

AMENDED MINUTES

MARCH 10, 2015

PLANNING BOARD

LONG HILL TOWNSHIP

CALL TO ORDER AND STATEMENT OF COMPLIANCE

Chairwoman Dapkins called the meeting to order at 7:32 P.M. She 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 2015.

MEETING CUT-OFF

Chairwoman Dapkins read the following statement: Announcement is made that as a matter of procedure, it is the intention of the Planning Board not to continue any matter past 10:30 P.M. at any Regular or Special Meeting of the Board unless a motion is passed by the members present to extend the meeting to a later specified cut-off time.

CELL PHONES AND PAGERS

Chairwoman Dapkins read the following statement: All in attendance are requested to turn off cell phones and pagers as they interfere with the court room taping mechanism.

PLEDGE OF ALLEGIANCE

ROLL CALL

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

Suzanne Dapkins, Vice-Chairwoman
Brendan Rae, Mayor (arrived at 8:56 P.M.)
David Hands, Member
Ashish Moholkar, Member
Guy Piserchia, Member
Guy Roshto, Member

Kevin O'Brien, Board Planner
Daniel Bernstein, Board Attorney
David Gleassey, Board Engineer
Cynthia Kiefer, Board Secretary

Excused:

J. Alan Pfeil, Chairman
Gregory Aroneo, Member
Timothy Wallisch, Member

Thomas Lemanowicz, Bd.Engr.

Ms. Kiefer advised Chairwoman Dapkins that she had a quorum and could proceed.

EXECUTIVE SESSION

At 7:34 P.M., Chairwoman Dapkins advised the public that the Board would recess for approximately 15 minutes to discuss pending litigation in Executive Session. The Board reconvened at 8:02 P.M.

APPROVAL OF MINUTES

Chairwoman Dapkins said that on page 8, paragraph 12, the minutes of October 14, 2014, read, "Mr. DeLaney said that the Board had hired an attorney by the name of Gerry Legato." Ms. Kiefer advised that after reviewing the recording multiple times, she could verify that those were Mr. DeLaney's exact words. Chairwoman Dapkins wanted to make note for the record that the Board had **not** hired Mr. Legato. Mr. Bernstein suggested that the term "(sic)" be inserted after the statement to indicate that it was incorrect. Mr. Moholkar moved approval of the minutes as amended and Mr. Hands seconded. A **VOICE VOTE** was taken and the minutes were approved as amended unanimously by those eligible to vote: Chairwoman Dapkins, Mr. Hands, Mr. Moholkar, Mr. Roshto. Mr. Piserchia was ineligible since he was not at that meeting.

PUBLIC QUESTION AND COMMENT PERIOD

Chairwoman Dapkins asked if there were any questions or comments from the public on any item not listed on this evening's agenda. Seeing none she closed the meeting to the public.

PUBLIC HEARING

LOUNSBERRY MEADOW
1449 Valley Road
Block 10301, Lot 16.04

#14-11P

Minor Site Plan
Dev. Permit Waiver

PROOF OF SERVICE PROVIDED

Present: Greg D'Alessandro, esq., Attorney for the Applicant
 Leon Cohen, AIA, PP, Engineer for the Applicant
 Chris Collins, President, Lounsberry Meadows

Greg D'Alessandro, attorney with **D'Alessandro & D'Alessandro, LLC**, Basking Ridge, New Jersey, stated that he was representing Long Hill Township Senior and Handicapped Low Income Housing & Associates, LP, "Lounsberry Meadow." The applicant was seeking Site Plan Approval, Development Permit and Waivers so that a gas generator could be installed at the property to provide power for the residents in the event of an emergency or loss of power much like what happened after Sandy when power was lost for approximately two (2) weeks.

Mr. D'Alessandro introduced Leon Cohen, an architect with **CSR Associates**, Nutley, New Jersey and indicated that Mr. Cohen would be the primary witness for the applicant. He also introduced Chris Collins who was the President of Lounsberry Meadow. Mr. D'Alessandro added that the applicant was seeking any additional waivers that might be required in order to install the generator. He reviewed the waivers that had already been requested.

Mr. Bernstein swore in the Board's consultants, Mr. O'Brien and Mr. Gleassey.

Mr. O'Brien stated that during the technical review process and the completeness review process, staff had an opportunity to review the waivers that were requested and no exceptions were raised to that request.

Mr. Bernstein suggested that the Board vote to grant the requested waivers and then proceed with the hearing.

Mr. Roshto noted that the Shade Tree Commission listed some objections to this. He asked Mr. D'Alessandro if he had received the Shade Tree Commission's report.

