

MINUTES

PLANNING BOARD

FEBRUARY 14, 2012

LONG HILL TOWNSHIP

CALL TO ORDER AND STATEMENT OF COMPLIANCE

The Chairman, Mr. Connor, called the meeting to order at 8:04 P.M. He then read the following statement:
Adequate notice of this meeting has been provided by posting a copy of the public meeting dates on the municipal bulletin board, by sending a copy to the Courier News and Echoes Sentinel and by filing a copy with the Municipal Clerk, all in January, 2012.

PLEDGE OF ALLEGIANCE

ROLL CALL

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

Christopher Connor, Chairman	Charles Arentowicz, 2 nd Alternate
Mead Briggs, Member	
Joseph Cilino, Member	
Kevin Dempsey, Member	Barry Hoffman, Bd. Attorney
Jerry Aroneo, Mayor's Designee	Kevin O'Brien, Twp. Planner
Guy Roshto, Member	Thomas Lemanowicz, Bd. Engineer
	Dawn Wolfe, Planning & Zoning Administrator

Excused:

Brendan Rae, Vice-Chairman
Donald Butterworth, Member
Michael Smargiassi, Member
Sandi Raimer, 2nd Alternate

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

APPOINTMENT OF ADMINISTRATIVE SITE PLAN WAIVER SUBCOMMITTEE MEMBER

Mr. Connor stated that the Administrative Site Plan Waiver Subcommittee currently has work ahead of it and one of its members is ill and the other is out of town. Noting that he is the 1st Alternate member, he wished to appoint a 2nd Alternate. He suggested the appointment of Mr. Cilino as 2nd Alternate, if acceptable to the Board. Mr. Cilino indicated his willingness to accept the appointment.

Mr. Briggs made a motion to approve the appointment of Mr. Cilino as 2nd Alternate to the Administrative Site Plan Waiver Subcommittee which was seconded by Mr. Dempsey.

Upon a voice vote, all members present were in favor.

APPROVAL OF MINUTES

The minutes of October 25, 2011 were approved as written on motion by Mr. Dempsey and seconded by Mr. Connor. Mr. Briggs abstained as he was not present at that meeting. Mr. Cilino, Mr. Aroneo, Mr. Roshto and Mr. Arentowicz abstained as they were not members of the Board at the time.

The minutes of November 8, 2011 were approved as written on motion by Mr. Briggs and seconded by Mr. Dempsey. Mr. Connor abstained as he was not present at that meeting. Mr. Cilino, Mr. Aroneo, Mr. Roshto, and Mr. Arentowicz abstained as they were not members of the Board at that time.

The minutes of November 22, 2011 were approved as amended on motion by Mr. Briggs and seconded by Mr. Connor. Mr. Dempsey abstained as he was not present at that meeting. Mr. Cilino, Mr. Aroneo, Mr. Roshto, and Mr. Arentowicz abstained as they were not members of the Board at that time.

PUBLIC QUESTION OR COMMENT PERIOD

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

Mr. Connor said that there will be a chance for the public to comment after each of the Status Update items contained under Item 9 on tonight's agenda are discussed. He noted that there are a number of items which were forwarded to the Township Committee and they are now starting to take action.

DISCUSSION – PROPOSED TECHNICAL REVIEW COMMITTEE

Referring to the Township Committee's discussion on the proposed Technical Review Committee (TRC), Mr. Roshto said that at the next Township Committee meeting they are inviting whoever would like to attend and they will answer questions on whatever issues they may have.

Mr. Connor replied that he wanted to be responsive on the matter.

Mr. Roshto asked if it was the Planning Board's desire that the Township Committee continue the discussion or bring it back here for further discussion.

Mr. Connor replied that he only viewed parts of the meeting on Sunday but thought a first reading on one of the ordinances was done.

Mr. Roshto replied that they were about to do a first reading on the Technical Review Committee Ordinance and that it is with the Checklist. He said that one of the issues that came up was that he did not think that Mr. Pidgeon was

prepared to discuss the Checklist, so he wanted to break it into two. He said that he had a number of technical questions. He felt that that is the one ordinance that is in front of the Township Committee that it appears that it will pass, although he did not want to speak for the entire Township Committee. However, he said that there are a number of technical issues that were mostly raised by himself that he would like to get answered first just to make sure that it is exactly what they want. He confirmed that they plan to do that on February 22nd, which is the night that the Tifa presentation is expected to take place.

Mr. Connor said that eventually the Planning Board needs to be a part of that discussion and a couple of the members will be in the audience just to listen.

Mr. Roshto said that the first reading on the TRC will be held on February 22nd and the second reading will occur approximately 30 days later.

Mr. Hoffman said that, if you have some questions of significance as far as the substance of that proposed ordinance, it wouldn't hurt to try to get clarification for your benefit even *before* the first meeting. He said that, technically and legally, it does have to come here and it will come here for official comment and further recommendation, but even going in if you know of specific issues right now, it is an opportune time to discuss them.

Mr. O'Brien added that you also have staff here tonight which you will not at the Township Committee meeting.

Mr. Roshto replied that it is whatever this Board would like to do. He said that they will certainly discuss it at whatever point you want, adding that he did not know if he was necessarily prepared to do that tonight.

Mr. Hoffman said that one problem is that once it is formally introduced on first reading, it can be amended in minor respects, but if it turns out that those amendments are deemed to be substantial (and he deferred to Mr. Pidgeon), then it would have to be formally reintroduced.

Mr. Aroneo agreed that Mr. Pidgeon has given the Township Committee guidance on it and he did not believe that the things they were talking about were substantial (but relatively minor), however the entire Township Committee wanted clarification on some of the points in the proposed ordinance. Some of them were very small things such as "will this streamline the process?" and, of course it will.

Mr. Connor said that there were some things on redundancy.

Mr. Aroneo said that another question was whether or not this would really help the applicant if they are forced to pay professionals and he couldn't remember what that arrangement was, noting that he had worked on it in 2010.

Mr. Connor clarified that the purpose of the TRC is to make things less costly and that doesn't mean that our professionals work for free. What it means is that our professionals are going to work more efficiently and, in total, there should be less cost to the applicant simply because they won't have to come in twice, so they won't have to pay twice for a lawyer or other professionals.

Mr. Aroneo recalled that there was a review committee at one point that was doing pro-bono work for applicants in a very short period of time, such as 15 minutes.

Mr. O'Brien said that that is what was done this evening during the Application Review Committee (ARC).

Mr. Aroneo said that that may have been what he was thinking of.

Mr. Roshto asked what the difference is between the ARC and the TRC and a number of committees like that. He wanted to make sure that we all understand what we are about to approve.

Mr. Dempsey felt it was best to answer questions in front of the Township Committee. If changes are substantial, he said that it *should* come back to the Planning Board and if they are not, it should be passed.

Mr. O'Brien said that the ARC is a *conceptual* body where somebody will come before them and say that this is what they are thinking of doing and then ask if it is a good idea or a bad idea; will it require Planning Board or Zoning Board approval; and what type of relief would I need if I decide to do this. The TRC would be charged with taking an actual application that comes before this Board and, as part of the completeness process (which is required by statute), our staff would meet with whomever it is – the homeowner, a commercial applicant, or their professionals and would try to make sure that everything that is required to be in that application is there rather than, for instance at a recent meeting of the Zoning Board, we got part way through an application and realized that there was more to it than they had said in their application (or that we knew of) because certain information wasn't provided....

Mr. Roshto interrupted Mr. O'Brien and said that that was actually a rhetorical question and he was not intending to have this conversation tonight because they are going to have it at the Township Committee meeting.

Mr. O'Brien understood, but replied that we won't be there.

Mr. Connor asked Mr. Roshto to arrange to briefly review the comments he had at the last meeting with Mr. O'Brien (and possibly Mr. Lemanowicz) and then Mr. O'Brien can provide him with something in writing and maybe agree

to what you are doing. Rather than have him there, he said he would attend himself and maybe most of the issues will be resolved and, if not, he will be available to answer questions.

Mr. Roshto agreed to do so after tonight's meeting if there is time.

Mr. Dennis Sandow, Millington, asked why this TRC does not have at least one appointed member of the Board on it rather than all professionals.

Mr. Connor replied that that was a discussion that was held with the professionals and the Board and there were concerns that an attending Board member might privately influence what was going on and it was the feeling of the majority that not having a Board member on the TRC was probably a reasonable thing to do. It is still open for discussion and he was relatively neutral on the point because he could see advantages and potential disadvantages for having a Board member serve on the TRC.

Mr. Aroneo believed that the comment came from the public and the concern was that, with all respect to our professionals, a Board member *should* be present for the applicant's interest – especially the economic interest of the applicant with regard to the clock running if they are being billed for that.

Mr. Dempsey said that he had thought of the financial side of someone coming in and taking advantage and that he had always looked at it as more of a completeness checklist, making applicants better prepared so it was really all about getting it right and not making a judgment. He said that the Board members sitting here are supposed to be making a judgment as to whether they want something or not and he did not want to go down the road of an ARC or an actual committee meeting where an applicant is instructed not to do this or that. He said that it is more of a completeness review only and not really judging what the content is, which is why he did not object to *not* having a Board member serve on it.

Mr. Briggs added that an applicant will also have their professionals there so that, from an efficiency perspective from professional to professional, it would seem to be more productive. He said that, if a Board member were to serve on the committee we would probably want to have *more* than one member to avoid some of the concerns that were raised as far as a "sway" or moving it along particular lines.

