

MINUTES

DRAFT

PLANNING BOARD

NOVEMBER 22, 2011

LONG HILL TOWNSHIP

CALL TO ORDER AND STATEMENT OF COMPLIANCE

The Chairman, Mr. Connor, called the meeting to order at 8:02 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
E. Thomas Behr, Member
Donald Butterworth, Member
Guy Piserchia, Member
Brendan Rae, Member
Michael Smargiassi, Member

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

Excused:

Mayor Harrington, Member
Kevin Dempsey, Member

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

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

TIFA LTD. DIVISION AVENUE STREET FRONTAGE IMPROVEMENTS

Present: Greg Perry, Morris County Supervising Planner
Christopher Vitz, Morris County Assistant Engineer

Mr. O'Brien stated that on 7/11/11, he issued a summary memo to the Planning Board informing the members of the status of the Tifa property street frontage improvements. He said that the issue is that site plan approvals on the Tifa property dating back to 1989 through the present day, including both County approvals and Township approvals, have called for Tifa to establish a sidewalk on the Division Ave. side of its property as well as to install curbing and to improve the R.O.W. along the Division Ave. side of the property. Those requirements of many site plan approvals have been ignored. As a result of receiving Administrative Site Plan Waiver applications, the County realized that they have still not installed what they were supposed to and decided that, at some point, they have got to do what they were supposed to do on this property and install the sidewalks and curbing. Over the summer, the Board discussed the matter at a couple of meetings and wanted to hear what the County had to say. Therefore, he drew up his 7/11/11 memo recounting what had occurred in the past and this evening we have Mr. Greg Perry, who is the Morris County Planning Board Supervising Planner, and Mr. Christopher Vitz., Morris County Asst. Engineer, present to discuss what the County would like to see or what their side of the story is.

Mr. Greg Perry introduced himself and said that this project originally dates back to the 1970's. He said that Mr. ArneGoytil, former Morris County Supervising Planner, recently retired and had been trying to get the site frontage improved and Tifa kept saying that they had to take care of the site contamination first and so the County kept pushing it back instead of forcing the issue. Shortly before retiring at the beginning of the year, Mr. Goytil indicated that the County had been receiving applications for Administrative Site Plan Waivers for changes in tenancy on the site for years and felt that the County had to put its foot down to force the issue or else nothing would ever get done and so, the County started including in their reports a notation that the improvements must be done and requested a time table. The County has heard nothing back from Tifa. He said that he has been in contact with Mr. O'Brien on several occasions talking about the issue and they are still of the contention that the sidewalk and the curbing are needed and that it is a safety issue in many regards including access to the train station for pedestrians. He said that it is a dangerous stretch of road and they would love to have a sidewalk throughout the entire stretch, however they cannot afford to do it and it must be started little by little as development comes along.

Mr. Christopher Vitz, introduced himself. He said that in 2004 he did work with the applicant and work through several iterations of a curb and sidewalk plan and it even came down to working the sidewalk around the trees that are on site. He felt that they had come to an equitable agreement with the applicant to construct the sidewalk and curbs.

Mr. Perry believed that the meeting actually took place in 2006. He believed that they had a site plan that may have actually included the curb and linear sidewalk, however he could not find it. He noted that an individual from the Long Hill Township Environmental Commission was at that meeting and was concerned about trees. He said that they have no problem with doing a sidewalk around trees to preserve them, but they felt that a sidewalk and curb are both necessary along this frontage.

Mr. Connor noted that there is a sidewalk on the opposite side which stops at the Runyon property where you have to go across the street to get to the train station.

Mr. Vitz said that he has been at that frontage and does not feel safe trying to cross it even though it looks like it's safe. He said that people travel at an excessive speed once they get past the train station.

Mr. Connor noted that Division Ave. is a County "stub road" to nowhere and so it sees very limited traffic. He said that Northfield Rd. is one that is clearly being used regularly, but Division Ave. is not a heavily traveled road. He said that part of the Tifa building has some sort of utility space in front that right now is covered with some reasonable greenery. He said that it appeared, when he looked at the plans, that there would be no way to keep that greenery and we would end up having that rather ugly looking building bulging out at the side.

Mr. Perry said that they had discussed that and had agreed to narrow down the sidewalk so that they wouldn't have to remove all of the greenery to keep the sidewalk and curb together at that point. He said that he had forgotten the exact width but it was about 3' in that stretch and it was felt that one could be snaked through.

Mr. Connor said that they would have to keep the bushes trimmed regularly or within a matter of 6 months it would be impassable.

Mr. Perry agreed and said that the same is true for several of the trees. They would have to be pruned regularly and maintained because the sidewalk would be rather close to several of the trees. He said that that was another concern of the Environmental Commission – that the trees be preserved, and the County had no problem with that.

Mr. Butterworth asked what the possibility would be that the rest of the road on that side would be curbed and sidewalked.

