

MINUTES

PLANNING BOARD

MARCH 13, 2012

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, 2012.

PLEDGE OF ALLEGIANCE

ROLL CALL

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

Christopher Connor, Chairman	Sandi Raimer, 1 <sup>st</sup> Alt.
Mead Briggs, Member	Charles Arentowicz, 2 <sup>nd</sup> Alt.
Donald Butterworth, Member	
Joseph Cilino, Member	
Kevin Dempsey, Member	Kevin O'Brien, Twp. Planner
Jerry Aroneo, Mayor's Designee	Thomas Lemanowicz, Bd. Engineer
Guy Roshto, Member	
Michael Smargiassi, Member	

Excused:

Brendan Rae, Member  
  
Barry Hoffman, Bd. Attorney  
Dawn Wolfe, Planning & Zoning Administrator

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

APPROVAL OF MINUTES

The December 13, 2012 minutes were approved as written on motion by Mr. Butterworth and seconded by Mr. Smargiassi. Dr. Rae abstained as he was not present at that meeting. Mr. Aroneo, Mr. Cilino, Mr. Roshto and Mr. Arentowicz abstained as they were not members of the Planning Board at that time.

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.

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DISCUSSION/ACTION

DRAFT CHECKLIST ORDINANCE

Mr. O'Brien said that at the last meeting we received information from Mr. Aroneo indicating that Mr. Pidgeon advised that the Checklist needed to be adopted by ordinance. Also that time, the Board members were asked to review the draft Checklist.

With regard to Checklist Item #35, Mr. O'Brien said that Jerry Hoffman, Construction Official, advised that the Knox Box requirement is an item that is required by code only under *certain* conditions. He asked that the entry for Knox Boxes be removed from the Checklist since he will deal with it on the code side. He said that the Board has two choices. The first is to let the Construction Official take care of it and apply it whenever he has to. The second is to leave it in the Checklist which means that the Board can apply it independently of the Construction Official when it feels it is necessary based upon a site plan in front of it.

After extensive discussion it was agreed to keep the requirement for a Knox Box in the Checklist and add the words "if applicable" at the end of the sentence.

Discussion followed as to Checklist Item #54 listing the specific authority by title of those who are to receive "as built" plans. Mr. O'Brien recalled that Mrs. Wolfe had made the list and that it is ready to be included if the Board is so inclined to approve the Checklist.

Mr. Aroneo made a motion to adopt the draft Checklist Ordinance and recommend it to the Township Committee for approval, as amended, which was seconded by Mr. Butterworth.

Those in favor: Mr. Briggs, Mr. Butterworth, Mr. Cilino, Mr. Dempsey, Mr. Aroneo, Mr. Roshto, Mr. Smargiassi, Mrs. Raimer and Mr. Connor. Those opposed: None.

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DISCUSSION

DRAFT ENVIRONMENTAL ORDINANCE AND BEST MANAGEMENT PRACTICES STORMWATER MANUAL

Mr. Connor said that, because the draft Environmental Ordinance and Best Management Practices Stormwater Manual are tied together, it made sense to discuss them at the same time.

Mr. O'Brien said that the Board received the draft Environmental Ordinance at the last meeting and he was looking for comments or suggestions. He noted that the document originated from the Environmental Commission and they took a number of ideas from the former Ten Towns Committee and the documents that they had prepared.

Mr. Lemanowicz said that he had briefly discussed the BMP Manual and the whole thought process behind it at the last meeting and then it was thought best for the Board members review it and develop questions.

Mr. O'Brien said that, among the things they were looking for in terms of comments from the Board was some help with the manual in that he and Mr. Lemanowicz and the others on the environmental side who drafted the document all knew what they meant, but they would like to be sure that others understand what they meant in terms of the general public as to whether it is readable, does it make sense, does it need more illustrations, etc. He said that the purpose of the manual is very narrow and it is to the homeowner and what they need to do on their property when they come to the Board for some type of project. Items such as blockages and storm sewers are extremely important in the Township, however, they are not part of this except to be mentioned that they exist because all we are trying to do is show a homeowner in very non-scientific language how they can mitigate their particular project. He said that we are specifically addressing the homeowner and *not* a commercial applicant who has its own professionals and staff who are devising their stormwater systems for them. It is for the homeowner on how to build a rain garden and how to direct stormwater in such a way that it will not impact others.

Mr. Lemanowicz agreed and said that, although he had not seen a local guide such as this before, it is generally for a single family resident or a small commercial developer who is trying to deal with stormwater issues. He said that he was trying to simplify it to make it a little less frightening.

Mr. O'Brien explained that there are two sets of rules. The first set is where the State Manual comes in and applies to all major and commercial projects and large subdivisions.

Mr. Lemanowicz said that the definition is a "major development" which means that you are disturbing *more* than an acre. If you are disturbing *less* than an acre, it isn't required to apply. He said that the Township Ordinance does catch those non-major developments and gets into rate reduction anyway and no net increase and we do refer back to this and that is proper. The issue we were coming across is that when you have a single family older home which contains only 1,500 S.F. and they are constructing a 1,000 S.F. addition. In that case, you are not interested in an extended detention basin that is 50' x 100' – it just doesn't work.

Mr. O'Brien added that, for at least 20 years, the Ordinance requires stormwater mitigation anytime a homeowner adds more than 400 S.F. of additional coverage. This was an attempt to show the homeowner who comes in with a pool, deck, addition, etc. what they need to do because it had been done on an ad-hoc basis, particularly before the Zoning Board which is dealing with homeowners. He said that we could hand them this manual and tell them to choose from it how they are going to make up for that 400 S.F. – 1,000 S.F. As part of the Zoning Permit review, the applicant will see whether additional impervious cover is being added to a site. If it is, at that instant, the manual should be provided to the applicant.

Mr. Connor said that the purpose is to allow the homeowner to make additions that do not require hiring a professional to understand all of these things and to provide guidance while being consistent with the requirements of the Ordinance which says that you can have no net increase in runoff. He said that the design is supposed to be readable and allow the applicant to do something quickly and cheaply without a lot of overhead. Secondly, it protects the Township that those new installations are at least attempting to meet the requirement for no net increase in runoff.