Mr. Connor said that the Completeness Review Committee consisted of the Board professionals and Administrator and two Board members and it worked okay. He said that he sat on the Committee and felt that it had some value, but the problem with it was that it depended on the Board members being there and so you had to get everybody there at the same time and it met once a month and sometimes that was not the appropriate thing to do. He noted that the professionals are more likely to make the time to meet. However, he said that if you get people on the Committee who are in the community, you can manage that too. He did not have any strong feelings either way and said that we can have that discussion at the next meeting.

Mr. O'Brien said that one of the primary reasons the Board decided against having Board members on that body is because the merits of the case were not to be discussed at this meeting. The only thing to be discussed was whether there was enough information for the Board to take action and whether all of the requirements of the Checklist were taken care of and, as we are reviewing that Checklist and application, based on our experience and the community, we can look forward and determine if we have flood plain, steep slopes, or other considerations that we know exist and we take care of them now as part of the Checklist so that there is not a surprise when it gets to the Board. He said that, if you have a Board member on this type of committee and comments are made by a Board member, you run a risk of having those comments interpreted as Board direction to an applicant to present an application in a particular way or revise an application in a particular way. Whereas, the way that the Board set this particular body up currently is technically routed and *not* based on the merits of the application whatsoever and keeping it at that professional level.

Mr. Roshto said that one of the things he had raised as a question is that it seemed to him that we are taking some power away from the applicant in the sense that, if it doesn't get through the TRC, they can't come and talk to us. He said that that is the way he read that ordinance.

Mr. O'Brien replied that it has got to go that way anyway. They still have to complete a Checklist by statute and still have to be declared complete by statute and that is currently done by a body of Mr. Lemanowicz, Mrs. Wolfe and himself.

Mr. Dempsey said that they are formalizing it and actually giving it to them in a single spot, concise, so that they can read through it and know exactly what is needed. He said that, the first time you look at it, it appears a little scary but when you realize that all you want to do is add a deck it is about 1/5 of what you need to do, but we wanted it all on one document.

Mr. Roshto felt that it is a very good thing and will save residents/applicants a lot of money.

Mr. Dempsey added, "And time", and that they get it in and get on the schedule faster.

Mr. Roshto felt that it is a good thing and if those kinds of answers were provided that night, the Township Committee probably would have passed it.

Mr. O'Brien said that this process does not change as the result of the Ordinance in front of you – there is not a change. He said that we are doing it now but we are just not doing it as well and we think it can be done better because we think that we can save applicants time by doing this. He said that they have to go through this procedure anyway, both by statute and by Ordinance.

Mr. Connor said that there is one more consideration and that is the new law that says time of decision and time of completeness of application, which hasn't been well defined yet. He said that we don't want to have a situation where somebody comes in, makes an application that is clearly not something that is complete but somehow they say that they are going to put this in and now they have a certain period of time from the time they submit it and the interpretation that is being supported is that the clock doesn't start until we say that the application is complete. He said that we are trying to make sure that we get as much information and that we have a proper application and we start the clock when it is complete and technically ready to go rather than when they submit it and say that the clock starts February 14th but, in reality, we really don't have a good application until April 1st. In that case, we want to start the clock on April 1st. He said that this is probably going to be tested in the Courts and we at least want to have a process where it is clear when the application starts and when the clock starts to run.

Mr. Aroneo said that that was discussed at the Township Committee, not necessarily in terms of the new law about the time of decision, but in terms of when the Planning Board has to respond to an application.

Mr. O'Brien said that there are timelines on everything and there are statutory deadlines for how long you have to review it and how long before it gets to a Board, all of which are imposed by the statute.

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DISCUSSION

DRAFT ENVIRONMENTAL ORDINANCE

Mr. Connor asked Mr. O'Brien and Mr. Lemanowicz to review the draft Environmental Ordinance.

Mr. Lemanowicz said that the Environmental Ordinance came to be basically because of some contradictions in the Ordinance, primarily in the area of stormwater. He said that it is very difficult to follow which regulations you are supposed to be going after. If you are very fluent in the law, you can make some educated guesses on where you are supposed to be going but even with that there are contradictions. In fact, he said that the Ordinance requires applicants to follow a document that was prepared by Somerset County that Somerset County doesn't even use anymore. He said that we also wanted to attach it to other existing regulations because one of the problems that they saw is that the Ordinance tried to stand on its own, and as the references that the Ordinance used were updated, the Ordinance stayed where it was and everything else moved ahead in time and then it was left behind. He said that Ordinances, as we know, take a lot of effort to change so it was found to be easier and more efficient to attach the Ordinance to the Residential Site Improvement Standards (RSIS) and to the NJDEP standards, so as the State regulations evolved, Long Hill would evolve with them. He said that it made it easier on applicants because they knew what they were getting into because RSIS is statewide and there are no surprises because that is where applicants and their professionals lose their way a little bit because you have an Ordinance that is unfamiliar and doesn't follow any of the other things and it is nice to see something familiar which results in less review comments and a smoother process.

Mr. Dempsey recalled that there were a few times when we had stricter guidelines and we added wording saying that ours supersede theirs unless theirs is stricter.

Mr. Lemanowicz agreed.

Mr. Dempsey said that stormwater was one of them and there was a lot of debate and "how much" and different things like that as far as when to come to town to find out – best practices and things like that and what we did put in there was, if ours is better than the State's then ours supersedes the State's, but if we don't specifically call it out we refer to the State's ordinances.

Mr. Lemanowicz said that the advantage in doing it that way is, if the drainage document that we are referring to had 20 different regulations or points and we wanted to change 3 of them, that is fine because you still have the other 17 that are going to carry on with life and we don't have to worry about that. He said that it is easier to maintain and follow. The other issue that we had was that some of the critical areas requirements defined a drywell as a critical area so it put a drywell in the same environmental category as a wetland, with setbacks, etc. which clearly doesn't work. He said that you had to put a drywell a certain distance off the house because the house had to be a certain distance off a critical area which, again, could be a wetland. He said that it was very confusing so we tried to redo the Environmental Ordinance so it is easier to use. He said that there are two basic categories of drainage design – major development and a non-major development. A major development is defined as something that disturbs more than an acre. If it disturbs *more* than an acre, it goes to the NJDEP regulations on the stormwater management. If it is *less* than an acre, then the Township has the power to set things and that is what we also did here and did it consistently with common practice, got rid of the Somerset County drainage design that dated back to the 1970's. He said he and Mr. O'Brien attended a Township Committee meeting where the Township Engineer made some comments and they were committed to paper and that is basically where this process ended because we got started with Valley Rd. and some applications. He said that we are going to have to go back to see the Township Engineer's comments and merge them into here and then go back to the Township Committee. Once that is done, he felt that

you will see a lot less in the way of stormwater comments because what they are supposed to be doing will be much clearer. Being that stormwater probably makes up for ¾ of a hearing when you are discussing a project, he said that if you can clarify exactly what you want so that a design engineer can understand it the first time and things go a lot smoother.

Mr. Connor said that he watched that meeting on television and remembered the Engineer's comments and it seemed to him that they were relatively consistent with what we wanted to do - it was not anything major. He said that there were some comments about how you might move one section to another area for consistency. He asked where we are in that process? He asked, if we reconstruct the document that includes the Engineer's comments, should the Planning Board readopt it and send it up to the Township Committee again?

Mr. Lemanowicz replied, "Right". He said that once those changes are made we will bring it back and discuss it with the Board and then send it back to the Township Committee.

Mr. Connor said that what this says is that the one you have now can be left on the shelf because it sounded to him like the ball is back in our court.

Mr. Roshto felt that it has always been in the Planning Board's court. He said that Mr. O'Brien sent us a list of the ones the Township Committee should be acting on and that is one that is not on the list.

M. Lemanowicz said that one of the other things the Ordinance does is that it begins to refer to a *local* BMP Manual. He said that the State has a BMP Manual which is a document that sets forth how to deal with the stormwater management regulations. The stormwater management regulations have requirements with respect to the rate of runoff, groundwater recharge, and the removal of all of the suspended solids. There are chapters in there about *how* you can do that if it is an above ground basin, a below ground basin, a vegetative filter, etc. There are all different design aspects as to how that is to be done. He said that he created a *local* BMP Manual which deals with that sort of thing only on a much smaller scale. He said that the BMP Manual from the State is looking to control runoff from a target, or a 20 lot major subdivision which is not what this town sees much of anymore. When a resident comes in on a 1 acre lot and adds a 1,500 S.F. or 2,000 S.F. addition and they get the BMP Manual and they are talking about 5,000 S.F. retention basins, it's totally out of scale. What he tried to do was to present the ideas in the BMP Manual on a single lot scale so it is usable. He said that Mr. O'Brien is looking at it and it will follow right behind, if not be simultaneous with, the Ordinance.

In response to Mr. Dempsey, Mr. O'Brien confirmed that the BMP Manual must go before the Township Committee.

Mr. Aroneo said that it should probably be done in advance of this because this Ordinance refers to that Manual and one of the Township Engineer's comments was that the Ordinance refers to a Manual that to his knowledge (and also Mr. Aroneo's knowledge) has not yet been created.

Mr. Lemanowicz agreed and said that they have to be adopted in the correct order.

Mr. Connor said that we must finish the Manual and make whatever revisions in the Ordinance that we need to make and then send the package up to the Township Committee. He sounded to him like we are mostly done, with modest work. He said that considerable work was done, not only by the Planning Board, but by the Environmental Commission including members of the Environmental Commission who sat on this Board for a number of years. He asked Mr. O'Brien if he had any thoughts on how long it may take.

