

MINUTES

SEPTEMBER 13, 2011

PLANNING BOARD

LONG HILL TOWNSHIP

CALL TO ORDER AND STATEMENT OF COMPLIANCE

The Chairman, Mr. Connor, called the meeting to order at 8:06 P.M. He then read the following statement:
Adequate notice of this meeting has been provided by posting a copy of the public meeting dates on the municipal bulletin board, by sending a copy to the Courier News and Echoes Sentinel and by filing a copy with the Municipal Clerk, all in January, 2011.

PLEDGE OF ALLEGIANCE

ROLL CALL

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

Christopher Connor, Chairman

Mead Briggs, Vice-Chairman

Mayor Nanette Harrington, Mayor

E. Thomas Behr, Member (arrived @ 9:35 PM)

Donald Butterworth, Member

Kevin Dempsey, Member

Guy Piserchia, Member

Michael Smargiassi, Member

Excused:

Brendan Rae, Member

Barry Hoffman, Bd. Attorney (left @ 10:15 PM)

Kevin O'Brien, Twp. Planner

Thomas Lemanowicz, Bd. Engineer

Dawn Wolfe, Planning & Zoning Administrator

X X X X X X X X X X X X

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

APPROVAL OF MINUTES

The minutes of May 24, 2011 were approved as written on motion by Mr. Briggs and seconded by Mayor Harrington.

The executive and regular session minutes of June 14, 2011 were approved as written on motion by Mr. Briggs and seconded by Mr. Butterworth.

PUBLIC QUESTION OR COMMENT PERIOD

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

RESOLUTION OF MEMORIALIZATION

FRANCES ANN MASON

274 Main Avenue
Block 11604, Lot 15

**#11-01P
Prelim./Final Site Plan
Development Permit
Bulk Variances**

The Planning Board approved the annexed Resolution of Memorialization, as amended, on motion by Mr. Butterworth and seconded by Mr. Dempsey.

A roll call vote was taken. Those in favor: Mr. Briggs, Mr. Butterworth, Mr. Dempsey, Mayor Harrington and Mr. Connor. Those opposed: None.

DISCUSSION

PLANNING INITIATIVES STATUS REPORT

Mr. O'Brien referred to Item 1A of his Planning Initiatives Status Report #2 – 2011, dated 9/9/11 entitled "Technical Review Committee". He said that the Board has approved the concept of a Technical Review Committee (TRC) and the language of an ordinance that would allow it. The TRC is proposed to review applications at the end of the completeness process and before they are scheduled for a public hearing. The TRC would consist of the Board Engineer, the Planning & Zoning administrator, and the Township Planner. The TRC would meet at least once a month to review applications for thoroughness and compatibility with the Master Plan and community design guidelines. Applicants and/or their professionals would attend to deal with questions of a technical nature before Board review of the application. Site Plan approvals would require a TRC appearance while homeowner applications would be optional. He said that the TRC is included in a draft ordinance being forwarded to the Township Committee.

With regard to Item 1B entitled "Application Checklists", he said that the Planning Board Operations Committee reviewed checklist revisions prepared by Mr. Batista with assistance from Mr. Lemanowicz and himself. He said that the proposal is to change some 30 pages in the Ordinance to just a few pages with a graph like system containing checkmarks as to which application items go for what type of application. He said that it is an attempt to simply for applicants, make it a lot more readable, and take up a lot less space in the Ordinance. The completed checklist was reviewed and accepted by the Board and will be forwarded to the Township Committee shortly.

He then referred to Item 1c entitled "Planning/Zoning Process Committee Meetings" and said that Mayor Harrington took the lead last year by holding meetings on 10/26/10 and 11/9/10 and there was a consensus to reform the process through the use of a Zoning Permit and strict adherence to following the stated procedures prior to issuing

construction permits, certificates of occupancy or any other building documentation unless the planning/zoning process is followed completely. He said that the process is now complete and noted that the Township Committee adopted it on 8/17/11.

Referring to Number II – “Master Plan – new items”, Item A, entitled “Ten Year Reexamination”, he said that originally this was a 6 year reexamination, however due to a last minute reprieve on the Governor’s part, we now have 10 years to adopt a new Master plan or Reexamination. He said that we have until 11/25/13 to complete our next Land Use Element of the Master Plan. He said that the Master Plan Land Use Committee met in 2009 and 2010 and got some preliminary work done in terms of land use categories and working on designations for zoning districts and that work is mostly complete. He said that it was a matter of bringing into the Land Use Element the material from the subsidiary elements such as Stirling, Millington, Gillette, and Meyersville as an overall umbrella document that would encompass those smaller area documents. Once we have the area/village documents done, that would be the appropriate time to move on to the Land Use Element and complete it. It is currently an open item.

In response to Mr. Connor, Mr. O’Brien said that the Board would *not* have to redo Valley Road as part of the Land Use Element. Instead, you would take the recommendations from each of those area elements and put them in the Land Use Element. It is almost like they are chapters in a book and the Land Use Element is the introduction where you summarize everything that is going on. The area elements (Meyersville, Valley Road, Gillette, and Stirling) all have their own individual objectives and studies and they are brought into the Land Use Element by reference as well as by bringing in those objectives and standards that are laid out in those individual elements. The Land Use Element has to be redone, but Valley Road can stand alone for the next 10 years or for the 10 years that it is viable for. He agreed that this will allow us to plan out how to bring in the next set of elements and, to the extent that there elements that may be ready, we can consider them in a reasonable way rather than to say they must be done in 3 or 6 months. The other elements of the Master Plan also have a 10 year shelf life as a stand alone document. However, the Land Use Element is like the conductor or maestro that runs the orchestra and the orchestra consists of those other elements, so those other elements must support the Land Use Plan, which is what is required by the M.L.U.L. *Most* of the other elements are optional. The Land Use Plan must be consistent with all of those other elements, which is why you do the other elements and then bring that information into the Land Use Plan, or the Board could do it the other way if it prefers to – write the Land Use Plan, make its goals and objectives, and then they cascade down into the supporting elements.

Mr. Connor did not feel that “let’s dictate from above” is the most effective way to do this.

Mr. O’Brien replied that that is why he recommended proceeding as we have for the last 15 years or so.

Moving on to Sec. 111 – “Master Plan – open items”, Item A “Historic Preservation Element”, Mr. O’Brien said that the Historic Preservation Committee provided updates to the Board in August, 2010. They provided a draft of the Historic Preservation Element and, given our workload, we have not conducted any work on it since we have been busy with Valley Road and other things. He said that it is up to the Board, if it so wishes, to review it and either give them feedback or revise it. It is up to the Board as to whether they are comfortable with the language or not. He said that it is the Board’s document and agreed that it is the Historic Preservation Committee’s *recommendation*.

Mr. Connor said that it seemed to him that if a committee has actually completed something, then the Board ought to take the time to review it. He asked Mr. O’Brien how long he felt that it would take for him and Mr. Lemanowicz to provide the necessary review.

Mr. O’Brien estimated that it would take about 6 hours and Mr. Lemanowicz agreed.

Mr. Connor said that if it is that close we ought to get it done and schedule it soon.

Mr. O’Brien agreed to review it and make comments for the Board’s review.

Mr. Smargiassi asked if it could be forwarded to the Board members now, even before Mr. O’Brien and Mr. Lemanowicz review it. He said that that would give the members more time to review it at their leisure.

Mr. O’Brien agreed.

Mr. Connor requested that it be reported electronically with paper copies provided upon request.

Mr. O’Brien replied that it will be done.

With regard to Item B – “Open Space and Recreation Element”, Mr. O’Brien said that we have received comments and the last time anything was done on it was in 2009 and the Board has been busy since then. He said that the Element has to be revised and we had talked about splitting it into two separate elements – one for Open Space and one for Recreation itself. He said that one of the thrusts of the current document is to bring up to date the Element to show the changes that have occurred in the Township since the mid to late 1990’s, such as Riverside Park and the municipal complex, etc. He said that the purpose of the document is to make plans for the future in terms of additional recreation or additional open space. In order to get that up to date, he said that we would have to sit with the players, the various committees, the administration, and Township Committee and see where we are going with it in order to revise it and get it up to date, which would be a bit of an effort.

Mr. Connor said that we have an Open Space Committee and a Recreation Committee and it seemed to him that those committees ought to be responsible for their respective responsibilities and, if it somehow gets amalgamated into a two section document or separate ones, we shouldn't force the Recreation Committee to work on Open Space issues, or vice-versa.

Mr. Smargiassi asked if the two can really be separated. He said that he was not here for the original discussion as to why it should be split into two, but he was thinking from a planning standpoint when you are drafting it and you are talking about each and felt that they need to work hand in hand a bit. He said that he was asking with basically no background.

Mr. Dempsey said that he said yes simply because of perception. He said that when people think of a recreation area, they immediately think of a ball field and open space is much more than a ball field and much more than recreational space. He felt that both having submitted what they want, the Board gets to put it together in one but he did not think that they need to work together to come up with one. He felt that it is the Board's job to take the Open Space recommendation and Recreation recommendation and see how they meet together, up here in front of everybody.

Mr. Briggs felt that that sounded reasonable.

Mr. Connor agreed and said that you can get things done quicker if they focus in and then it is up to us, even if it is necessary to have a small subcommittee. If there are conflicts they can iron them out – something that is a compromise. If that is the case, he said that we ought to ask the Recreation and Open Space Committees to look at the current draft and use that (or not) as they choose to create elements that we might combine. He said that if the two Committees choose to work together, that is fine, but he did not feel he needed to *force* them to work together.