Chairwoman Dapkins added that the Environmental Commission report listed some concerns.

Mr. Bernstein swore in Mr. Cohen. He asked if Mr. Cohen had testified before this Board recently.

Mr. Cohen replied that he had testified before this Board but not recently. He added that he was a principal with **CSR Associates** and that he had testified before boards for over 35 years. He stated that he was a registered architect and a civil engineer.

Chairwoman Dapkins indicated that the Board would accept his credentials.

Mr. Roshto told Mr. Cohen that he was looking at Item 1 on the Shade Tree Commission's report. It stated, "Waiver requested N/A - no trees will be removed." The Commission stated that trees would be removed along with ornamental shrubs.

Mr. Cohen stated that he had received those comments. In response, he prepared a colored site plan showing all of the trees that would be involved. After modifications were made to the location of the gas pipeline, there would be no trees or shrubs removed. He added that a letter had been emailed the Friday before this meeting to Dawn Wolfe, Planning and Zoning Administrator, identifying each and every comment for all of the reports.

Mr. Roshto thanked Mr. Cohen.

Mr. O'Brien stated that that letter had not been received.

Chairwoman Dapkins clarified that Mrs. Wolfe was not in the office on Friday.

Mr. Cohen gave Ms. Kiefer the letter and she had copies made for the board members and professionals.

Mr. Roshto said that the Shade Tree Commission discussed the need to stay away from the drip line.

Mr. Cohen stated that that was also part of the revised plan.

Mr. Bernstein asked if this was a map that had not been submitted to the Board prior to this evening. It was marked **Exhibit A - 1** along with the date. A set of seven (7) color photos including two (2) aerial views of the area where the generator would be placed were also marked into evidence as **Exhibit A - 2**.

Mr. Roshto stated that Item #32 on the checklist was the "rapid action key box" or Knox Box. He asked why the applicant asked for a waiver on this item.

Mr. Cohen stated that there was a Knox Box in the building. He felt that it was not applicable because this application was for a generator and the Knox Box would be inside the building. If there was a key on the door of the generator, that key would be added to the Knox Box in the event that the fire department needed access.

Mr. Cohen stated that this was a 60 unit development of low income seniors with a main that would be coming in from Valley Road indicated by a red line on the plan. It came in off of Valley Road as a high-pressure line to a meter. From that point to the generator which was located in the utility area of the building was primarily the project. Originally that line was in the shrub area however in response to comments by the Shade Tree Commission and the Board Engineer, the line was shifted outside the curb line and shrub area. They had added fencing which was recommended by Mr. Lemanowicz to hide the generator.

Mr. Roshto said that Mr. Cohen had answered all his questions regarding waivers. He made a motion that the Planning Board approve the waiver submissions. Mr. Moholkar seconded that motion and a **ROLL CALL VOTE** was taken. Those in Favor: Mr. Hands, Mr. Moholkar, Mr. Piserchia, Mr. Roshto and Chairwoman Dapkins. Those Opposed: NONE. The motion to approve the waiver submissions was passed unanimously.

Mr. Cohen said there were three (3) primary concerns. The first concern was that of the Shade Tree Commission. The second issue was the decibel levels and the noise criteria which were brought up by the Environmental Commission. The third was the unsightliness of the generator itself.

Mr. Cohen stated that the generator would be behind the fence and ultimately they might add some shrubs around it.

In terms of the noise criteria, Mr. Cohen noted that emergency generators did not have a criterion. There were criteria for normal generators which would operate all the time however an emergency generator would operate rarely only in an emergency situation and approximately once every two (2) weeks for testing. They had discussed a Type 1 enclosure and a Type 2 enclosure. Recommended procedure by Caterpillar (the company which manufactures Generac generators) was added in the latest round of correspondence and it indicated that the Type 2 enclosure would be more for a diesel generator. The proposed generator would be a gas generator and a Type 1 enclosure would give 77 dB at 23 feet. This generator was no closer than approximately 50 feet from any windows or resident rooms and the decibel level would reduce substantially at that distance. With the fence around it, the decibel level would be reduced even more. Given that, he did not feel the noise was an issue at all.

Chairwoman Dapkins asked what area or areas would the generator cover.

Mr. Cohen stated that the generator would be for emergency systems including certain community areas. Fire alarms, elevators, emergency lighting, security and site lighting, the kitchen in the Community Room, and the actual Community Room itself would be powered by the generator in the event of an emergency.

Mr. Cohen said that the generator's actual footprint was approximately 6'-8" X 13'-0" long X 7'-0" in height. With the thickness of the pad, it would be about ten (10) feet high.