Mr. O'Brien replied that it could be done by the next meeting or the meeting after. He said that if there is a first reading at the Township Committee of any ordinances that require comment by this Board and, if the Township Committee meets next week, then 2 weeks from tonight would be your opportunity to review any of those ordinances.

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

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DISCUSSION

DRAFT SHADE TREE ORDINANCE

Mr. Lemanowicz said that the draft Shade Tree Ordinance began before he was appointed as the Board Engineer, therefore he deferred the matter to Mr. O'Brien.

Mr. O'Brien said that the draft Shade Tree Ordinance was sent to the Township Committee in 2010 and the Township Committee asked the Planning Board to reconsider it and the Planning Board sent a Resolution to the Township Committee in February, 2011 urging the Township Committee to consider the original draft, as it was written, without change and up until now the Township Committee has not taken action. There were a lot of discussions concerning the Shade Tree Ordinance, a number of which were originated by both the Shade Tree Commission and the Environmental Commission and the Board discussed the importance of trees to the environment in the Township as well as the effect the trees have both on any particular individual's property and property surrounding that property because every time you do something to any individual property, there are effects to

neighboring properties. For instance, he said that the Ordinance right now does not allow anyone to clear cut a lot because if you were to clear cut a lot that had a significant number of trees on it you may be creating a problem for people who are below you, in terms of elevation, runoff, etc. Amongst the discussions that this Board had were the effects that tree removal would have on surrounding properties and the watershed, so the thought was to limit the amount of clearing that could be done while allowing it to occur under specific circumstances and, in his opinion, there were some very liberal circumstances given where property owners could remove trees under a number of various scenarios but the idea was to try to discourage that clear cutting or large scale removal of trees because of the effects upon neighboring properties.

Mr. Connor said that the more trees you have, the less runoff you have and, ultimately, if you have more runoff it ends up in Stirling. He said that one of the requirements before coming to this Board is to show that the proposed construction provides no additional runoff. He said that there were a lot of questions about the freedom people should have and the fact that it is their property and if they want to cut down their trees they should be able to do so. Yet on the other side, it affects not only immediate neighbors but it affects everybody on both sides of the hill. While you should have individual rights, he said that there is also the better good for the Township and he was not sure that discussion properly made it into some of the things he heard while at the Township Committee meeting.

Mr. Dempsey said that he was vocal is asking to send it back up to the Township Committee and did not feel that the Board got clear direction of what the Township Committee wanted. He said that the two biggest things he had heard were about what gives us the right and can we *legally* do it? He said that there is a precedent (which he believed to be Jackson Township) which was upheld by the N.J. Supreme Court. He said that we didn't get a feeling of a direction but what the Board got from the Township Committee yesterday was that they talked about it and here are our concerns. He did not think that that ever came through from the Shade Tree Commission for the Board to have something to talk about. He said that it was kind of like "No" and we said "Yeah". He felt that if the Board had better, more documented, dialogue over the Township Committee's concerns, it would absolutely come up with a compromise.

Mr. Aroneo said that he was on the Planning Board at that time and so was Guy Piserchia and they differed over that and Guy would come to this Board and tell the Board how happy he was with that Ordinance and he felt that he was doing a good job in explaining how *unhappy* he was with it. He said that it was the property rights issue and, yes, you may legally take that property but, philosophically, he was opposed to that and Guy was in favor of it. He said that there were also other members of the Township Committee who were philosophically opposed to it also and one member of the Township Committee at the time was saying that was the taking of his tree. He said that he wanted to harvest his tree, perhaps, and sell it and sell the wood and here you are putting restrictions on that without compensating him for that. He said that those were two of the things and there were *many* reasons why it was rejected immediately. He said that they had several public hearings on the Ordinance and there were a lot of people in the audience and a lot of residents came to talk about it. He said that it was a pretty big item at the time and the Township Committee voted against it (he thought by a vote of 4 to 1).

Mr. Dempsey asked if it was voted on (because he didn't believe it was)?

Mr. Aroneo replied that Mr. Dempsey was absolutely right in that it *technically* wasn't voted on but was rejected by all but 1 member. He agreed that it was never introduced, but yet they had several public hearing on it. His recollection was that two of the biggest issues were property rights issues and.....

Mr. Dempsey interrupted and said that, if it was property rights issues, he would lean straight the other way and said that we then don't even want a tree ordinance.

Mr. Aroneo replied, "That's correct". He said that the Township at the time decided "no tree ordinance". He said that we have a tree ordinance, by the way, and it's not governing individual trees. He said that you can't clear cut in advance of a development.

Mr. Dempsey said that you can clear cut your own property so it is a matter of what is clear cutting.

Mr. Aroneo agreed, but said that the issue that was brought to the Township Committee to prevent those clear cutting situations in advance of development. He said that the issue on Highland Ave. was raised and it was one of the examples being used at the time.

Mr. Dempsey replied that the amount of water that flows through his yard now is his problem and he has to live with it, but it is *unbelievable*.

Mr. Aroneo did not think that the draft Tree Ordinance would have prevented that because he was before a Board and had to get approvals and the Board decides which trees you cut so that wouldn't have helped that situation at all.

Mr. Dempsey agreed that it probably wouldn't have helped him, but when somebody else does it on a different property, it could help somebody else.

Mr. Aroneo said that he was sorry if Mr. Dempsey didn't get the message but the answer really was that the Township Committee did *not* want to pass the Tree Ordinance.

Mr. Dempsey replied that he did not get that message at all.

Mr. Aroneo said that that was not the first time that a Tree Ordinance was considered by the Township Committee and it has been done over the years and failed every time.

Mr. Connor said that the personal problem he had with that is that he lives below a property where they cut all the trees and put in a swimming pool. He and his neighbor ended up spending between \$10,000.00 - \$15,000.00 for taking care of their runoff because it turned their backyards into a swamp and there was no way he could do anything. He said that he was told that he could sue the neighbor, but he did not want to sue over \$15,000.00. He said that if there was some sort of ordinance that he had to abide by before he cut down 20-25 trees on his property where it said he could only cut 3 trees, maybe he could have figured out how to put a swimming pool in without cutting the whole back yard. He said that you say there is an ordinance, but it is nonfunctional.

Mr. Aroneo said that at one time there weren't as many trees in the town and that this was a farm community. He asked, what if you want to farm and a person wants to cut down 20 trees and plant corn – why should we govern that?

Mr. Dempsey asked if it would be prudent to have the Township Committee officially vote it down or keep it in limbo? He said that right now we kind of feel it is in limbo.

Mr. Roshto recommended having the Township Committee send some direction about where they are as a Committee.

Mr. Briggs said that the Township Committee has two new members and one of his concerns was that the Ordinance was never properly told to the Committee as to the outline. He said that the people who wrote it (David Welch and the Tree Ordinance group as part of the Planning Board) never properly got to sit down with the Township Committee and discuss its outlines and goals.

Mr. Aroneo disagreed and said they *did*.

Mr. Briggs replied that they barely got to speak.

Mr. Aroneo said that it was an open meeting and they were invited several times. In fact, he said that they changed the date of the meeting a few times when David Welch couldn't be there. He said that it was definitely done and he spoke in front of the Township Committee, as did the Planning Board Chairman.

Mr. Connor agreed that he was there too but would have preferred 15 minutes up front to do a presentation of what was done, including the rationale of *why* we did it. Instead, he said that they sat there and it was an open meeting to the public and they were in an “answer the question” mode rather than being able to present to the Township Committee, in 10-15 minutes, the rationale. He said that that would have answered a number of questions.

Mr. Aroneo replied that, procedurally, it was different than that. He said that the first time they discussed it the Shade Tree Commission was present with David Welch and they had the opportunity to present the Ordinance.

Mr. Connor replied that the Planning Board wasn't involved in that meeting.

Mr. Aroneo replied, “The first time, you are right” and added that the Shade Tree Commission certainly had the opportunity to discuss it.

Mr. Connor replied, however, that this was a Planning Board recommendation to the Township Committee and it seemed to him that it would be appropriate that the Planning Board be the one that did the presentation with the assistance of the Shade Tree Commission rather than not having the Planning Board there the first time.

Mr. Roshto said that, in general practice, he would agree with that however, if philosophically the Township Committee reads an ordinance and says that this ordinance is just not something that it is willing to stand behind, then it doesn't matter if you come up for 10 minutes or 2 hours, the answer is going to be the same – it is a philosophical statement. He said that if there are 4 members of the Township Committee that philosophically believe that the residents of this town want to go in a direction that is contrary to what the Planning Board is suggesting we should, as a Township Committee, be giving you that guidance.

Mr. Connor and Mr. Aroneo agreed. Mr. Connor said that he would like to hear more comment from the Board members.

Mr. Aroneo said that, as Mr. Briggs had pointed out, there are two new members and one member who was in favor of it is still there, so you might want to test the water again with it to see if anything has changed.

Mr. Briggs said that he would suggest that, if we have that 10-15 prelude, members of the public who hadn't read the ordinance or were watching on television would have an opportunity to come in an opine based upon what the direction is because people such as himself and two other members who have been prone to tree cutting and flooding may have had their own desires to be heard rather than those who may want to harvest trees or plant corn. He said that those farms are no longer now and they are housing developments and we all know the impact of flooding on the community. He felt that people should be given the opportunity to hear what it is about and comment rather than

have 5 people judge, based upon their reading of it. He felt that it just needs to have more air time than the predetermined.

