

MINUTES

JANUARY 29, 2013

PLANNING BOARD

LONG HILL TOWNSHIP

CALL TO ORDER AND STATEMENT OF COMPLIANCE

The Chairman, Mr. Connor, called the meeting to order at 8:04 PM. 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 the Echoes Sentinel and by filing a copy with the Municipal Clerk, all in January, 2013.

PLEDGE OF ALLEGIANCE

OATH OF OFFICE

Mrs. Wolfe administered the Oath of Office to Guy Roshto as Class III member.

ROLL CALL

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

Christopher Connor, Chairman
Guy Piserchia, Mayor
Charles Arentowicz, Member
Ashish Moholkar, Member
J. Alan Pfeil, Member
Guy Roshto, Member

Excused:

Brendan Rae, Member
Sandi Raimer, Member

Gregory Aroneo, 1st Alternate
Timothy Wallisch, 2nd Alternate

Barry Hoffman, Bd. Attorney
Kevin O'Brien, Twp. Planner
Thomas Lemanowicz, Bd. Engineer
Thomas Delia, Zoning Officer (left 8:35 pm)
Dawn Wolfe, Planning & Zoning Administrator

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

MOMENT OF SILENCE

Mr. Connor requested a moment of silence in memory of former member Donald Butterworth who passed away suddenly on January 24, 2013.

He then read a Resolution in memory and appreciation of Mr. Butterworth commending all of his good work on the Planning Board and for the many other services he rendered to the community.

The entire Planning Board moved (and seconded the motion) to adopt the Resolution.

As Chairman, Mr. Connor expressed his own gratitude for the work Mr. Butterworth has done and for the support he gave him for many years on various committees. He said that he will be sorely missed as a friend and a member of this Board

A roll call vote was taken. Those in favor: Mayor Piserchia, Mr. Arentowicz, Mr. Moholkar, Mr. Pfeil, Mr. Roshto, Mr. Aroneo, Mr. Wallisch, and Mr. Connor. Those opposed: None.

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APPROVAL OF MINUTES

The minutes of August 14, 2012 were approved as written on motion by Mr. Connor and seconded by Mr. Arentowicz. Mr. Roshto and Mr. Moholkar abstained as they were not present at that meeting. Mayor Piserchia, Mr. Pfeil, Mr. Aroneo and Mr. Wallisch abstained as they were not members of the Board at that time.

The minutes of November 13, 2012 were approved as written on motion by Mr. Roshto and seconded by Mr. Moholkar. Mayor Piserchia, Mr. Pfeil, Mr. Aroneo and Mr. Wallisch abstained as they were not members of the Board at that time.

CORRECTIONS TO PREVIOUSLY APPROVED MINUTES

Mrs. Wolfe pointed out some corrections to the previously approved October 23, 2012 minutes. Referring to Pg. 3, she said that the topic listed as the Morristown Road Rezoning Study should say Bridget Annis & Willow Pond Farm Rezoning Request. Also, the first sentence of discussion should read Bridget Annis & Willow Pond Farm Rezoning Request rather than the Morristown Road Rezoning Study.

Mr. Moholkar moved to adopt the changes as recommended which was seconded by Mr. Roshto. Those in favor: Mr. Arentowicz, Mr. Moholkar and Mr. Roshto. Mr. Connor abstained as he was not present at that meeting. Mayor Piserchia, Mr. Pfeil, Mr. Aroneo and Mr. Wallisch abstained as they were not members of the Board at that time.

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PUBLIC QUESTION OR COMMENTS

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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AMENDED 2013 PLANNING BOARD CALENDAR

Mrs. Wolfe said it had been brought to her attention that the 2012 Planning Board Calendar which was adopted at the Organizational Meeting contained 4 errors. She said that the September and October dates listed are actually Board of Adjustment meeting dates. Therefore, she proposed changing September 3rd to the 10th and September 17th to the 24th; October 1st to the 8th and October 15th to the 22nd.

Mr. Moholkar moved to approve the corrected calendar dates as described which was seconded by Mr. Arentowicz. All were in favor

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DISCUSSION
TOWNHOUSE GENERATORS

Mr. Connor said the Township Committee requested the Planning Board to discuss and consider the topic of townhouse generators in an attempt to come to a resolution. He said that Mr. Delia, Zoning Officer, is present to answer any questions. He said that the Ordinance Subcommittee did have a discussion at which time Dr. Rae was present and was asked by the Township Committee to manage the discussion. He said that, although he was not present this evening, he believed that there is now a recommended resolution and asked Mr. O'Brien to summarize the findings of the Ordinance Subcommittee.

Mr. O'Brien said the Subcommittee met last week and reviewed the discussion at the Township Committee level at which a resident came to the Township Committee and discussed how one would place a freestanding whole house/townhouse generator on property that is owned by either a condominium or townhouse association and not by an individual property owner. He said that the Subcommittee looked at the existing standards for mechanicals such as air conditioning units and found that there are no zoning standards for those units, although there are code standards that are enforced at the Construction Office but are not something we can use at this point because the Construction Official would allow the placement, should they be approved, in what they considered to be an appropriate location which would be site specific. Going through the various alternatives that are open to an applicant, the Subcommittee felt that the most expeditious way to make that kind of application would be for the common landowner or the association (in the event of a condominium or townhouse) to make an application for an Amended Site Plan which would allow the placement of various accessory structures on a particular piece of property. Under certain circumstances he said that the Amended Site Plan could come before this Board or, under certain circumstances, could go through the Administrative Site Plan Waiver Subcommittee.

Mr. Lemanowicz thought the issue was you have a property or unit owner and a homeowner's association and most homeowner associations have their own set of rules. He said that they wanted to make sure that the Board is not in a position where it had a unit owner acting independently of the homeowner association and getting the Board in the middle of two people who were not talking to each other. He said that it seemed that the best way to do this, rather than have all unit owners go through the same thing, was to have the homeowner's association do it as the owner of the entire parcel.

Mr. Delia estimated that over the last three years he has received 118 applications for generators. Regarding condominiums or homeowner associations, he said that he presently has 2 such applications on his desk on hold. He said he also had 4 people in his office recently and explained to them that we are trying to resolve the issue. He said that one of the condominium associations, Meadowview at Millington, told him that out of the 33 units at least 20 of those unit owners want generators. He also had several people from Sunrise at Gillette inquiring, but no formal applications were filed from any of those unit owners. He noted that Sunrise at Gillette has 115 units. He also noted the Centennial Village development and said that he had one application on his desk for the Knoll at Millington. He said that right now he is treating generators as accessory structures and is making the single family residence owners keep them behind their front yard setback. He said that we must remember that condominium associations have a lot of two front yard setback and corner lot situations and we must be cognizant of the situations we will be coming into.

Mr. Connor thought that the placement of generator units is going to be site specific. It seemed to him that if there is an agreement that the condominium has to come in for their own site plan reviews, then the Board could take action and assure that they are placed where they should be and give all of the necessary variances that might be necessary.

Mr. Delia agreed. His suggestion was that it should be specified where the generators will go for every single unit on the site plan, whether the unit owner wants it or not and that site plan would stay with the condominium forever. That way if a person purchases Unit 34 and wants a generator it is already on paper where their generator could be placed. If the owner of that unit does not want a generator today, they do not put it in.

Mr. O'Brien felt that it is so much more efficient if the association or common landowners would put one generator in for an entire development.

Mayor Piserchia agreed and said that he did not know if that would be feasible from an engineering perspective. He said that the President of Sunrise at Gillette, during Hurricane Sandy, had come up to Mr. Roshto and himself and said he was going to look into having a generator for the *entire* complex.