Mr. Perry replied that it all depends on development and/or if the County ever decides to improve the road.

Mr. Butterworth said that it is basically all developed and is residential and so you won't get any movement from there and along Tifa it just goes to a residential area and drops dead and so there is really nobody walking there.

Mr. Perry said that he did not know if anybody from there is using the train station.

Mr. Butterworth replied that some may, but they probably walk across the street and up the sidewalk on the other side.

Mr. Connor said that the walking comes in on the eastern side of the town and they turn at the telephone building and walk north and cross the train tracks. He said that the other side has limited people walking.

Judging by the worn and dead grass, Mr. Briggs asked Mr. Connor if he felt that that is where the people traverse.

Mr. Connor replied affirmatively.

In response to Mr. Briggs, Mr. Perry said that there is no widening there. They will just come up with a straight line and probably eliminate a little paving and do a little paving.

Mr. Butterworth agreed that if it were widened you would need to take the trees out.

Mr. Briggs asked if it was possible to have a sidewalk on the Runyon side where the Cumberland Farms already does have a sidewalk.

Mr. Perry replied that they would love to have at least one side with continuous sidewalks, but the County is not going to come in and install a sidewalk.

Mr. O'Brien said that over the last 5 or 6 years, we have had about 4 properties on that stretch come before this Board or its sister Board. He noted that Stonehouse Division has been before the Zoning Board and there was also a subdivision across the street. Therefore, as Mr. Perry indicated, properties come up over time and we have seen quite a few already.

Mr. Smargiassi asked if the policy is to have a sidewalk on one side or both. His thought was that there is some existing sidewalk on the eastern side, so do you pick that side to be the sidewalk side? He said that this is something that is going to take a long period of time and, if we are going to pick a side, then let's pick a side. If the wisdom is to do both, then fine. He said that that way we don't have 50' of sidewalk here and 50' there.

Mr. Vitz felt that the main reason this side was chosen was because the application was in and, if you can get one long stretch like that, you are going to do it.

Mr. Perry also noted that it would provide direct access to the train station parking.

Mr. Vitz said that another issue that has come up more recently, within the last year or so, is the ADA compliance that must be met on all of the ramps so, even if there is a crosswalk at that street just south of there, there would have

to be ramps and landing areas put in on both sides of the roadway just to allow pedestrians to cross at that specific location and have a safe place to land on the other side. He said that that is something else that was not reflected on the original plans but would have to be installed at this time. If the County came to repave Division Ave., he said that they would actually have to put those landing areas in for any existing crosswalk.

To be clear, Dr. Rae asked if there would be the possibility of a sidewalk on one side, and the other side not really.

Mr. Vitz said that the County would not be opposed to sidewalks on both sides.

Dr. Rae felt that the road is well traveled, especially in the morning. He felt it is a dangerous spot in the dark. He said that he has often thought that there should be a sidewalk there, especially with its proximity to the train station.

Dr. Behr asked if any thought had been given to narrowing the road.

Mr. Perry said that he was not even sure of the current width of the road.

Dr. Behr said that it has varying widths as you drive down Division Ave.

Mr. Butterworth said that it is wide and then narrows as you come up the road.

Dr. Behr said that there is a certain kind of anomaly that we see in a couple of roads where a road that historically had been narrower was widened to meet County standards and you wind up with some rather bizarre road with discrepancies and Division Ave. has the quality of being a residential street and so it is not necessarily one that needs to be improved to the County standards of a 50' R.O.W.

Mr. Perry said that it is a 45' wide road and would have to be considered by their Engineering Dept. He said that the current requirement is an 18' half width. He noted that in its current configuration they were not touching the width with the improvements. He was not sure how they would go about that and if the applicant would be amicable to tearing up part of the road.

Mr. Vitz said that it could end up being more work for them because they would have to saw cut down the side of the road instead of just installing the curb at the existing edge of pavement. He was definitely not against the idea and felt that 18' from centerline is more than enough for that roadway, so you would get an extra 2'.

Mr. Perry said that the County would work with the Township and would have no problem as long as their Engineering Dept. is on board with it.

Mr. Vitz said that he would like to see some type of improvement rather than no improvement.

Mr. Perry was sure that people in the town would rather have a curbed road there, noting that it is right next to the train station and there is curbing in that area.

Mr. Hoffman said that he was confused as to how we got from there to here. Specifically, he said that the gentleman from the County is stating that it has become a part of their requirements that certain street improvements (sidewalks and curbing) be installed. What he was curious about is when there has not been compliance or satisfaction of the required requirements, don't we get into an issue of legal enforcement and what, if anything, has been done to see to it or attempt to see to it that there is compliance?

Mr. Perry replied that he believed that there has not been any construction since their reports, other than some paving and cleaning up the site.

Mr. Butterworth agreed, only recalling rentals of space.