Mr. O'Brien asked if it would be helpful if the current document were split so that all of the recreation pieces stay in one draft and the Open Space paragraphs stay in another draft, and let them each look at their particular areas and then it would be up to us to do either - combine them.....

Mr. Connor replied that it may be that they want to change it for guidelines since we are not going to get to it for a while. He said that maybe they will just rearrange some of the things, add some things, and then we can put it back together. Since some of the people that presented it got some feedback from the Board, he thought that they have some ideas of where the Board is at.

Referring to Item B – “Conservation Element”, Mr. O'Brien said that it was last looked at in 2009 and the Board made some changes and asked him to do some edits and recomposing and the effort has basically stopped. He said that if the Board wants to take a look at the document as revised by the Board, that might be the next step. In response to Mr. Connor, he said that the Conservation Element supports the stormwater and environmental and shade tree considerations of the Township.

Mr. Dempsey said that, as we find things that are close, we need to go back after Mr. O'Brien has given his update and prioritize. He did not think that we want 4 elements delivered to our inbox tomorrow morning and have one person work on one and another person work on another. He felt that we need to be focused on getting it to a point where we can't work on it anymore and then pick up the next one.

Mr. O'Brien replied that the staff welcomes priorities.

As to Item D – “Community Facilities Element”, Mr. O'Brien said that it had been revised with some suggestions from Mr. Sheola that dates back to late 2009. He said that it was up to him to revise it with those suggestions and get it back to the Board and that is where it has sat since then. In response to Mr. Briggs, he agreed that this would be a quick one, however he said that all of these are two years old and we really do have to spend a little time making sure that they are up to date and nothing has changed and we aren't saying something is true that is not true. He said that that would include going back, as just discussed with the other elements, to either the appropriate people or committee to confirm that we are okay on this. In this case, it would be Mr. Sheola, the administration, and the Township Committee.

Mr. Smargiassi felt that they should be contacted to give it a review and see if there is a piece that needs to be updated, then forward it on to get it rolling.

With regard to Item E – “Millington & Stirling”, Mr. O'Brien said that they are part of our Transfer of Development Rights (TDR) Grant from the Highlands Council. He said that Millington is the lead on it and we are going to try and piggy back as much of Stirling as we can onto that. He said that it is underway and that he has been working with Mr. Ferraro and Mr. Sheola on that.

Mr. Connor said that when we looked at this earlier, we had Millington and Stirling as trying to do that by the end of the year in conjunction with the Highlands Council. He said that he was not sure that we will make that, although it is possible.

Mr. O'Brien replied that he believed that that is still the target.

Mr. Connor said that it is pretty high up on the list of priorities to get them done because then we are going to come back into the adoption of ordinances and that whole process and by then, we'll start this and be done with Valley Road, one way or another.

Mr. O'Brien said that the advantage is that this is underway, it is active, and it is funded.

In response to Mr. Smargiassi, Mr. O'Brien said that we will not lose funding and, as long as we are on track by the end of the year, we will be in very good shape on that. Unless it is moving, it won't be done by the end of the year because there is a time for the Board to review and approve and then the Township Committee has got to approve the recommendation. It is our deadline, but it has been reinforced by the Highlands Council as well.

Referring to Item IV – "Grants", Item A - "Highlands Council Transfer of Development Rights (TDR) Grant", Mr. O'Brien said "ditto-ditto".

He then moved on to Item V - "Ordinances" .

Mr. Connor said that there have been some meetings but the overall Ordinance Subcommittee hasn't met for a long time. From his view, he said that it doesn't look like much has been done. He was somewhat concerned about where we are and, if we are trying to get this adopted in December, we've got less than 3 months to work on it. He asked what the issues are and what needs to be done.

Mr. O'Brien replied that one of the major pieces in the background is our wastewater and what happens to it. He said that Mr. Ferriero has been working with the Wastewater Committee along with Mr. Sheola and Mr. Butterworth and that piece is going to drive what happens overall. He said that his piece of this is looking at Millington and Tifa, in particular, for its suitability to create a more dense residential/commercial village center type of place and whether or not that is possible in that area. He said that the thoughts of the Committee in the past have been to tie as much of that into the train line as possible and, perhaps in the future, a goal would be to make it a part of a transit oriented development that would win some type of support from the State. He said that they have been unfunded this year but, in the past, they have been funded.

Mr. Connor asked about the EPA and the Tifa property. He said that, obviously, part of it is capped and the other part is very actively used. He asked if there has been any investigation or thought about what the impact would be in bulldozing everything up and putting up whatever new is.

Mr. O'Brien replied that both the Tifa people and the Township Engineer have looked at that, along with the EPA reports. He said that the Tifa area next to the Passaic River is where the superfund site is and that is not only capped, but untouchable. However, the area on the land side where most of the current development is can be improved to residential standards given certain considerations and that requires engineering review. So we are talking possibilities, but whether or not it is financially possible or the scope of development would support that – there are a lot of different questions that go to that and that is all part of what the study is going to address from a planning and engineering end.

Mr. Connor said that clearly a feasibility study has to include that.

Mr. O'Brien agreed and said that that is why that was one of the drivers of this whole thing.

Mr. Smargiassi asked if there is somebody who is leading up the feasibility of any type of environmental hazard.

Mr. O'Brien said that we have been working with people from Tifa on that, as well as Mr. Ferraro, but our information is coming from them.

As to Item A – "Forwarded to the Township Committee", Mr. O'Brien said that a number of Ordinances were recommended to the Township Committee. They are:

- Stirling Parking – adopted by the Township Committee on 2/9/11 in Ordinance 273-11. He noted that the Resolution that was adopted for Frances Ann Mason reflected the reduced parking requirement.
- Building Height – The Planning Board voted unanimously to forward this Ordinance to the Township Committee at its meeting on 1/26/10. He said that he will ask Ms. Gatti where it stands.
- Environmental Ordinance – including stormwater measures – The Township Committee sent a revised draft to the Planning Board on 6/8/11. The draft was discussed at the Township Committee meeting on 6/22/11. Chairman Connor and Chairwoman Hennessy of the Environmental Commission attend the meeting and discussed the draft. It is still before the Township Committee.

In response to Mr. Connor, Mayor Harrington said that the Environmental Ordinance is on the list for an agenda for an October time frame, although she was not 100% sure. She said that the Tree Ordinance also needs to come back to the Township Committee for discussion. She said that some of the Ordinances listed here as having been sent up to the Township Committee in 2009 and 2010, she was not even aware of to know that they needed to come back on an agenda. She said that she probably should have known and apologized for that, but her predecessors did not bring them before the Township Committee.

Mr. Piserchia said that the Tree Ordinance is something that will be discussed again, but hopefully with participation of the Planning Board, the Environmental Commission, and the Shade Tree Commission. He said that the Mayor had suggested that she will schedule the discussion of the proposed Tree Ordinance at the beginning of a meeting as opposed to what had happened a couple of times when it was slotted at the end of the meeting when perhaps the attention span had waned. He felt that it is important and said that the Committee will apprise the Board as to when that is so that whoever is going to speak will be properly prepared.

Mr. Connor said that a week's notice would be nice.

Mr. O'Brien said that the Development Fee Ordinance that is required by COAH was referred to the Township Committee in 2009. At that time, he and Mr. Pidgeon were of the opinion that they should do whatever they needed to do to keep in compliance with the (then) COAH requirements. COAH itself is no longer in business but the obligation is still there to provide housing, however the methodology to do so is currently before the State Supreme Court. Since we have not taken action, he felt it probably would be wise to wait until we see how all of this shakes out.

Referring to Item C – "Meyersville Ordinances" – Mr. O'Brien said that, as a result of the adoption of the Meyersville Element of the Master Plan on 5/12/09, the Planning Board revised the land use Ordinances affecting the Meyersville Hamlet District. The draft Ordinances were sent to the Planning Board on 12/10/10 and were discussed at the 12/14/10 Planning Board meeting. He said that we had come up with a draft and we needed to finish that draft and forward it to the Township Committee and that is where it sat.

In response to Mr. Connor, Mr. O'Brien said that he has a document ready for review by the Planning Board.

In that case, Mr. Connor felt that we need to get it on an agenda. He said that he actually thought that the Board had adopted it.

Mr. O'Brien said that his recollection was that the Board approved a draft, made a couple of changes, and it was to go back to the Planning Board as a future agenda item for review and possible forwarding to the Township Committee. He asked Mrs. Wolfe if that was her recollection.

Mrs. Wolfe said that she was of the same opinion as Mr. Connor (that it was already adopted by the Planning Board for forwarding to the Township Committee).

Mr. Dempsey and Mr. Butterworth agreed.

Mr. O'Brien and Mrs. Wolfe agreed to check the December 14, 2010 minutes to see exactly what was done. Mr. O'Brien added that, if the Board had voted to forward them to the Township Committee that will be done.

Referring to Item D – "Other Suggested Ordinance Changes", Mr. O'Brien said that one of the things left out of that paragraph was the fees and escrows that he thought Mr. Briggs has been taking a look at.

Mr. Briggs said that he was reviewing them back in 2009 but it pretty much died along with the Planning Board Operations Review Committee.

