. He said that he would like to see some ordinance that does not allow clear cutting but may be worded that protects trees along property borders, but he reality is that he wanted to make a playground for the kids in the back of his lot and cut down 10 trees and wanted to be able to do it and not really be harassed. He felt that there were some things in the proposed Tree Ordinance that he thought went too far, but that is his personal opinion and the Township Committee is going to come up with whatever it is and the Board has already spoken, so it will be what it will be.

Mr. Connor said that his personal opinion is that if it is 10 or 15 trees and it is on a piece of property that is above his property and those trees have been soaking up groundwater and his property and his neighbor's property in the backyard turns into a swamp and we now have drainage problems and spend between \$10,000 - \$15,000, somebody ought to be able to say that if you are going to so severely change the drainage pattern, they you've got to also make sure that you also don't get the additional runoff and I don't take your runoff and become your rain garden for your particular installation. He said that he did not know how you present that, but clearly that needs to be protected.

Mr. Piserchia agreed that that is a *real* example, not a hypothetical one. He said that he actually has a real example as well where the property behind him (which is Township property) used to be very treed and overgrown in a natural way and all that undergrowth that used to appear there doesn't appear there anymore and the water does come down onto his property, although he does not flood. He said that Mr. Welch used an interesting word and said that the intent is not....and Mr. Smargiassi used a good example that he wanted to put in a playground for his children.

He said that he put in a playground for his children as well, but it was a “trip-wire”, as he described it, so we are not saying that you can’t do that, we are saying that you have to take a breath and somebody with some expertise is going to look at that and say that maybe it is fine and the trees can go *or* maybe it is going to cause a runoff problem. He said that, once the trees are gone, they are gone and there is no going back. So, if it is going to cause a runoff issue onto another property, it is too late. So Mr. Welch said that night that we are not saying you can’t do it, we are just saying let’s take some thought here and make sure it is *not* going to cause an issue. He said that if it is not worded in a fair way, he felt that the Board would be more than happy to look at it and reword it maybe. He said that he understood what Mr. Smargiassi was saying and put in a playground for his children as well.

Mr. Smargiassi said that there is probably no perfect answer because the bottom line to all these examples again, he could cut down 3 trees every year and in 5 years he would have 15 trees cut down and has his playground and wherever the water goes, goes wherever and there is no recourse to anybody, he guessed. He said that maybe that is beside the point in trying to gain the system too much. He said that maybe there is some type of happy medium.

Mr. Piserchia said that he made that very point which is why he didn’t like 3 trees in it.

Mr. Connor said that he felt that when people are doing that they are putting in a playground or a swimming pool, so by taking down 3 trees a year it will be 4 years before the playground or swimming pool can be put in and, in actuality, that is not how they do it.

Mr. Briggs said that most of this discussion is moot anyway because we don’t know.

The meeting was opened to the public for comments.

Mr. Sandow reminded the Board that there is a “grander” issue involving the tree cutting which no one really wants to face up to and that is, when you talk about environmental, everyone is talking about alternative energy and his neighbor, who has a very heavily wooded lot, decided he was going to put solar panels on his roof. In order to do that, he had to cut back the trees so that he could get line of sight from the noon day sun and he wound up cutting about 20-30 mature trees that were the closest to the house in order to put light on his solar panels. He said that, if you take a look at the fact that he could not replace those trees on site, because obviously the only place he could put them was where he cut the old ones and then they would interfere with the solar – but he is allowed a 4 for 1 replacement elsewhere in town and the going rate that was suggested in the Ordinance was something like \$200.00 and it would have cost him \$16,000.00 into the Tree Trust Fund for somebody to spend installing trees elsewhere in town, therefore the \$16,000.00 would be added to the price of his solar project. He said that the point here is, what is the balance that we want? He questioned how many trees are there in town versus how many solar panels? What is the greater ecological good for the planet earth to save carbon emissions, generating electricity, or to have a couple more trees in somebody’s back yard in Long Hill Township? He said that there is a judgment call here but you cannot pass ordinances which conflict with one another because every ordinance ends with “any part of this ordinance in conflict with something else overrides it,” or whatever and now you have to figure out which ordinance came first. He said that all of the environmental preaching that we do talks about alternative energy and yet we have not adapted our Tree Ordinance in order to support that. He asked why bother putting in solar panels if you’ve got to pay a \$16,000.00 penalty only because you were too stupid to cut the trees down 10 years ago before the Ordinance went into effect? He said that, as far as trip wire is concerned, Mr. Welch treats trip wire as if there were some certain amount of purity to the process of having one non-elected expert go out and tell you whether or not you can build a swimming pool in your back yard if it involves tree cutting. He felt that there was a great deal of objection to that and a great deal of objection to the fact that the designated tree official would be the chairman of the Shade Tree Commission and there is nothing that requires that the Chairman of the Shade Tree Commission have any competence at all – it could be a “flower lady” for all he knew or some appointee. He said that it happens that we’ve got a few tree experts in town and then there is the question of why is the Ordinance written to favor sending money to them? He said that there were a lot of issues over and above the 3 tree limit, but the fundamental that the Township Committee has to wrestle with, and probably has to give guidance to the Planning Board on, is do you get a “get out of jail free card” on the tree cutting ordinance automatically if you are going to put in solar panels.