Mr. Perry said that for years they have been issued Site Plan Waivers on the tenancy changes and do it as a matter of course. He said there are some times when they say no, that they don't agree with the Site Plan Waiver, although very rarely. He said that it has almost gotten to that point at Tifa because they have been pushing them for 20 years and kept crying that they had to do the remediation and when that is done, they would take care of the frontage.

Mr. O'Brien said that Tifa has been aware that this meeting has been scheduled and they were invited to attend.

Mrs. Wolfe said that she has been dealing with Ms. Stephie Palm and, for the past few months, she has been sending her e-mails as to the status of this meeting. When she confirmed that the meeting would be held this evening, she said she immediately let her know. She said that she did not hear anything back and contacted her yesterday and asked if she was coming and she replied that she didn't think so. She said that she e-mailed her back stressing the importance of the meeting, noting that she had been inquiring about the meeting for months now. She said that she advised her that she felt it would be wise for someone from Tifa to be here because it would be the best opportunity to listen, ask questions, or make comments. She said that she never received a response back from Ms. Palm as to that e-mail, however, today Ms. Palm's associate, Mr. Rick Branigan, stopped in the office and he did not seem to know anything about it. She said that she explained about the e-mails which were sent back and forth to and from Ms. Palm and again stressed the importance of a Tifa representative attending this meeting and he said that he would

definitely go back to the office and speak with her. She said that they have definitely been given notice of tonight's meeting and, in fact, were *urged* to attend.

Mr. Smargiassi said that he liked Dr. Behr's suggestion which he felt will end in the best result for the Township and its citizens. Because it is a change, he said that it may require that we go back to Tifa and renegotiate the agreement. He was in favor of narrowing the roadway more in line with the residential neighborhood and adding a sidewalk that would allow us to keep the trees. He said that it would be either a "yes" or a "no". If it's "no", then just go with the sidewalk at 3' and go from there.

Mr. Briggs asked Mr. Perry and Mr. Vitz if they were just going to start denying Site Plan Waivers and, if so, wouldn't that be a reason to bring them to the table?

Mr. Butterworth agreed and said that they have a big turnover.

Mr. Perry said that the County would ask that the Planning Board request the County to reduce the width of the road, so that they have it in writing from the Board and can say "yes" to it.

Mr. Butterworth felt that from a cost standpoint for Tifa, it is better just to leave the road the way it is and go with the present plan.

Mr. Perry replied that they may wish to reduce it too because it may be easier for them to snake things around.

Mr. Butterworth did not feel that there would be too much snaking, noting that the trees are in a straight line. He said that he had seen a set of plans and did not feel that it is that "twisty".

Mr. Perry said that, normally, they do not like a sidewalk against a curb, they like at least 3' back for plowed snow but because they are aware of the situation, they are willing to work with them on it.

Mr. Briggs said that he was in favor of what Mr. Smargiassi and Dr. Behr were talking about and he liked that visual.

Dr. Rae was in favor as well with the only caveat being that it should be done as expeditiously as possible. He said that we cannot have this situation for another year where we are waiting on them to do something that they should have been doing at some point in the last 20 years and thumb their noses at all of the authority. He said that it has to end.

Dr. Behr said that there is a bit of leverage. He said that when he and Mr. Butterworth review Administrative Site Plan Waiver applications, one of the options that they have is to say that they are going to refuse to grant a site plan waiver and they are going to have to come in front of the Board and be heard. One of the reasons you could refuse to do a Site Plan Waiver is that they haven't complied with the requirements of the County. He felt that it was that alert on our part that really triggered some action here in the first place.

Mr. Butterworth agreed and noted that Wild Bill's Soda almost didn't get in.

Mr. Piserchia agreed with Dr. Behr and Dr. Rae that this decision makes itself. He said that it should be done post haste.

Mr. Butterworth believed that there was a set of plans that were approved by the County. The only revision would have to be for handicapped access (crosswalks) and they are good to go.

Mr. Connor agreed with Dr. Behr and Mr. Smargiassi that the road needs to be narrowed. He said that one of the reasons he has a real concern about walking and leaving greenery is that Northfield Rd. has a walkway that has greenery and shrubbery and that road gets a lot of children and, even though people say that they will take care of their shrubs, what happened was that we had kids walking on the streets simply because the shrubs were there. He said that he could see the same thing happening – you go there and the shrubs are out and now the people are walking into the middle of the street around the shrubs and then back in which he felt is a definite safety hazard. He believed that if you can narrow the size of the road, and allow more greenery and shrubbery and keep it cut back, he felt that it would make a much safer way to go.

Mr. Perry repeated that they would have no problem with reducing the width of the road.

Mr. Connor said that the plans ought to be relatively simple to make – it is drawing a few straight lines. He asked if there was a resolution that someone would like to offer in order to have a discussion and pass something for Mr. Perry and Mr. Vitz.