Mr. Aroneo replied that he would say that it had plenty of air time on this Committee.

Mr. Briggs replied that not as many people watch this.

Mr. Aroneo continued and said that it certainly had plenty of public comment period on the other Committee as well. He said that several times it was discussed and anyone could say anything they wanted. He said that they sat there for hours actually on multiple times and had hours, literally hours of it, and so he thought it was all done.

Mr. Dempsey replied that if you go back to the records of *this* Committee, you'll find that there was a light turnout from the public and they were *in favor* of it. He did not remember a strong voice against it outside of Mr. Aroneo himself. He did not remember a string and said that he was surprised to see it at the Township Committee when it was coming through.

Mr. Aroneo said that, at the same time, he was also the Shade Tree liaison and the Ordinance started at the same time it started here – it was actually starting a competing Ordinance with the Shade Tree Commission and he actually talked to a lot of people to try to merge those two together so that they could join forces, but at the beginning they were acting independently of each other. He said that one of the things he did with the Shade Tree Commission was tell them that he would support them because he was their liaison and help them move things along but, philosophically he was opposed to this and believed that the Township Committee would be opposed to it also. He said that he told them that the entire time. He said that it was communicated but he felt that some people wanted to advance it anyway. He said that he was not opposed to bringing it up again and, if it is something the Board wants, the Township Committee should take the time and review it again.

Mr. Connor said that the Planning Board moved forward simply because there had been some lack of movement and we moved forward in parallel for a while and then we sat down and what was presented to the Township Committee was a joint document put together by the Shade Tree Commission and the Planning Board and so what was presented were the results of both of the Committees and was the full agreement of both Committees. He added that it took considerable work to do that and the Planning Board was more concerned with the rights of the property owners than the Shade Tree Commission was. He said that he would like to hear comments from the public.

The meeting was opened to the public.

Mr. Dennis Sandow said that he hated to rehash specifics of the Tree Ordinance but felt that it might use a little bit more work before this Board considering that there are new faces on the Board. Without regard to the property rights issue but strictly with regard to some of the “surrounding stuff”, he said for example, if you cut trees and are required to replace them, then you must hire a certified tree expert to supervise the planting of the replacement trees. He said that that presumes that a landscaper with a backhoe doesn't know how to dig a hole to the proper depth to plant a tree. He said that that is his business and he did not think that you need to have the homeowner pay a professional tree expert to come and supervise the landscaper. He said that when a landscaper plants a tree on his property it seems to grow and when his wife plants a tree on his property it seems to grow, regardless. He said that the second issue has to do with the enforcement. According to the Ordinance, he said that the enforcement of this is left to a tree enforcement officer. He said that the tree enforcement officer is the Chair of the Shade Tree Commission or the designee which means that we are giving, essentially, police enforcement power to an appointed person who has the right to appoint a substitute and there is nothing that requires that the enforcement officer, in fact, be qualified to enforce foliage. It troubled him that any random member of the Shade Tree Commission could wind up coming out and saying, that in his/her judgment that tree is not dead and, therefore, you cannot cut it down. He did not mind if you are going to put a limit on the number of trees that are going to be cut *if* you are going to do that and he did not mind the exclusion that diseased trees can be cut for free, but he certainly felt that the qualification of the person who determines whether a tree is diseased or not ought to be spelled out and it should not just be *a member* of the Shade Tree Commission or the designee of the Chair. He said that a third item is the evenness of enforcement. He said that the author made a couple of contradictory statements in talking to the Township Committee which means that, depending on which sentence you picked upon, you could go either way on his thoughts. One statement was that this would create a level playing field and that all residences would have to live by the same rules and then he used the words “this was a trip-wire” and went on to say that it is an opportunity for the tree inspector or the Shade Tree Commission to come out and make a judgment about whether or not this particular cutting was excessive. He said that you can't have even enforcement and judgment in the same Ordinance, or at least you probably shouldn't because that obviously is subject to a whole lot of interpretation and, possibly, influence. He said that either you are going to enforce an ordinance or you are not. The final issue that troubled him is the conflict between this ordinance and environmental. He said that, if you are going to support alternative energy as part of your environmental program in this Township, one of the alternative energy things is solar panels. If you are going to install solar panels, he said that you are going to have to cut trees because a solar panel is worthless if you don't have line of sight. He said that his neighbor put solar panels up and thinks he did the right thing. He is a math professor by trade, so he assumed he did the numbers and did them well but, in the course of doing that, he had to cut about 20 mature trees in order to get line of sight even though he was putting the panels on a second floor roof. Obviously, there is no place to replace them on his lot because it is heavily wooded. He said that you can't put the new trees where the old trees were because they will just block out the sun so, unless he were to put 80 trees in his front lawn (which is improbable), then his recourse under this Ordinance would be to pay the Shade Tree Commission a penalty so that they could plant trees elsewhere and that would have run, according to the numbers, to

about \$16,000.00 which would be his additional tax under this Ordinance for installing solar panels on his roof to comply with our substitute energy policy. He said that we have got to decide which is more important, the trees or encouraging alternative energy. He said that he did pose this question to the former Chair of the Environmental Commission and he came back with an answer, but he would not reveal it.

Mr. Aroneo said that his answer would be to let the property owner make that decision.

Mr. Connor said that there is guidance, but he would let Mr. Sandow continue.

Mr. Sandow said that the point is that if, in fact, you are going to have an alternative energy policy in the Township, whether it is an ordinance or a policy in general, part of the Master Plan talks about rural, etc. and it will talk about energy conservation he was sure, you've got to be sure that all of the pieces of the puzzle fit together which means that you have to allow solar panels and you have got to make an exclusion for them in the Tree Ordinance. He said that you can't penalize somebody for doing both.

Mr. Connor said that solar panels are most efficient if they are +/- 10% of perpendicular. Once they go much below 10% of perpendicular, the efficiencies drop off significantly. He said that the proper pitch for a solar panel is around 35 degrees. Once it is below 25 degrees, he said that you start to see a significant drop-off. Secondly, he said that the real efficiency of solar panels are during the summer months and that is when the trees have leaves on them, so you really don't have to worry too much about the winter. In the winter months, your power production is going to be relatively low. He said that the fact that you will get some shading on your solar panels in the winter probably really doesn't make much difference at all and his choice there is clearly trees but, if you have trees in front of the house there is an issue if they are large trees that would provide significant shade. He said that in some ways Mr. Aroneo is right – it is a case by case decision, but there is significant information that could provide guidance which gets us to an issue that we have talked about which this Board has got to start to address and it is how you take renewable energy and there is work on various ordinances on renewable energy, so it is imperative for this Board at some point to take that into account. He felt that there is significant data that would allow people to make an intelligent choice because in the winter they are not going to get significant power savings.

Mr. Sandow said that, in this case, the panels are on the back of the house which is the south side and the tree line was quite close to the house. In New Jersey, roof mounted solar panels get on average (taken over 365 days) of 5 usable hours of sun per day which accounts for morning and evening low sun and rainy, cloudy, and snowy days. He said that that is not very much – it is only 20% of the 24 hour clock and so you are going to squeeze all you can out of the solar panel, including winter, and that means cutting trees which is the price you pay for solar energy.

Mr. Connor said that if you look at the pattern, you will find out that in the winter the percentage of the total rating of that solar panel you can produce is relatively minor, so you are not losing very much in the winter because you don't get very much in the winter, particular if it is on a roof that has a 15 degree pitch. He said that these are issues that can be addressed through proper direction. Right now solar operators just put them on the roof and rate it at a certain amount. They do not get paid by the power that they produce. All of the reimbursements that they get are based upon the rated power of the solar panels so, from a resident's viewpoint, they really don't care if it produces the power or not.

Mr. Sandow suggested that perhaps the Board would want to review some of these technical issues having to do with the authority of people and the evenhandedness of enforcement, etc. and perhaps soften the language of it and make it more owner friendly. He said that there may very well be circumstances where clear cutting is required, but on the other hand what is the biggest instance of clear cutting that we have at an existing house? It is to install a swimming pool and you can't put a swimming pool in your front yard because that is where you have lawn and not trees. He said that if we say that you are not allowed to install a swimming pool because the guy before you had a lot of trees there and didn't cut them down and, therefore, you are stuck without a swimming pool forever – that is the consequence of this.

Mr. Connor said that, if they are actually doing construction, they may have to put in a drywell or something else. There is a very simple solution, although not necessarily cheap, and that is that they may have to put in a drywell to take care of the additional runoff.

Mr. Sandow replied that, in order to put in a drywell, you've got to cut more trees.

Mr. Connor replied, "Not necessarily".

Mr. Sandow disagreed.

Mr. Connor said that it depends and that it could be around the side of the house in an open area where there are no trees.

Mr. Sandow replied, "But that is not where the water is running". He said that you've got to put a drywell downhill from where the water is running.

Mr. Connor said that what happens is, if you put the swimming pool in the back of your yard, the water (if it is on a hill) goes around both sides. So if you put the drywells on the sides, that is where you collect the water.

Mr. Aroneo said that, ideally, you would collect it from the roof of the house through leaders and direct them into a drywell instead of allowing it to run onto your neighbor's yard.

Mr. Sandow believed that what Mr. Connor was getting at is that without the trees you don't have transpiration up through the leaves and so the excess water on the ground, instead of going up through the leaves, has got to go into a drywell instead and that is a gravity issue and doing something with your roof isn't going to change that.