Mr. O'Brien said that the current fees and escrows are an item of concern but no action has been taken and it is on the list of some other changes we would like to see down the line. He said that usually you put that list of suggested changes in the Land Use Element and say that these are proposed changes based upon our past experience and then the ordinance follows the adoption of that.

In response to Mr. Connor, Mrs. Wolfe said that it was so long ago that the current Fee Ordinance was adopted she could not even recall the date. She said that there are several instances wherein the required professional review escrow is only \$500.00. Considering that the three Board consultants are going to review the application, two of them will do site visits and prepare written reports, all three will attend the meeting and, ultimately, the Board Attorney will draft a Resolution, you can see why an escrow of only \$500.00 is unreasonably low. She said that it is embarrassing because she routinely must ask applicants in those instances to instead please post \$2,000.00 because that is a more realistic estimate than \$500.00. She said that it is starting to cause problems because applicants look at the Ordinance and see where they are only required to pay \$500.00 and then question why they must pay more than the Ordinance requires. She also noted that she has had to consult with Mr. O'Brien in some instances in order to calculate the required fees for major site plan and subdivision applications because of the methodology used in the current Fee Ordinance, urging that a simpler method of calculating be implemented. She said that there are things in the Fee Ordinance that need to be fixed as well as updated, and felt that it is quite urgent that it be updated as soon as possible.

Mr. Connor said that he discussed the matter with Dr. Behr and he indicated that he also had some feedback from the Board of Adjustment and indicated that they have similar problems. He said that Dr. Behr advised him that applicants appear and indicate they feel that the Board has taken advantage of them because they are only supposed to do "x" and are spending "y". He said that, from a budgetary standpoint, he has seen where necessary work has been done and it ends up that the escrow account doesn't cover it and then Mrs. Wolfe has to attempt to recover the money and we get into a "debt collection" mode. From his standpoint as Chairman, he said that it has been a problem.

Mr. Piserchia asked what has to happen to alleviate the problem quickly.

Mr. Connor replied that we need to adopt new numbers. He said that Mr. Brigg's work will probably still be helpful, but it is a high enough priority that we should still have some staff time to at least look at some estimates as to what applicants really do cost. He said that Mrs. Wolfe and the professionals can sit down and review applications to see what the fees/escrows should really be and then review the fees in surrounding towns just to see that we are no so much above or below surrounding towns to be unreasonable – not that we should copy other towns, it should be based upon our review of expenditures.

Mr. Hoffman said that, as a practical matter since numerically or percentage-wise most applications that come before the Board of Adjustment and Planning Board end up being approved in one form or another. Practically speaking, since the Board is instructed not to sign off on the plans, the successful applicant is therefore unable to go forward and have no choice but to reimburse the municipality for any deficiency in Berkeley Heights if they want to go forward with their now approved project. It is those rare instances where there is a denial of the application where there is a problem. He cited an appeal, which is a question of legal interpretation more than approval or denial, and said that they sort of slip between the cracks of those that are not approved or approved in a manner that the applicant is proposing and then the town has no available remedy other than collection efforts.

Mrs. Wolfe added that, probably because of the economy, she is running into situations where applicants receive an approval but then have to save a little longer before they can begin their project and, therefore, they don't *need* their signed plans immediately – they have a year and, therefore, they don't feel the need to post the additional escrow until they need their signed plans. However, that leaves the town in a predicament as to how to pay the invoices that are coming in.

Mayor Harrington said that there is also frustration on the part of residents who come in and feel like they are being taken advantage of because the Ordinance says that they only have to provide an escrow fee of \$500.00 but in the end it cost them \$2,000.00. She said that we really need to try and give any applicant, for whatever their situation is, an idea of what their escrow fees are ultimately going to be. She felt that that is only fair and reasonable that our residents should expect this. She said that we do this enough that we ought to have an idea and be able to give them an idea of what it is going to cost and, at very least, to collect enough money to get them through one meeting, one review and, hopefully if everything goes well, they get their approvals and that is *all* it costs them.

Mrs. Wolfe said that she understood and agreed with Mayor Harrington's statement, however the problem she experiences is that she has seen bulk variances before a Board take ½ meeting if the applicant is very thoroughly prepared, and she has seen the same type bulk variances that could take three meetings because the applicant is *not* prepared, or that haven't provided all of the information needed.

Mayor Harrington replied that we should be able to provide an estimate assuming that the applicant is approved within the first meeting. If there are multiple meetings, it will cost more and we will work that as it goes. At very least, if they come in and provide the necessary information, go through the reviews, and go through a meeting and receive an approval, the delta should be relatively small at that point and we should be able to define that for our residents.

Mr. Piserchia felt that we should have enough in the escrow to cover a meeting and \$500.00 is not enough to cover a meeting and, therefore, it is misleading to the consumer. He said that, as a consumer, we would all rather know what it is. He said that he knew of at least two variance applications where the work has already been done but the applicant was required to seek a variance. Before they begin a hearing for something that they either knowingly or unknowingly had done, they really should deposit enough in their escrow. He said that it is "salt in the wound" that they don't have money to pay for the hearing that they should have had before they began construction.

Mrs. Wolfe replied that, in those instances, they could be the same required bulk variances as a simple deck. She said that her hesitancy is that if she provides an estimate to an applicant that it will cost between \$2,000. - \$2,500. and it ultimately turns out to cost \$4,000..... She said that she would need to have a crystal ball.

Mr. Dempsey felt that that is an argument that Mrs. Wolfe does not need to have with them. He said that we should put in wording an amount to be posted up front - a dollar value, but he felt strongly that this is not a position that Mrs. Wolfe should be put in.

Mr. Piserchia said that we all agree it is not \$500.00 and \$2,000.00 at least gets it more accurate.

Mr. Dempsey replied that it doesn't necessarily get us more accurate, it basically gives the Township more money to run its business because, if we don't have it in escrow and the Township is paying for it, it is out of money that is tied up for somebody else and that is not something that we necessarily want to do and we can't be in that game.

Mr. Connor said that we assume that it will take one meeting so we should add the fees of the three professionals for one meeting and a typical 5 - 10 hours of professional review which comes up to \$2,500.00 and that is the escrow amount. He said that in that way if the application only takes ½ meeting, money will be returned to the applicant who is then pleased. It then gives the applicant a whole different view and they come away happy rather than spending another \$2,000. and being angry. He said that there should be a couple of classifications that we think would normally take a full hearing and classifications which are decks, sheds and walkways where you can look at

them and say that they will take half of a meeting and 3 hrs. of professional time and have two levels and pick one of the two.

Mr. Hoffman said that one of the practical problems that we try to implement is that the applicant may be seeking *merely* to enlarge their house with a small addition or deck and it does not sound like, and probably is not, a big deal. But the numbers work out that by putting just on “x” number of additional square feet, it puts them over the allowable lot coverage. He said that the Board of Adjustment is very concerned about allowing any significant overage in lot coverage and precedent and so you get into hearings of what other lot coverages have been in the neighborhood and what might work for this area and not that area and it expands what started out to be a rather de minimis issue into a whole study of what is an appropriate lot coverage for different zones and uses and it makes it into more of a big deal.

Mr. Connor asked Mrs. Wolfe to lead an effort to get the matter organized and a recommendation back to the Board, including the professionals and Dr. Behr as Chairman of the Board of Adjustment because it actually affects that Board more than the Planning Board.

Mrs. Wolfe said that she would begin with a study of the actual final costs of applications for the past two years.

Mr. O’Brien said that he and Mr. Lemanowicz gather with Mrs. Wolfe on a regular basis to go over applications, etc. He said that perhaps at their next meeting he and Mr. Lemanowicz can give Mrs. Wolfe a hand as much as they possibly can. He said that another item that Dr. Behr has been working on is an Applicant’s Guide. He said that part of the Applicant’s Guide was to discuss the use of application fees and escrows and he believed that one of his ideas was to give a range of past costs for past applications. He said that perhaps that is something that should be reinforced emphasizing that the length of an application is a complete function of the completeness, appropriateness, and efficacy of that particular application.

Mr. Connor agreed that it is certainly true that an applicant can make a big difference on how long it takes.

Mr. O’Brien said that that led to the reason for the Technical Review Committee which was driven by the Zoning Board when they were getting applications that were just not that good and, therefore, they wanted a level of professional review to make sure that more, appropriate, and needed information was going to be part of those applications – to reduce the amount of time that the Board has to look at them, which also reduces the applicant’s cost.

Mr. Connor also noted that, during planning for this year, the Board was going to try to get to a renewable energy ordinance. He asked Mr. Lemanowicz to briefly mention the topic.

Mr. Lemanowicz said that, during his departure, Governor Corzine signed a bill that made alternative energy features an inherently beneficial use which means that, in cases where it is not a permitted use, it carries that extra advantage of an inherently beneficial use which is shared by churches, schools, and hospitals where, if you go for a use variance, it reduces the amount of work you need to do to get that variance. He said that right now the Township does not have an ordinance to address alternative energy facilities, whether they be wind turbines, solar panels, or wood doctors (which is essentially a wood fired boiler). He said that since we don’t have anything to work with, if an applicant comes forth, it will be a brand new discussion each time so there would be some advantage to having an alternative energy ordinance to go into whether or not you want a wind turbine in the front of a house or in the back, or do you want it at all? He questioned if you would want a height restriction on it. As to wood doctor’s he questioned if you would want them at all because they do have some issues with smoke, etc. He said that he has found and begun to collect a few ordinances that the Board can review if it so chooses. He said that apparently alternative energy features are here to stay, noting that he hears radio commercials daily now regarding the number of solar companies that are advertising that they will put solar panels on your house for free and that it will reduce your energy costs. He said that he was sure that the Board of Adjustment will be seeing such applications in the future.