Mr. O'Brien said that back in 2007-2008, the owner of Tifa came to the Township informally and had a meeting with staff and discussed a possibility of taking the Tifa site and putting a mixed use residential/commercial development on that site that would be oriented towards the train station. That proposal was left in the private developer's hands and they were seeking to work out a contract with Tifa. He said that we have not heard anything about that since then but there is a thought on the part of that property to perhaps change it into something else from the industrial monster it became. So any further development of that site would require an entire site plan review by this Board

and the County and that could certainly move whatever improvements you discuss this evening onto a higher plain. He said that he was suggesting that, if the Board is willing to settle for something at this point, there is a distinct possibility that in the future you will have another crack at this.

Mr. Connor said that it is clear if that happens – traffic patterns change and everybody really wants to save the trees.

Mr. Hoffman distinctly recalled in that same time frame that there was actually some rather comprehensive litigation in the Superior Court involving these issues, but after some preliminary and initial review, it was basically handled on behalf of the Township and any municipal involvement by the Township Attorney. He felt that it behooves Long Hill to have Mr. Pidgeon take a look at the terms by which that litigation was settled because if, in fact, there has been a breach or noncompliance on the part of a litigant to terms of a package deal of provisions and conditions, then that presumably *may* reopen the entire thing for a fresh look. The parties are not at liberty to disregard the terms of a settlement that ultimately was approved or ratified or at least filed with the Court in a “willy-nilly” manner and then thumb their nose at the co-participants in the litigation, particularly when those co-participants are municipal agencies. He felt that it was at least worth refreshing ourselves as to where we stand and what rights we have if they are in violation of the terms of a comprehensive package settlement.

Mr. O’Brien said that in 2006, the Township reached agreement with the owners of Tifa concerning their refusal to come in and apply for site plan approval for changes in tenancy on the site. What they did for a number of years was just not inform us of anything. Over the years we realized, primarily through Ms. Wolfe’s diligence, that there were constant changes going on over there that the Township had no knowledge of from a safety and hazard standpoint and from a planning and zoning standpoint, the Township did litigate with the owners of Tifa and they came to an agreement that Tifa would come in for site plan approvals for all of the tenants that were in the building and they have continued to do that since then.

Mrs. Wolfe agreed.

Mr. O’Brien said that we really didn’t talk much about the site itself as part of that litigation, but Mr. Hoffman has a very good point that anything we do along these lines should involve Mr. Pidgeon since he has that institutional memory in terms of that litigation and what brought it about and where it all landed.

Mr. Hoffman raised the simple question, if a party is in breach of their obligations, what rights and remedies do we hold to enforce the terms that were reached?

Mr. O’Brien replied that he did not think it had anything to do with the external site but rather the internal Site Plan Waivers and approvals that had not been sought.

Mr. Connor recalled that he had joined the Board right about the time that that had been done and there were 23 Site Plans and a schedule of handling 6 at a time over a period of 6 months or so, or maybe more. He recalled that the focus of that was just getting them approved and obviously finding some of the things that were not so approvable being there.

Mr. Butterworth added that we wanted to get hazardous materials out of there or at least learn where they were in order to protect our volunteer firefighters.

Mr. Connor said that, assuming when you talk with Mr. Pidgeon, there is not some sort of legal problem with changing the actual street sidewalk design, if in fact we are free to do that without having a legal repercussion, then he thought he heard that at least a majority of the Board would like to see a redesign and narrowing of the road to 18’ from centerline. If that is true, he asked for a motion.

Dr. Behr made a motion that the Board request the County to agree to our intention to reduce the roadway width to 18’ from centerline and that we inform the owners of Tifa that we want them to agree to complete the work on the sidewalk as we have indicated to them we would like to see it done to provide a greater protection where people might have to walk around that shrubbery.

Mr. Briggs seconded the motion.

Dr. Rae asked for a point of clarification. He said that, if we do that and Tifa comes back and says that they really don’t agree and want to put the sidewalk in without any other added expense, what does that do to us – are we stuck in this, and will we have to go back to them and argue back and forth? He felt that it is a timing issue that has been going on long enough. He felt that we have been lucky up to this point that nobody has been injured on that road. Now that it has come before us, he felt that we should do everything that we can to make it as safe as possible and by saying that they should do some work to the road, his fear is that that gives Tifa another out for another “x” number of years. He said that the problem for us is that our luck just may run out and somebody gets injured on that stretch of road.

Dr. Behr said that we have the ability at any time we wish, since they haven’t complied with what they said they were going to comply, to require them to come before this Board which means that every time some new applicant wants to come into that site, instead of getting what is a very painless and easy Site Plan Waiver approval, they’ve got to come before the Board and make a presentation. He felt that the Board has a lot of power in this to insure that they are going to do what the Board thinks needs to be done.

Mr. Butterworth noted that it also raises the cost of the Site Plan approval – tremendously.

Dr. Behr agreed. He said let's plan for the least desirable thing that we think we might get as opposed to saying let's try and plan for what we do want and insure that we have the resources to make sure that we get what we plan and, in this case, he believed that we have the leverage to insure that they are going to be cooperative.