Mr. Lemanowicz said that the units draw a lot of power and he suspected that they might look into each building having its own unit, rather than individual units. He said that there are a lot of ways to handle it.

Mr. Connor felt it would be up to the Association as to how they would handle it and make their presentations.

Mr. Lemanowicz said that that is the advantage of leaving it as a minor site plan because individual unit owners will not want to foot the bill for that. It will go to the homeowners association and the reality of it is that we need, as a Board, the owner's permission to do something on the common area which is the homeowner's association land. He said that we are focusing on the fact that the homeowner's association has to do something and that way, whether it is per unit or building, or for the whole complex, they have to make that decision before anybody starts doing things on their own.

Mayor Piserchia asked if Mr. Delia should contact the presidents of the associations themselves and ask them what they are thinking.

Mr. Connor said we did have that discussion on this for about an hour and the Ordinance Subcommittee felt that the responsibility for putting in the necessary site plan and paperwork did lie with the association. If there are 20-30 units that want generators then if they want to expedite that the association has to go through their by-laws in order to authorize the representatives of the association to develop the site plans. Once developed, he said that we will process it as quickly as we can. He felt that the responsibility is first for the association to agree that they want to submit a site plan and secondly is to decide what they want to do. He noted that individual generators will be noisy and the association will have to realize that the noise problems, as they pertain to adjoining neighbors, will have to be addressed and buffering also may be needed.

Mr. Roshto asked Mr. Hoffman if there were any ordinance changes that we have to make to do this and is it all through the site plan waiver process?

Mr. O'Brien replied, "Yes".

Mr. Hoffman agreed with Mr. Connor that it is essential that you work with the knowledge of the condominium association because this way when the ownership of a unit changes, the new owner might say that he didn't care what was agreed to or discussed 4 years ago because he didn't think this was the best place to have it. He said that you can then turn to them and advise them that they had signed or

countersigned their condominium deed and typically those deeds require signature not only by the seller but also by the buyer in which they acknowledge that they are bound by all the rules and regulations of the condominium association so, in effect, they in are deemed to have agreed to whatever the arrangement was and if they want to change it they would have to go back in that venue and argue it with the association. He said that we have to know that we have one responsible party that we are dealing with.

Mr. Moholkar asked if we were to do it as a site plan then we can make sure that there are sound buffers in place as opposed to having 20 different people coming in individually to place them wherever they want.

Mr. Lemanowicz said that as a site plan you can consider buffering and location. He noted that the larger generators come with sound packages.

Mr. Delia said that, if left open to the individuals, that *would* leave it open to them getting larger generators which could cause a noise problem. He felt that having control over and dealing with one person will be a lot better for everyone.

Mr. O'Brien said that any application/site plan coming before this Board gives you full power over that application and you can make any requirements and reasonable conditions you wish.

Mayor Piserchia said a sound package had been mentioned. One thing he had noticed during Hurricane Sandy is that Town Hall has a generator and he never heard it and yet where he lives, he could hear the generator from a house that is probably 100 yards from him.

Mr. Lemanowicz explained that the portable generators you might purchase from Lowe's or Home Depot are really just engines but when you get into the more permanent installations with enclosures which have mufflers, they are much quieter. He said that it is better for everyone for them to come in with a permanent unit rather than portables and you then have control. If you look on the websites for any generator it will give you the decibels and you could actually put a limitation on that if you choose.

Mr. O'Brien pointed out that we do have noise limitations in place.

Mr. Roshto said this is a discussion item tomorrow evening for the Township Committee and he believed the answer is the Township Committee has to take no action whatsoever.

Mr. Connor thought what needed to be done, probably through the Construction Office, is that a letter should be sent out to each association informing them of what the requirements are and inviting them, if they wish to pursue generators within their condominium associations, they need to come before the Board and submit a site plan.

Mr. O'Brien said this requires no change in the ordinance but we would have to go through our established procedures which have withstood the test of time and they make the application process much easier.

Mr. Connor felt they should send someone into Town Hall to find out what they have to do.

Mr. Roshto questioned Mr. Delia about the two applications he has now and what he will you do with them.

Mr. Delia replied that he was waiting to see what was resolved by the Township.

Mr. Roshto said that, if the Planning Board is going in the direction that we are, then this would all go back through the site plan waiver process. He then asked if those two applications be closed or kicked out?

Mr. Delia said he would hold onto them until it was decided exactly what was going to happen. He said that he could give them back to the residents.

Mr. Connor felt that with those specific residents you should tell them the intent and that their association would have to file a site plan.

Mr. O'Brien said that concurrently letters should go out to the five associations outlining what the site plan process is should they wish to file applications with office contact information should they have any questions.

In response to Mr. Arentowicz, Mr. O'Brien said that the letter should be generated from the Zoning Office and/or the Construction Office.

Mr. Delia said that, because he is the first contact, he would want to generate the letter adding that it is more of a zoning issue than a construction issue.

Mr. Connor requested Mr. Delia to send a copy of the draft letters to the Planning Board before they go out.

Mr. Delia agreed to send copies of the draft letters to the Board and other officials. In response to Mr. Pfeil, he said that as of this date no permits for generators have been issued to anyone residing in any of the condominiums.

The discussion concluded and Mr. Connor thanked Mr. Delia for his input.

DISCUSSION

HORSE FARM REZONING

Mr. Connor noted that Mr. Michael Bonner, Esq., who represented the applicant was present and asked him to come forward.

Mr. Bonner introduced himself and said that he had written the initial letter to the Board and made a presentation in October. He said that he was present to hear the Board's discussion this evening.

Mr. Connor asked Mr. O'Brien to provide a summary and start the discussion.

Mr. O'Brien said that Willow Pond Farm is a horse farm located on Meyersville Road and is owned by Bridget Annis (alone). He said that the farm has been the subject of a Certificate of Nonconformity before the Zoning Board of Adjustment for 7 or 8 years which Ms. Annis received from the Zoning Board of Adjustment after having met the statutory criteria. Recent activity on the farm has led her to make an application to the Zoning Board initially in 2010 and it was declared complete in 2012 (Application 11-09Z) for an expansion of the nonconformity. As part of the discussion of that application, he said that Mr. Bonner made it clear that there were other horse farms in the Township that may be in a similar circumstance in that they are nonconforming uses and any additions/expansions to those uses require a use variance which is the most difficult relief to acquire under the MLUL. Over the last few months, he said that the Planning Board and staff have discussed alternatives open to the Planning Board should they wish to consider a change in the status of the horse farms in the Township. He said that Mr. Delia has identified a number of horse farms in the Township which are included on Page 6 of his report dated January 25th and he identified Willow Pond Farm, 577 Pleasant Plains Rd. (known as Stirling Farms), 651 White Bridge Rd. owned by David & Joyce Major, and 658 White Bridge Rd. which is owned by Jerry & Mary Sinagra. He said that Mr. Delia was unsure if the Sinagra's property was a farm or if the horses were there for personal use. He said that there are several properties for which the horse farm name could apply to. He said that this Board, at its October meeting, discussed possibilities as to which way the Board could treat these horse farms and there was a discussion the following evening at the Township Committee meeting where some alternatives were presented by Mr. Aroneo who put the possibility of some alternatives before the Township Committee and reported back to this Board that the Township Committee would look favorably upon a recommendation from this body. In his report of last week, he said that he pointed out that there were several possibilities that were open and amongst them you could declare a horse farm with a specific definition as a permitted use in the Conservation Zone where all of the currently identified horse farms are. You could also identify horse farms as a conditional use. He said that a conditional use one which is an allowed use when, and only when, all of the conditions that are enumerated in a Zoning Ordinance are met. He said that a conditional use for a horse farm could require "X" amount of lot area, lot coverage, setbacks or other bulk requirements that would kick in and if any of those conditions were not met, then a conditional use variance would be required by the Zoning Board of Adjustment which is still the most difficult variance to receive. He said that another possibility is to give each individual horse farm its own overlay. That would mean that each individual block/lot would be part of an overlay zone which would be noncontiguous. He said that that is not typically a good planning alternative but is something open to you should you find that the arguments in favor of it were so compelling that you would consider it. He said that his report of last week shows the current regulations on keeping of livestock which is allowed in the residential zones and those conditions do state the amount of land, setback, lot area, etc. required. For comparison purposes, the report contains information he received from Mr. Hoffman and Mr. Bernstein from the Tewksbury Ordinance which shows that they allowed horse farms for shows with various lot sizes going down to five acres in the Piedmont Region of Tewksbury. For comparison, he also noted that Harding Township allows horse farms in all of their residential zones without conditions.