Suggestions/comments made by Board members included the following:

- The introduction needs less technical jargon and less referral to specific practice manuals. This is a guide with some potential solutions that are site specific.
- Drywells should be added as an option.
- There is an issue on what it is to be called. The title should be changed. Board members are welcome to provide suggestions to Mr. O'Brien.
- Professional hats should be taken off and the document should be looked at from the point of someone who is just starting out and may not know a whole lot or have working knowledge of what we are trying to accomplish. It should be read from the standpoint of the audience we are trying to reach and ask if it is clear.
- Clarify the understanding of the Ordinance and the manual itself.

In response to Mr. Roshto, Mr. Lemanowicz said that he would inquire of his colleagues in other towns as to whether they have adopted a similar manual.

Mr. Connor recalled that Dr. Leonard Hamilton was very involved in putting the draft Best Management Practices Stormwater Manual together and was also the Chair of The Ten Towns Committee. He said that he did an extensive amount of research and he would not want to see the research redone and, secondly, he did not feel that we have the resources that Dr. Hamilton had at the time to do so. He suggested that Dr. Hamilton may be able to be contacted to provide the research he did, including the towns which he modeled it after.

Mr. Roshto said that, on the other hand, in the past 2-3 years, towns may have developed very nice plans that would be nice to see to refresh our minds.

Mr. Connor replied that, at the time, in the upper Passaic River Basin, we were part of the leading Planning Board addressing this issue.

Mr. Roshto noted that the draft manual says things like “Shall conform with the standards and procedures of the Best Management Practices Manual”. He felt that that statement is a very strong one and, if we pass these ordinances we are saying that the residents *shall* conform to those standards. He asked how we would reconcile that. He referred to Sec. 145.5.

Mr. Lemanowicz agreed that it needed to be reworded and softened to some extent.

Mr. Roshto said that, if we soften the language in the ordinance, then he felt it is a great document. If not, he said that he would be concerned.

In response to Mrs. Raimer, Mr. O’Brien said that a legislative intent is not prepared when such ordinances are passed.

Mrs. Raimer asked Mr. O’Brien if he felt it would be advisable if he would go on the record when this is ready for that type of action to explain the distinction between the two documents and the need for there to be this dependence on each other so that it is understood that, while it is not legally binding, it is advised that it is followed. She said that the language may not exactly hit on the intent here and you want to make sure that there is some history or intent established if someone wants to understand why they need to do this.

Mr. Lemanowicz said that, as time goes on, people will take portions of what is being recommended here and change it somewhat to make it work better and we want to encourage that. He felt that if someone has a better idea to apply versions of some of these practices, we should let them do it.

Mr. Roshto said that he would like to take exactly what Mr. Lemanowicz had just said and put it in the Ordinance somehow, although he did not think that we can.

Mr. Connor did not think that a substantial re-write is needed and felt it is more tone than substance which should be able to be done reasonably quickly. He suggested that a new draft be sent out for comment prior to the meeting when it is next discussed which he hoped would be within a month.

Mrs. Raimer asked that the revised document be red-lined so that each detail need not be re-read.

Mr. Lemanowicz said that his practice and that of Mr. O’Brien is to use the track changes feature.

Mr. Connor said that there is agreement, in concept, on the manual and he felt that it was time to go back to the draft Environmental Ordinance itself.

Mr. Aroneo asked if the Board had seen the memorandum written by Paul Ferriero, Twp. Engineer, dated 6/11/11, which contained some recommendations.

Mr. O’Brien clarified that, on the bottom of Pg. 10 of the most recent draft Environmental Ordinance, it notes that it contains KOB revisions 0222412. He said that a number of Mr. Ferriero’s comments were shared with the Board last year after he made them and a number of them had been taken care of elsewhere in the ordinance. He said that he wished to stay narrowly focused on this rather than bring in the whole Land Use Ordinance.

Mr. Aroneo said that he talked about splitting this ordinance up between police powers, zoning, and some other things.

Mr. O’Brien replied that that is already there.

Noting a discrepancy, Mr. Aroneo referred to Sec. 146.1b (ii) which indicates that seepage pits or other infiltration measures shall be provided with a capacity of 3” of runoff for each square foot of new impervious area. Yet in his memo, he says that we should use 4” because that is the standard that the Township has always used.

Mr. Lemanowicz believed that there was also a change in the void ratio. He said that when you calculate how much water can be stored in stone, you calculate by how much void there is. In here it is 33%, but in other cases it is sometimes used as 40%. He remembered looking at it after Mr. Ferriero had made his comment and said that he would have to look at his notes because he recalled switching one to match but now the other one didn’t – it was kind of a combination.

Mr. Connor felt it would be helpful to look at Mr. Ferriero’s recommendations and those recommendations that are contained in another part of the ordinances or other documents just to note whatever document it is covered in so that we will have a full response and we can be assured that nothing had dropped off by mistake.

After discussion, Mr. O’Brien noted that Mr. Aroneo had a copy of a letter from Mr. Ferriero dated 6/8/11 and he had a letter from him dated 6/20/11. He said that maybe we should assume that he had a number of items cleared up. He said that the letter dated 6/20/11 is the one that was discussed at the Township Committee level.

Mr. Aroneo did not recall ever having the letter dated 6/20/11.

Mr. Roshto noted that there are a number of places in the draft ordinance that read “and/or”. He said that, generally, when he reads that it becomes ambiguous or he did not have a clear understanding of what exactly we are saying. He used the definition of “setback” as an example where “and/or” is used 3 times. He asked if that was a standard “catch-all”?

Mr. O’Brien replied that the setback definition referred to is in the Ordinance currently. He said that the draft Environmental Ordinance is a combination of some changes and a re-stating of what already exists in order to show the entire part of the ordinance that is being changed. He said that “and/or” is a typically used phrase in land use planning to leave open a number of possibilities or to narrow possibilities. In response to Mr. Connor, he said that he presumed that most of the definitions were developed by Carl Lindbloom, former Twp. Planner, who also wrote the Development Definitions handbook for New Jersey.