Mr. Connor added that somebody who is going to enforce them has to have the technical credentials to do that, just as we have our Zoning Officer and Construction Officer go to school before they are allowed to slap a tax payer on the wrist, so should the enforcer of this – whatever it is. He said that there is actually an upcoming statewide session on this whole solar issue.

Mrs. Wolfe agreed and said that she had registered Mr. Connor and Mr. Cilino to attend. She said that if anyone else is interested to let her know.

Mr. Cilino said that it seemed pretty easy to him and that he believed that the homeowner should take precedent. He also believed that there should be certain instances where the homeowner needs to contact an authority such as the Planning Board or some other authority such as the Shade Tree Commission, if excess is to be accomplished. He said that that is a bulk of "x" number of trees are cut down or a swimming pool is put in and it is going to affect neighbor's property in terms of flooding or excessive water, etc. He questioned in his mind, in those exceptions, aren't we looking at making a general rule based upon an exception? He said that either you have all of one or all of the other, or can we make it such that for the most part the homeowner takes precedent and if they want to cut a tree down on their property, they do so, and if they want to cut two trees down, they do so, but if it *does* impact properties around you and the only way you can say that is a pool, some other construction which displaces water, and whatever areas that we can determine, then those are the exceptions to the rule and that would take care of all concerned parties, in his opinion, with rare exception. Regarding solar panels, while the yield is getting greater as technology increases, the best way for a solar panel to work – because as you well know, in the winter the sun is very low and the reflective energy causes solar panels to be *very* inefficient. He said that he happens to be an electronics person (a technician) by trade. In the summertime, the sun is up high so based upon where that panel is, it is not collecting that perpendicular light either. He said that the best way for that to occur is for having a variable angle based upon the time of the year, much like you have a TV dish that scans the horizon based upon where the satellite is. He said that he was going above and beyond to explain when we are talking about yields and average yields, you really can't make a statement because that changes with neighborhoods, seasons, etc. Getting back to the situation of the Shade Tree, he said that you really have to make a decision on a one on one basis based upon the exception and to make provisions for these other things, in his opinion. It was his observation that when a tree is removed from Township property, most of the time because it has died and has outlived its usefulness, the replacement – the care and taking care of getting that tree started, is less than what he felt is adequate. He felt there should be some guidelines. For example, when the Township pays the vendor or the contractor to dig down only 1', if you have a tree that is 30 years old with a tremendous amount of roots sitting on top of shale, and you dig down 1', it doesn't take a genius to figure out that the probabilities of that tree making it are not going to be really good. For an investment of a few more dollars, he felt that we should do a better job in that area. Also, in the tree itself since we are in a wildlife area, to not take the extra step (of about \$5.00) of protecting that tree from damage from wildlife while it is in its initial growth stage, he felt is doing a disservice to the money we are spending on putting a new tree in place.

In response to Mr. Aroneo, Mr. Cilino confirmed that his comments were about trees that were planted by the Township on Township property.

Mr. Connor said that there has been some agreement that the Shade Tree Ordinance needs to be looked at and some revisions made. As Chair, he said that he would still like to get some direction informally from the Township Committee, at least to quantify in writing what the Township Committee thinks.

Mr. Roshto felt that that is the most efficient way to do it. He said that he would support that if the Board wants to do it that way. If the Board would like him to bring it up in discussion at the Township Committee, he said that he would propose that, as well.

Mr. Aroneo said that the Township Committee did alter (or amend) the existing tree ordinance this year. He said that this Ordinance was discussed very briefly but it was in the context of tree cutting on Township property and that was the part where clarifications/adjustments were made – specifically dealing with the penalty.

Mr. Connor asked if it would be a great effort for the Township Committee to put whatever they've done in organized fashion to send over to the Planning Board to start the process. He said that we need to get the Shade Tree Commission re-energized to sit down and decide where we should take this. He said that it will not be an over night process but it seemed to him that given t he amount of work we have to do publicly, this is the time to do it.

Mr. Dempsey agreed that it was better than letting it sit on a shelf.

In response to Mr. O'Brien, Mr. Aroneo said that an ordinance was introduced by the Township Committee on first reading regarding trees on Township property.

Mr. O'Brien said that he had a few clarifications to Mr. Sandow's comments. He said that the Tree Conservation Officer is the Chair of the Shade Tree Commission or their designee. He said that the Shade Tree Commission is

appointed by the Township Committee and those members have some background qualifications and familiarity with that area. He said that there is no professional requirement on residential properties that a tree professional, landscape architect, or some other like person be responsible for planting trees on residential properties. He said that the cost for tree replacement is capped at \$200.00 per tree. As for renewable energy requirements, he said that the original of this proposed ordinance was prior to the State adopting renewable energy requirements, so this would have to be amended to reconcile this with those requirements. He said that the Ordinance does allow a number of exemptions that are laid out specifically.

Mr. Connor felt that the Board should restart the process and work on it over the next few months. He said that the Board is going to get a semi-formal document from the Township Committee more or less one page of guidelines of what they think needs to be done and what the Ordinance needs to look like. He said that the Board will take them under consideration and will look at the current document. He said that the Shade Tree Commission, over the next couple of months, will come back and recommend an ordinance and, hopefully, we will end up with an ordinance that everybody can agree to.

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DISCUSSION

VALLEY ROAD ORDINANCES BEFORE THE TOWNSHIP COMMITTEE

Mr. Connor said that we would not have a complete discussion of Valley Rd. at this session since 4 members were not present. He said that it would only be a brief discussion to bring us up to date.

Mr. O'Brien said that we received a memorandum from Mr. Aroneo on behalf of the Township Committee, dated February 14, 2012, that makes clear the Township Committee's position. He said that Item #2 indicates that there shall be no increase in lot coverage. He said that there is no increase in lot coverage currently suggested in the proposed Ordinance. He said that Item #4 indicates that there shall be no increase in building height and there is currently no proposal to increase building height in the current proposed Ordinance. He said that lot consolidation is not addressed nor could it be addressed as part of an ordinance because that is a private property right.

Mr. Hoffman said that the M.L.U.L. actually defines as not constituting a subdivision for a land development application a property being merged or consolidated with an adjoining property. In other words, he said that you can do that just by having a surveyor or qualified professional draw up a new metes and bounds description of the newly enlarged tract and file that and unilaterally send it for recording to the County. He said that it doesn't require any Board action to merge or consolidate lots, therefore he did not know how one could go about disallowing that when it has been favorably treated by statute.

Mr. O'Brien Item #6 indicates "No environmental impact. Remove environmentally sensitive or constrained areas from the lot coverage calculation". He said that this Board deliberated that item at some length last year and the Board, including the Township Committee representatives, decided that although it was legally permissible to exclude environmentally constrained lands from a lot coverage calculation, that would not become part of the proposed Ordinance, so it is not currently.

Mr. Roshto said that, being on the Township Committee, he had access to a number of documents. It was not clear to him that the new members of the Planning Board have those same documents.

Mr. O'Brien asked Mr. Roshto which documents he was referring to.

Mr. Roshto replied that he had 10 documents – versions of the Ordinance, a memo to the Planning Board from Mr. Aroneo, the final Valley Road Ordinance, a cover letter to the Township Committee, and JRP revisions to Mr. O'Brien's draft. He said that if you read through these by the dates, it gives a history of how this unfolded and might be helpful to the newer members.

Mr. O'Brien suggested sending the list to Mrs. Wolfe and she could provide it to him electronically and, whatever Mr. Roshto did not have, he would have somewhere.

Mr. Roshto said that it was given to him by Ms. Christine Gatti, Municipal Clerk, so he felt that Mrs. Wolfe could just talk to Ms. Gatti and they could get together and have the whole list.

Mr. Arentowicz said that he would appreciate that since he didn't get any of that material.

Mr. Roshto said that Mrs. Wolfe could get the CD of the documents from Ms. Gatti.

Mr. Connor felt that was a great idea and the documents should be provided to all of the Board members, including those Board members who have been doing it for a while.

Mr. Aroneo recommended adding the Master Plan for the Township as a whole and every component that is not part of the most recent – especially the Valley Road Master Plan.

Mr. O'Brien said that the 1996 Master Plan is not available electronically.

Mr. Roshto said that he could send it to everybody since he had it electronically.

Mr. O'Brien asked if it included all of the graphics and supports.

Mr. Roshto replied that he would send it to Mr. O'Brien so that he could review it to see if anything is missing from it. He said that he tried to gather everything that he could find and put it all in one PDF.

Mr. Connor said that he would appreciate Mr. Roshto sending it out and reviewing it to see if any additional information or revisions that he thought would be appropriate are appended to it.

Mr. O'Brien said this matter has been under discussion since some time in 2006 and that the shelf space on this is probably about 2' long. He did not think it would be helpful to provide every document. He said that Mr. Roshto is pointing out 10 documents that may explain something at a given point in time. He did not know how relevant they are because he did not know which ones he was referring to, but he felt that we should all start with whatever the current proposal is and if the members want various explanations for things, we can certainly go back and provide documentation.

Mr. Connor said that this certainly gives what the current proposal is and each individual Board member will have to decide if they want to go through and read all of it.

Mr. Roshto said that he found that reading the minutes of the meetings proved invaluable to him. He noted that there were at least 10 or more meetings over the past two years in which the Planning Board was discussing this. He said that they are very good and are full of information and are available on the Township website. He asked Mr. Roshto to identify the dates of the 10 meetings he was referring to.

After further discussion, Mr. Connor said that if it is available and not restricted, the easier answer would be to have it posted on the website so everyone could read it.