Chairwoman Dapkins asked what the elevation was.

Mr. Cohen said the elevation was 218 which was approximately five (5) or six (6) feet above the flood level.

Mr. Bernstein asked Mr. Cohen if he agreed with the proposed conditions in the Board Engineer's report.

Mr. Cohen responded that he had answered each and every condition in each of the reports. He had agreed to make whatever changes. The only condition that he felt was very difficult was related to the Ma Bell easement because he did not have control of that. He stated that the utility companies had their own long-term agreements with easements. The lines had already been installed by the utility companies and they had not impacted any trees. That condition was difficult because it was not a condition that the applicant could control.

Mr. O'Brien asked, since Mr. Cohen was responsible for addressing all of the points in all of the reports, if it would be beneficial to the board members for him to go through those reports, item by item.

Mr. Cohen referred to Mr. Lemanowicz's letter dated March 2, 2015. Under "Technical Comments" he agreed that they would exclude the survey as suggested in Item 1 and re-number the drawings 1 through 3. In reference to Item 2, he noted that there had been some items that Mr. Lemanowicz wanted to be shown on the as-built survey. He said that he would be willing to add those items to the survey but he didn't think it was mandatory. He wanted to know if that issue could be eliminated. He reiterated that he would be happy to add them to the site plan but didn't want to get a surveyor out there.

Mr. D'Alessandro said the plan that was submitted by Mr. Cohen showed all the items that were listed in Item 2 of Mr. Lemanowicz's report. He suggested that that sheet (A-1) be added to the set. It would become A-4.

Mr. O'Brien clarified that 2a, 2b, and 2c were shown on Sheet A-1 and that 2d and 2e were no longer needed since the pipeline had been rerouted.

Mr. Cohen said that that was correct.

Mr. Cohen indicated that he agreed with Item 3 and had no further comment on it.

Mr. Cohen agreed to Item 4 and would make the appropriate changes on Sheet 3.

In Item 5, the word "creosote" was inadvertently used by one of his draftsman according to Mr. Cohen. The correct terminology would be "pressure-treated." It would be rewritten on Sheet 2.

Item 6 addressed the inconsistencies of the dimensions of the concrete generator pad. Mr. Cohen said that the dimensions would be corrected to read 4'-0" +/-.

Mr. O'Brien clarified that everything should be corrected to read "an 8 by 13 pad and a 4 by 12 generator."

Mr. Cohen stated that that was correct.

Mr. Cohen said in reference to Item 7, he had added the information for gas generators. He noted that the original submission which related to diesel generators was a "packeted package." The reason the diesel generator information was submitted was to show a Level 2 sound enclosure showing 77. With a Level 1 enclosure for a gas generator, the same 77 was provided.

Mr. Cohen said, in reference to Item 8, that the gas line would be shifted to be adjacent to the curb line. He pointed to a red line which was outside of the planted area.

Mr. O'Brien added that Sheet A-1 would be the operative drawing for that.

Item 9 referred to warning tape which Mr. Cohen noted was a standard installation detail.

Item 10 referred to the gas main and the easement that was discussed earlier. Mr. Cohen had requested a letter from PSE&G but he was not sure he would ever get it. The line had already been installed. Mr. Cohen continued however his comments were inaudible.

Mr. Bernstein wanted verification that it was Public Service who installed the line.

Mr. Cohen verified that it was Public Service.

Mr. D'Alessandro added that they had submitted a copy of the easement.

Mr. Cohen said at that point he had addressed all of Mr. Lemanowicz's concerns.

Mr. Gleassey, who was representing Mr. Lemanowicz in his absence, stated that their office had received the comments when they were emailed. They had been reviewed and he agreed that Mr. Cohen had addressed all of the concerns.

Mr. Hands indicated that all of his own concerns have been addressed by rerouting the pipe.

Mr. O'Brien noted that there were three (3) other reports: the Planner's Report, the Shade Tree Commission Report, and the Environmental Commission Report.

Chairwoman Dapkins stated that they had given their response to the Shade Tree Commission Report. Mr. Roshto indicated he was satisfied and the other board members agreed. There was no need to review it again.

Mr. Cohen reiterated his earlier testimony and said that there would be no disturbance to the drip line and that no trees or shrubs would be removed. He had located the trees to show that.

Mr. Hands asked if that was the most logical site for the generator.

Mr. Cohen answered that it was the correct location because the electrical room was in the same corner. It was far from the residences. The closest units were community service units such as the janitor's office.

Chris Collins, President, Lounsberry Meadow, was sworn in. He indicated that the residents were fully supportive of the generator installation.