Referring to Sec. 146.1a, Mr. Roshto said that it states in part that the applicant shall review and choose the appropriate mitigation as listed in the Long Hill Township Stormwater Best Management Practices Manual and/or consult with the approving authority. He asked if he was to read that to mean that it is his choice?

Mr. O’Brien replied, “Yes”. He said that you can do both or do either, it is up to you. The purpose was to give people an option of discussing it with the Engineer if they wish or to rely upon the manual.

Referring to Pg. 2, Mrs. Raimer said that it was not clear to her what was new that was added and what was amended. When looking at legislation, she said that she was used to seeing new language underlined and old language with a strike through. In this case, she said that it appears as though it is *all* new language. She asked how one would distinguish between what is existing and what is new?

Mr. Aroneo agreed with Mrs. Raimer.

Mr. O’Brien said that the problem is that we have a document that has been worked on for about 4 years and, over time, various iterations have been developed, drafted, and adopted by this body and then moved on to the next iteration, so those past iterations aren’t there for you to see. He said that this was the most recent one as adopted by the Board at some point last year. He agreed that it is not clear what is new and what has changed because it is all in the draft ordinance at this point.

Mr. Roshto made a motion that, going forward, the standard procedure for this Board is that all ordinances are annotated appropriately and consistently with the standards.

Mr. Cilino seconded the motion.

Further discussion followed.

Mrs. Raimer suggested that, when proposing legislation, all new language shall be underlined and all language proposed to be deleted shall have strike thru’s or be bracketed.

Mr. O’Brien said that that is actually a lesser standard than what we do currently. Currently, every document provided shows the changes made since the last time. If you just stick to legislation, he said that it would only include ordinances.

Mr. Aroneo and Mr. Roshto agreed that it should apply to all documents, as amended.

There being no discussion on the motion, a roll call vote was taken.

Those in favor: Mr. Briggs, Mr. Butterworth, Mr. Cilino, Mr. Dempsey, Mr. Aroneo, Mr. Roshto, Mr. Smargiassi, Mrs. Raimer and Mr. Connor. Those opposed: None.

Mr. O’Brien said that it may be helpful to take a look at the top of Pg. 4 or Pg. 5 of the draft ordinance where it says “Section 3” on Pg. 4 and “Section 4” on Pg. 5. That introduction points out that an entire section is being changed.

Mr. Smargiassi said that Microsoft Word has a compare feature which would basically take care of about 95% of this in 30 seconds.

There being no further comments, Mr. Connor called for a recess.

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**DISCUSSION**  
**PLANNING INITIATIVES STATUS REPORT #3**

Mr. Connor requested Mr. O’Brien to begin with Pg. 10 because discussions were held at the last meeting as to priorities, where we were, and how we were proceeding. He felt it would be best to review what is on the Board’s plate, what is partially done, and what is new to do. He said that the first 9 pages deal with some of that information in more detail.

Mr. O'Brien referred to the first item, "Referred to Township Committee and awaiting action:". He said that he should have revised it to take out the Application Checklist draft Ordinance which, as was discussed this evening, is still before this Board and being revised and *then* it will go to the Township Committee. He said that the Technical Review Committee draft Ordinance was forwarded to the Township Committee and will go for a second reading on March 28<sup>th</sup>. Among the other items before the Township Committee are the Building Height draft Ordinance; Development Fee draft Ordinance; Meyersville draft Ordinance; Technical Review Committee draft Ordinance; Shade Tree draft Ordinance and the Valley Road draft Ordinance.

Mr. Connor asked Mr. O'Brien to update the Board on COAH.

Mr. O'Brien said that the Development Fee draft Ordinance was required by COAH so that the Township would collect affordable housing fees from all development within the municipality and then use those monies to institute affordable housing. He was quite sure that the Board saw the news article courtesy of Mr. Pidgeon which reported on an appellate division court case that stated that the Governor did not have the ability to abolish COAH itself because it was legislatively created. The Governor is appealing that decision to the Supreme Court. He said that COAH itself has been transferred to the Dept. of Community Affairs within the State of New Jersey. The requirements for COAH and the Fair Housing Act have not disappeared, only the name COAH, until this recent court case had gone away. The requirements that towns provide affordable housing is still on the books as of now. Also in front of the Supreme Court is a ruling on whether the methodology used by COAH for their last round, known as the third round of affordable housing, was appropriate or not. This was the methodology that required some towns to put in hundreds and, in some cases, thousands of affordable housing units based upon COAH's calculation of open space and usable space, so that that methodology is still before the courts. In Long Hill Township, we had adopted the various required ordinances which allowed for Growth Share – meaning that if a developer were to come into the Township and ask for a 10 unit subdivision, 20% (or 2 of those units) would have had to have been affordable and would have been distributed to people based upon how the Ordinance lays out that process. The same situation applied to commercial development governed by the creation of jobs. If a commercial developer came in to the municipality and wanted to create 100 jobs, somehow they would have had to provide somewhere around 5 affordable homes to house that 100 person workforce. He said that the Growth Share methodology is still there at this time, but it was the methodology they used that said that towns had to put in so many units to catch up and that is at question now.

Mr. Connor asked what happens to the various rules that were put out for the third phase of COAH. His concern was if we are in any way vulnerable to someone coming in and proposing affordable housing and essentially saying that since we aren't zoned for any location with COAH except for places that are already fully built, they therefore have the right to build affordable housing anywhere.

Mr. O'Brien wondered if that was a legal question that should be addressed in executive session. He said that the only caution he would give the Board is that our Master Plan and our ordinances should work together and if for some reason they are not working together, then that *could* be a problem.