Mr. Bonner thought Harding did a nice job of describing ancillary structures and other setback criteria. If you were leaning towards changing the definition of farming to include equine activities, which is kind of what the Morris County recommendation was, Harding has done a nice job of setting out a structure of what types of things you need to think about if you are going to allow horse farms in terms of barns, garages, storing of equipment, manure piles, setbacks, buffering, etc. He said he had not read Tewksbury as permitting horse farms but as allowing the keeping or boarding horses on farms as part of agricultural operations, not necessarily strictly horses. He said that it seemed you had to have a farm of some other type in order to have horses.

Mr. O'Brien clarified the definition to Mr. Bonner and said that those are various alternatives available. At this point he said that what we are looking for from the Planning Board is some direction as to which way they would like us to go in terms of drafting something for its review.

Mr. Connor noted that farms have certain rights and we allow farming in general in various areas but we exclude horse farms. He asked for comments on that.

Mr. O'Brien said the Township Ordinance does have a Right to Farm area in which we assert the right of farmers to farm their land. He added that the Morris County Agricultural Development Board encourages farming and allows horse farms as an allowed agricultural activity on any farm. For some reason, he said that our Township (dating back thru mid 1980's) has not allowed horse farms as a permitted agricultural use.

Mr. Bonner found it interesting that probably within the last 10 years the NJ Right to Farm Act amended their agricultural use definition to include the sale of plants and animals useful to man including but not limited to horses, including breeding, raising, boarding, rehabilitating, training, grazing or any or all such animals. He said that Morris County echoes those sentiments in their comprehensive farmland preservation going even farther to include recreation.

Mr. Connor thought that perhaps our Ordinance is in conflict.

Mr. O'Brien said it was silent on that and because of the way our ordinances are written is that, if it is not a specifically permitted use, it is a prohibited use.

Mr. Bonner knew that the Willow Pond Farm has been in existence since before the Zoning Ordinance was ever adopted. He said that the reason they got the certificate was because there was some question as to whether a prior owner had stopped the horse farm use for a year or two when he didn't board any horses. He said that his clients request had been granted but he thought they are the only farm in town that actually has a certified nonconforming use for a horse farm. The others have not been questioned and they haven't proved it either.

Mr. Connor asked for questions from the Board.

Mr. Aroneo asked when the NJ Statute was amended.

Mr. Bonner said that unfortunately he had not included that date, but what he quoted was that it was in the Morris County Farmland Preservation Plan since it was adopted. He *believed* that the NJ Right to Farm Act was adopted in 2001, but he said he was not positive.

Mr. O'Brien said that the Right to Farm Act was in the late 80's to early 90's.

Mr. Bonner said the language he was talking about he believed was done in 2001.

Mr. Lemanowicz said that his neighbor has horses and, when he first moved into his house in the late 80's, his neighbor said that he could not get farm assessment on boarding horses so he was doing other things to get that. After about 10 years ago, he said he wasn't doing this anymore because their horses count as a farm and he was getting his taxes reduced because of the boarding of horses, so that was probably the same action.

Mr. Bonner felt it was probably around the time the State Plan was updated last, in 2001. On June 26th, 2008, he said that the State Agricultural Development Committee (SADC) adopted rules that expanded the list of protected activities under the Right to Farm Act to expressly include equine related service activities and complimentary equine activities. So whatever existed before was formalized by the State in 2008.

Mr. Wallisch questioned Harding Township's definition of a horse farm.

Mr. Bonner said he had not gone into that much of their definition of farming, but breeding and boarding of horses is included in their definition. He said that the first zone they mentioned in their bulk standards describes how you can board, train, do horse shows, etc. and then those requirements apply in every other zone.

Mr. Connor felt the Board should discuss the minimum size of a horse farm.

Mr. Bonner said the number that seems to come up the most is about an acre a horse which he felt seems about right. However, he said that that does create a problem for some of the other horse farms in the Township (but not for his client). He said that his client has 12 horses on the 17 acres called the farm. They also own adjacent acreage equaling 32 acres. From what he understood, some of the other farms have a higher ratio than that which is something the Board will have to wrestle with. Mr. Bonner thought that Tewksbury was the same - 2 horses for the first 3 acres and then one horse per acre after that.

Mr. O'Brien said that we currently have a requirement of one horse per 45,000 SF in our Zoning Ordinance.

In response to Mr. Roshto, Mr. Bonner thought about 40% of the overall property is wetlands and is located toward the rear of the property. He said that this is why we were before the Board several years ago as his clients wanted to expand a garage that is right behind their house but on the other lot. He said that his clients were in the process of deciding what to do with the two properties (whether to merge them or not). He said that parts of both lots have fenced in grazing areas for the horses.

Mr. Roshto mentioned a letter regarding environmental impact and asked Mr. Lemanowicz speak about it.

Mr. Lemanowicz said that he did not go into it because he wasn't sure where the Board was going to go with this. He thought if the Board is going to talk about horse farms as a permitted use, he said there are certain things that horses bring with them. Because of their activity, grazing, and waste products, he said that there are impacts and the Board may want to consider looking into some of those things. He said that there are some papers out there about how to deal with runoff and trying to do some water quality measures before the runoff from the site leaves the property. Because of the manure and such, he said you will have a lot of nutrients possibly getting to the wetlands and you may have algae issues because of the extra nutrients, etc. If the horses are on a piece of property where they tend to be very active or their density is on the high side, there will be trampling of vegetation or erosion. He said that grass cannot be regenerated because the horses are running on it and chewing it up, so there are some issues to be dealt with there. If the Board is looking to do something, whether it be creating a zone for them or just creating regulations to help protect the environment, he said to let him know and he will go that route, but he didn't want to take that step without getting permission.

Mr. Roshto asked if some of the model ordinances in front of the Board include the environmental impact considerations.

Mr. Moholkar asked if the Right to Farm Act automatically assigns certain rules from the State or County? He said that we might be looking at some runoff and he wondered if that might not already be included in some farming regulation. He asked if there are local ordinances which prevent those kind of issues?

Mr. Lemanowicz did not believe it was included in the Right to Farm Act, although there might be recommendations as to how many animals per acre, etc. He felt that Long Hill Township with having the Great Swamp can be allowed to take measures we feel are necessary.

Mr. Bonner suggested that it would be worthwhile to discuss the method of operation - how the properties are set up with the existing farm owners before you do that. He felt the Board should find out what their requirements are and how they deal with it now and see if any problems are being created. He said that Willow Pond Farms' manure piles are adjacent to the stable which is well away from the Great Swamp and wetlands.