Mr. Cilino felt that the best thing is to put it on the website if we can do a download or on a site we can go to and download it. He was sure that the document being discussed is larger than 15-16 megabytes.

Mr. Connor said that if it is on the website we can read it and not download it. If we want to download it, he said that it would be individual files and we can download any individual file. For example, he said that he can copy the minutes.

In response to Mr. Cilino, Mrs. Wolfe said that the Planning Board minutes are already on the Township website and can be easily accessed. She said that documents such as those discussed by Mr. Roshto are put on the website by Andrea Tsimboukis, Administrative Assistant.

In response to Mr. Connor, Mrs. Wolfe said that she could go through all of the agendas from 2010 forward to ascertain when the Valley Rd. Ordinances were discussed.

Mr. Connor did not think it is something that has to be done immediately.

Mr. Roshto said that the last page of the Valley Road Business District Element lists the dates of the meetings.

Mr. O'Brien replied that that was *prior* to the Ordinance work. He said that the first meeting he found was held on 7/13/10, although that did not mean that there weren't any before that.

Mr. Connor replied that, if Mr. O'Brien had them and the Board has copies of what he has, he felt that that was significant.

Mr. O'Brien suggested that he give Mrs. Wolfe the dates. He noted that there may be more because his file was for a specific reason for him which may not reflect all of the discussions.

Mr. Connor asked Mr. O'Brien to provide a brief history.

Mr. O'Brien said that, after the Township Committee had discussions about Valley Rd. last year, the Planning Board took those discussions and worked with them in their attempt to address them and correct them as best as they could. In a document dated 12/12/11, he said that the Planning Board wrote a memo to Ms. Gatti and the Township Committee and laid out what they gathered as the concerns of the Township Committee as were expressed to the Planning Board, took those concerns and then showed how the Ordinance revisions that were worked on last year by the Planning Board addressed them and made various corrections to the Valley Road Ordinances and that accompanied the draft Ordinance that was sent to the Township Committee by this Board. He said that that is probably the best summary document we have at this point. He did not know if new members were aware of it or not.

Mr. Cilino requested a copy.

Mr. Connor agreed that everyone should have a copy (of Mr. O'Brien's memo to Christine Gatti dated 12/12/11) because that is where we are starting from. He felt that everybody has been a part of those discussions by either being a Township Committee member, a Board member, or a participant from the audience. He said that it is essential that we revise the Valley Road Business District Ordinance because there are certain things that have to be

changed. He said that the Township Committee has focused on 6 items and Mr. O'Brien has commented on 3 of them, but there is need for substantive comment. He wanted to move this along in such a way that we can come to resolution. It seemed to him that we need to have a meeting where this is, in fact, if not the only primary discussion to work on the comments that the Township Committee forwarded to us and where we have opportunity to discuss those and we have additional time for public comment and then come to a resolution. He said that we are now away from the time of decision. He said that there need to be changes and he did not believe that there is any disagreement that in any area where there is flooding, we are not going to see any residential development. He said that his intent was to try to set up a meeting within the next month where we basically focus on that. He said that we need to have sufficient time so the Board members can bring themselves up to date, noting that some members do not have the background of this discussion. He said that he was open to suggestions from Township Committee members or Board members on how they would like to proceed with the understanding that, within the next few months we need to be able to say that we have a new Ordinance that everybody is in agreement with and can be adopted on first reading and we can start the process.

Mr. Dempsey thought that during the last review of this the Planning Board, with some directions from current members who are not present and others, tried to come up with a compromise and he thought that we came a long way. He felt that the direction we received this weekend tells us that we are not quite there yet, but he felt good about what we did in compromise and felt that we are going down the right road. However, he felt that we have to take it back again and go through another round of meeting in the middle somewhere or at least make sure that people understand what we were trying to accomplish and whether we need to accomplish it or not.

Referring to the points contained in his memorandum of 2/14/12, Mr. Aroneo said that it was pointed out that some of the points in the list he drafted at the direction of the Township Committee are not in the current Ordinance. He believed that the reason they were included is that they have been on different versions. For instance, he said that the prior version had a 3 story building height and in the most recent version it is a 2 ½ story/35' building height consistent with the rest of the Township. He felt that the idea was so that we don't take a step backward and start talking about residential and then have the building height situation again, or lot coverage – so that we are not going to have residential but we are going to have more lot coverage. He said that the Township Committee discussed it and it has gone back and forth and this is another volley. He said that they sent it back with direction the last time and said no residential and it came back with residential indicating that the Township Planner and the Planning Board Attorney said that we should include residential to accommodate a COAH component and that was the reason that our liaison said last year that we needed to have residential, even though the Township Committee had discussed it and asked for no residential in the most recent version. He said it went back and forth a few times and the Township Committee was questioning what they should do with it and wondered if they should just draft it themselves and decided that there were plenty of smart people on the Planning Board and this is what they do, so let's let them look at it again, which he felt was the right thing to do. He said that the Township Committee felt that maybe they hadn't really had the best direction from the Township Committee throughout this process, although there are two liaisons.....

Mr. Dempsey interrupted and said that around residential he thought there was a little glimmer in trying to protect and foresee the future in it. He thought it was a clear direction that there was no residential, but he thought that the majority of the Planning Board probably thought that was a "pendulum swing" and so that is why they limited it and scoped it and they wanted to say "protect us from a possible unknown", be it one line. He said that what he thought Mr. Aroneo was saying back to the Board was "let's deal with the unknown when the unknown comes" and, if COAH comes in and we have to make modifications, then we will go back and make them, but don't think of COAH at this time. He said that there was a lot of talk and a lot of compromise, especially around that area and he thought there was a little wishful thinking that we could meet in the middle.

Mr. Aroneo said that, if COAH were in existence still, he felt that adding residential would create more COAH obligations.

Mr. Dempsey agreed and said that you have to build that compromise and that was exactly what the Planning Board was trying to do.

Mr. O'Brien said that he wished to correct Mr. Aroneo's statement and said that COAH *is* still in existence. It is part of the Department of Community Affairs (D.C.A.) and does exist and, in fact, in December this Township received our annual reporting requirements from the D.C.A. and COAH to tell them how we did last year.

Mr. Aroneo said that it was his understanding that COAH was suspended.

Mr. O'Brien replied, "That is not correct". He said that the Council on Affordable Housing has been disbanded and all of the powers and responsibilities of the Council on Affordable Housing have been transferred to the Department of Community Affairs which are enforcing those regulations today. He said that the third round that we worked on several years ago regarding a set-aside have been suspended due to the Supreme Court case, but all of the regulations other than the Growth Share, which only applied to new development, are still in effect.

Mr. Aroneo replied that, having said that, everything in the Valley Road Ordinance would create COAH obligations, whereas without that, we would have COAH credits before the third round. He said that, before the third round which includes the Growth Share, the Township had COAH credits.

Mr. O'Brien agreed (before Growth Share and before the third round).

Mr. Aroneo said, however, that additional development under the third round would create additional COAH responsibilities by the Township.

Mr. O'Brien added, "And those are the regulations that are currently suspended".

Mr. Aroneo felt that they were both on the same page, but he was saying it a little differently than Mr. O'Brien.

To correct the record, Mr. Hoffman said that he did not recall his having giving any guidance on the matter.

Mr. Connor said that we got the legal and other advice from the Board's professionals, but it was the decision of the Board to make those revisions taking into account the advice received from its professionals, but basically realizing that it was our responsibility to take that advice and then do what we wanted with it. He said that they provide us good information and technical advice but, as far as what we should do, they direct us from a professional and legal viewpoint, but it is our responsibility to make sure that we make a decision that is consistent with that and that is our decision and not a function of our professionals.

Mr. Aroneo replied that he understood that.

Mr. Roshto said that at one meeting last year, one Board member had stated something to the effect of do we want to revisit the Valley Road Business District Element to see if it is inconsistent with the proposed discussion of removal of residential development. He asked if that was something that this Board wants to consider?

Mr. Dempsey replied, "Not without everybody sitting here".

Mr. Briggs said that, if the new members do so the research on the background as far as some of the dialogue is concerned, it may help them come to the conclusion as well. He felt that it was a fair question, but he felt that everyone should get up to speed.

Mr. Dempsey felt that that is a big step – to go back into that. He said that it was probably him that said it since he said it several times. He said that it is a commitment going down the road and he felt that it is best to have everybody read the documents and understand it and, if that is what we end up doing, then that is what we end up doing.

Mr. Connor said that, however this is resolved, it would certainly be better if we can resolve it in such a way that the Planning Board feels that the Resolution is consistent with the current Master Plan which means that we can just move forward. If an ordinance comes before us that appears to be inconsistent with the Master Plan, he said that we have a legal responsibility to make a determination that ordinances are consistent with the Master Plan or inconsistent. If it is so different from the Master Plan, he said that we would have to come back and say that it is inconsistent with the Master Plan and give it back to the Township Committee and they have the right to pass that ordinance, but the enforcement of the ordinance tends to be much more difficult because a builder could come in and now cite the fact that the Township passed an ordinance that is inconsistent with the Master Plan which says that the remedy to that is then for the Planning Board to reopen the discussion and adopt a new Master Plan Element. He said that we can do that, but that is a harder row to hoe and, hopefully, there is a way we can come to a solution in a way that we don't have to go through a year's worth of activity because, realistically, that is what you are talking about when we reopen the Master Plan and do the hearings. He said that this is a difficult issue that we are going to have to address over the next couple of months.