Mr. Aroneo said that he had spoken to Mr. O'Brien about that and he also asked Mr. Hoffman for his opinion on it and he deferred to the Township Attorney. He said that he discussed the matter with the Township Attorney several times and he is in disagreement with Mr. O'Brien and he pointed out to him the statute and case law that said otherwise. He said that there is no legal requirement that they should agree and there *can* be discrepancies between the Ordinance and the Master Plan and, in instances where they are not consistent, he recommended that the Township Committee pass a Resolution acknowledging that. He said that to do otherwise – to have this Board pass whatever kind of Master Plan they wanted without having an Ordinance that the Township Committee could pass that was consistent with that, would really usurp the legislative authority of the Township Committee and that is why the law is the way it is. He felt that we should get that point clear right now that they don't have to necessarily agree.

Mr. O'Brien replied that he completely agreed that Mr. Aroneo was correct. He said that, if they do not agree, there should be a legislative finding in the Ordinance that points out what that disagreement is. In the absence of that legislative finding, if there is a disagreement, then that is *potentially* a bad thing. But if the circle is rounded and the Township Committee makes a finding and puts that in the Ordinance, then that cleans that up.

Mr. Connor said that his recollection of the Meyersville draft Ordinance was that it moved smoothly through and he did not see any disagreement on that. He added that the Meyersville community seemed to be fully supportive of it and he didn't hear anybody that didn't support it.

Mr. O'Brien replied that we have not heard back from the Township Committee on it.

Mr. Roshto said that the next ordinance he was going to propose for the Township Committee to consider is the draft Building Height Ordinance.

Mr. Connor felt it would be possible for the Township Committee to consider the draft Meyersville Ordinance at the same time, noting that as part of the Planning Board process it was essentially a reaffirmation of what the old Master Plan said.

Mr. Roshto agreed to bring up both and let the Township Committee decide how it wishes to handle them.

Discussion followed regarding the status of the draft Valley Road Ordinance. Mr. Aroneo stated that the Township Committee had sent it back to the Planning Board with guidelines and recommendations. He added that he had spoken to the Mayor regarding the draft Shade Tree Ordinance and it will be placed on an upcoming Township Committee agenda as a discussion in order to give the Planning Board guidance. He also said that the Township Committee has agreed to pass the draft Application Checklist Ordinance.

Mr. Connor said that a discussion regarding architectural and building standards needs to be scheduled by the Planning Board.

Mr. O'Brien added that Dr. Behr did write that he and Mr. Jones were preparing their manual and would be ready at some point this month to present it and it is up to the Board to schedule it.

Regarding the Morristown Road zone change study, Mr. O'Brien said that he had met with the planner that the resident hired and as of early in February he was starting to work on a zone change proposal for the Board to review. He said that he would call him before the next Board meeting to ascertain the status.

Regarding signage, Mr. O'Brien said that Mr. Sandow had informed him that the Promotions & Enhancements Committee was meeting some time in late February or early March. He said that he would check with him to see if there was any progress.

With regard to completing the Best Management Practices Manual and revising the Environmental Ordinance, Mr. Connor said that they are moving forward. He also said that he knew that work was being done by Mrs. Wolfe on fees and escrows.

In response to Mr. Connor, Mr. Briggs said that he had also done some related work on fees and escrows, however that was done some 3 or 4 years ago. He said that it was very preliminary and was done as part of a subcommittee with Mr. DeGenaro that was disbanded. He felt that what Mrs. Wolfe has is a lot more thorough than what he had. He noted, however, that our fees are really below others in some major areas.

Also in response to Mr. Connor, Mr. O'Brien said that the background work has been done on the Millington TDR Study, but at this point we have this concept for the TIFA property that will be coming before this Board at some point in the future and that needs to be taken into account as part of our study. He said that once we hear the concept and have a chance to have a conversation with them and include that information, we should be able to wrap it up within a month or two of hearing what they want to do there.

With regard to the open Master Plan Elements, Mr. O'Brien said that if the Board wanted to set a target and pick one Element and look at the draft 3 or 4 weeks out from whatever the date is at one meeting, give it back to staff for revisions/changes, and then look at it at the following meeting, you could probably wrap each one up in the space of a month or so. He suggested that the Board look at each one, one at a time, and if the Board is in a position to adopt several of them because it had finished the work on them, then a noticed public hearing could be held one night and do several of them at once.

In response to Mr. Briggs and with regard to the Community Facilities Element, Mr. O'Brien said that he had spoken to Mr. Sheola and needed to speak with him some more, but he had his general ideas.

In response to Mr. Arentowicz, Mr. O'Brien agreed that the Open Space and Recreation will be split into two elements. He said that a past Board wanted each area to have its own emphasis.

Mr. Aroneo asked Mr. O'Brien to make that one of his priorities because the Open Space Committee would like to see that happen soon.

Mr. O'Brien said that, if the Board would like that as a priority, he will do as the Board wishes. He said that if the Board would like to take a look at a draft, two meetings from now it could be ready.

Mr. Aroneo said that he would like to see that happen.

Mr. Cilino said that he thought the Board was going to set priorities this evening.

Mr. Connor suggested going through the list. He said that there may be some things we can focus on and agree to immediately.

Mr. Roshto wished to add the Valley Road Business District Element to the list. He did not think it was a surprise to the Board that he had asked that the residential part of the Element be discussed and he said that he would like to bring it back in for review.

Mr. O'Brien asked how that would affect the draft Ordinance. He said that the Master Plan usually guides the Ordinance. If you are discussing the Element itself, he said that it might be wise to leave the Ordinance in abeyance until whatever issues there are with the Master Plan Element are resolved.

Mr. Roshto agreed with Mr. O'Brien. He felt that the Board should do the Element first – discuss whether we want to make those changes and then address the Ordinance. He felt that it would take one meeting at most and then have a public meeting for the Element. He felt that it could be done in 6 weeks.

Mr. Connor asked Mr. O'Brien, if the Board were to consider revising the Master Plan, what is the process and how long would it take us with a relatively minor revision, primarily dealing with whether or not there are residences in the Valley Rd. Business District?