Mr. Moholkar pointed out that he had not heard anyone complain about the horse farm. However, if you do something like Harding has, which is if you have the space you can own a horse without any rules, you need to make sure the next person doesn't go beyond that.

Mr. Bonner said his comment was to talk to the people doing it now and find out what works and the solution may present itself because it already exists. He said that you have one farm at 1.7 acres where it is hard to hide the manure.

Mr. O'Brien noted that they are nonconforming in the zone anyway.

Mr. Connor asked Mr. O'Brien about our ordinances. He asked if there is any mention of livestock on nonresidential zones.

Mr. O'Brien replied there is not. He said that we do have some setback and bulk requirements in Sec. 124.10 which is a start but certainly not as comprehensive as Harding or Tewksbury and those are rules that are in effect today.

Mr. Arentowicz asked Mr. Bonner to explain two things. He asked what the driving force is that your client wants to achieve and why do you want us to do something? Secondly, based upon what you have heard at our last discussion in October, if it was Christmas morning what do you want us to do?

Referring to his client's application 7 or 8 years ago, Mr. Bonner said that he presented the solution to his client didn't want to do it then although to him it made sense. He said he tried explaining to his client that, every time they want to do something, they would have to appear before the Board for a variance. He explained that although they won the certification, they are still a nonconforming use. He said that it will eliminate a lot of headaches and expenditures in terms of their farm and that explains the genesis and the driving force. He said that they put up a tent which is what caused this application. He said that there is an open question of whether it was an expansion of a nonconforming use. He said that they weren't doing anything differently and weren't adding any new horses. They enclosed one of their riding rinks and so the question of expansion was open and we were disputing that. He said that that application has been suspended but has never been resolved. He said that his clients then went to another attorney who was not successfully prosecuting their application and they called him again to straighten the matter out and he said that he immediately raised the issue of whether they really wanted to put another band-aid on this or solve the problem. He said that they talked about it and decided to try and solve the problem. He said that he spoke with Mr. O'Brien, suspended the application and wrote a formal request to the Board. He said that when he initially presented this, he did not take a position either way and cited 5 possible alternatives. In his opinion, he felt that the simplest, easiest and best way to do this was to add equine related activities ("horse farms") to the Township's agricultural use definition. He said it would permit horse farms and, if the Township Committee adopted that as a change to the Zoning Ordinance, then the Planning Board could take up whatever discussion it wants and design the attributes that they wanted to apply to that new/changed use definition of farms. He said that he would like on Christmas morning to have the Board change the definition, permit horse farms; look at Harding Township and see what their parameters are and do something like that. He said that they would be happy and he thought the others would be happy too.

Mr. Connor asked Mr. O'Brien to explain, if we were to give direction similar to what Mr. Bonner is requesting, what the process would be and his thoughts.

Mr. O'Brien said this Board would have to decide which way they feel is the best alternative and, having done that, will drive what happens next.

Mr. Connor asked what would happen if the Board was to take his recommendation and decide that we should add horses to the definition of farm animals.

Mr. O'Brien replied that, should the Board wish to do that, you then have the staff come up with reasonable conditions, review language suggested by towns we have discussed and bring that to our Ordinance and, perhaps extend another invitation to the horse farm owners. When that discussion is held before this Board, the Board can take it under advisement, accept it and whatever the decision the Board would make would be forwarded to the Township Committee who has the power to change the Ordinance.

Addressing Mr. O'Brien, Mr. Arentowicz said that he had started out this evening stating that we could do three things: conditional use, permitted use and an overlay. He did not think the Board, based on his recommendation, wants to do an overlay. He questioned, based on the two options remaining, how they would that relate to what Mr. Bonner just proposed about changing the agricultural definition to accommodate horses?

Mr. O'Brien replied that should the Board decide that is what they want to do, it can be done either by making it a permitted use or a conditional use. If it is made a permitted use, then your Ordinance would read that amongst the other agricultural activities allowed would be equine uses or horse farming, depending on the language that we would come up with. That use would still have to meet the requirements of the keeping of livestock in single family residential zones as it is currently written, or, the Board could make horse farms a conditional use with a list of conditions that they *must* meet in order to be allowed and if they didn't meet those conditions then they would need a use variance and amongst those conditions could be things such as what

is presently in the Ordinance now in terms of minimum size and setbacks or perhaps some of the things that were brought to the Board's attention from Harding and Tewksbury.

To clarify, Mr. Arentowicz said you are saying that we cannot do what we are trying to do with this permitted use because we will violate the single family residences.

Mr. O'Brien replied that you can make it a permitted use, however as a permitted use it still has to meet the requirement in our current Ordinance about the keeping of livestock, or, you specifically make it a conditional use and attach *specific* conditions which presumably would be greater or more intense than the ones in the current Ordinance.

Based upon that discussion, Mr. Arentowicz said that he thought Mr. O'Brien might recommend towards leaning towards doing this that we ought to go with the conditional use so we don't have the problem with the existing homeowners.

Mr. O'Brien said he would like to hear more about what the Board would like to see, but felt that you could accomplish it, if that was your goal, in either of those two ways; a) making it a clear out permitted use, however using the language in the current Ordinance *as a limiter* (or even adding to that) or b) straight out make it a conditional use with specific conditions. Either way would accomplish the same thing. He said that the key question is whether or not those conditions that you enumerate as a conditional use would meet the needs of the existing horse farms in the Township.

Mr. Connor said he heard what Mr. O'Brien was saying and said that the only place where we mention the livestock and horse businesses doesn't set any concerns about runoff or any other things. He felt that horse farms are different than most any other farm and, while there may be some general right to farm, horse farms have different requirements. It seemed to him that having it fall just under a section that talks about livestock in single family residences is *not* appropriate. He felt the Board would have to set up specific requirements as they pertain to size, etc. He felt it should be a conditional use which he felt more appropriate.

Mr. Bonner was in general agreement with what Mr. O'Brien said as to the type of use. He felt that using a conditional use in this instance is impractical because you are talking about trying to apply conditions to one entity with 1.7 acres to one that has potentially 32 acres. That would be hard to come up with conditions that apply across the board for the 4 existing horse farms. That being said, he again pointed to Harding Township. He said that you can create either a new permitted use, add horse farming to an existing permitted use, and you can come up with requirements for that permitted use. He again he referred to Harding Township and said there could be 15 or 20 parameters for how it is done. Whether it is on a 3, 10, or 15 acre parcel, he said you have to do it. He said that manure piles have to be 150' away from any lot line, etc.

Mr. Connor said his point was that we can't use what is in our current Ordinance so, whether or not we call it a conditional or permitted use, we have to have a separate set of guidelines.

Mr. Bonner said his only point would be that you are not limited to leaving your existing description of livestock as the only parameters for operating a horse farm, you can draw new ones and make it a permitted use as well.

Mr. Connor thought there would be some minimum acreage requirements and maybe that some of the current places that have horses that are under that would be nonconforming and would have to come before the Zoning Board. We said that we have a lot of nonconforming structures in this town.

Mr. Bonner felt that three of them are five acres or over. He said that Tewksbury starts at 3 acres and so does Harding Township.

Mr. Connor asked Mr. O'Brien for his suggestion, whether it be conditional or regular. Under either option, he said that we need to set out some specific requirements.