Mr. Connor replied that there is actually a conversion of solar energy produced and the number of trees it replaces, so there is real data that everybody uses on how many trees and the carbon footprint.

Mr. Sandow replied that that is not in the Ordinance.

Mr. Connor said we want to try to get into renewable energy ordinances which are essential. He said that, with regard to the issue of cutting down trees, the issue is how the roofs are. He said that it is not automatic that a particular renewable energy application is to anyone’s advantage if you cut down a whole bunch of trees and cause a bit of damage. He said that even a minor amount of shading cuts down the value of solar panels. He said that it is not that if it is 50% shade the solar energy is 50% less, if it is 15% shade, you may lose over half your solar. He felt that there are a lot of residents that buy solar that don’t know what they are buying. He said that we need to really work on the environmental ordinances and renewable energy ordinances so that we put something that provides guidance to people who are trying to put this in.

Mr. Sandow said that the meters have been spinning backwards for the past couple of days with the bright sunshine and 90 degree heat, but Long Hill Township only gets, on average, 5 hours of usable sun a day on a year round basis. He said that if you take out the clouds, winter, and low sun angle in the winter, you’ve got about 5 hours a day which is 20% of the day when you can generate energy and the rest of the time you are not, so you’ve got to maximize what

you can. He noted that there are only 8 meetings of the Township Committee left this year, so getting something into the schedule may be problematic.

Mr. Roshto asked if it was possible to look at what was discussed at the 2 Township Committee meetings when the Shade Tree Commission came up and listen to the discussion from a perspective of what can be improved *before* you send it back as is. He said that as the Planning Board sounded a tad annoyed that the Township Committee sent it back in a way that you didn't like it, imagine how it is going to be when you send the same thing back to them. He encouraged the Board to listen and communicate a little bit and talk about what things can be improved. For example, he recalled someone asking the question, "Is this enforceable?" He said that his opinion is that a large part of the Shade Tree Ordinance, except for the things that are way out there like the arborist, is *not* enforceable. He said that you developed a Tree Conservation Officer (T.C.O.) in an attempt to enforce and he felt that subconsciously you realize that it will be very difficult to enforce those laws. He said that if you cut down 3 trees and then in January cut down 3 more, who is going to be counting? He said that, if you are going to go back and present the same ordinance again, you are probably going to hear a very similar answer and that would be unfortunate. He said that he would like to see something real happen the next time it is presented, that it get's passed and everybody feels good about it, not just this back and forth kind of thing that he continues to see.

Mr. Briggs replied that he felt that part of the problem is that it was never formally presented. He said that it was sort of "scatter shot" in pieces and there was never a formal approach where two people were going to discuss all of the aspects of it. He said that they might be able to answer 50% of the questions rather than having it come back gutted and then we could actually take those tangible pieces and have a discussion here, but we never got the opportunity through Mr. Welch and Mr. Batista to actually say that this is the Ordinance and this is why we are looking at these things. He said that the presentation which Mr. Roshto had mentioned 3 or 4 times just never occurred and there was never the opportunity. He said that he agreed with Mr. Roshto, but having one thing come up and have it gutted coming back, there is just nothing to work off of.

Mr. Roshto replied that that is the good thing about the Environmental Ordinance, which he felt went so much smoother than the Shade Tree Ordinance.