Mr. O'Brien replied that an Ordinance to an Element or adopting an Element in and of itself requires a noticed public hearing which means that an advertisement is placed in a newspaper a minimum of 10 days prior to the hearing date itself, plus a notice is sent to the Clerk of each adjoining municipality, and a notice is sent to the County Planning Board along with a draft. That process typically takes a minimum of 2 weeks in order to make all that happen as it legally should. He said that the process would be for the Board to come up with a draft at the various discussions. Once you have a draft that the Board feels is workable, notice would be served for a public hearing. If there was enough input and you were able to make changes to the document to recognize that input, you could adopt it at that point or, if there were substantive comments from the public, you would revise the Element and then re-notice to have another public hearing to adopt. He said that the adoption has got to take place at a public hearing and the public has got to have the ability to speak at a public hearing that has been noticed. He said that the practice of this Board in the past has been to come up with a draft by consensus of the Board and then put that in front of the public for comment. He said that it could be done in one night or in several nights – it is entirely up to the Board as to how it would like to proceed.

In response to Mr. Connor, Mr. O'Brien said that the comments that would be germane in any Master Plan hearing would be on the draft document itself or the revisions that are in front of you. If you were to put an entire Element up, the entire Element would be open for comment. If you were instead to put up just certain sections of a Master Plan for public hearing, then those are the sections that are to be commented on. He said that that does not stop the ability of the public to make comments on other matters that they feel may pertain, but what is being legislated on by the Board would be the draft that is in front of you at that time. He suspected that, with the direction that Mr. Roshto was suggesting, it may be difficult to limit it.

Mr. Roshto replied that the document he was going to pass out *is* limited and only contains two pages and a map.

Mr. Connor asked Mr. Roshto to distribute the documents he had.

Mr. O'Brien said that it would be best for the entire Element to be checked to make sure that it *is* consistent with whatever the suggestions are, so that if other changes need to be made, they should be made at the same time should the Board wish.

Mr. Roshto agreed.

Mr. Connor said that Mr. Roshto had sent him a copy of his recommendation and his reading of it was consistent and relatively limited.

Mr. O'Brien noted that the zoning map in Mr. Roshto's hand-out is an old iteration and it was replaced at some point.

Mr. Roshto replied that he received it from Mr. O'Brien two weeks ago.

Mr. O'Brien agreed, but said it was an old document. He said that there is not a newer one from that but because it has never been adopted, the Planning Board revised it to take out the B-3 Zones.

Mr. Connor said that it was recommended when the Planning Board returned the Valley Rd. Business District Ordinance. He said that it had a revised map which kept what is commonly called the Kurz property in the O-Zone. He said that there were also discussions as to why the Valley Mall and Shop-Rite Mall were separate and so the Board did recommend a different map. He said that it was consistent with the Master Plan but was not adopted as a change to the Master Plan.

Mr. Roshto did not believe that it was adopted as a change to this Element of the Master Plan.

Mr. O'Brien agreed. He said that this is the map that went out with this document.

Mr. Roshto added that it is an inconsistency between our current proposed Ordinances and the Element, as approved.

Mr. O'Brien replied that that was what he *should* have said and thanked Mr. Roshto.

Mr. Connor asked if the Master Plan needs to be adopted to reflect the changes. It seemed to him that the Township is free, as long as there is some consistency with the Master Plan, to change the attached map because it is somewhat of a more living document.

Mr. O'Brien replied that the districts are changed by Ordinance. While it is certainly possible for the Township Committee and completely legal for the Committee to change districting, it is usually best to do that first through the Master Plan and then through the Ordinance.

Mr. Connor felt that there is a very general agreement on the Board that the zoning recommendation needs to be changed. He said that that needs to be one of the other things then that needs to be included in any sort of notice that we would be revising the Master Plan to be consistent with the one that we had adopted at the end of December.

Mr. Roshto replied that he felt that that has to happen no matter what.

Mr. Briggs said that he was having a hard time getting an appreciation of what the re-examination entails. Given that we have 20 months before the deadline, he asked what we have to do as far as Elements. He said that we are looking at smaller pieces of other Elements, but asked if we should be looking at a bigger pie that we need to have subcommittees for?

Mr. O'Brien replied that it could entail as little as you want or as much as you want. He said that, for as little as you want could, for instance, be the 2003 Re-examination which was basically a re-finding of the 1996 Master Plan. That was done to meet the 6 year requirement (which we missed by a year) and as a defense in the Commerce Bank case because we had an outdated Master Plan and we wanted to update it. He said that we did a very cursory re-examination. He said that you could do the same thing which would be completely within the law according to the statute. Up until now, what the Board has been doing is saying that it would like to go through the Master Plan, Element by Element, fix one and put it to the side (which makes it a piece of the existing Master Plan) and then the last part to be done would be the Land Use Element, which is the overall recapitulation of everything that is happening in the Township and brings in those pieces of the other Elements as part of the goals and objectives. He said that the specific Elements that statutorily have to be done are the Land Use Element, the Housing Element, and the Stormwater Element.

With regard to the Elements to be done in the future, Mr. O'Brien said that Millington is reflected in the Millington TDR Study, so once that study is done, that can segue into a Millington Plan and that has been the intent all along. Once we have a general idea of what is proposed at Tifa and what are the Township's wishes, he said that there is no reason why we would not have a draft Millington Element done very quickly (within 8 weeks). He said that nothing has been done with Stirling. The intent was to get Millington done and then do a similar study for Stirling. He said that the timing for the Stirling Element (from draft start to a draft finish presentation to the Board) depends on what else we are working on at that particular time. If we have several Elements going, he said that the process is a little slower. If the Stirling Element seems to be the only top priority, it could be done in 3-4 months.

Mr. Roshto noted the three Elements that are mandatory and asked, if we were to add a fourth (the Historic Preservation Element), would it need to meet the 10 year requirement?

Mr. O'Brien replied that *only* the Land Use Element must meet the 10 year requirement. All of the other Elements are subsumed within that.

Mr. Roshto said that we could have a 1980 Historic Preservation Element which would be fine and 20 months from now we could use that Element.