Mr. Connor asked if an application for an inherently beneficial use means that they don’t have to show that it is a benefit, they would have to show that the detriment to the community and the residents outweigh the beneficial use that is already granted?

Mr. Hoffman replied that that is correct.

Mr. Connor said that, in order to do that, we probably ought to have some ordinances to cite because at this point in time we don’t have any.

Mr. Lemanowicz agreed and said that the issue with these facilities is that a lot of the implied detriment is visual and that is hard because you can’t really quantify it.

Mr. O’Brien said that any application for *any* renewable energy device would require a use variance before the Board of Adjustment at this point because our Ordinance does not recognize them. As Mr. Hoffman had pointed out, an inherently beneficial use satisfies the positive criteria which is necessary for the Board of Adjustment to grant a use variance.

Mr. Hoffman said that they then skip to the negative criteria if it is an inherently beneficial use.

Mr. O'Brien agreed and said that, if it is an inherently beneficial use, they get to skip ahead to the Sica balancing test which is the different negative criteria that only applies to inherently beneficial uses that regular applications don't have to go to so that the burden is even more lifted, or easier for the applicant, for those types of applications.

Mr. Connor said that, although not needed *immediately*, it is another item to add to our list.

Mr. Lemanowicz said that the key issue with eliminating the need to prove the positive is that the positive to these are generally limited to the homeowner. He said that you could say that it probably does benefit everybody eventually, but with an individual solar panel on a roof, that particular building gets the positive for the most part. He said that he did not think that they are going to install panels big enough to power their house and two others down the street – they are going to get what they need for themselves and so that positive proof could have been difficult.

Mr. Connor suggested moving on to the BMP Manual.

Mr. O'Brien said that the BMP Manual followed the Environmental Ordinances that were proposed because those ordinances required homeowner and small type applications that don't rise to the level of the State requirements to still do some type of stormwater mitigation. He said that was rain garden type of mitigation or other things that a homeowner could do. He said that he and Mr. Lemanowicz were tasked with coming up with that based upon Dr. Hamilton's draft of a few years ago. The idea was to hand it to a homeowner to offer different choices and sizes based upon the amount of stormwater that had to be mitigated. He said that it basically just needs to be finished. It was not finished because the Environmental Ordinances have not been completed. He suggested that, regardless of the Environmental Ordinances, this is probably a good thing to finish anyway because homeowner's do not fall under the State required limitations/threshold for stormwater and that becomes a local issue. Since we are doing this for homeowners, anyone who comes before the Board with a lot coverage or stormwater issue, we could hand out this type of manual and say that this is what we want you to do.

Mr. Connor said that, if you finish this and the Environmental makes some impact on the Manual, you could make a minor change in the Manual.

Mr. Lemanowicz said that there was also a discussion at the Township Committee of a Land Disturbance Ordinance which would basically take disturbances that might not necessarily come to a Board. He said that he had written one of these for another municipality because they were having issues with in-ground pools. A person would take a yard that had some slope to it, bring in fill to make a flat spot to install an in-ground pool, change the drainage for the entire area, and be a problem. Similarly, he said that a lot of septic systems are mounded now because you have to have a certain distance above ground water and you mound the system and change the topography and send the water a different way. He said that a Land Disturbance Ordinance was set up with limitations. He said that they had a minor permit and a major permit based upon the area of ground disturbed and what you had to do. It was also going to be applied to single family houses. For instance, if you had a buildable lot and a conforming house on it, you didn't go to a Board. But this set forth drainage requirements, what size the leaders had to be, etc. that the Construction Official could apply to help mitigate some of these issues.

Mr. Connor said that, given time and budgetary, we ought to finish this item. Since Mr. Lemanowicz has already done some work on land disturbance ordinances, he felt that we may easily be able to pick up something that has been done and change the names and review it.

Mr. Lemanowicz said that he could send the actual one to the Board members and then it can be discussed for better direction.

Referring to Item F "Time of Decision Rule Changes", Mr. O'Brien said that as of 5/5/11, the rules governing an application for development became those that are in place when a development application is submitted. This is a huge change. The Planning Board has responded with the Zoning Permit Ordinance and is finalizing the Technical Review Committee Ordinance and Revised Checklist Ordinance.

Referring to VI "Current Initiatives", Item A "COAH", he said that there is no change.

As to Item B "Building Design/Architectural Standards", Mr. O'Brien said that this is ongoing and that our last discussion was in the middle of 2010 at which time a panel discussion was held before the Board. It remains an ongoing discussion.

Mr. Connor asked how this relates to the Valley Road Business District?

Mr. O'Brien replied that it does in that, depending upon which way we go on Valley Rd., the architectural design for Valley Rd. has got to follow closely what form and function the types of uses will be on Valley Rd. Right now, the design standards on Valley Rd. are reflected in the Valley Road Master Plan which, at this moment, calls for mixed use buildings and allows various types of designs. If that is changed and the ordinances are changed to reflect a different way of developing Valley Road, then building design or architectural will have to follow whatever form or use is allowed.

He said that Morristown Rd. is an open item. The Township Committee secured funding last year from a resident on Morristown Rd. to investigate rezoning on Morristown Rd. The planner for the resident has been working on a

rezoning suggestion. He said that he reached out to him over the last couple of weeks to see if there was any progress, however he has not received a return phone call from him. He said that he discussed it with him about two months ago and he said that he was waiting for something from his client, but according to him it was underway.

Mr. Dempsey said that most of this goes down to prioritization. He was not sure if that could be done tonight, or the Board could ask Mr. O'Brien to take a stab at it and the Board could bless it at the next meeting. But he felt that everybody should know what the Board's priorities are.

Mr. Connor did not believe that it could be done tonight. He asked Mr. O'Brien to get back to the Board in two weeks as to what the priorities are.

Mr. O'Brien agreed to do so, but said that it would always be helpful if Board members would give him some idea as to what they see as the top priority or two and then he could take that consensus into account.

Mr. Connor asked the Board members to contact Mr. O'Brien directly.

The meeting was opened to the public for comments.

Mr. Dennis Sandow, Millington, said that he wished to cite two calendar benchmarks. He said that, if we have converted the 2009 Master Plan into a 2013 Master Plan, and apparently that is what we have done, then we have 28 months to get it wrapped up. He said that the last time this Board held an open public hearing on a Master Plan element was in May, 2009 when we talked about the Meyersville Element and that was 28 months ago. For 28 months, he said that we have had no public hearings or consideration for any of the additional Master Plan elements. He said that he did not hear anyone talk about the reality that 41% of all the residences in this town are on nonconforming lots and that does not include the residences which have been built on density modification which are today nonconforming, although at the time they were given variances to build. He said that that would add another 250 units to the 1,200+ which are currently on nonconforming lots. He said that this "land use elephant in the room" has a great deal to do with the upgrading and upscaling of our town because these lots can't be built with larger houses without coming to the Board for variances. He said that we have a situation where 1,200 houses in this town are on nonconforming lots and the Zoning Board is moving about 10 applications per year. He asked how long it will take to get some of these turn of the century row houses that we have in various parts of the town rebuilt? He said forever if we don't change the zoning regulations. He said that that is the elephant hanging over the land use and yes, it means that we have to make some changes for Valley Rd. and for Millington, but he hasn't heard anyone address the study which he put to the Board 3 years ago and 41% of this town has to come to the Zoning Board to do almost anything with their house.

Mr. O'Brien referred to Pg. 2, Item II A entitled "Ten Year Reexamination", third paragraph. He quoted that "Discussions centered on land use classifications and new designations of zoning districts that were more descriptive of the various zones". He said that he probably should have been more descriptive himself in describing it there, but among the things that were looked at were Mr. Sandow's study, as well as the recognition that a number of our zones, as currently laid out, do not accurately reflect what is on the ground. He said that that is part of the ongoing discussion, although he should have been more clear about that.

Mr. Sandow thanked Mr. O'Brien. He said that the Historic Preservation Element is going to require a lot less work than the 6 hours because, as he read the most recent draft of the Historic Preservation Element, there is no land use involvement. It is all signage, current budget stuff, and walking tours. He said that the contention he has always had is that there really needs to be protection in the Zoning Ordinance for historic properties in order to avoid situations like we had with Barrett Roofing, for example, where he had to come begging for permission to continue a use which has been going on since the 1890's because the Master Plan had rezoned out from underneath him and made his property part of an Office Zone even though he had an ongoing business. He said that that entire train, which also affects Meyersville Rd. and Runyon in Millington, is entirely omitted from the draft you are seeing of the Historic Preservation Element. He believed that the Historic Preservation Element requires more land use protections built in for the historic property. He said that the only Queen Ann house in town has been recently rezoned as Office which means it can be knocked down and has no protection if that Office Zone is ever developed. He said that the Historic Preservation Element needs to be a lot stronger and hasn't been discussed before this Board in 3 years. He said that they took a step backward in what they presented and the review by the professionals will take a lot less than 6 hours and the public hearing is going to take a lot more. He said that the Conservation Element has to include two items that we have been dancing around. One is the flood wall and the other is trees. It was his contention that we have got too many trees in the town and the proof of that was that he was without cable service for 6 hours. He said that it wasn't the water and it wasn't the wind – it was the dead trees which are all over this town, especially near utility wires. He said that we need to have focused attention on the Conservation Element vis a vis protecting the health and welfare of our residents.