Mr. O'Brien agreed and said you could do it either way. As a permitted use, he said that you can define it and list requirements. As a Conditional Use, you would do the same thing. He said that you indicated that the current requirements that we have for livestock are not sufficient quantity or quality to address this situation and, obviously, we need to do a little research. He said that we should look at Harding and Tewksbury and see what their requirements are. If the 1.7 acre horse farm is not conforming, no matter what they do they will have to go to the Zoning Board. He said that the question is a philosophical one and perhaps Mr. Hoffman can give a little advice on that as to what the difference would be between a permitted use and a conditional use. He said that a permitted use is allowed in the zone as long as it meets the definitions set forth in the Ordinance. If it doesn't meet those requirements, then it would be a use variance which would go before the Zoning Board of Adjustment. A conditional use must meet every single condition laid down and, if it doesn't, it will be a conditional use before the Zoning Board.

Mr. Hoffman thought that when you determine the usage to be permitted, generally, that is an expression legislatively by the Planning Board and the governing body of acceptability of what is attached to that permitted use. If you say horse farms are a permitted use, you are saying that something that looks like a horse farm on such and such minimum size, with adequate setbacks, structure limitations, etc., is allowed but that still technical types of determinations that could weigh heavily on the ultimate acceptability of a given proposal could be adjudicated or weighed out before engineers and technical individuals rather than left to the Planning Board or the Board of Adjustment to hash out. He was not sure that either of those bodies are the best equipped to make the final determination of what is an adequate collar of form level - what is proven to be an element that weighs heavily such as runoff. He said that these are environmental and technical issues that could be affirmatively spelled out in a list of conditions so that the applicant will have the burden, no matter what forum or individual in the Township he appears before, will have to demonstrate what is proposed will not violate those established criteria. For example, he said that if you just declared a permitted use flat outright, without attaching specific conditions to it, he was not sure what you have approved other than to say that we allow horse farms because of their ambiance, but we don't have the integral scientific basis on which to ultimately determine whether they should be approved. He felt this type of thing is almost classic for treatment as a conditional use.

Addressing Mr. O'Brien, Mr. Roshto said that currently in our Conservation Zone farms are a permitted use, so if we go down this road of all farms *except* horse farms are conditional, he asked if that is a problem? Assuming we say that farms in a C-Zone that are horse farms will be conditional, but all other farms in our Ordinance are permitted today....

Mr. Hoffman felt you have to amend the other ordinance or, on the face of it, otherwise there would be a conflict, however he felt that there is justification for doing it.

Mr. O'Brien thought there was enough, given the operation of a horse farm, that with the concern for public health and safety you could impose reasonable conditions.

Mr. Lemanowicz said he had looked through the internet and had gotten to Rutgers which gave information about runoff. He said that he did not get into all of that and start producing information until he knew if the Board wanted to go that way. He said that the difference between a permitted use and a conditional use is the type of variance you need. If you have a permitted use and it is required to have 3 acres and you only have 2 acres, it is a c- variance. Under a conditional use with the same situation, it is a d-variance because the use is conditioned upon that. If you don't have that you don't have the use. He said that the difference between a c- variance and a d-variance is significant.

Mr. O'Brien added that the conditional use would go before the Board of Adjustment. Whereas a c-variance, should it be applied for under a site plan, could be given by the Planning Board.

Mr. Bonner commented that, if you adopt it as a conditional use, you haven't changed anything. He said that every single bulk standard change or violation becomes a "d" standard variance. If you say it's a conditional use and a fence is 1' too close to a setback line or a building is a couple of inches too close, then everything his client does becomes a d-variance. Nothing has changed for her. He said that, if you go back and review what he and Mr. O'Brien have said in various

communications, you are looking at the Master Plan. He said that the Board has talked a lot about rural character and integrity. He did not think that making this a conditional use does anything to push that objective forward.

Mr. Roshto said that he, personally, would not be prepared to change existing farmland from a permitted use today to a conditional use. He thought that that should weigh heavily on this Board and our planners.

Mr. O'Brien said that it is not something that has been proposed at this point.

Mr. Moholkar felt that all the details about what the current farms are doing for those requirements that are out there need to be collected.

In speaking about environmental concerns, Mr. Bonner said he would even venture a guess that the runoff from a traditional farm is *at least* as bad as what runs from a horse farm. He said that a horse farm is very contained and manure is a big pile. If you cover the pile, there is not as much runoff. He said that whatever they are doing to cultivate their farmland is running off all over the place and he suspected it was worse than a horse farm.

Mr. Lemanowicz said the new storm water management regulations require the Township to pass regulations on fertilizers, so that is now a controlled issue.

Mr. Connor wanted to get an idea of a direction. In listening to the Board, he sensed that they want to look at making horse farms either a conditional use or an approved use. Going forward, he said that the next step is to decide what sort of conditions would be required.

Mr. Bonner said that his client is willing to allow another \$1,000 to be transferred out of the original escrow account to the escrow account for the rezoning request. He suggested that his client set up a meeting and invite the other horse farm owners to her farm to meet with Mr. O'Brien and Mr. Lemanowicz and come up with some broad strokes about how it can be done as a permitted use. Obviously, he said he was not in favor of a conditional use.

Mr. Connor said he understood and that it would be a permitted use with published conditions.

Mayor Piserchia referred to Mr. Lemanowicz's statement about the Great Swamp Watershed Association and he felt that that is what makes this somewhat unique. He said that he has noticed over the years that whenever something could happen that might be detrimental to the Great Swamp, they were here and he didn't see them.

Mr. Lemanowicz said that he did not know how or if they were notified.

Mr. Hoffman said that this is not a noticed proceeding. It is a discussion.

Mr. Bonner said that they did not object or show up at any of the prior applications he handled for his client.

Mr. O'Brien said that, when we meet with the other owners, we could certainly put a call into The Refuge and have a discussion with them.

Mr. Connor asked if the Board was in agreement that we should move forward and get additional information so that we can make a final decision the next time we discuss this subject.

Mr. Roshto said he was not sure what this Board is thinking right now, but if there is some general agreement, perhaps we can send this back to the Ordinance Subcommittee and have them meet with the various property owners.

Mr. Connor felt that a meeting of the professionals and Ordinance Subcommittee could be set-up.

Mr. Roshto suggested that what comes back before the Planning Board would be something a little more complete.

Mr. Connor suggested taking it to the Ordinance Subcommittee and said that we will take up the offer for a discussion and set up a Subcommittee meeting at a time to be determined. He said that they try to set up Subcommittee meetings before Planning/Zoning Board meetings because our professional staff is already here.

Mr. Roshto asked to poll the Board.

Mr. Connor asked Mr. Wallisch and Mr. Moholkar their thoughts. They both agreed with the approach.

Mayor Piserchia agreed with the approach but also wanted to expedite the process as it's been here for a while. He volunteered to contact the Great Swamp Watershed Association and ask if they would offer their opinion on horse farms. He said that one thing is clear, Harding, which is also contiguous to the Great Swamp doesn't seem to have any issue. He said that, if he had to vote tonight, he would say that he didn't see the issue. However, since we are not doing that tonight, he said that he would like to get the Great Swamp to weigh in on this.

Mr. Aroneo agreed with the approach

Mr. Pfeil agreed but wanted to make one suggestion. He thought if Mr. Bonner laid out all those little details when the conditions are set, he would not have to come for a d-variance..

Mr. Bonner said his point was, unless whatever the requirements are meet with what exists on his client's property today, she gains nothing. He said that he could tell you that she has building expenses and things like that that violate setback lines because she has 2 adjacent pieces of property. He said that he couldn't imagine the conditions as being designed in such away that would not require his client to continually appear for d-standard variances as he could not see all those parameters being met.