Mr. Connor said that they recently have seemed to want to cooperate. He said that we were the ones who told them not to do it because there were some reservations on the Board as the plan that had been presented might have a problem with the trees. He felt that if we had not done anything, they might have actually done something within the last 6 months. In this particular case, he felt that we have been the delay because a number of members thought that that was not the proper solution to the plan.

Dr. Behr said that his sense was exactly the same as Mr. Connor's.

Mr. Connor said that Mrs. Wolfe can tell them what it is and if they all of a sudden yell, holler, and scream, we will have to sit down with them, but he suspected they will say "okay".

Mr. O'Brien said that, if this Board feels that way, be aware that the power that you have is to not grant any Site Plan Waivers or approvals to that property, meaning that if they come in as of a certain date (and you tell staff when you want this to start), that that will stop all activity at the Tifa property so that they cannot rent to somebody – they cannot turn over a unit to somebody else. In order to do *anything* they would have to come before the full Board *or* comply.

Mr. Piserchia said that, perhaps their absence tonight is indicative that they are going to do what we ask them to do.

Mr. O'Brien said to be aware that the use of power has consequences, so be sure that this is what you want to do and give that word to your staff and we will do it – just be prepared for the storm that may follow.

Dr. Rae said that what we want to do is have some kind of a sidewalk in there and we can recommend that something be done with the road, but what we need there is a sidewalk. He suggested that we just tell them what we want and they can do whichever way they want and we can even recommend it, but he said he would be much happier with that.

Dr. Behr said that that was not his motion and he had a motion on the table.

Mr. Connor said that when they thought there was going to be a widening of the road, there was a cry and a number of residents went up to the County and lobbied against anything being done. So, if there is any suspicion that we are going to cut down the trees, he said that he could guarantee that the citizens will once again interfere. He felt that what has been proposed is something that can be done quickly with public support.

At Mr. Connor's request, a roll call vote was taken.

Those in favor: Dr. Behr, Mr. Briggs, Mr. Butterworth, Mr. Piserchia, Mr. Smargiassi and Mr. Connor. Those opposed: Dr. Rae.

Mr. Connor suggesting expediting the matter to let Tifa know.

Mr. O'Brien asked Mr. Connor if he would like some type of communication to be sent to Tifa to let them know what action was taken tonight with a time frame?

Mr. Connor said that he did not wish to set a time frame, just have Mrs. Wolfe inform them of the decision and that we would like the matter expedited. He said that, if they agree with it, he did not feel there will be a problem. If it tends to drag on, he said that the Board members can reconsider and put a time frame on it if they desire.

Mr. O'Brien suggested forwarding a copy of this Resolution to Mr. Perry at the County.

Mr. Connor agreed.

Mr. Smargiassi said that, if we go to them nicely but also let them know that we have this stick and intend to use it.....

Mr. Connor replied that they already know that.

Dr. Rae asked why we can't include a time frame. He said that if he is sent something without a time frame, he doesn't pay a lot of attention to it. He felt that it behooves the Board to set a time frame and plan it with whatever engineering work we feel needs to get done.

In response to Mr. Connor, Mr. Lemanowicz said that if they wind up with a new tenant during the last week of December, you are not going to get curbs and sidewalks put in in time. He felt that, to Dr. Rae's point, it might be appropriate to say we will consider Site Plan Waivers and whatever, if you bond for the improvements and, as long as we are holding your money, we can build it if we need to and you can have as many Site Plan Waivers as the

Board chooses to grant because, at that point, for the Board to say “As of this date”...you’ve got to design, the County and Township will want to look at it and they are going to have to find a contractor and go through a plan review which takes time, plus you have to have the actual construction. He said that if they started looking for an engineer to start the work tomorrow, you will not see plans until the end of December at best.

It was noted that Maser Consulting prepared the latest plans. Dr. Butterworth said that that would be the person to continue them.

Mr. Lemanowicz replied that nobody who worked on that plan is with the firm anymore or is familiar with that job. He said that when he was with that firm, he did not sit in on an application because that plan existed with a Maser title block on it and, at that point, there was nobody in the firm that had worked on that plan. He said that he stepped aside just for the appearance of it. He said that he can basically go where he wants.

It was noted that the latest plan is dated 2005. Mr. O’Brien added that there was a revision to that that showed a serpentine sidewalk.

Mr. Butterworth said that, if it is in auto cad, it is easy to revive.

Mr. Smargiassi suggested getting an update in early January on what the progress has been and said that, if there has been no progress, we will break out the stick and stop granting Site Plan Waivers.

Mr. Lemanowicz said that it would not be difficult to come up with a construction cost estimate. He said that you do not need full blown plans for something like this. He suggested that they be told that the next time they want a Site Plan Waiver you are going to either owe us the curb and sidewalk installed, or this bond – pick one and we will see you when you need something.