(Dr. Behr arrived at 9:35 P.M.)

Mr. Sandow said that we talked about the Millington plan and, of course, Millington is a disaster in the 1996 Master Plan because there was a large chunk of land rezoned as office and diagrammed as multifamily, both within a few pages of each other and both in the same Master Plan. He said that we have the Tifa issue and noted that 7 of the Board members sitting on the Board pay more taxes than Tifa does. He said that it is a very underperforming property and there is a great deal of opportunity – no doubt it will be contentious, but it has to be done. He said that the Board talked about Main Ave. and, of course, nothing happens there. He said that there are some issues on Main

Ave. which he presented to the Board 2 years ago having to do with the fact that about half of the properties on Main Ave. on a random mixed basis are residential properties and that constrains what the business property owner on the adjacent lot can do. He said that that needs to be thrashed out in order to make it economically more productive for the owners of the business lots to develop and max out their properties. With regard to public facilities, he said that Mr. Sheola presented a draft (in late 2009) and the only thing that has happened to change the situation with public utilities since then is that the Police Dept. has flooded twice since then. If the Utilities Element doesn't deal with the Police Dept. in some cogent way, he said it is not doing its job. He said that there are a couple of items that were missed in Mr. O'Brien's synopsis that must be done within the next 28 months. He said that there is the Utilities Element and obviously a part of it has to be the lifting of the 11 year old sewer ban and what this town should do as part of its Master Plan to get the sewer ban off the books so that we can, in fact, have a plan. He said that we can't ignore that reality and the Utilities Element. He said that we have a Circulation Element which has to do with things like bicycle and walking paths, etc. Recently the Township Committee sent to the County applications for open space purchases which included walking paths and bicycle paths which are not in the Master Plan Circulation Element as we now know it. He said that 10 years ago we opened up a bicycle trail in the Hicks Tract which was not in the Circulation Plan of the Master Plan. He said that we need to address the Circulation Element and at least bring it up to date with what has happened in spite of the 1996 Master Plan and possibly even make it a little more attractive. He said that in 2002, a lot of people got together and hacked out a river trail. He said that we keep talking about redeveloping the river trail and he didn't see any action to do it and the Dept. of Public Works told him that it is a nightmare to maintain. He asked if the river trail is part of the Circulation Plan or the Recreation Plan, or isn't it? He said that he did not know and it has got to be addressed. He said that the Open Space Committee recommended to the Township Committee to apply to the County for money to buy a building to use as an indoor recreation venue, pool hall, or whatever. He said that new business is not in the Recreation Element or the Open Space Element. He asked how much it will cost to put an attendant in a closed building and make it available to the residents for indoor recreation, slot machines, or whatever they had planned. He said that it was all invented out of thin air and not a part of any part of the Master Plan. He said that he did not understand how we could have a Master Plan that doesn't deal with the plan, whatever it may be. He said that the Housing Element wasn't mentioned which is also a key piece and very closely tied into COAH and very closely tied into the recent debacle on Valley Rd. where housing seems to have taken some disfavor with the members of the Township Committee and some members of the public. Nonetheless, he said that we need a Housing Element and that needs to be on Mr. O'Brien's list. He said that all of that within the next 28 months compared with what we have achieved with the Master Plan in the last 28 months – tipping the scales. He said that the Tree Ordinance has got to come back before the Township Committee and it has got to involve some heavy cutting along the utility R.O.W.'s. He said that it is unconscionable that we should have had the outages that we did and those trees are identifiably aged and we've got experts in town who claim to be able to spot decayed trees. He said we should get them out with some chain saws and take down some of this stuff. He said that 6 days of outage is unreasonable and unconscionable and that he may as well be living in parts of Iraq. With regard to fees and escrows, he said that there is more to it than just collecting enough money and, somehow or other, we've got to make the procedures work. He said that he just recently heard a horror story from a member of the Chamber of Commerce about having to come back to the Zoning Board 6 times for a simple subdivision which involved moving a lot line. He said that he knew that there was a lot of complexity to it, but the fact is that this property owner hired professionals 6 times, paid for Board professionals 4 times, was adjourned twice, and all for the simple moving of a lot line. He said that somehow or other we are making the process too complicated and thus too expensive. He said that the property owner told him that I could have actually accomplished all my rebuilding for the amount of money that I have spent in escrow fees and my own professional's fees, and that is probably correct. With regard to renewable energy, he said that "I am with you on that", but renewable energy ties in very closely with two other sections of the Master Plan. One is Conservation (specifically tree cutting) and you cannot put up solar panels without cutting trees. He said that he brought that to the attention of both the Planning Board and the Township Committee in the past and we've got to decide what we want – trees, or renewable energy. He said that this is a Master Plan decision and you can't deny people the right to cut trees on their property if they are going to install solar panels, so it is part of the Utilities Element and the Conservation Element, as well as being a separate stand along study that we'd like to get done before the end of the year. Finally, he said that he wished to remind the Board that for 6 years we have been promising members of the business community an off premise sign ordinance and we still don't seem to be able to put that on our agenda even though a year ago this month he sent proposed language and a pictorial survey of off premise signage to the Planning Board as an input from the Chamber of Commerce and he would like to see the Sign Ordinance on the Board's list of things to do.

Mr. Connor thanked Mr. Sandow for his comments.

Mr. Sandow said that he was scared for the fact that for 28 months there has been no definitive bringing of Master Plan elements to the public and we have got only 28 months left to go and we've still got 11 elements undone.

Mr. Connor said that he was frustrated that we have worked on various and sundry major projects and have seen those sit and nothing has been done. He said that the Board ends up working and putting things forward to the Township Committee and there is no return.

Mr. Hoffman said that what the Planning Board did several months ago is one step below a formal public hearing but held vast opportunities for public input on issues that are of vital importance to the municipality and which would in turn, if voted in a certain way, end up being part of an official public hearing. He said that he was simply noting as a fact that the Planning Board was not "out to lunch" – the Planning Board was busy dealing with vitally important housing and land use issues that eventually frequently find themselves the subject of the formal public hearing. He felt that the record should be clear that the Planning Board was doing its thing, and diligently.

Mr. Sandow said there was no question about it that Mr. Hoffman made a good point and he did not suggest that the Planning Board hasn't been doing its job. He said that he was just saying that there is a whole lot more job to do within a limited amount of time and all of the hearings that were held here in the past 28 months, to be precise, were hearings on the ordinances that would implement the Meyersville Plan, which ordinance never got to the Township Committee, and the ordinances that would implement the Valley Rd. plan which took, as he recalled, 7 or 8 meetings and went to the Township Committee and then came back. He said that those were important and they had to be done, but they were ordinances to implement two sections of the Master Plan and we've got eleven sections of the Master Plan to go.

Mr. Dempsey said that we are making a checklist and there are a lot of other pieces that were sent up. He said that the Tree Ordinance took several meetings and then there was the checklist. He said that we did help the community and noted that the Mason application took one meeting because the applicant knew exactly what she needed to bring in, it was discussed, finalized and done in one meeting. He said that we *are* making progress and going down that road.

Mr. Sandow replied that he was with Mr. Dempsey, but for the past 28 months he has not been able to see where that road is and he will not tell how many meetings of the Planning Board have been cancelled in the past 28 months because we couldn't think of anything to talk about.

Mr. Connor replied that, if you look at the past 1 ½ years since he has been Chairman, you haven't seen very many meetings cancelled. He said that we have spent a lot more of our own money doing it because in the old days we tried to have a meeting when there was a hearing and steal a couple of hours from clients. He said that we haven't done that. We have had meetings and paid for them. He noted that he has been on the Budget Committee every year and every year that he has been Chairman, at the end of the year he has had to go and look for money for the budget simply because we can't completely fund what we are doing. He said that that is going to continue with the budget problems that we have.

Mr. Sandow suggested that Mr. Connor write a letter to the Mayor and the Township Committee asking them to write a letter to the Governor and ask him to delay our need to meet the 2013 deadline for the Master Plan. He said that that is the reality and we have used that excuse for the past 3 years and will probably use that excuse for the next 2 years and he predicted that he will find himself back up here in December of 2013 with this set of notes.

With regard to Pg. 8, Item B – “Building Design/Architectural Standards”, Dr. Behr said that his anticipation is that he and Patrick Jones will have something for the Board in about a month.

(Mr. Hoffman left the meeting at approximately 10:15 P.M.).

X X X X R E C E S S X X X X

DISCUSSION

VALLEY ROAD BUSINESS DISTRICT

Mr. O'Brien said that, over the last several months, the Board has discussed at some length what the future of the Valley Road Ordinances should be. This is in response to a revised set of ordinances that have been returned to the Board from the Township Committee. In essence, he said that the Township Committee sent the draft ordinances back to the Planning Board suggesting that all residential uses be removed from Valley Road via the ordinance that had been proposed by the Board. Over the last several meetings, he said that the Board has discussed whether or not residential uses should or should not be allowed and, if they should be allowed, they should be contained in certain areas, if there should be certain *types* of residential if they are allowed such as a condominium/townhouse – some type of a denser building, rather than a single family home – what styles would be allowed, and possible locations. He said that the core question in front of the Board is whether or not residential is or should be a use that is allowed along Valley Road. If it is, then what parameters follow that? If it is not, then that would have to be removed from the ordinance and then the Master Plan Element on Valley Road would need to be made consistent with the ordinances. Right now there is that very large inconsistency between what the Valley Road Business District Element says, which calls for residential uses, and the current ordinances which 1) don't have a Valley Road Business District, and 2) don't allow those residential uses anywhere along Valley Road in the current business districts. He said that it is coming after some months of discussion as to what the Board's pleasure is going to be and where we move from here.