Mr. O'Brien agreed and said that we have that right now in that we have the 1996 Master Plan which is the basis for where we are now, but certain parts of that have been replaced. He said that the Re-examination goes on top of the Land Use Element, however there is also a new Housing Element (which replaces the Housing Element from 1996), and there is the Valley Road Element (which replaces the Valley Road part of the 1996 Master Plan).

Mr. Arentowicz added that there is also the Meyersville Element and Stormwater Element.

Mr. O'Brien agreed that those are all part of the *current* Master Plan and, if there was a previous Element, the new one takes its place. So the 1996 Master Plan has 10 things in it, 4 have been replaced, so the 4 old ones are gone and the 4 new ones are now part of the 2012 Master Plan which incorporates a number of things from 1996.

Mr. Connor said that a lot of the work on the Elements has been done. If it is reasonable to expedite it with a very minor amount of work, he suggested finishing them and not put them off for another year. He said that the last one is the Land Use Element, which is a mandatory one.

Mr. Roshto asked, if the Land Use Element is a mandatory Element and we put that off until the last days, are we at risk of not completing the work?

Mr. Connor replied that the Land Use Element is fed by the Valley Road, Millington, Stirling, and Meyersville Elements. Theoretically, he said that once you have those four Elements, then that provides most of the guidance to the Land Use Element. He said that it is the summation of the Township's Land Use Element which incorporates those various other Elements. He said that, logically, it fits after we have finished those particular pieces of work.

Mr. O'Brien said that there is an Element of the MLUL that discusses a presumption of validity which is a legal phrase which goes to the Master Plan and whether or not a court believes that plan is valid or not. The major test of that presumption of validity revolves around whether the Ordinances and the Master Plan are in synch except in the



case Mr. Aroneo brought up in which case the Township Committee has made a finding that they are not and gives a reason why not. But barring that, if a court were to find that there is a difference, then the presumption of validity goes away and that makes it difficult for the Township to defend itself.

Mr. Arentowicz said that the Township Committee recently formed a Flood Plain Advisory Committee and last year Governor Christie's Passaic River Basin Flood Advisory Commission issued a 15 point plan as an approach to help minimize flooding at the Passaic River Basin and, in particular, help the residents and businesses of Long Hill Township. He believed that the Planning Board needs to place on its priority list for 2012 revising our Master Plan to be consistent with this plan and realize that we are part of the Passaic River Basin that has flooding in areas of the Township that are in the flood plain. He said that this effort will require revisions and changes to the proposed Valley Road Business Element, the Stirling Element, the Environmental Element, and Sec. 140 of the Land Use Ordinance (Environmental Protection Regulations), including Sec. 142 (Critical Area Requirements) and Sec. 143 (Flood Damage Prevention). He read Point #15 to outline what we are facing to promote the public health, safety, and general welfare of our residents and businesses. He quoted as follows: "Moratorium on All New Development Within the Flood Plain – Municipalities within the Passaic River Basin should pursue flood risk reduction changes to their existing Master Plans, their existing Zoning Ordinances, and their existing local Flood Damage Prevention Ordinances. The goal of these changes is to reduce negative impacts from future flooding by guiding development away from flood plains or by completely phasing out and preventing any future development in these high risk prone areas". He said that we have had major discussions in this town on the issue of flooding and what has happened. He said that if we are even thinking about revising this Master Plan by regulation in 2013, we need to put this on a top priority list for our businesses and our residences. He offered copies of the 15 Point Plan to those interested.

Mr. Connor assumed that the Township Committee has reviewed it to see where there are inconsistencies between the 15 Point Plan and the Ordinances. He said that we can also look to see where there are inconsistencies between our Master Plan and, particularly, our Environmental Ordinances and that it is an issue that everyone wants to address. He said that ever since the October storm, he sees trees down in the river and somebody has got to get rid of those trees at a minimum. He said that there are probably 2 or 3 times as many snags now as when we had our flood.

Mr. Aroneo said that there are 125 full mature trees down in river in Long Hill Township alone and that there is a map depicting the locations in the conference room.

Mr. Arentowicz asked Mr. O'Brien if he was aware of any towns that have adopted their Master Plans and zoning to accommodate the Governor's 15 Point Plan?

Mr. O'Brien replied that he had not seen the 15 Points. However, he said that the point Mr. Arentowicz had made concerning the moratoria is against the MLUL. He said that municipalities are not allowed to adopt moratoria except in very circumscribed areas and for no more than 6 months.

Mr. Aroneo asked, "Even in the flood plain?"

Mr. O'Brien felt that we are probably straying onto the legal side and that all he could do is quote Sec. 40:55D90(b) of the MLUL which says that "No moratoria on applications for development or interim zoning ordinances, shall be permitted except in cases where the municipality demonstrates on the basis of a written opinion by a qualified health professional that a clear imminent danger to the health of the inhabitants of the municipality exists, and in no case shall the moratorium or interim ordinance exceed a six-month term". He said that Sec. 40:55D-90(a) states "The prohibition of development in order to prepare a master plan and development regulations is prohibited". He asked if the 15 Point Plan is a Governor's order, a suggestion, or a finding by a committee?

Mr. Cilino said that he was sure it was not a suggestion. His recollection was that the 15 Point Plan was adopted by the State.

Mr. Connor said that the Board runs by the MLUL and any exceptions would have to somehow be specific in releasing us legally from any liabilities for not following the MLUL. He said that we can seek legal advice from Mr. Hoffman. He said that there could probably be a long discussion on this and, at this point, each Board member can read it and do whatever research they want to do themselves. He said that we will bring that up as an issue, but not at this hour of the evening tonight.

Mr. Arentowicz felt that it was ironic that it is March 13<sup>th</sup> and we are talking about 2012 priorities and this is about the 5<sup>th</sup> or 6<sup>th</sup> meeting. He found that rather surprising.

Mr. Connor replied that the Board had a priorities set by the prior Board that it was moving forward on and there was a recommendation at the last meeting that we look at those priorities and we are starting that process.