Dr. Rae felt that was fair and that he could definitely support that. He said that he felt that it goes to Mr. Smargiassi’s point where we are gently telling them exactly what we are going to do and how we are going to exercise the power that we have.

Mr. O’Brien said that we will talk to them and tell them what is going to happen and give them until early January to come up with a plan and/or a bond or some positive action to show what they have done and then we will decide where we will go.

Mr. Connor suggested that the update be given at the second meeting in January, rather than the first meeting since that is the reorganizational meeting.

Mr. Perry said that he did not see them getting the work done until the summer or the fall with everything they will have to do – with the approvals and everything else. He said that it is a matter of getting the County and Township to approve a plan. He said that he did not want to put an undue strain on Tifa by saying they must get it done by March, when that is really not a good time frame. He said that he would say by fall, have the improvements constructed, completed, and taken care of.

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(Mr. Briggs recused himself from the remainder of the meeting due to a potential client conflict).

PRESENTATION (CONT’D)

INDOOR SOCCER, LLC (COPPER SPRINGS)

200 & 230 New Vernon Rd.
Block 14602, Lots 4.01 & 8

#10-15P

Request for Rezoning

Present: William F. Harrison, attorney for the applicant
Peter Steck, licensed professional planner
Steven D. Plofker, Esq., principal of the applicant

Mr. William F. Harrison, attorney for the applicant, said that at the last meeting held in October, his client requested that the Township consider changing the zoning of the property first by amending the Master Plan to reflect that change in the zoning, and then proceeding with adopting an ordinance to reflect that change. At that meeting, he said that the Board decided that it would consider a Master Plan amendment and some language was sent to the Township Planner for consideration and he sent the Board a few comments on the language that was suggested. He said that the applicant is in the process of applying for a flood hazard jurisdictional determination from the N.J.D.E.P. and once they have that, they are confident that they can come up with something concerning development on critical areas that the Board will be comfortable with.

He said that in the first paragraph of the proposed Master Plan amendment, Mr. O’Brien raised an issue with their phrase that “The use, however, has been lawfully operating on the property...”. He felt that the way to address that and not have the Planning Board conclude that everything that is going on the property is lawful, even though they think everything on the property *is* lawful, is to just rephrase it to say “however, recreational uses have been lawfully operating on the property as a result of development approvals”.... He said that his proposed change towards the end of the second paragraph of changing “with environmental sensitivity of the Great Swamp National Wildlife

Refuge” to is obviously acceptable to his client. He said that they had provided comments from Mr. Plofker at the last meeting concerning the accessory housing and their intention is that the existing residential units on the property would be used for people associated with the uses (employees of this facility or other facilities). He said that that is their intention, however if the Board has other wording than that, that would be acceptable to them. He said that the words they used in the draft ordinance is commercial recreational facility, however if the Board has a different phrase that conveys what they are doing on the property, that would be acceptable. He said that Mr. O’Brien suggested that they have a 25 or 26 acre minimum lot size to avoid the possibility of subdividing the property and that is also acceptable to his client. He said that, in addition to the two lots owned by Indoor Soccer, LLC, they are proposing to include Lot 4 as part of the proposal. By doing that, he said that they would not be reducing any of the ability of that property owner to use the property as they currently can in the Conservation Zone. In fact, he said that there would be additional opportunities should that property end up being combined with Lots 8 & 4.01, however that is something for the Board to consider although they felt it makes sense from a planning perspective. He said that Mr. Steck was present to give his planning reasons why they feel that including that lot is a logical thing to do in terms of planning. He said that that is their recommendation and it is the Board’s decision and either way works for them.

Mr. Peter Steck, licensed professional planner, said that the intent of including Lot 4 (which is not owned by the applicant) is that it is kind of an outlying parcel now. If the Board chooses to rezone the subject property for commercial recreation, then there is one isolated lot that is zoned by itself and would be surrounded by other zones. He said that the Master Plan is a general document and so we do not have to craft the exact zoning language, but the intent is to obviously not injure that property owner. They can still continue to use it for single family use. But, because it is an outlying parcel and because there have been discussions with the owner of the recreational facility, it makes sense that if it can be done, to incorporate it with the main property. To make it worthwhile, he said that it makes sense to at least have the Master Plan recommend that the new zone extend to that property. From a pure planning point of view, he felt that it makes sense. He said that it is not the intention at all to diminish what that property can be used for. If that owner doesn’t want to sell, he said that life goes on and it can continue to be used as a single family house, but what it does do is simply expand the options that are available to that owner. If that owner wants to make a deal and incorporate the property with the subject property, then there isn’t a zoning hurdle again with having now the whole facility going to the Board of Adjustment because a portion of it now is non-conforming. He said that the goal of this is to get this facility before the Planning Board where site plan issues can be discussed as opposed to being a burden by a variance or a series of variances from a non-conforming use. He felt that it would be easier to craft the Master Plan language. He said that you can dodge the words “lawful” or “unlawful” and just say that the property was used for recreation uses. He said that, if you recall from the last hearing, what the applicant wants to do is get out of this morass of different zoning opinions and the disagreements about what is legal and illegal and have a clean slate to start with so that they can plan for development in the future.