Mr. Connor noted that he did not have these discussions during the summer simply because he wanted to have as full a Board as possible because this is fundamental to where we are going to go on Valley Road.

Mr. O'Brien said that it is a policy matter and asked what the Board would like to do?

Mr. Connor said that there is residence; non-residence; and then within the residence side would be the type. He said that he would like to hear discussion and asked Mr. O'Brien what type of residential development is currently allowed in the Master Plan?

Mr. O'Brien replied that mixed use residential is currently permitted only above the first floor of any building. In response to Dr. Behr, he said that Pg. 3 of the Valley Road Master Plan, Item 2 - “Community” reads “Allow small scale residential uses on Valley Road above the first floor”.

In response to Mr. Smargiassi, Mr. O'Brien said that further down in that same section it states "Do not allow single family detached residences along the Valley Road Business District".

Dr. Behr said that single family doesn't really address the question as to whether or not something would be at the first floor.

Mr. O'Brien felt that calling for it above the first floor would eliminate the first floor. He said that live/work residential units were allowed with the work space on the first floor. He said that the actual percentages, numbers, and specifications were in the suggested ordinance.

In response to Mr. Connor, Mr. O'Brien quoted from the same section which states "Allow small scale senior housing along Valley Road to take advantage of the proximity of existing retail and services". In response to Mr. Dempsey, he said that that one does not specify anything about the first floor, but since it states that small scale residential uses above the first floor are permitted, he would assume the same for senior housing.

Mr. Connor felt that it would be a matter of interpretation.

Mayor Harrington felt that the question at hand is, what do we want it to say?

Mr. O'Brien said that what we want it to say is reflected in the ordinance. He said that the Master Plan is always a little on the nebulous side because the nuts and bolts are laid out in the ordinance, so this gives you the guidance. While it says that you want residential, in general, above the first floor, then it says allow senior citizen housing, then it is up to the Board in the ordinance section whether or not you keep that above the first floor or you allow some kind of a center development. He said that, in the proposed ordinance, we allowed senior citizen housing.

Mr. Piserchia said that it was never quite clear to him if senior citizen assisted living is congregate care?

Mr. O'Brien replied that they are different types.

Mr. Piserchia asked if any of those types are considered inherently beneficial?

Mr. O'Brien replied, "All of the above". He added that they don't *have* to be included. He said that inherently beneficial helps an applicant when the use is not allowed in the zone. But if you allow it, then they can come in and build. He said that inherently beneficial kicks in when it is not allowed in the zone and that is an arrow in their quiver to get an approval.

Mr. Connor asked, if there are no areas in the town that allows senior citizen housing, is that a problem where one could almost get a builder's remedy because it is not a permitted use?

Mr. O'Brien replied that we do allow senior citizen housing in several other zones, however most are maxed out (but there may be room in one or two). He did not believe that it rises to the level of allowing a builders remedy because, at this point prior to the elimination of COAH, we had been in compliance with all COAH regulations. He said that a builders remedy kicks in when you have no COAH protection and, until the demise of COAH, we were protected by COAH because we had been compliant with their regulations. It is the municipalities who took no action with COAH who are open to a builders remedy lawsuit because then they say that the town has not taken any steps to zone for this obvious need that the State says everybody has got to take care of.

Mr. Connor said that we were also in compliance with the amount of senior housing that we were required to have by COAH, therefore there really wasn't any risk to us. We had extra available.

Mr. O'Brien said that we had credits at the end of the last round that we maintained to COAH that we still had at the beginning of the current round.

Mr. Connor said that the issue is residential versus non-residential and if you believe that there should be some sort of residential, what sort of residential makes sense? He asked the Board to comment.

Mr. Butterworth felt that the mixed usage should be in. It is in the Master Plan and also goes along with the idea of making the investment on business property more attractive. He felt that it should be limited to one story above the businesses. As Mr. Sandow had pointed out, he felt that there should be a limit as to how many units can be built. He said that the big fear that has been raised in the town is that you could have 2,000 units, whereas in reality you are lucky to get 40. He said that one way to resolve the controversy is by putting a limit on the number of mixed use units. He also felt that the size and number of bedrooms should be limited. He felt that that would take the controversy away from the mixed use.

Mr. Dempsey asked if you would want to see it limited in the area of Valley Road as well?

Mr. Butterworth replied that he didn't think it matters because he felt that the current lot size and coverage will dictate more than anything.

Mr. Dempsey said that he was playing the devil's advocate just because these are all the questions we are going to get when the public comes back out in front of us.

Mr. Butterworth said that, from the report that Mr. Sandow gave us, it is going to be self limiting because parking is going to be the ultimate challenge because if you are going to need 2 parking spaces per apartment and you have a small piece of property with 3 housing units above 3 stores, you would need a lot of parking.

Mr. O'Brien said that parking is shared under the current proposal, so you would not need the extra residential parking because the commercial would provide it.

Mr. Butterworth agreed, but said that the lot coverage will be a limiter. He felt that there will be a big limit as to what you could do and people are not taking that into consideration. He said that with the density the big argument was whether the density should be 10, 12, or 5. Taking the figure of 12, he said that people just multiplied the acreage by the density and said that this is 2,000 units and he felt that that was the big controversy and why it was bounced back to the Planning Board and why, during the semi-public hearings when Kohl's made a presentation, so many people were upset.

Mr. Smargiassi noted that Kohl's had more than 40 units and they weren't over a business on the second floor. They proposed something else that actually wasn't allowed under the current proposal. He concurred with Mr. Butterworth's point that people saw the number of units, more than the 40 or so that Mr. Sandow had initially commented on, but there are ways for people to potentially propose additional units. He asked Mayor Harrington and Mr. Piserchia what the vote was when the Township Committee voted and sent it back to the Planning Board saying no residential?

Mayor Harrington replied that it was a unanimous vote. She added that she did not know if that means that all of the members of the Township Committee were opposed to residential. It was just an attempt on their part to reach consensus to try and move the ordinance along.

Mr. Smargiassi said that it came back as a "no", which is rather definitive. He asked Mayor Harrington and Mr. Piserchia if they felt that there is a middle ground that might work, or was the vote "no residential"?

Speaking for himself, Mr. Piserchia said that, to Mr. Butterworth's point, it is the unknown that troubled him. To have the limit be determined by something that is vague because of parking or because of this, troubled him. He said that, if you put a limit of 100 units on the Valley Road Business District, first come first served could be the property across the street if somebody purchased it and they could put all 100 units there and then the rest of Valley Road doesn't have the opportunity to do exactly what he felt it is we intended. He did not think that the original intent was to have 100 units across the street. He felt that the intent was to help encourage a mixed use type of environment. He said that, if the owner of Valley Mall wanted to put a second floor on his property and put in 100 residential units, that is also not was envisioned.

Mr. Butterworth said that that was the unknown. Could they do it – would they do it?

Mayor Harrington said that additional language could be added to an ordinance that says a maximum of 100 units across the Valley Road Business District but no *single* development could contain more than 25 units which would throttle that even more, which would mean that if somehow the property across the street ever gets developed, then the maximum they could put on that particular lot would be 25 even though there is a limiting factor across all of the Valley Road Business District.

Mr. Dempsey stressed that the numbers we are talking about are fictitious numbers just to make a point.

Mayor Harrington agreed that they are not based on any fact whatsoever.

Mr. Smargiassi believed that it was Mr. Batista who brought up the concept of something along those lines. He felt that there probably is a need to say that in some places along Valley Rd. we need to reserve for potential residential for future (something similar to) COAH or for future senior citizen housing. At a minimum, he felt that the Board should definitely try to plan for that and take that one step further if there is something along what Mr. Butterworth or Mr. Batista proposed – that would be a step above that which can be discussed further. He said that the next question becomes how much further up the chain do you take that?

Mr. Piserchia said that the majority of the Township, if not unanimously, agrees with Mr. Smargiassi's point and battled back and forth between legal advice as to whether we should include a COAH reference in light of where the court case is before the Supreme Court, or whether we shouldn't. He said that he would take guidance as to whether this Board wanted that in and whether the lawyers would agree that if the decision of the Supreme Court is "x" and this is clearly what he would support the COAH allocation to be, as opposed to always the fear that if you haven't allocated anywhere for the COAH requirement, a developer could put it wherever they want.

Mr. O'Brien said that the COAH matter before the Supreme Court revolves around the methodology that was used by the people at COAH for the last amount of required housing given to the municipalities. The fact of affordable housing and municipal obligation is *not* before the Supreme Court. No matter what happens in the future, there will be a municipal obligation to provide affordable housing. Whether we have met that because of our past credits, or whether there is some future change to that, we do not know. His advice to the Planning Board and Township Committee has been consistent and that is that we should plan for affordable housing in some form or other so that we are not caught at some future stage with, not only a Supreme Court decision, but a state mechanism that has been put into place that then requires us to do something.