Mr. Roshto said that he asked the question, not from whether or not the ordinance will be inconsistent with the Master Plan, but because he felt that it is clear that you can write an ordinance that partially fulfills the Master Plan and is not necessarily inconsistent with it. He wanted to know the feeling of the current Board on the Valley Road Business District Element outside of an ordinance. He asked if the Board, as we sit today, believes that the concept of being able to live on Valley Road is one that we want to drive for the next 20-30 years.

Mr. Dempsey felt that that was a big part of what we will be discussing when this comes on.

Mr. Connor felt that there will be a variety of opinions on it.

Mr. Briggs asked Mr. Roshto if his question on the Element was strictly on the residential component, as opposed to a revisit of the whole Element.

Mr. Roshto replied that it was strictly on the residential component.

Mr. Aroneo said that, to remove a few words, might make the Master Plan consistent with what we are talking about here, with no residential and that it is not redoing the whole thing. He said that he has had the benefit of having one attorney opine on this and he heard the Chairman say something, but as far as ordinances that are not consistent with the Master Plan or are not completely fulfilling the goals of the Master Plan and being difficult to enforce, he asked for Mr. Hoffman's opinion.

Mr. Hoffman replied that he was not a maven as far as the enforcement end but, in terms of adoption of the ordinance, it requires a higher vote requirement on the part of the governing body – a majority of the full authorized membership, so if only 4 people were present on the Township Committee at the time a vote was taken on an

ordinance that was deemed to be differing from the Master Plan, the burden would shift to the governing body to justify why it is going forward with such an ordinance. He said that it shifts the normal sequence of who is dealing with it from the Planning Board as an agency, to the governing body as an agency to rationalize how it finds and supports that it can be deemed to be inconsistent type of legislation. He said the enforcement is left by the M.L.U.L. exclusively in the hands of the governing body or individual officials who are designated.

Mr. Connor asked if there were any other comments on the Valley Road Ordinances.

Mr. Arentowicz said that Mr. O'Brien had responded to 4 of the 7 issues raised in Mr. Aroneo's memorandum. He asked what he was to assume as to the remaining 3 items.

Mr. O'Brien replied that the ones he had commented on, he commented because they are not issues and are not dealt with in the Ordinance the way that this is stated here. For instance, he said that Item #1 states that no residential use shall be permitted and the current proposed ordinance indicates that residential use *is* permitted. As to Item #2 (no increase in lot coverage), he said that there is no proposed increase in lot coverage beyond what currently exists. As to Item #3 (no increase in density), he said that a density of 6 units per acre, which affects 5 building lots on the north side of Valley Rd., would be permitted under the proposed ordinance.

Mr. Aroneo said that that includes commercial density as well.

Mr. O'Brien replied that we do not regulate commercial density.

Mr. Aroneo said that the idea of that is to not change the character of the town by increasing the building envelope.

Mr. O'Brien replied that there is no proposal to do that.

In response to Mr. Hoffman, Mr. O'Brien replied that the F.A.R. is proposed to be approximately the same because we are consolidating different zones.

As to Item #4 (building height), Mr. O'Brien said that that was dealt with and is not an issue. He said that Item #5 (lot consolidation) is not an issue before either body. He said that Item #6 (no environmental impact) is regulated by the Dept. of Environmental Protection, so there can be no impact upon those regulated lands. As for removing environmentally sensitive or constrained areas from the lot coverage calculation, that is a policy decision that would be made by this Board and/or the Township Committee. He said that this Board decided not to do that during the last go around. As to Item #7 (no traffic impact), he said that that is a site plan issue and our site plan review requires traffic impact to be considered and we did not address that as part of the ordinances because that is a standing directive.

Mr. Connor said that it sounded to him like there are two issues there. He said that there may be others as we discuss and upon further review by Board members.

As a point of clarity, Mr. Dempsey said that there was a change from the old proposed ordinance to the new proposed ordinance and we are not talking about the lots on Valley Rd. that are not governed by this. He said that we excluded the multiple lots that still remain in the old (existing) ordinance.

Mr. O'Brien said that regarding the lots on the north side of Valley Rd. west of Morristown Rd, the first four lots have been excluded from the proposed ordinance which means that they stay as they are currently zoned, which is Office in the front and Conservation in the rear.

Mr. Connor said that part of that property is being considered to be purchased by the Township and the Board contemplates no action until that is done. Once it is done, he said that there are remaining properties available and we will have to address what remains, but we weren't going to predetermine the zoning for something undergoing negotiations for purchase.

The meeting was opened to the public for questions.

Mr. Sandow said that after the Township Committee meeting two weeks ago, when the list of suggestions came up, he heard lot coverage mentioned and, as is his custom whenever someone says lot coverage on Valley Rd., he rises to remind whoever it is that the lot coverage of nearly 2/3 of the lots on Valley Rd. currently exceeds the standard, mostly grandfathered or perhaps with variances, it really doesn't matter. In August of last year, he said that he put on a picture show for the Planning Board and they walked from one end of Valley Rd. to the other and looked at each lot and discussed the extent of the lot coverage. He said that his reason and concern about doing that is that, to the extent that you don't allow the current lot coverage to remain, then any redevelopment involves shrinking the size of the coverage which means shrinking the size of the parking and shrinking the size of the building and, in fact, encouraging the developer to spend money in order to have less when he is finished in terms of usable space. He was concerned that we be as liberal as possible in our business district with regard to lot coverage. He said that immediately after the Township Committee meeting, he wrote to the Administrator and the Township Clerk and asked them to please forward to all of the members of the Township Committee and Planning Board the website location of the show that he put on in August so that they could re-familiarize themselves with the reality of lot coverage on Valley Rd. By his count, that should have been about 20 people banging away at that web page where the pictures show up and, in fact, as of this afternoon there were 10 different people who hit in the past two weeks

and he assumed that they were all members of the Planning Board or the Township Committee and not just random folks. But he said that that is still only half of the people who might have been looking at it if they were serious about understanding the lot coverage. He encouraged those among the people who have *not* looked at his presentation and not drawn their conclusions about the extent of the current lot coverages, to please dredge out the e-mail from 2 weeks ago, follow the link, and take a good hard look at what we are looking at now.

Mr. Roshto referred to the Valley Rd. Business District Element and said that the last 3 sections of the Element are called the “Appearance of the Built Environment” ; “Building Standards”; and “Recreation”. He asked if we are addressing those three things in the ordinances that were presented.

Mr. O’Brien replied, “In some ways, yes”. In other ways, the larger discussion of appearance is another separate issue that is before this Board and has been reviewed over the last several years and that speaks to our Architectural and Building Appearance & Design Guidelines that have been reviewed by the Board in the past. He said that we are currently awaiting a final presentation by Patrick Jones, an architect in town who has chaired the Zoning Board and served on the Planning Board, and Dr. Behr, formerly of this Board and of the Zoning Board. He said that it was decided that that effort would be the *major* part of that, although many elements of that are addressed in the nuts and bolts of the ordinance.

Mr. Roshto said that he likes to have *all* of the information available to him before he makes a decision as a Township Committeeman. He said that if we are saying that there is still some outstanding work to do, he was questioning whether or not we are doing the right thing when we are addressing bulk/use standards, lot coverage, F.A.R., etc. He said that we are listing off all of these things and are describing them rezoning the area from B-2 to B-3 to BD. He said that we are doing all of these things and it is not clear to him that the issue that he believed we should really be addressing is the appearance of Valley Rd. He was not seeing that in these ordinances that are currently proposed and was not seeing that we are going to *necessarily* be improving the appearance. He said that in some buildings we are doing a great job but then we have some other buildings that are kind of falling down. He did not know if our current ordinances can handle that and felt it is an enforcement issue or this Planning Board should be recommending ordinances to address that issue.

Mr. Connor said that we already have a set of architectural standards that new buildings are supposed to meet and this would provide some changes and some clarification on that. He said that, as to the existing buildings that are in a state of disrepair, unfortunately the Planning Board doesn’t have any impact on them until somebody wants to do something with them and then we can enforce architectural standards on them. He said that there has been a lot of discussion on architectural standards and it is sort of like Shade Tree – in the eye of the beholder and how much should a Planning Board tell a builder they should do and how much freedom does the owner have versus how many requirements does the Planning Board have. He said that he believed that it is a separate issue and we need to do that. He felt that trying to link the two together makes the process work longer and he did not think that it is going to significantly impact, in the short term, what the Township looks like. He felt that there needs to be some long term agreement. He asked the Board to review the current architectural standards.

Mr. Roshto replied that it was not just the architectural standards. For example, it indicates that we are to encourage street furniture and pocket parks as gathering places. He said that we are saying that in an element and there it sits – what are we doing with it? He felt that it is a great idea.

Mr. O’Brien replied, “Site plan review – that’s where that comes up”. He said that it speaks to Mr. Roshto’s point about the good and bad buildings you see on Valley Road. He said that the good buildings you see are the ones that were built since the 1996 Master Plan and the subsequent ordinances to enforce that which include the current architectural design standards. He said that all of the recent buildings that have been built (approximately a half dozen of them) – the PNC Bank, the Ippolito building, the office building in Gillette – are all new, built in the last 15 years and were built under those design standards. So, every time a property came before this Board or the other Board, those standards are applied and that is the chance you have to make a change. Any existing property can stay as long as they want in the condition that they are, unless they violate the Property Maintenance Code, which we have in the Ordinance and the Zoning Enforcement Officer is directed to go out and, if a building is falling down, it is up to him to enforce the law and make sure that it looks proper.