Mr. Arentowicz replied that he had a hard time understanding. If it is our job to protect the town, its citizens and businesses, he asked why flood mitigation and issues surrounding this aren't important to this Board?

Mr. Connor did not believe that anybody said that. He said that we all believe it is important and we need to understand a little more information on it so that we can make an intelligent decision.

Mr. Dempsey said that we just spent an hour and a half talking about it at the beginning of this meeting and *nobody* said that.

Mr. Connor questioned what are the criteria that we need to do on setting the priorities? For example, if the work is 90% finished, does that get a higher priority because we only have a small amount of work to do until something is resolved? Is it something that is critical that the Board feels we need to address, even if it is new work? He questioned what is required legally and what is not required legally. He said that he did not have a set of criteria but, in order to decide on the criteria we need to look at that and that is constrained by two things. One constraint is the time that the staff has to work on it and, secondly, it is constrained by the budget of the Planning Board where we have set up certain amounts of money that we are requesting. He said that that budget hasn't been finalized yet and he assumed that we would get most, if not all, of what was requested. If it is determined that we feel that there is considerable additional work that we need, then we need to also identify what the cost of that work is and amend our request to the Township Committee for funding in order to do the work. He said that there are a number of things we need to look into and we need to do it quickly. He was open on how the Board would like the priority discussion to be held so that we end up with some sort of resolution on what we need to do when and get general agreement of the full Board.

Mr. Smargiassi said that from what he heard tonight, he thought that Valley Rd., Stirling, and Millington should get priority and that Open Space also be put in there. He said that the first two that seem most ready to go would be Valley Rd. and Open Space. He said that it was noted that there is some additional work that still needs to be done on Millington and Stirling, but he would prioritize those which were noted as the key parts that need to be done so that we can revise the Land Use Element. He said that then you have these other items that are 90% done that you fill in while we are getting the priority pieces ready to be heard by the Board.

Mr. Connor felt that was a reasonable way to start and asked for additional comments.

In response to Mr. Dempsey, Mr. O'Brien said that the Land Use Element should be done by November, 2013.

Mr. Dempsey asked Mr. O'Brien, if we really need to be done by November, when do we really need to start the Land Use Element? He felt that the priorities are right, but said that we also need an end date.

Mr. O'Brien replied that he thought that it could be done in a 6 month period from start to adoption.

Mr. Aroneo said that he did not see any glaring things that have to be changed.

Mr. O'Brien replied that that is why the Board has two options, one of which is very simple.

Mr. Aroneo liked Mr. Smargiassi's priorities and also liked the idea of plucking off the easy ones as they come along – the few things on the list that we can clean up.

On the required elements of Housing and Stormwater, Mr. Arentowicz asked if the Board can use what it has now from 2008 and 2007 for both of those items?

Mr. O'Brien replied, "At this time, yes". He said that the only change might be if there is a change in COAH regulations which demands a new Housing Element. Based upon what the Supreme Court is going to find – whether they are going to uphold that methodology or say it is no good and do it all over again, we *may* be required to do a new Housing Element. He said that the Supreme Court has been making that decision for the last 6-7 months and no decision has been given out. He said that the last time the Board had to redo it, there was guidance and all the towns worked together and the League worked with us, so there was a general draft that we all worked from. He said that it was very, very quick and fortunately because it was essentially mandated, we all just marched in step and got it done. He said that, if they do what they did the last time, there is an awful lot of discussion on because a lot of it is not in our hands. He said that he could not say what they are going to do next.

Mr. Cilino said that we can't move forward if we make a bunch of assumptions of something that is going to happen that we are not sure of. His recommendation was that the Board proceed in a timely fashion at this point and, if things come down that are unexpected, he felt that there is a reasonableness built in the law that allows us to take into consideration that reasonableness and a reasonable amount of time to react to it. He stressed that we need to move forward on where we are and that doesn't mean that we close our eyes totally to what might happen in the future, but we can't be guided by what might happen in the future.

Mr. Connor felt that there was a general consensus that the Valley Rd., Millington, and Stirling Elements, plus the Open Space are things that can be done by the end of the year and that ought to be the target, probably in the order given, simply because Valley Rd. has been discussed and is on the table and Millington is coming forth and there is work done on that. He said that the one that is probably going to be the bigger challenge is Stirling and whether or not we can get it done by the end of the year, however he thought that the Board should at least have that as an objective. He said that that would put the Board in a position to move forward and at least take care of the Land Use Element. He asked if there is agreement amongst the Board that that is at least an initial look at priorities with the caveat that Mr. Smargiassi had, that the other items that are nearly completed be filled in when there are spaces to do so.

Mr. Dempsey asked if the pieces which will be filled in are also ordinances, or are we strictly talking Elements for the next 6-9 months?

Mr. Cilino said that that is the reason to put together a priority list, which we don't have. He said that a priority list doesn't consist of only ordinances or "x" or "y" – it consists of everything that is out there that we need to focus on and that includes the small things that are 90% done. In his opinion, he said that we need to put the list down including the 90%'s in a time slot. He said that, in a list of 20 items, those 90%'s may be numbers 3, 7 & 9. He said that it is a moving target and it doesn't mean we can't change them. He felt that one of the first things of business that we should be doing within the meeting is looking at this list and revisiting it on a meeting to meeting basis to see if anything changes. He said that being new is one thing, but he said that he was all over the map and did not know where we are. He likened it to "shooting in the dark".

Addressing Mr. O'Brien, Mr. Connor said that he felt that what was recommended makes some sense and that he felt that he saw the sense of the Board and has a better idea than everyone else on the work that is almost done, how that might fit in, and whether or not one of the pieces of work that is 90% is better than the other. He said that, obviously, the Environmental Ordinance is something that we do have to address. He said that a priority list should be put together that may be in groups.

Mr. Roshto felt that it would be great if Mr. O'Brien could take a first shot at a schedule of what he feels is achievable and what we might do next week.