Mr. Hoffman replied that if the ordinance were amended today in such a manner as with being each of those areas of concern that you are voicing to be satisfied then he thought that she gains the benefit of having an affirmative adjudication by the reviewing agency that her use is allowed and that the conditions have been satisfied as distinguished from just a flat out denial which leaves it sort of unregulated but continuing.

Mr. Bonner said he did not know that to be the case. He did not believe that you could grandfather the violations of the setback ordinance simply by adopting a new zone – he would have to look that up.

Mr. Roshto agreed that he would like to see the Ordinance Subcommittee come back to this Board. He suggested expediting this and moving it forward. He suggested that they come back with solid ordinances that we can discuss and agree or disagree on and hopefully we can move forward from there.

Mr. Arentowicz also agreed to move forward. His only comment was that he needed more input on permitted vs. conditional.

Mr. Lemanowicz asked if the Board wanted him to contact the Harding Twp. Engineer. He said that there may be something that he normally asks for of horse farm applications that may not be in the ordinance. Under his drainage review, he said that he may be doing something already.

Mr. Connor agreed that Mr. Lemanowicz should contact whomever he felt might have valuable input.

Mr. Bonner asked when the next Ordinance Subcommittee meeting was scheduled.

Mr. Connor replied they meet as needed and they had to appoint another member to the Subcommittee. He said that they usually meet on a Tuesday and ideally prior to the Board meetings.

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Mr. Connor reconvened the meeting at 9:45 PM.

DISCUSSION

MORRISTOWN ROAD REZONING

Mr. James Knox, Esq., attorney for Mr. & Mrs. William Stroh, said they last appeared before the Board on October 17, 2012 and are here tonight to follow up on events that happened *after* that. He said that the October session was a brainstorming session on how to handle the situation on Morristown Road involving perhaps a half a dozen properties including two owned by his clients. He said that the Board has a report dated October 17, 2012 from Mr. O'Brien and at the end of that meeting it was left that he would make contact with the Township Committee with a view toward getting on their agenda. The idea being that the Planning Board members here that night felt they wanted a little more guidance about direction from the Township Committee before the Planning Board invested a lot more time and effort in a rezoning effort. He said that there were a couple of different ways to go and this Board wanted some guidance. Two days later, he said that he contacted the Municipal Clerk and she informed him that the night after our meeting here the Township Committee did indeed discuss the situation. He said that she told him to basically do nothing until he received a letter outlining what the Township Committee's wishes were and then he would know how to proceed. Since that time, he said that they have been unsuccessful at developing any information from any source about what was decided, what the general thrust of the Township Committee's desires are and what we should do next, so they are here to find out.

Mr. O'Brien said he understood that there were concerns raised at that meeting in October. They felt the Board should discuss those concerns which included the adjacent flood plain, issues of spot zoning and allowing the pre-existing uses to continue. He said that the Committee felt that those issues should be discussed by the Planning Board as part of their deliberations.

Mr. Knox replied that, to him, that doesn't advance the ball passed where we were in late October. He said that they know they have to talk about spot zoning and we know there are environmental restraints in the Zone but since the application does not involve any change whatsoever to existing and longstanding environmental impacts whatever they may be, driveways and that sort of thing, he did not think there is much to discuss there. He said that the other matter was allowing pre-existing to continue and that is the issue, which doesn't give this Board much guidance about how to handle the issue. He said that the issue is how to handle these pre-existing nonconforming uses. He said that, as you recall, the situation on my clients' property began in 1932 when Mr. Stroh's parents owned the property and they commenced a whole series of uses over the years. He said that he has been told that the Township's first Zoning Ordinance was adopted in 1937 or 1938. He said that we then went thru a period from 1962-1997 where the zoning was Economic Development which encouraged things like manufacturing. Then suddenly in 1997, he said the zoning goes from the *most intense* category (light manufacturing, offices, etc.) to the *least intense* which is Conservation which is what it is today. He said that a lot of the folks who live on Morristown Road, including his clients, are "caught in the shift". He said that his client has a tenant on this property who is in a light manufacturing status and has been there 55 years and is a second generation operation and everybody wants to know what to do. He said that there is one obvious thing to do and that is to "duke it out". In other words, you have an enforcement proceeding and it is determined which of these things pre-exist the Ordinance which makes them fall into pre-existing nonconforming uses that are protected because they were okay until 1997 and the other uses have to be discontinued. That is route "A", which is the route they *don't* want to go down because it is expensive, time consuming and a waste of taxpayers' money. He said that because there has never, to their knowledge ever since 1932 been a zoning complaint about this property except the one that triggers the recent interest which they think is from a gentleman who is having the Ordinance enforced against him elsewhere in the Township. He said that when the Zoning Officer came, he found a truck on the premises which was too big and that is what got the ball rolling. He said that they were able to get the enforcement stayed while we all try to work this out and they have been struggling to make some headway. He said that their specific suggestion wound up being that the existing Ordinance remain in play, be tidied up a little bit, and improved perhaps and made more environmentally oriented but, most importantly, that a provision be attached elsewhere in the Zoning Ordinance which basically protects uses that have existed prior to 1997 that have been in continuing usage since 1997 and list those uses which include fabrication, landscaping businesses and so on - basically, the kind of businesses that are in the neighborhood already and, thereby, protect against actions of those categories of uses with respect to this area of Morristown Road. He said that that is what they threw out as an idea. He said that there was a long discussion about why 1997 and the answer is that there is no real good reason but they wanted it to be long enough ago so they don't have some new wise

guy show up who just started a use 3 months ago and say that they want to be protected. He said that that is not who we want to protect - we want to protect those uses that are long, longstanding. He said that 1997 seemed logical because that is when the zoning changed and there are some uses that would be protected. He said that that is where we are and they would like to know what they should do next.

Mr. Connor asked Mr. O'Brien to briefly review where we are and where we are going.

Mr. O'Brien said he thought Mr. Knox gave a fairly comprehensive and precise summary of where we are. He said that there was an enforcement action against the Stroh's and that has been stayed and is pending a resolution of this action. He said that the proposal of the Stroh's and their planner, Mr. John Leoncavallo, is one that recognizes and legalizes the uses that were in existence as of the change in the ordinance in 1997. Should the board be favorably inclined to do this type of a change, he said there are a few ways to do it. He said that probably the easiest way, if you are inclined to go down this road, would be to create an Overlay Zone of these properties and give it its own name such as Morristown Rd. Commercial Center and allow the uses that are there to continue but without further change. The existing bulk requirements remain; the existing requirements concerning flood plain and setbacks from wetlands remain in effect; but what would change are the uses that are there and existing could be continued and it is very similar to the discussion that we just had on the horse farms as to where do these properties go when there is a change? If they are an allowed use then, should they wish to make a change, they would present a site plan to the Planning Board. But if they are not conforming, which is where they are right now, then *any* change goes to the Board of Adjustment and requires a super majority of 5 affirmative votes. He said that that is the basic tension here - where these properties wind up should they wish to do something?

Mr. Arentowicz said what we are proposing and what was on the table here is the existing uses today vs. going back to 1997.

Mr. Knox replied that that is okay with us if it is okay with you. He thought the Township is more protected if we look back to some earlier date to avoid the guy that started last week and says I've got one of these uses and then you have to prove when he started. Whereas, if you go back some period of time, he felt that the Township is better protected, but he didn't think *they* cared.

From prior meeting minutes, Mr. Wallisch said he didn't remember seeing a list of what were those verifiable uses continuous from 1997.

Mr. O'Brien said they were on the second page of Mr. Leoncavallo's proposed ordinance.

Mr. Connor said that in the Valley Road recommended ordinance there was an overlay zone for the light manufacturing that is currently in the area.