In response to Mr. Piserchia, Mr. O'Brien clarified that no matter what happens, each municipality has an obligation to provide affordable housing. Have we met that obligation by virtue of our past credits? He said that today our answer is "Yes". He said that future methodology may change that on us – we don't know. Will a methodology be brought up in the future similar to what they tried to do, which is the cleanest part of what they did 5 years ago which was to say, if you build "x" number of market rate houses, you have to provide "y" number of affordable houses. He said that we don't know.

Mr. Piserchia asked Mr. O'Brien how he would suggest it be worded?

Mr. O'Brien said that he would start a draft with both Mr. Hoffman's and Mr. Pidgeon's assistance with something to the effect that any or all future affordable housing obligations could be met in the Valley Road Business District by providing whatever State mandated affordable housing is required.

Mr. Piserchia said that, at the risk of speaking for the Township Committee, he felt that the Township Committee would support that. He said that he, himself, would support that.

Mr. Connor asked if there were any Board members who believe that the necessary provisions that would allow COAH type housing (if we got into the position that we had to provide such housing) wouldn't be appropriate?

Dr. Behr said that he completely agreed with what Mr. O'Brien had stated. He said that it has to be included with enough protective language as Mr. Hoffman and Mr. Pidgeon may direct us to say that this is a permitted use in the Valley Road Business District.

Mr. Dempsey asked if he was saying the *only* housing on Valley Road would be COAH if needed?

Mr. Connor replied, "No".

Mayor Harrington said that she wanted to point out that she may disagree with Mr. Piserchia a little bit as to whether the Township Committee would actually support that because the advice that they were given from Mr. Pidgeon was that we did not need to include it at this time and so there were a number of members of the Township Committee who were happy to *not* include it.

Mr. Connor said that the one thing that was clear in the past was that COAH may or may not have recognized our surplus. That was never an issue that they were even going to recognize our surplus in the first place. Secondly, given the fact that there will be some new method of determining what the number of houses are, there is absolutely no guarantee that our numbers couldn't substantially change and that could be done relatively quickly with the Supreme Court decision and the development of new language and we could be sitting here with 50 units of housing that we are now having to put in, or it could be that for every "x" number of residences, we have to provide a certain amount of housing. He said that there are a number of formulas. He saw no downside risk of putting in protective language that is only triggered if we have COAH provisions. If there is a downside to have that protective language, then he said he would like to hear it.

Mr. Smargiassi concurred with Chairman Connor. He added that the other flip side is that it may go lower, but we don't know. If there is no downside that protects us, he felt that that is obviously a good thing. He said that his other opinion is that, if you have this, you would not have COAH or low income only housing. He said that he wouldn't want to see, for instance, a 20 unit complex go in and all 20 units be low income housing. He did not believe that that would be a smart move for the Township or residents. He said that he would rather see some co-mingled housing unit which he felt would benefit the Township and low income residents equally.

Mr. Connor invited Mr. Sandow to speak.

Mr. Sandow said that one major issue that no one has talked about is whether or not these low income units are rental or ownership. He felt that there is a generalized inference that they have to be rentals but they don't have to be rentals.

Mr. O'Brien said that a percentage under the old round had to be rentals.

Mr. Sandow said that we all have this vision of apartments over retail in Gillette and he felt that that is coloring our acceptance of the general situation. He said that you can do ownership, low income, stripped down condos and that is perfectly legitimate under COAH assuming that you can find buyers that can get mortgages and still be low income, but one of the advantages of stand alone units is that you don't have to have parking spaces for them because they all have a driveway and they all have a one car garage built in and so, therefore, you don't have massive parking lots. He said that you can create a condo situation as we have in Chestnut Run and Stonehedge where you have a fairly dense side by side installation but you don't have massive parking lots. You have streets with driveways and built in garages and that is a much more attractive situation than you have when you try to have rental units on top of retail and, in fact, he said that there is no other way to put housing on top of retail other than to make them rental because you simply can't do a mixed condo over retail development. It has got to be a rental which means that you have got to find a developer who is willing to become a slumlord.

Dr. Behr asked Mr. Sandow if he was really sure about that. He said that he could remember touring places here in New Jersey where there were 3 story units. The first floor was all commercial and it seemed to him that above those were two stories of small condos that people would buy.

Mr. Sandow replied that that very well might be. However, he said that he does not know of any in town and he hasn't researched it elsewhere.

Dr. Behr said that he has seen units like that in New Jersey.

Mr. Sandow replied that he felt it would be a nightmare because one of the pieces of fallout from a condo development is that you have a condo association which creates rules.

Dr. Behr replied that it was not a condo. He said that, from his understanding, you are buying that unit.

Mr. Sandow said that that makes it a condominium ownership. He said that to protect your investment you want to be sure that your neighbors and the people who make pizza below you all conform to a set of rules. He said that he was not sure how you enforce a condo association if you have a business property underneath you.

Dr. Behr said that his confusion persists because he was not convinced that what he was looking at was following what Mr. Sandow was talking about.

Mr. Sandow said that it was clarified for him during the presentation of the development across the street. He said that a townhouse is a form of construction where units are side by side, separated by fire walls. A condominium is a form of ownership. Often condominium ownership is applied to townhouses and what we call a condominium association is really an association of the owners of townhouses in a neighborhood. But if you have separate ownership of defeasible square feet underneath the same roof, that is condominium ownership, regardless of what exists and presumably the residual pizza parlor underneath would also be a condominium ownership of the first floor of the building.

Mr. O'Brien added, "Or rented out by the condominium association which owns all of the common areas".

Mr. Sandow agreed and said that that is another way to look at it. So now you've got 3 or 4 owners on the second floor who are looking for somebody to occupy the pizza parlor, otherwise all of their taxes are going to go up.

Dr. Behr said that he wondered if where he saw it 5 years ago is still standing and if it has tenants and is viable. He said that it would be interesting to see what that experience would be because we are living in a time when people are trying a lot of different things and maybe some of them work that are more innovated. He said that he just did not know.

Mr. Sandow said that America on Rye has been vacant for 20 months because the landlord would not bring the rental price down to where the renter could afford it. He said that that is what happens and somebody has got to pay those taxes. He said that low income condominium ownership situations would not want to take on an additional tax burden because they couldn't rent out the property underneath them. He said that he was suggesting a stand alone development of the sort that we have on Cooper Lane targeted at low income construction and low income families to buy it. He said that perhaps that is an attractive alternative to what happens when you have rentals over pizza places. He said that he also wanted to point out that if we go along with Mr. Butterworth's suggestion of one floor of residences over only, then your numerical limit, based on parking and 60% lot coverage, is about 5 residences per acre. He said that you have slightly bigger retail because you don't have the third floor of residences to provide parking for, so retail could be a little bit bigger and the second floor maxes out at 5 per acre on the theoretical basis. In order to get 25 residences under that scenario, you'd need a 5 acre lot and we don't have that many 5 acre lots on Valley Rd., especially not available for redevelopment, although there are 2 or 3 very deep lots on the north side of the road where a deep retail development wouldn't work, but a deep stand alone residential development might work.

Mr. Dempsey said that when we passed the Ordinance, it went up to the Township Committee. We had a concept that someone came in and showed us and he kept on thinking two terms: "knee jerk" and "pendulum swing" and he felt that what went from one end of having residential to having no residential and that we owe it to the Township itself and, no disrespect for the Township Committee, not to the Township Committee but to the people themselves to hear something in between because there was a lot of emotion. He felt that if the Board makes a decision for no residential right now, without another comfortable full house meeting, what people might think is a median and get their water mark on that. He said that if we have to do something for protecting the town for COAH and everything we can, maybe we just write that in as COAH only, if that is what the median comes out. But he felt that we owe it to them why we think we need it – tax ratables, the ability to build this or that, and let them voice their opinion one more time.

Mr. Briggs felt that one of the intents of some of the constrained lots, especially down towards Main St. in Stirling, where people only had so many options of what they could do with their property, and because of the ability for residential to be included, gave them another opportunity to improve their property and get another income source and perhaps improve the lots down there.

Mr. Dempsey added, or perhaps even sell it to their adjacent neighbor to allow them to do something.

Mr. Briggs replied that he would definitely agree with that. He said that that was part of the original idea, not necessarily a 100 unit view, but 1 or 2 lot consolidations.

Mr. Dempsey said that he did not think that we should be saying that we have a 300' deep lot that would be perfect for this type of one so that one lot can do this. He said that that is what we have right now – 20 different zones. He said that we don't want to do that either. He felt that we need less, but maybe 1 is not enough.

Mr. Connor said that he believed that we need to have some limited residential whether it is over retail or stand alone. He felt that it is a requirement if we are going to develop a real business district that will be viable and that will attract investment. He also liked the idea of encouraging developments where there is ownership. He said that a lot of the comments he heard were about people coming in and renting and moving out and a real concern that you will turn this into an area where you just had renters moving in and out and attracting investments that wouldn't really meet our requirements and residents who may not have the stability that we would want. He said that ownership ties them into that and he was not sure we put together an ordinance where we say we want there to be ownership but somehow that appeals to him is emphasizing types of structures, some sort of limited size townhouses. He said that he was not saying 200 townhouse units or something like that, but some limited size townhouse units which could incorporate, if required, COAH type housing to the extent that it needed to be. He said that he agreed with Mr. Smargiassi and we don't want to just have COAH housing because that is almost developing a slum before you start and that is not one of our objectives, at least to his mind.