Mr. Cohen then referred to the Environmental Commission Report regarding the decibel levels. He noted that he had testified to this previously and he had included the submissions of the generator as well as the sound test results which indicated that a Level 1 sound enclosure for a gas generator would be the same as a Level 2 sound enclosure for a diesel generator.

Mr. Cohen referred to a report by Mr. O'Brien that had arrived on Friday. He noted that most of the comments were in the same vein as the Shade Tree Commission, the Environmental Commission and the Board Engineer. He did not feel there were any other comments that required further testimony.

Mr. Bernstein asked Mr. O'Brien if there were any conditions in his report that he would see as conditions should the application be approved.

Mr. O'Brien noted that in his report on page 5, Item D, he had recommended that the vinyl slats on the proposed fence should be bolted in place through the chain link fence so that they did not come away from the fence.

Mr. Cohen said that although they had never bolted the slats to a fence before, they would do it in this instance. He asked if Mr. O'Brien felt that it was required.

Mr. O'Brien stated that it was done in high impact situations. Without bolting the slats, he felt that they would not be there in a couple of years. They were usually bolted on the ends to hold them in place. He had asked if the vinyl slatted fence gave enough noise protection and noted that there had been testimony about the decibel levels. He added although those levels did not count in emergency situations, he wanted to know if a solid vinyl fence would add to the noise protection.

Mr. Cohen said that he was not sure if a solid vinyl fence would help. He thought it might just reverberate. A concrete fence would create a reduction in sound because concrete is porous. He did not think of vinyl fence would make that much of a difference. He did not see the benefit regardless of the additional cost.

Mr. Cohen verified that there would be no additional lighting proposed. There was lighting built into the generator.

Mr. O'Brien referred to page 6, Item H, and the "somewhat neglected" utility area behind the building. Besides the general debris, there were dumpsters just sitting back there. He asked if they should be placed in a specific area.

Mr. Collins stated that the landscaping and the maintenance of the area were taken very seriously and the current state was a result of the harsh winter. He promised that come spring all of these issues would be taken care of.

Mr. O'Brien advised Chairwoman Dapkins that he had no further questions.

Mr. Piserchia asked if there was a large cost differential between Level 1 and Level 2.

Mr. Cohen said that there was. A Level 2 enclosure would be used with a diesel generator. It would rarely be used with a gas generator.

Mr. Piserchia asked Mr. Cohen, should the resolution be approved, would he be amenable to stating that the biweekly testing would be conducted during the afternoon hours.

Mr. Cohen said that testing would be conducted biweekly between the hours of 11:00 a.m. and 2:00 P.M.

Mr. Hands wanted to ensure that the testing would be conducted during weekdays and not on weekends.

Mr. O'Brien said that the Board can specify which days the testing could be conducted.

After discussion, Mr. Cohen said that they should state that the testing would be done *weekly* so that there would not be any issue. In response to Mr. Hands' comment, he added that there would be no testing done on weekends or holidays.

Chairwoman Dapkins asked how long testing would last.

Mr. Cohen answered anywhere from 12 to 15 minutes.

Chairwoman Dapkins asked the board members if they had any further questions. Seeing none she opened the meeting to questions from the public. Seeing none she closed the meeting.

Mr. D'Alessandro stated that he had no further witnesses. He asked that the Board grant the application. It met stated planning purposes by providing emergency electricity to the residents of the community in times of emergency. It also provided for the health, safety, and welfare during such emergencies.

Mr. Bernstein suggested the following motion, "Be it resolved by the Planning Board of the Township of Long Hill on this 10th day of March 2015 that the application of Lounsberry Meadow to install an emergency generator which necessitates a Site Plan Approval and a Development Permit Waiver be approved with a memorial resolution to follow subject to the conditions that the Planner will set forth."

Mr. O'Brien stated some of those conditions might include those conditions that the applicant had agreed to as a result of the engineering, Environmental Commission and Shade Tree Commission reports during the commentary of this meeting.

Mr. Piserchia moved the resolution with the conditions as outlined. Mr. Roshto seconded the motion. A **ROLL CALL VOTE** was taken. Those in Favor: Mr. Hands, Mr. Moholkar, Mr. Piserchia, Mr. Roshto, Chairwoman Dapkins. Those Opposed: NONE. The resolution to approve the application was passed unanimously.

At 8:56 P.M. Mayor Rae arrived.

Chairwoman Dapkins stated that the board members would now discuss Morristown Road.