Mr. O'Brien replied it was discussed, however it was removed from the final recommendation.

Mr. Connor wanted to clarify that in the proposal that was made, the overlay zone was subject to certain set of uses which include uses there but were more than those in place. He said that if we do this overlay zone we have the suggestion of 1997 or we have the options of looking at other uses that might be appropriate and not objectionable and would give more flexibility.

Mr. O'Brien agreed and said that the Board utilized the tool of an overlay zone knowing that the underlying zone is the C-(Conservation) Zone, so anything that is allowed in the Conservation Zone continues to be allowed here because it is still in the Conservation Zone, but an overlay zone takes a little carve out of a little area of a larger zone and allows specific uses in that particular contiguous area. He said that it was suggested at one point along Valley Rd. for the commercial uses along and behind Bay St. In this case, he said should you use an overlay zone, you eliminate the argument that you are spot zoning something because you would not be giving it its own zone and would not be doing it to a particular individual property or a property or two but rather to a specified geographic area. He said that an overlay zone could be seen as proper planning in this area.

Mr. Connor asked Mr. O'Brien to clarify that in the proposal the Board made for an overlay zone was subject to a certain set of uses which included uses there but were more than just the uses that were in place. He recalled that there were some modest additions to that rather than being in this case restricted to the uses in 1997. He said that, if we do an overlay zone, we have the suggestion of 1997 or we have the options of looking at other uses that might be appropriate and not objectionable which would provide slightly more flexibility.

Mr. Knox said that, unlike what he thought the Board was doing on Valley Rd., the notion here was to only permit property owners to continue who were already doing the use. In other words, in a normal

overlay zone you create a set of permitted alternatives uses. Anyone in the zone can pursue those uses. Here the original notion was not to let anybody do anymore than they are already doing. There would be no switching from property to property. That is very different from a flat overlay zone. He said that their suggestion is more restrictive. In response to Mr. Connor, he said that they chose to use a more restrictive approach to give the Board the best possible deal so that they would make a deal. He said that they would be delighted with that kind of overlay zone would be more flexible, etc. He said that, frankly, on our property there will never be any future development as there are too many environmental restrictions. It is too tight, too wet and it is what it is.

Mr. Connor said there are some areas there that are essentially storage and there might be some areas where a different use would be an improvement.

Mr. Knox replied that it would need a site plan application and the economics probably are not there.

Mr. Roshto apologized to Mr. Knox. He said that back in October it was his intent when he took it to the Township Committee to accelerate this and not to slow it down. He said that part of that process was during the liaison reports. It was not a formal discussion, he simply brought up which, in fact, turned into a larger discussion even though he had asked the Township Committee not to do that because he wanted that to occur at a later date when the applicants were invited

Mr. Knox replied that no apology was necessary and said that we are all doing our best.

Having said that, Mr. Roshto said that our Township Attorney had serious reservations about the spot zoning and he even forwarded some information that Cox had referred to about overlay zoning, in general, and spot zoning. He said that he suggested that the Board Attorney review this and give some guidance on direction.

Mr. Hoffman said that he wasn't aware that there was anything pending from his firm, however he would look into it.

Mr. O'Brien said that he had not received anything from Mr. Pidgeon.

Mr. Roshto felt that it was his oversight.

Mr. O'Brien said that if the discussion was about spot zoning, that is a common concern under these circumstances. He said that the fact that you are assembling a number of properties which have similar uses and using a criteria based upon a particular date and time which is connected to a Township action, which in this case is the adoption of the Zoning Ordinance and a change in zone, he thought are ample justifications that would allow an overlay zone should this Board wish to go that route. He said that, if he were on the other side of the table on this, he thought he would have a pretty hard time trying to convince a court that this was spot zoning for all those reasons.

Mr. Connor felt it was not spot zoning as it is not like one or two properties but the vast majority. He asked how to proceed because we need to get this done.

Mr. Knox thought the next step would be to decide whether you want to put in place a set of permitted uses in the overlay zone, meaning on any one of these properties in this zone. Do you want to link this to the uses on a given property now which is what his draft ordinance did? Do you want to go more conventionally? More traditionally? You would come up with a list of uses along the lines of what is in his draft ordinance did and permit them in this overlay zone if you were comfortable with that.

Mr. O'Brien said you could actually combine them and have an overlay zone for convenience which specifically allows only those existing uses.

Mr. Knox replied then you wouldn't be tying it to 1997.

Mr. O'Brien disagreed.

Mr. Knox replied that that is where you move away from traditional zoning.

Mr. Connor suggested that the Board have a discussion on it. He said that it seems to be that you can include all of the current uses and not worry about which property is using them. They could all become one of the conditions vs. restricting each property to its past use. He said that that is one issue upon which he would like to hear the Planning Board's comments.

Mr. Pfeill asked if that wouldn't lead to expanding the uses that the properties have now. He asked if it wouldn't open it up for the potential of all of those properties to have swimming pool maintenance and/or trucks that may not be there now?

Mr. Knox said that that was their concern – that the Board would be concerned about that. He said that, in the real world, probably not because he didn't think that anyone could get a site plan approval for this new swimming pool company or landscape business. He felt that the cost of the engineering, environmental studies, etc. would be prohibitive. He said that this Township is rigorous in its approval processes and it costs money to get approvals here. He did not think it is likely that you would have a lot of action down there, but you *theoretically* could.

Mr. Wallisch asked what the feelings were of the owners of the other 6 lots in that area.

Mr. Knox replied that Mr. Stroh tried to reach out to some of them and was not successful in getting any meaningful feedback. He said that he had a direct discussion with at least one of them and never heard back. He said that they know that one of the other property owners has (or had) an application pending to the Board of Adjustment for some kind of relief and there is a history of some other use variance applications. He said that, basically, you have a neighborhood in flux where everyone is scrambling and trying to get something on their property that works for them because the zoning doesn't let you do anything.

Mr. Wallisch asked Mr. Knox if his list (a-l) included everything that is being done there now.

Mr. Knox replied they were comfortable that it includes everything that they think would be a candidate on *our* property but can't tell you that one of the other properties might have some other ideas. He said that he would think that once you trigger a formal ordinance amendment process that these people will be notified or see newspaper notices and if they had something to say they would say it - or you could reach out and ask them if they are interested in rezoning and if so come to the assigned meeting. He did not believe that it is required by statute said he would let Mr. Hoffman call that one.

Mr. Moholkar thought the intent was not to penalize owners of these properties that have had business there prior to changing to Conservation but we don't want to allow in the Conservation Zone, everyone to expand to make it everything on the list. He said that the intent is not to penalize someone who has always been doing this pre-ordinance. He said that we want to provide relief for what is already there, but not more.

Mayor Piserchia said that, if an owner can prove that something has been in continuous use, we cannot zone it out of existence. So he asked why we are here.

Mr. Knox replied because for the doctrine of pre-existing nonconforming uses that you just described to come in to play, you must demonstrate that the use at one instant in time was legal under the Ordinance or proceeded the enactment of the Ordinance and has been in continuous use ever since, and here there is an issue about whether the Stroh's can through all of these uses and prove that they were legal under some prior Ordinance. He said that some of them clearly were and some of them might not have been. Rather than duke it out, he said let's work it out. He said that the zoning we are talking about would be more than the Stroh's property, it would be 6-7 properties and there is a feeling that that may be the way to do it by reasons of planning and spot zoning concerns.

Mr. Connor said the continuing use proof is expensive and difficult and sometimes impossible to get records. He felt that establishing the date and when the use was in use is probably a much cleaner way to do it.

Mayor Piserchia found it interesting that the neighbors haven't stepped up to help in this process.