Mr. Dempsey said that the architectural standards were going to be ready for the Board to look at next week and at the last meeting that was pretty high on everybody's list and then it went back low again just like it has for the last 4 years. He asked if we want to use the next meeting to look at architectural standards or do we want to bring something forward. He said that the first thing is to know what we are going to do at the *next* meeting.

Mr. Smargiassi said that he would propose, as Mr. O'Brien is putting together a list, we talk about the next two meetings because the next meeting will be hard to notice for things. He said that he did not believe that Valley Rd. and Open Space can happen on March 27<sup>th</sup>, so perhaps it will be April 10<sup>th</sup>.

Mr. O'Brien replied that it *could*, but you are not going to have a noticed public hearing on anything now. But if the Board wishes to start the discussion, it could do that.

Mr. Smargiassi noted that Mr. Roshto will not be in attendance at the next meeting and, since he is proposing the changes to Valley Rd., he proposed that that gets slotted in for the April 10<sup>th</sup> meeting. He questioned if architectural standards would be ready to put on the agenda for the next meeting.

Mrs. Raimer referred to an e-mail that was sent to the Board members regarding the architectural standards and said that it would be ready by the first meeting in April.

Mr. Smargiassi asked if Open Space would be ready.

Mr. Connor suggested that Mr. O'Brien look at what makes sense for the next couple of meetings, specifically, and also address the remainder of the year.

Mr. Roshto asked if it could be agreed that Open Space could be worked on at the next meeting.

In response to Mr. O'Brien, Mr. Connor said that the Tifa presentation has not been scheduled yet.

Mr. O'Brien suggested that that may be the thing to schedule to start things off.

Mr. Connor doubted that it could be scheduled at the next meeting and noted again that it is related to the Millington Element.

Mr. O'Brien agreed, but said that they have got to come in with their concept and that is something that we don't have to do a lot in order to have it at the next meeting.

Mr. Dempsey recalled that they were going to be limited to an hour.

Mr. O'Brien said that the question remains as to what we want to do at the next meeting.

Mr. Roshto said that he would like to know at this meeting so that people can be prepared.

In response to Mr. Connor, Mr. O'Brien said that Open Space will not be ready and that he would need at least a month. He said that it is an old one and he needed to speak to several people in order to get it ready properly.

Mr. Smargiassi suggested that by one week from today the Board knows what is on the agenda. He said that it was very difficult for him to get the agenda and material items from Mrs. Wolfe only 3 days before a meeting and be able to read the material and come prepared. Understanding that things may change, he said that if we could find out what is penciled in for the next few meetings, it would be very helpful.

Mr. O'Brien said that we have got to start the train on each one of these. Right now the train is stopped on all of these things that are just lying there. He said that we must build up the steam and get the engine rolling which means we have got to go back and look at these things which have not been looked at in a very long time. Between updating, separating, rewriting, and revising, there is some time involved. However, he said that he said that if the Board so wishes, he and Mr. Lemanowicz will try to come up with a revised draft of the (for lack of a better title at the moment) Best Management Practices Manual and, perhaps, the Environmental. He said that there is no way the Board will see that until the end of next week. In the meantime, he said that they will work on what the priority list can look like and we will have Valley Rd. the week after that, which means that the Board can set priorities at the next meeting for the following month which does give them time to get something moving and start putting things in the queue.

Mr. Roshto said that he thought he heard tonight that we are setting a priority on Open Space, so they can start working to prepare for that, and we are setting a priority on the Valley Rd. Business District Element changes, which he felt involved minimal work.

Mr. O'Brien replied that he had no work on that until guided by the Board.

Mr. Connor said that it was agreed that that would be done at the April meeting anyway and he felt that it would be fine by then.

Mr. Roshto said he was trying to address Mr. Smargiassi's concern that the Board have only 3 days to review information when it is received and was trying to extend that to give at least a week.

Mr. Dempsey said that he thought he heard the next three meetings. He said that at the next meeting we will primarily talk about the Best Management Practices/Environmental + something else. He said that Valley Rd. was going to skip the next meeting and will be discussed at the following meeting (or in about a month).

Mr. Roshto said that he heard Mr. O'Brien say that he was not going to do anything else on those until he receives direction from the Board, but he thought it was agreed that we were going to talk about the Valley Rd. Element in April, so the Board *is* giving him direction to work on then.

Mr. Dempsey disagreed and said that he cannot work on it until the Board has a discussion because all he has are Mr. Roshto's notes rather than all of the Board member's agreement.

Mr. O'Brien said that the Board needs to make a decision and say "make these changes".

A motion was made and seconded to extend the meeting an additional 5 minutes. All were in favor.

Mr. Cilino requested a calendar and Mr. O'Brien's help.

Mr. O'Brien said that the next meeting will include Stormwater and the meeting after that is for Valley Rd. and now we are open.

Mr. Cilino said that that is assuming that we are doing one item per 3 hour meeting and he felt that the Board can do better than that.

Mr. Briggs noted that the Sign Ordinance is waiting for the Promotions & Enhancement Committee and, if they get back to us in the meantime, we can fill that piece in. He said that, if we can clean up the Community Facilities Element, we could just wait until we open it up to the public and push that into another element. He said that there are ancillary things we could put into while we are waiting for outside information so that those items that are second or third tier items can help fill.

Mr. Cilino said that he would like to have a better understanding in a calendar format.

Mr. Roshto said that he felt good that Mr. O'Brien has enough direction to fill out a schedule with all of these things we are doing and when he comes back we can look at the schedule and tweak it as we need.

Mr. Connor agreed and said that it will be a draft schedule which the Board will review and agree or comment upon. He also felt that the Board should institutionalize the suggestion that the Planning Board agenda be published to the members no later than the Tuesday or Wednesday following the Board meeting. He said that, if we get it the Wednesday prior to the Tuesday meeting that gives everyone plenty of time.

Mr. O'Brien said that the Board will have a proposed calendar next week and will prioritize what is on Pgs. 10 & 11. The first two groups come in as they get done (either by the Twp. Committee or the Planning Board) but the rest of it – the Master Plan Elements and the open items will be calendared.

The meeting adjourned at 11:10 PM.