Mr. Bernstein said that the Planning Board had received communication from the Township Committee stating that they supported the Board. There were questions as to whether the applicant was best served by a rezoning or by applying to the Board of Adjustment for both a prior non-conforming status and alternatively variance relief or whether the applicant would be better served by going the rezoning route which had been followed in the past.

Mr. O'Brien added that in the very beginning of this process the Strohs made it clear that they did not wish to pursue a Section 68 Certificate of Non-Conformity because they had stated on the record before this Board that they did not believe that they could meet the statutory burden of proof.

Mr. Bernstein replied that he had seen applicants who had pre-existing non-conforming uses which might not have existed for 50 or 60 years. In his experience boards of adjustment on occasion took that into account. The fact that they had been there for many years and did not cause a problem had on occasion been sufficient evidence to grant the variance. He added that the question was what would be best for this applicant and for the community.

Mayor Rae said that he felt the applicant had made it clear by pursuing this route that they felt that that was what was best for them. That was what they wanted to do. They had been taken down this path for a number of years. A lot of time and effort was spent at the last meeting to fashion a resolution which was taken to the Township Committee. The committeemen agreed with the resolution.

Mr. Bernstein asked if Mr. O'Brien should prepare an overlay zone such as the one that had been discussed. He also asked if Mr. O'Brien should enter into discussions with the applicant as well to get his input. He wanted to know what procedure to follow.

Mayor Rae stated that he thought that they had arrived at that when the applicant was present at the last meeting. There was a course of action that they were ready to pursue. He questioned if that was not the case.

Mr. O'Brien stated that one of the discussions that ensued after the prior hearing revolved around the limited nature of the presentation from that hearing. Instead of the properties running from the pump station down to the railroad, half of the properties were taken out including the other properties that had been in a similar non-conforming state and also in a state of enforcement before the municipal court. There were only three (3) properties being discussed and of those three (3), two (2) had variance approval for what was being done there leaving only one (1) property that this overlay would affect. The concern was that since the presentation really only affected one (1) property, to continue down the Planning Board path was one that could potentially be lengthier and more expensive than applying to the Zoning Board of Adjustment for a use variance. The reason for that was that if the applicant stayed with the Planning Board, there would be an Ordinance Subcommittee or Planning Board review of that overlay ordinance. The Planning Board would have a meeting to take action, refer it to the Township Committee which would have their first hearing and then refer it, by statute, back to the Planning Board. After their review the ordinance would be brought back to the Township Committee. That would be four (4) meetings. If every one of those meetings was positive for the applicant, after the re-zoning, should that be approved, the applicant would have to come back before the Planning Board for Site Plan

Approval and possible variance approval depending on the circumstances on the ground such as parking and bulk setbacks and other violations.

Mr. Roshto asked Mr. O'Brien if he had any other conversations with the applicant about what he had just described.

Mr. O'Brien stated that he had not had any conversations with the applicant since the hearing several weeks ago. The applicant was using a professional planner. When the applicant first came before the Board as a result of the court action, he was advised that one alternate was to go to the Zoning Board of Adjustment and as indicated previously, the applicant felt he was not eligible for a Certificate of Non-Conformity and therefore did not want to go down the "use variance path." The applicant felt that the Planning Board and rezoning route would be the easier way.

Mr. Roshto said that they had tried to explain that to the applicant when he was in front of the Board but his planner seemed reluctant to take that route.

Mr. Piserchia said that the proposed ordinance would add potential uses. The other two (2) properties, even though currently compliant, would be helped should there be new owners or should the owners decide to change the use of the properties. He did not see it as "one property specific."

Mr. Roshto agreed. He felt it was fine the way it was. He added that there was a question even at the Township Committee level as to why there was a change in the number of properties. From his perspective, there were three (3) alternatives: the applicant could continue working with the Planning Board which he felt would be costly; it could be sent to the Ordinance Subcommittee and have them work on a draft; or, as recommended by Mr. Bernstein, it could be sent to the Board of Adjustment. As a fourth option, he suggested it could be sent to the Master Plan Committee to work on in conjunction with the 2016 Master Plan but preferred that that route not be taken. He asked the board members which direction they wanted to take.

Mayor Rae felt that they should speak to the applicant and that the applicant should make the decision.

Mr. Bernstein felt that the board members wanted to pursue the rezoning route and he understood that because there was a history. He noted that if there was some rezoning, there would be some cost from the Township's standpoint as far as professional services. He wanted to know if these costs would be charged to the property owner or to the Township.

Chairwoman Dapkins did not feel it was fair to ask the taxpayers to pay for this.