Mr. Connor said the applicant and one other party agreed that this was important. The applicant provided funding to support the application but when we asked the co-applicant for a contribution of \$1,500.00 they lost their interest and were not willing to spend that amount. He then polled the Board as to whether the members would be agreeable to some sort of overlay zone of permitted uses and what would the criteria be – specific to the use that is there, or you don't agree at all?

Mr. Arentowicz thought we should move forward with some sort of overlay zone. Understanding the history, he said that we need to do something. His concern was that we will get other requests down the road, but so be it. He said that the question is what are the uses now and, as we only have one owner here, how do we find that out? He said that his overlay zone would just be that you could continue with the current uses *today* and move forward from there.

Mr. Roshto said that he would have to see the specifics of an overlay zone and that anytime we create such a zone (and in this situation we are expanding the uses), that concerned him given the area that we are in – a flood prone area with a lot of wetlands. He said that there is a reason why it was changed to the Conservation Zone and he said that he would be hard pressed to put an overlay zone in the middle of a flood prone area.

Mr. Pfeil said he would support the overlay zone but make the conditions property specific in terms of uses so there would be no expansions.

Mr. Aroneo thought what they said made sense and he had nothing else to add.

Mayor Piserchia said that he heard what Mr. Roshto said, but he agreed with the others. It is a flood prone area but if that concerns the municipality to such a degree but in this case even the DEP can't come in and zone something or regulate something out of existence. He said that he would go along with Mr. Pfeil, Mr. Arentowicz and Mr. Aroneo in saying that what currently exists should remain.

Mr. O'Brien said that the structures may remain as long as they don't change.

Mr. Roshto said what currently exists already remains because they were pre-existing they can continue to exist so I am not sure I follow the logic.

Mr. Connor said he understood his point but would like to continue.

Mr. Moholkar said he liked the general idea however, if it is too difficult to prove that it has been a continuous use, we should allow some relief to that without allowing expansion on properties. He said that it is a wetland that needs to be protected but at the same time he didn't think you can penalize somebody for an ordinance change if it has already there. He said that we need to decide on the list or what is included in the pre-existing and it would have to be per lot and if the owner's don't give you what they are then they are stuck with the uses in the Conservation Zone. It would be up to them to tell us what they have in place and present some proof. He said that we would then have a list of what the Zoning Officer can or cannot approve. There has to be some burden of proof by the owner and essentially you are grandfathering someone in.

Mr. Wallisch agreed with Mr. Moholkar's summation and said that we have to protect the property owners. He said that we cannot penalize them for changing the zoning 15 years later on.

Mr. Connor agreed that we need an overlay zone and it needs to be property specific. He said that he tended to prefer the current use. Looking at the current uses that the Board might modify, he said that we may find current uses that are not going to be continued. He said that as long as the property owner is there we can't change it but they can't sell the property and continue the use. There may be certain uses there that we would like to discontinue and he felt the Board should have that option. I thought the Board was favorable to some sort of relief using an overlay zone and said that we need to move forward and get additional data and information as requested. He said that this may be something that we can handle through the Subcommittee and if not, then this Board.

Mr. Knox asked Mr. Connor if he would envision linking it to today's uses.

Mr. Connor replied that that was an issue and he thought there is sort of a split. He questioned if we use 1997 or today's date and said that maybe there is no difference so it won't matter. If there *is* a difference, then maybe the 1997 has disappeared and we really don't want to see it appear again. He said that he would like to see what the uses were in 1997 and the current uses to see any differences before he could commit, noting that it is easier if we use now.

Mr. Knox said the uses for which they are seeking protection are listed in his draft ordinance. H

Mr. O'Brien said that they existed in 1997 and exist today.

Mr. Knox said that they exist today but he was not positive whether they all existed in 1997, although he believed they did.

Mr. Connor asked Mr. Knox if all of the uses in his draft ordinance are currently being used. If not, he said that he would not approve the list because that would allow the applicant to expand.

Mr. Knox replied that in their draft ordinance there is a prohibition on expansion.

Mr. Connor said that the problem he had is that there are 12 uses listed on 5 properties.

Mr. Stroh said there are only currently only 5 uses on his property which are the same uses on the different properties down the street and the 12-15 uses on the second page were uses that were in use over the past 40-50 years. He said that the current 5 uses on his property include a landscaper, a mason contractor, storage, a heating & cooling business and a small parts fabricating manufacturer. He noted that there are numerous landscapers on the other properties that he knew of.

Mr. O'Brien asked Mr. Stroh if these businesses were also in existence in 1997.

Mr. Stroh said they were and well before that.

Mr. Roshto said he and some other Board members only saw 3 uses that were listed.

Mr. Connor said that he did not see storage listed.

Mr. Roshto said that the list included: a – mason contractors; b- heating & cooling contractors; d – landscape contractors and he missed the last two.

Mr. Stroh added small parts fabricating/manufacturing (electronic assembly). He said that storage is really his personal use.

Mr. Roshto said that he had a; b; d; i; and l.

Mr. Connor had a, b, c, d & l. He asked that the list be cleaned up and said that we need to see what everybody else has done before we know what that is going to look like. He felt that the list may get bigger but he was not sure. He asked how we propose to get the information from the other property owners as to what they want to do.

Mr. Stroh suggested that they use Mr. Delia's resources, as he felt that he has a pretty good idea what is on the other properties.

Mr. Connor agreed to have the Zoning Officer look into the other properties and advise as to the current uses. He said that we also need to be sure that Mr. Hoffman has access to whatever Mr. Pidgeon may have.

Mr. Hoffman said in listening to the dialogue this evening he had no difficulty with the concept that this would not be subject to a successful challenge as spot zoning. He said that the other purposes involved are not being singled out of the surrounding lots and it has valid planning functioning to it.

Mr. Connor asked Mr. O'Brien to monitor the progress on this as we need to move things forward. He noted that it will require the cooperation of some of the other landowners in order for us to gather some of the information.

Mr. Knox asked if it would be appropriate, once Mr. O'Brien has the list of uses, to put together a draft ordinance for review by the Board.

Mr. Connor thought there was a general agreement (though not unanimous) that some sort of overlay zone is appropriate. He said that we need the additional information and then Mr. Knox and Mr. O'Brien should get their heads together. He said that Mr. Knox had put together a proposed ordinance which has not been discussed in detail. In discussions with Mr. O'Brien, he said that Mr. Knox could propose an ordinance that is more appropriate after tonight's discussion and then come before the Board with a recommendation. He said that we could have our own recommendation but since Mr. Knox has done some of the work, he felt it is reasonable for him to continue to do that work.

Mr. Knox said he was going to ask their planner, Mr. Leoncavallo, to work with Mr. O'Brien on that after he gets the word that Mr. O'Brien has the full list of uses on the various properties.

Mr. O'Brien said that his next step is to work with Mr. Delia to get a list of uses that are current on the properties and, if possible, to date that list back to 1997.

Mr. Connor said he also wanted to see the current uses.

Mr. O'Brien said he would work with Mr. Leoncavallo on the actual ordinance language and will consult with Mr. Hoffman and Mr. Pidgeon on whatever they develop to make sure they review it.

Mr. Connor asked for further comments or discussion. There were none.

Mr. Connor had one more item to add to the agenda. He said that he left open one seat on the Ordinance Subcommittee and would like to appoint Mr. Pfeil to fill that position.

Mr. Pfeil agreed to serve and thanked Mr. Connor.

There being no further business, the meeting adjourned at 10:35 PM.

DAWN V. WOLFE
Planning & Zoning Administrator