Dr. Behr said that he agreed with Mr. Piserchia that it is exactly the wrong thing to do to simply set arbitrary limits because that is simply the wrong approach to take. He felt that what we really need to do that we have been crying for and missing is a clear understanding of what is real and at the very least to say where is it possible to have some kind of mixed use that makes sense from a number of perspectives. He said that, if you've got areas because of their environmental conditions that are simply not going to be viable, let's identify those so that we begin to take a look at Valley Rd. and answer the question, if there were residential units, where might they make the most sense. He said that he would be strongly in favor of making the language of the Master Plan and the Preamble of the Ordinance as absolutely concrete in terms of the intention of residential use in this area because that would go in part to Mr. Connor's point of ownership. So that we are saying this is the kind of usage that we want to encourage, but he felt that Mr. Sandow has actually helped us in making some cogent arguments in saying that we probably do not want to specify necessarily it has to be one story above or it can't be all residential. He felt that what we have to do is to write the kind of ordinance that says "where it makes sense" in terms of the viability of the entire area, that's where the residential goes and you provide guidelines that say under these circumstances it could be allowable to have, let's say 3 stories. He said that there may be places where we want more density. He said that there are a couple of points that we are forgetting about the residential uses. He said that the point here is not to scatter residences around Valley Road. He said that the whole reason to have residential units in Valley Road, if we go back to the discussions of 2007 and 2008 when we worked on this for *ages* was that you wanted to change the pattern of Valley Road from what is now essentially a highway use where people drive, stop, do their business and leave, to an area where there are sufficient numbers of residents to create some kind of sense of mini-community and that was the intent. He said that if you go back to his quote on June 14th, he had stated that the vision for downtown Long Hill depicts a vibrant hub of community activity - that was the language and the intention. He said that we envisioned a future in which the downtown area is highly accessible to pedestrians, hikers, transit and automobile modes where people will come to stroll, walk, talk, work, attend cultural and entertainment events, buy food and drink, conduct civic and other business, and live. For that to take place, he said that you need to have viable residential units that make sense for the geographic area that they are in. He said that that is what we need to be looking at, so he felt that the next step is to say, can we identify areas where residential units would make sense and where they would not make sense from topographical, parking, or other factors. He said that you also have to have limits and find ways of saying would there be a maximum in any one area? He felt that that is an important limit to put in place because you want to identify the things you don't want and make sure that the ordinance keeps that from happening while allowing the kind of housing that you do want, if you do have housing. He said that there is another point that we haven't talked about. Development has to be, if it is successful, a win-win for all of the people involved. It must be a win for the town. If you have commercial businesses there, it has to be a win for the commercial entity because you are creating an area that is going to attract people so that you are specifically doing things with the purpose of helping the businesses thrive, because your goal is that you don't have empty stores and that whatever goes in there is going to be supported, in part, by the residences around. He said that it has to be a win for the town, a win for the developer (or they won't build it), and it has to be a win for the people who live there. If it doesn't meet the needs of all of the stakeholders involved in the creation of it, it's going to wind up meeting the needs of none. So we have to be thinking about this in terms of what is going to be a sustainable, functional, attractive mix of residential and commercial in some fashion without limiting it to have a store above or one story. He felt that you can control it by saying how many units and there are other ways you can control it. But, if you are going to do it properly and meet what the vision of the Master Plan was, that is the way you have to do it. If you don't want to do that, if you are saying that you want to put the minimum amount of residences in for COAH or something like that, you really have to go back and redo the entire Master Plan. If you are going to do that, he said that he strongly supported what Mr. O'Brien was saying – that you would have to reopen it to the public again. He said that he was *completely unconvinced* that the opposition that we heard to residences in Valley Road represented anything like a majority view of the people of Long Hill Township. He said that what we heard was a number of citizens who are really opposed to it who showed up but there is nobody in this room that can say we are confident that if we say no residential development on Valley Road, that that's going to be the finding if people understood it, acceptable to all of the people in Long Hill Township. He said that it simply would be acceptable to those people who showed up and protested. He did not believe that planning by protest is a very viable approach. To summarize, he said that he felt that we should have it and be careful to define what is it that we are looking for in terms of the kind, the number, and

perhaps the size, but he did not think that we arbitrarily want to limit it. He said that he strongly endorsed what Mr. Connor had said about ownership. He also said that one way out is to accept COAH and have Mr. Pidgeon and Mr. Hoffman do their legal best to make sure that safe and make it a conditional use with the kinds of careful provisions that he had talked about that says here is what we are looking for that is in the Master Plan, it is also in the Preamble to the Ordinance so that the intention and purpose is part of the Ordinance which means you can, therefore, use it and it becomes then the responsibility of the developer to say that he wants to do this kind of residential – maybe just residential, mix, whatever they want to do, and they have to prove to us that it meets the vision of the Master Plan.

In response to Mr. Smargiassi, Dr. Behr said that we might want to accept COAH (carve that out), but other than COAH, residential would be a conditional use and be very clear about a couple of things. What are the hurdles that they have to pass (and do some real thinking on that)? Remember that it has got to be an attractive win-win for the developer or it won't get built and, therefore, you won't get your Master Plan. If it is unattractive and is not a win-win for the developer, if somebody comes in, they are going to create a win-lose and, therefore, if it is punitive for the developer, if they do build it, all of the amenities that we are looking for will simply disappear because they will not be getting the money for the amenities. So it has to be a win-win; it is conditional; and you get very clear on saying this is what we want and why we want it. Maybe we can't demand ownership, but we can explain why ownership is an important part of the concept. He said to take a look at where it makes sense and where it might actually be a good thing maybe to have a little bit more density.

In response to Mr. Piserchia, Dr. Behr said that he was not prepared at this point to say what those conditions should be because he would need to talk about it and listen to other people and also get Mr. O'Brien's advice. He said that you might say, if it's all residential then it has to be combined with other kinds of things. He said that you could put the condition in that the design is going to have to include public spaces and public amenities.

Mr. O'Brien said that the last COAH regulation required a minimum of 25% rental properties.

Mr. Connor advised Mr. O'Brien that this matter needs to be addressed in an expeditious way. He asked him if he would prefer to work on it himself or with a subcommittee of the Board.

Mr. O'Brien said that the Board has discussed two items this evening. The first was the COAH standard and as Mayor Harrington pointed out, Mr. Pidgeon was entirely correct when he said that we don't have to do anything right now. However, his advice has been to take care of it now so that it is on the books rather than to react when it comes down from Trenton, but you don't *have* to.

Mr. Connor replied that he felt that we ended up agreeing that that was a good idea and he felt that it could be written without Board assistance.

Mr. O'Brien said that the other piece is residential as a whole, which the entire Board has commented on.

Mr. Connor said that that is the issue he felt needs to get worked.

Dr. Behr said that, if there were a subcommittee, he would volunteer to serve on it.

Mr. Piserchia said that there has to be a limit number put on it. He felt that that is what really got into the fray of the public because it started out as 1,200 and it grew to 2,000.

Mayor Harrington agreed and said that that is what generated all of the emotion and, unfortunately, trying to then inject facts into that emotional argument became a losing proposition.

Mr. Piserchia felt that it was sufficiently vague where it got legs because it *was* vague.

Mr. Sandow said that one of the issues that always comes up when you talk about adding high density residential housing is the impact on the schools and there was a *frightening* number that came out of the School Board meeting last night – frightening to him anyway. He said that the principal of the Millington School (grades 2-5) gave her class size for this year and the second grade class was more than 20% smaller than the fifth grade class. If you assume that the second grade class represents the size that the school system will be six years from now, he said that you are talking about a school system that has got about 800 students in it. Although the buildings we constructed a few years ago have 1,200-1,300 student capacity. He said that we residual taxpayers are paying for what might be 20%-40% over capacity in the school system simply because our younger neighbors aren't bearing children as fast as they should be. He said that it continues to go down and it was rather dramatic. He said that the Echoes headline two weeks ago said an enrollment of 940 was projected and Dr. Rovtar announced last night that the enrollment was 917. Even two weeks later, they lost 23 projected enrollees and the second graders are so much less than the sixth graders, it is almost frightening what is going to happen to the people who have to continue to pay off his social security. He said that they aren't going to be there. He said that right now we could use more students in the school system.

Mr. Connor asked the Board members if there was a consensus for a subcommittee or not. If not, he said that he and Mr. O'Brien would work something out.

Mr. Smargiassi said that if there is going to be a subcommittee, he would strongly recommend that one of the members of the Township Committee also be on that committee to get a better sense of what may or may not fly within what the Township Committee has already discussed.

Mr. Connor asked, if there is a subcommittee, of those members present who is willing to serve?

Mr. Briggs felt that Mr. Smargiassi's suggestion of a Township Committee serving was appropriate because he felt that a liaison is needed and is sorely missing at times.

Mr. Smargiassi volunteered to serve.

Mr. Dempsey asked if it must be a sitting member of this Board and a member of the Township Committee, or could it be somebody else?

Mr. Connor replied that it was his subcommittee, so he gets to appoint its members. He said that, if there is a subcommittee, Dr. Behr and Mr. Smargiassi would be two good people to serve.

Mr. Smargiassi said that he was not sure he would want to be on a subcommittee if there is not a representative from the Township Committee serving on it. He did not believe that it would be productive.

Dr. Behr agreed with Mr. Smargiassi.

The meeting adjourned at 11:05 P.M.

DAWN V. WOLFE
Planning & Zoning Administrator