Mr. Roshto felt that that was a legitimate question. He asked if the board members felt that this rezoning would be in the best interests of the *Township*. He felt that the Board should not make a decision based on an applicant who wanted to fix a problem. It should be based on good zoning and planning practices. If the board members felt that there was a good planning reason to approve the rezoning, the Township should pick up the cost. If this was being done to create an overlay zone with five (5) or six (6) uses, then the applicant should pick up the cost should the Board move forward.

Chairwoman Dapkins stated that in her opinion there was nothing wrong with the zoning changes made and '96 or '97.

Mr. Roshto said that since the zoning change to Conservation in 1996 or 1997 nothing had changed. He felt that after a certain period of time there had to be some sort of realization that no significant change in the area would be effected. He felt that some action should be taken since currently it was just languishing there.

Chairwoman Dapkins said that nothing had changed because everything had been held in abeyance. The Zoning Officer had acted but then the Court held everything in abeyance.

Mr. Roshto felt that that had not been going on too long, not since 1996. He felt that part of the reason why there had not been significant change in that area was because limited industrial types of uses had diminished in the state. It was difficult to move those types of operations to another location. He felt that was one of the reasons there was a problem.

Mr. O'Brien added that there had been one change to that area. The factory at the southern end was constructed as the result of a variance from the Board of Adjustment in 2004 or 2005. That did conform to the prior economic development zoning but not the current conservation zoning.

Mr. Hands felt that after the discussions held at the prior meeting, the applicant understood. He was in favor of allowing the process to continue as discussed. He said he saw no need to change course at this point.

Chairwoman Dapkins disagreed. She did not think that the Strohs fully grasped the procedure and the expenses that would follow. She felt it would be a good idea for Mr. O'Brien to speak to the Strohs.

Mr. Hands had no problem with Mr. O'Brien speaking to the Strohs. He added that the ordinance was a conversation within the Board. He didn't feel that the applicant should have much to say about it.

Mr. O'Brien stated that there was a proposed ordinance that had been reviewed. The board members all had copies of it. It would be up to the board members as to whether they wanted to make recommendations or to change it.

Mr. Bernstein interjected that the proposal outlined uses only. There was no reference made to parking or storage or signage or setbacks. He wondered if the Strohs had heard that part of the conversation and the fact that there might still be some non-conformities.

Mr. Roshto agreed with Mayor Rae who suggested that the Board ask the Strohs. It would be up to them whether they wanted to continue or halt the process. Regardless, he felt that the board members should look at this through a planning perspective. He added that the Master Plan Committee would discuss this in some way.

In response to Mayor Rae's request for clarification, Mr. Roshto said that currently it was zoned conservation. It was an economic development zone prior to 1996. During the time period that it had been zoned conservation, little to nothing had happened. The one change that did occur was away from conservation. He felt that a long period of time had passed where there had been no positive impact in terms of conservation and because of that, it should be reviewed.

Mayor Rae said that that comment went to the point of who should bear the cost. He felt that these discussions were in the best interest of the Township and that perhaps the applicant should not be the one to bear the costs.

Mr. O'Brien asked if this would be done as part of the current process on the part of the applicant or as part of the Master Plan Committee and part of a long-range plan.

Mayor Rae referred back to Mr. Roshto's comment that he would prefer that it not come to the Master Plan Committee.

Mr. Roshto said that time was the issue. The applicant had been waiting a long time to get an answer from the Township. By moving it to the Master Plan Committee, the applicant would have to wait at least another year. He noted that the Master Plan Committee was also deep into many issues. Eventually it would be discussed but if the Board instructed him to do so, he would move it up.

Mr. Piserchia said the reduction in the number of properties affected from six (6) to three (3) would look strange on the map. He felt that this was an issue that had perplexed the town for eight (8) years. If it took another year to get it done correctly, the Board should ask the Zoning Officer to continue to hold off on issuing any summonses. He felt it should be done as part of the Master Plan.

Mr. Roshto agreed. He felt that ultimately the Master Plan Committee would have to look at it since they were looking at the entire town.

Mr. Moholkar agreed that the first step was to bring the alternatives to the applicant and then let him decide.

Mayor Rae agreed however he felt that the Board had not "fleshed out" the alternatives.

Mr. Roshto said that the applicant had two choices. He could wait a year to see what the Master Plan Committee recommended. It could recommend that the zone remain conservation. Or the applicant could go to the Board of Adjustment. The middle ground would be to send it to the Ordinance Subcommittee for review.

Chairwoman Dapkins felt that the Planning Board had to make a decision.

Mr. Roshto agreed that ultimately it was the Planning Board's decision.