Mr. Briggs agreed and said that that should be the template for everything.

Mr. Roshto agreed. However, he cautioned the Board not to react. He said that there was conversation which occurred at both Township Committee meetings and there were substantive things that were said and there were good ideas that were put out. He said that it is worth looking at it before sending it back.

Mr. Connor said that we may be able to get Mr. Batista and Mr. Welch involved, noting that they were there. He also said that we should see if we can a transcript from those meetings to see if the Shade Tree Commission and ourselves would have some ideas that these suggestions are something that we can bring back to the Township Committee and say we will adjust and these aren't, so that we can at least get it down to the things that we don't agree on.

Mr. Roshto said, or perhaps present it not as an Ordinance that you want passed, but a discussion item that you could then take their input and go back and tweak it.

Mr. Briggs said that that is fine. It was proposed Ordinance and nothing has been formalized. He said that we could learn what they liked and did not like and then work off of there. He felt that the whole thing just got started in the wrong direction.

Mr. Roshto agreed.

Mr. Piserchia said that, as far as he understood it, the Supreme Court said that it *is* enforceable.

Mr. Roshto said that he was not referring to that part of it. He said that he was talking about the Township T.C.O. enforcing the laws.

Mr. Piserchia replied that he felt that we have moved beyond that at some point before the conversation broke down and he thought that we agreed that it wouldn't be automatically the head of the Shade Tree Commission, it would be an appointee of the Township Committee.

Mr. Roshto said that, even still, it doesn't matter. He said that in the Ordinance that was proposed, there was a T.C.O. and whether it was going to be the Shade Tree Chairman or not, it doesn't matter. He said that his point about this is that he could go down to his backyard and cut down 3 trees and 6 trees down and no one is going to know the difference.

Mr. Piserchia agreed that that is the more difficult thing. But like anything, he said that it has to be observed by somebody from the Township or a neighbor and somebody is going to have to report it. He felt that to make that a stumbling block doesn't really work because if you go to any town in this area, they all have these ordinances.

Mr. Roshto agreed. He said that that was just one example, but he was sure that if you go back and read the Township Committee minutes, you will find 10 of those. He said that he was just throwing something out there as an example, not to debate it.

Mr. Piserchia said that he recognized that there are parts that are awkward or difficult to enforce, however it works, but none of that precludes that a Tree Ordinance is a good idea. It is how we get to the optimum version.

Mr. Roshto replied that he sat at both of those meetings and listened to everything, but did not get the same picture that you got. Putting aside that you did not like their answer to it, he said that he felt that they were moving to wanting an ordinance and it was just a question of what would be in that ordinance.

Mr. Piserchia said that the major problem was that the document that was presented was completely gutted and the only thing it left was public land.

Mr. Roshto replied that he felt that that is part of the problem when you think about it from that perspective – that they gutted your ordinance, as opposed to this is a Township ordinance that we should be coming to together. He said that saying that is not helpful. He said that it is a Township ordinance and the Township Committee had an opinion and you didn't agree with it, which is fine. He said let's just come to a common opinion.

Mr. Connor felt that one of the problems, however, is that the response from the Township Committee didn't reflect a lot of the discussions. He said that there may have been areas of possible agreement, but when the ordinance got re-written, those areas of possible agreement were redlined. He said that it wasn't like we really don't like this one and we'll talk about this one – it was like, we don't like any of them.

Mr. Roshto said that he did not disagree with anything anybody is saying and that he felt that the process is at fault and not the content.

Mr. Connor agreed that the process is at fault. He said that he would comment on the actual enforcement and said that it is probably typical to our Zoning Officer. He said that every month we get a Zoning Report and about half of the things that get Zoning Ordinance problems are because he has gone through town and saw someone beginning to build a wall, or he saw this or that and the other half are neighbor complaints. He said that as far as he was concerned you could make it the Zoning Officer because he is riding around town anyway. He said that we are going to try to educate the public as much as we can and it is not going to be perfect. He said there will be times when you tell residents you can only cut 3 trees down and then find that they have already cut down 10. However, hopefully it will happen less and less if we have an ordinance and somebody trying to enforce it.

There being no further comments, questions or discussions, the meeting adjourned at 10:22 P.M.

DAWN V. WOLFE
Planning & Zoning Administrator