Mr. O’Brien said that the thing he was worried about here is if we make a single family residential use a permitted use in the CR Zone, then this house can remain single family residential even if it is purchased by the applicant and they could rent it out, sell it, or do whatever they want with it and remain single family. In addition, the remainder of the CR Zone (22 acres) is also zoned for single family residential which he did not feel the Board would like because it could be split up into what is currently allowed (3 acre zoning in the C Zone) which would certainly not advance the Master Plan or Ordinance at this time.

Mr. Steck replied, “Although it could be done that way today”. He said that one of the themes is that the applicant didn’t want to upset the current zoning. He said that now we are making the transition into the specifics of a zoning ordinance. His thought was that it will obviously depend upon the acreage. He said that, if you said you would have to have a minimum of 25 acres, that means that they can’t operate unless that property is assembled with this property. He said that there may be a way to simply say that existing single family houses can continue. He said that his intent in describing the zone in the Master Plan and in participating in the drafting of the Ordinance was not to diminish the capabilities of the adjacent owner of Lot 4. He said that they wanted to keep that person whole. What the Ordinance would be intended to do is to accommodate additional uses should that owner want to participate.

Mr. O’Brien felt it would be a little cleaner if we knew what was going to happen with that property vis a vis Mr. Steck’s client. He asked if there was a time frame for when then thought they may have some idea.

Mr. Steven D. Plofker, Esq., principal of the applicant, said that it hasn’t been reduced to writing, but they have a handshake agreement to purchase that property. He said that it is a concession to the owner of the property who has complained about noise. He said that their preliminary assessment is because of the wetlands on the property, noting that they are not going to be able to use it for any expanded recreational use, however they probably would like the opportunity to continue to use it for housing purposes. He said that they would have no issue at all with restrictions that denied them the ability to subdivide it, sell it, or use it for any other purpose.

Mr. Hoffman asked Mr. Plofker if he would use it for housing for individuals associated (employees presumably) of the overall recreational facility, or in the general market to rent it out?

Mr. Plofker replied that, ideally, it would be less restrictive to be able to use it for *any* housing purposes. However, if the Board thinks it important to restrict it to employees, they would not have an issue with that.

Mr. Piserchia asked if there is a noise issue for the current resident, why wouldn’t there be a noise issue for any future resident?

Mr. Plofker replied that they have taken noise readings and it may be less of an issue to a future resident, but any resident of the house would be very mindful, whether employed or not employed that that is the primary use and they are just going to have to accept it. He said that they would not actually own the house either. At best, they will be a renter of the residence.

Mr. Piserchia said that the purpose of crafting it would be to benefit the current owner – by zoning it where they have the possibility of having a recreational use, whereas it is zoned conservation/residential now. He asked if we are diminishing the current owner if recreational use were to be included, or is that a benefit to them?

Mr. Hoffman said that it sounded to him from what he heard that this may be a somewhat academic discussion because if any new construction were needed to join in with the recreational theme of the adjoining larger tract and that would not be able to be done with N.J.D.E.P. regulations, it may be moot.

Mr. O'Brien said that one of the problems is that if you keep that lot by itself and it is not a part of the recreational facility, it remains a single family home. Then it is surrounded by this recreational facility on one side and the other half is the Swamp.

Mr. Piserchia understood, but he said that even Mr. Steck is saying that we have to be mindful of the rights regardless of the situation. He questioned if we are hurting them or helping them by including that property?

Mr. O'Brien said that, if you take this property and include it in a recreational zone and it is owned by the recreational people and they use it for their people, no harm is done. If it is owned by the recreational people and it is rented out as a single family home, no harm is done because the house exists.

Mr. Piserchia replied that he was being specific to the current owner.

Mr. O'Brien replied that, if the current owner stays in the house and continues to own it and they are put in a recreational zone, with the language that is suggested in the Master Plan, there is no harm to that owner.

Mr. Steck said that, if you buy a single family house and all of sudden you said that you can have home occupations, such as a dentist office in the house, it does expand the potential of what you can do, but to the person who wants to keep it as a single family house, the rights continue.

Mr. O'Brien said that, if you allow single family homes as a permitted use for the recreational zoning, then single family homes can go on the 24 acres, which is the other side of it, which is why this is so much cleaner if they own the home and use it for their staff and we don't allow single family homes, but we allow staff housing. This way, they can't put single family on the 24 acres or on the 4 acres.

Mr. Lemanowicz said that that would be somewhat difficult to police.

Dr. Rae asked, if we said that it is okay for employees, would the property be able to be rented to non-employees?