Mr. Hands asked if the applicant said he wanted to stop the process, should the Planning Board stop. He felt this was part of a bigger process that might include the other properties. The board members had decided to proceed and the Township Committee endorsed that recommendation. The downside to the applicant would be that potentially they would be non-conforming. They would then have to rectify that.

Mr. O'Brien said that Mr. Hands had described the process as it currently existed. The Township Committee, the Planning Board, and the Ordinance Subcommittee would meet and, assuming all those

steps were affirmative, the applicant would still have to come back to the Planning Board for Site Plan Approval and possibly variance approval.

Mr. Hands asked if the applicant had been informed of the Township Committee's decision. He suggested that Mr. O'Brien advise the applicant of the latest developments and what the consequences of those developments could be.

Chairwoman Dapkins asked Mr. O'Brien if he felt that he had enough direction to proceed.

Mr. Roshto stated that he had presented the information from this Planning Board to the Township Committee. He wanted a general consensus as to whether or not the Board was heading in the right direction. He did not feel that the Township Committee was specifically "in agreement" because there was no ordinance in front of them. The committeemen had a general understanding of the direction as Mr. Roshto had described to them which was based on the discussions from the last meeting. What was currently being discussed was a change and he felt that "all bets were off." He felt that the board members were changing what he had described to the committeemen if they decided to go in that direction.

Mr. O'Brien said that there were a few alternatives that could be discussed with the applicant. Number one was that this area was going to be the subject of a Master Plan Committee review during the course of their Land Use Element review which would end sometime next year. Second, the Planning Board and the Township Committee understood that the applicant had the right to apply for a zone change through the Planning Board and through the Committee and that there was no outspoken disagreement with that process on the part of the Planning Board or the Township Committee. However, the Planning Board would like the applicant to realize that the process through the Planning Board could be lengthy and expensive resulting in a number of public meetings which they may or may not attend, the preparation of an ordinance or ordinances which they may or may not wish to take part in, and at the end of that process, should each step be affirmative, they then would be subject to further Site Plan Approval and possible variance approval from this Board. He added that the Board also wanted the applicant to realize that there was another process available to them should they wish and that would be to apply for a use variance and possibly a Certificate of Non-Conformity from the Zoning Board of Adjustment. The advantage of the Zoning Board of Adjustment process was that there would be an application fee, an escrow fee and a hearing. At the end of that hearing the application would have a decision as opposed to staying with the Planning Board process in which case a minimum of four (4) meetings would be needed to get to the rezoning. At any one of those meetings, the process could stop. He felt that the Board was charging him to advise the applicant that first, the Master Plan Committee was reviewing town wide and second, there were two (2) alternative paths available to them. They would then have the opportunity to choose the one that they felt was most advantageous to them.

Chairwoman Dapkins felt that Mr. O'Brien had summed it all up.

Mr. Roshto agreed. He felt that the applicant would ask whether the Board would continue with the overlay proposal or would the Board approach it through the Ordinance Subcommittee or the Master Plan Committee.

Mr. Bernstein felt that there were three (3) alternatives: the applicant's overlay proposal, waiting for the Master Plan Committee, or going to the Board of Adjustment. If the applicant pursued the rezoning, he would pay for the professionals. If it was a Master Plan Committee study, the applicant would not have to pay but would still have the opportunity to participate. He felt that the applicant should be advised that if he wanted to proceed with their rezoning application it would be done "on his nickel." If, as stated before, it was done as a community-wide project, the Township would not be looking for any one individual property owner to reimburse them.

Mr. Roshto felt that was the perfect way to say it. He felt that if the applicant continued on this path which could be costly to him, all that money might be thrown away should the Board decide to go to the Master Plan Committee or the Ordinance Subcommittee. He came back to his original question as to what the Board wanted to do. If the board members could help the applicant by making a decision to send it back to the Master Plan Committee or Ordinance Subcommittee, it would be a financial advantage to the applicant.

Mr. Bernstein added that the Zoning Officer should be advised not to issue summonses until the process was complete. He added that the applicant would never be precluded from going to the Board of Adjustment.

Mr. O'Brien stated that this was already in court. Enforcement had been put aside while the applicant pursued other alternatives. Now that the Board had had an opportunity to listen to the applicant's presentation and form an opinion, it was time for Board action. If the applicant was going to stay with the Planning Board or the Zoning Board, the Township Committee should be advised not to enforce the ordinance. He added that there had to be some sort of end in sight.

Mr. Hands asked if the applicant was sponsoring the rezoning effort or was the Board advising that that rezoning was a good idea therefore the Township would pursue it and assume the costs.

Mr. Bernstein answered that if a private property owner was suggesting that his property be rezoned, the focus would be on him and not a balance. He asked if the entire community should be financially responsible for that. When the Planning Board or Zoning Board looked at one (1) property, the applicant would pay for that. If it was a Master Plan study of the entire township, it could not ask the applicant to be responsible.

Mr. Piserchia stated that that was the reason he was troubled. The original proposal encompassed six (6) or seven (7) properties. It was now reduced to three (3) properties and potentially one (1) if it was just about the use. His preference was to have the Master Plan Committee review this as they were reviewing the entire township. Why would the applicant start with the Zoning Board after all this time?

Mr. O'Brien explained that the Zoning Board would be "one-stop shopping." The applicant could get their use variances and their bulk variances. It could be completed in a single meeting.

Mr. Piserchia responded that he was looking at it from a town-wide perspective rather than an individual basis. This issue had perplexed this township for years and he felt it would be addressed.

Mr. Roshto reiterated that the issue would be addressed whether or not something was done there.

Mr. Piserchia stated that it might be left as a conservation zone. If so, the owner would have to file an application with the Zoning Board.

Mr. O'Brien added that the applicant would have to wait until the end of that process.

Chairwoman Dapkins asked when that would be.

Mr. Roshto stated that the Master Plan was scheduled to be completed in 2016. His goal was to have a preliminary draft presented to this Board in October 2015.

Chairwoman Dapkins still felt that Mr. O'Brien should speak to the applicant.

There was agreement amongst the other board members.

Mr. O'Brien reiterated the three alternatives: (1) the Master Plan Committee would review the issue no matter what; (2) the applicant could stay with the Planning Board with whatever cost would be incurred; (3) the applicant could go before the Zoning Board of Adjustment.

Mayor Rae asked if this could be pushed up on the Master Plan Committee's priority list so that they could make the recommendation to this Board.

Mr. Roshto stated that if that was what the Board wanted, that was what the Committee would do.

Mr. Piserchia said regardless of what the Committee recommended, it would not be voted on until 2016.

Mr. O'Brien said that an ordinance would have to be prepared to support the Master Plan Committee's recommendation. That would have to go to the Township Committee, all of which would also take time.

Mr. Bernstein advised that the Master Plan did not have to be adopted as a whole. It could be adopted in sections.

Mr. Roshto stated that the previous mayor tasked the Master Plan Committee with delivering a *whole* Master Plan— not piecemeal. He stated that the Valley Road Element was almost completed. That was a piecemeal process and it cost the Committee considerable time to get that done. It detracted from delivering the Master Plan. He preferred not to break it apart. He had no issue with accelerating discussion of this issue but he did not want to have to deliver an element on it.

Mayor Rae said that he did not want anything to slow down the development of the Master Plan.

Mr. Roshto felt that from the applicant's perspective, he did not see these as "alternatives." He felt it was more of an education of the process. The applicant could then decide what he wanted to do.

Chairwoman Dapkins said that the applicant had his own professionals: a planner, an engineer and an attorney. They would advise him.

Mr. Roshto asked what the response would be if the applicant returned to the Planning Board at the next meeting and wanted to continue pursuing their proposal with the Board.

Mr. Bernstein stated that it would be a policy decision. The Board did not have to have a process for an applicant to come before it requesting rezoning.

Mr. Piserchia said that in essence the Board would be saying no in the middle of a process that it had originally encouraged.

Mr. Bernstein responded that the Board could allow the applicant to proceed.

Mr. Roshto clarified that if the applicant came back to the Board and wanted to proceed, he would be allowed to do so.

Mr. O'Brien said that as a policy, the Board never advised the applicant to proceed. At all times the alternatives were outlined and he chose to proceed because he felt that the rezoning route was in his best interests.

Mr. Roshto said, in all fairness, the applicant had been very patient. The Board had changed its schedule multiple times because it had to work on other applications which were more important.

Chairwoman Dapkins interjected that the applicant had done the same. He too had rescheduled on multiple occasions.

Mr. Roshto said, regardless, the Board had contributed to this. He felt that a decision should be made and, to him, it sounded that the Board had decided that if the applicant wanted to continue, he would be allowed to do so.

Mr. O'Brien added that if the applicant chose that path, it would be at his cost.

Chairwoman Dapkins asked for a motion to adjourn. Mayor Rae motioned and Mr. Moholkar seconded. By unanimous **VOICE VOTE**, the meeting was adjourned at 9:43 P.M.

CYNTHIA KIEFER
Planning and Zoning Secretary

Date