Mr. O'Brien replied that, if the language allowed single family residential use, it could be rented.

Mr. Harrison interjected and said that there the applicant has no problems with either the Master Plan or, more specifically, the Ordinance being written so that they cannot build new homes on the property. He said that that is not their intention, they do not want to do that, and that is not where they are going with this. He said that they put the language for single family in the Ordinance more out of the concern as being expressed that they didn't want to send a message to the property owner that they are taking something away from him/her.

Mr. Piserchia replied that he had no doubt that that was true, however the Board does not want a future Planning Board 40 years from now to be put in the same position this Board is in.

Mr. Harrison said that they were proposing a 20 acre minimum lot size which is one approach. He said that Mr. O'Brien had suggested 25 or 26 acres, if you are including the third property. He said that, if the Board feels more comfortable not making single family residences a permitted use in the zone, that is acceptable.

Mr. Connor said that his concern was that if circumstances change in 10 years and the property is sold, would the new owner think that he/she could buy the property and convert it, tear everything down, and put in new residences?

Mr. Harrison said that they expect and have not problems with the Board crafting this so that that is not a possibility.

Mr. Smargiassi said that he would like it if there is a way for the Board to do that and also give the property owner the flexibility to rent to non-employees. He said that he would be open to that.

Mr. Connor said that he did not have a problem with renting it or having employees there as long as it can be done in such a way that we don't have another 10-12 houses showing up on the property in the future.

Mr. Harrison said, allowing the existing house to be used as a house, but no new houses.

Mr. Connor noted that part of the house is already within a buffer zone, so there is not much that you could do with the house except to clean it up. He said that there is certainly no expansion that could be made, so it will pretty much stay the way it is. He asked Mr. O'Brien, if the Board goes forward, to craft something that would be agreeable to the attorney's and planners that the Board can agree to?

Mr. O'Brien replied, "Of course, Chairman".

Mr. Harrison said that they would like to get some sense of the timing. He noted that the first step is amending the Master Plan and then amend the Ordinance.

Mr. Smargiassi said that he would like the word "lawful" to be removed totally. He did not want the Board to make any type of decision on whether things have been lawful or unlawful during the last couple of years on the property.

Mr. O'Brien asked the Board if it wished to discuss the draft Ordinance at this point, or work on the Master Plan and then work their way over to the Ordinance?

Mr. Connor asked if they could be done in parallel? Assuming that the Master Plan would be changes as recommended, he said that that would probably dictate certain Ordinance language.

Mr. O'Brien replied that he could not see why not. He asked Mr. Steck if he had any comments.

Mr. Steck replied that his only comment is a procedural one that, assuming we want to move at some pace, your comment on the Ordinance is eventually just simply a recommendation to the governing body. It doesn't require an advertised public hearing, but amending the Master Plan *does* require advance notice in the newspaper. So, if language is comfortable that the Board is comfortable with, one of the first issues is to advertise a public hearing that you are going to amend the Master Plan, and you might receive other public comments and you might want to tinker with it certainly at that meeting.

Mr. O'Brien said that the Board will be holding a meeting in 3 weeks, in December.

Mr. Hoffman noted that the specific wording of the proposed language has to be submitted to the County.

After discussion, Mr. Harrison suggested that the Board get the language before its meeting on December 13th, but then aim for, not the reorganizational meeting, but the first regular meeting of the Planning Board in 2012.

Mr. Connor agreed that the second meeting in January is more realistic.

Mr. O'Brien said that he and Mr. Steck will work on the Master Plan amendment language and the Board will have it approximately one week before the December 13th meeting for its review and Mr. Harrison will have it for his client's review. It will be discussed on the 13th and, presuming that all are in agreement at that point, then we will it for proper notice for the second meeting in January.

Mr. Connor said that the Board will give its intent so that the incoming Board members will understand where this Board ended up and take it from there.

Mr. Piserchia asked if it is possible that the handshake agreement might lead to a sale sometime in the near future?

Mr. Plofker replied, "Yes". He said that they were supposed to meet with the owner today but she had some business come up and had to cancel. He said that their meeting was rescheduled for next Tuesday. He said that they have an agreement which is non-contingent. He said that he has never been in the house and wanted to go see it to make sure that there is some value there. After that, he said that they would go right to contract. He said that the owner is anxious to conclude the transaction. He said that they probably will not own it this year, but he felt that it would be extremely unlikely if they don't go into a binding contract in the next couple of weeks.

Mr. O'Brien asked Mr. Plofker to keep Mr. Steck and himself in the loop because he felt that it does make it a cleaner thing for all involved.

Mr. Plofker agreed to do so.

Mr. Connor had announced earlier that the proposed discussion on Sign Ordinance amendments will *not* take place this evening. He confirmed with Mr. O'Brien that a draft of the proposed amendments will be available at the next meeting.

There being no further business, the meeting adjourned at 9:30 P.M.