Mr. Dempsey felt that the Ippolito building is the perfect example of that. He said that when the Marty’s shoe store left and, if another shoe store came in doing the exact same thing, without a change to the building, it could have looked exactly the same. But when Dr. Ippolito came in and started talking about the different changes and wanting to do it, that is when we are able to have some input and he was able to go through with what was on the books already and come up with, in his opinion, a much better looking building than was there.

Mr. Roshto asked if it was enough that it is in the Element, or does it need to be in the standards in the Ordinance?

Mr. Hoffman replied that it has to be in the Ordinance to be enforceable, as opposed to just having it in the Master Plan which is a set of objectives or goals.

Mr. Roshto said that that was his point. As he understood it, he said that we don’t have these things in our ordinances yet. He guessed what we are saying is they are coming.

Mr. O’Brien disagreed with Mr. Hoffman in once sense in that an item that is in a Master Plan, which is a policy document and gives guidance, while that phrase “pocket parks” is *not* in the Ordinance (it should be, but if it’s not).

When the Planning Board reviews a site plan application, it looks at the appropriate passages in the Master Plan to see whether or not that site plan application is supported by the Master Plan. As a policy document, he said that the Board could say to an applicant that the Master Plan says we should have a pocket park on Valley Rd., what can you do? He said that that is within the purview of the Planning Board.

Mr. Hoffman replied that he did not quarrel with that. In fact, he recalled within the last 2 years at least 2 examples of existing buildings that were somewhat rundown and in need of, if not demolition and reconstruction at a minimum, substantial repairs and upgrading, one being the Valley Sports building. He said that the town has its hands basically tied whenever an agency or official may be called upon to render a judgment when no one comes in to seek development approval, a permit, addition, or change to his property. It can remain in its existing state subject to minimum health standards always being an issue that can be explored and dealt with but, other than that, the appearance of the structure and its physical footprint, height, and style of design can remain as they have been for the last 50 years or more unless the applicant is seeking to change or develop his property. He also recalled the restaurant across the street on the south side of Valley Rd. which is now a seafood restaurant (and had been Montebello's). He said that it had been the subject of hearings before this Board and, similarly, the building could have remained in its less than fully desirable state indefinitely unless and until they chose to come in seeking to change or upgrade the use of their property. So, at best, it is a piecemeal effort to deal with overall planning in a community sense that this Board or the Zoning Board has before it.

Mr. Cilino said that his vision of the vision for Valley Rd. is that that should be the driving force and it should be in the ordinances and everything else kind of trails.

Mr. Hoffman said that you have to set the standards, put them down on paper, and implement them.

Mr. Cilino agreed. He said that some of the new buildings such as the bicycle shop, the restaurant, the diner, etc. look really good and are a breath of fresh air. He said that we know that the Pathmark wants to subdivide and that in a subdivision, there's a movement of their peak and their signs, etc. He asked if there is an opportunity to do something there that starts that process within that complex.

Mr. Hoffman said that, in his opinion, there is always the opportunity when they are seeking permission, permits, or approvals from the town to "work something out".

Mr. Cilino said that where he was leading is that that process should be the leader in both our planning and our design of not only where we are today, but moving into the future and then how defined is that? He said that he is new on this and needs to look into what the structural design by the architect is and wondered how that influence our thought process in ordinances and allowing various structures to be altered.

Mr. Hoffman felt that by amending the Ordinance to detail the type of appearance of building, style, and character that you want to see in the town, you are setting down on paper the goals and objectives as you want to see them implemented so that when Mr. Jones does choose to come in for a plan of improvement or renovation to his property, you have something there ready and on the books to set as the standard for which he's to design his plans against.

Mr. Cilino replied that the question becomes, is it there and is it clear enough?

Mr. O'Brien said that there is a pretty comprehensive set of design guidelines in our current Ordinance and that set of guidelines was upheld in Superior Court in 2003 in the Commerce Bank case. But because of that case, the Township decided at that time to start to look at those design guidelines because it was felt that there were some things that were not completely clear and the thought by the Board and the Township Committee at that time was to make those guidelines more clear, more readable, and more understandable on the part of the community. He emphasized that there are effective guidelines that are in place. He said that the new members may want to familiarize themselves with the ordinances.

Mr. Connor said that there clearly have been proposals on architectural guidelines and a proposal that we produce and adopt a document of architectural guidelines which includes a lot more illustrative views. He said that it currently is basically all in words. He noted that, last year, Berkeley Heights adopted a full set of architectural guidelines which is about 20-30 pages long complete with pictures showing what street furniture looks like. He said that we are not quite there yet, but he felt that we are close to where we want to go. He felt that we need to bring the Board up to date as quickly as we can on where we are and then the Board can decide whether or not it wants to adopt the architectural guidelines *and* the ordinances at the same time, or whether it wishes to do them individually. He said that, perhaps, the architectural guidelines can be done as quickly, or quicker than the ordinances. He suggested scheduling 30-45 minutes at an upcoming meeting to bring all of the Board members up to date.

Mr. Aroneo noted that Mr. O'Brien had mentioned a subcommittee consisting of Dr. Behr and Patrick Jones. He asked if that is happening right now.

Mr. Connor replied that it is not actually a committee or subcommittee. He explained that when Dr. Behr was a member of the Planning Board, he took the lead on this and arranged for a *group* of professionals to work on the architectural guidelines.

Mr. O'Brien added that the group also included Mr. Kaufman.

Mr. Aroneo recalled that that happened in 2010 when he was serving on the Planning Board. He asked if that was the only time that happened.

Mr. Dempsey recalled that they came in last year.

Mr. Connor said that there was an update on it and they were working on it. He said that it was more like a citizen's advisory committee rather than something formal. He said that Dr. Behr has indicated that he would continue with the matter.

Mr. Aroneo asked if there is a Planning Board member on the committee and is it a committee.

Mr. Connor replied that it is *not* a committee. He said that it is an external group that has expertise that will present it to the Board. He said that he would like to get back to the issue that was raised regarding Tifa. He asked Mrs. Wolfe if she had heard anything back from Tifa.

Mrs. Wolfe replied that she had *not* received a response from Tifa, however she later heard that a concept plan for the site was presented to the Township Committee and said that perhaps that is why she did not receive a response.

Mr. Aroneo asked Mr. Connor for a quick review of what drove the enforcement of something that is so old.

Mr. Connor said that it was based upon some legal activities whereby Tifa had not been getting any approvals for changes of use. He said that, before he became a member of the Planning Board, Tifa agreed that they would take some 20-25 different uses and obtain the necessary approval, most of which were done utilizing the Administrative Site Plan Waiver process. Over the period of about a year, he said that they brought themselves up to speed and realized that it was not difficult. He said that the procedure has been working very nicely and they have been coming in approximately 5-6 times a year for changes in occupancy and, with few exceptions, they have been approved. He said that if they come in right now, we cannot grant them an Administrative Site Plan Waiver and, instead, they must go through the full Board process and, with enough turnover, that will be a major situation.

In response to Mr. Aroneo, Mr. Connor said that Tifa is basically in violation of the legal agreement that they had.

Mr. Hoffman added that they had settled litigation that they had instituted against the Township.

Mr. Connor said that Tifa was told that they have to be done by September and must give us some kind of notice that they have taken action and, as long as they are moving forward, we will continue on site plan waivers.

Mr. Aroneo asked what the part is that Tifa is failing to be in compliance with.

Mr. Connor replied that they have failed to put in the renovations such as the sidewalk and all of the activity that they agreed to do in the past. He said that the Board decided not that long ago that it would like to see a sidewalk subject to non-widening and they must present the plans for the sidewalk and start the process.

Mr. O'Brien added that the sidewalk is to be constructed on the Division Avenue side.

Mr. Hoffman said that, in a nutshell, Tifa wasn't seeking or obtaining necessary certificates of occupancy.

Mr. Connor added that the Morris County Planning Board also said that the sidewalks need to be constructed and we came to a resolution. He said that what we really need to do is motivate them and tell them that it is now time that they should have contacted us that they are moving forward. He said that we need some documentation that they are proceeding to meet the wishes of the Planning Board and Morris County so that we might consider continuing to grant Administrative Site Plan Waivers.

Mr. Hoffman added that, technically and legally, the terms of that settlement agreement is really not a Planning Board jurisdictional responsibility. He said that the Planning Board has had a continuing interest in seeing how that property has been developed or left undeveloped but, if pushed, he would have to concede legally that it is not the Planning Board's affirmative duty to go out there and cite them for not complying with the agreement. He said that it is the responsibility of the Township to see to it that that is done. He said that the Planning Board does, hopefully, have some leverage in that one of the principal benefits to Tifa is the shortcutting of the normal site plan or site plan waiver process so that they could get those non-validated uses legally approved in a shorter administrative process than had previously been their only avenue open to them.

Mr. Aroneo asked if the procedure of not offering them a site plan waiver to one applicant over another based on outstanding compliance issues is okay?

Mr. Hoffman replied that there is a good question there.

Mr. Connor felt that they will want to cooperate.

Mr. Hoffman replied that, if he were Tifa's attorney, he might perhaps give a different response.

Mr. Connor said that they have been cooperative and he felt that their lack of response is because somebody hasn't checked their records and it is the 14th of February and they need to respond to us. He suggested that Mrs. Wolfe work with him, Mr. O'Brien and Mr. Hoffman on the proper response of reminding Tifa of their continuing obligations and reminding them that, as of this date, any change in occupancy will need a full review by the Planning Board and the Administrative Site Plan Waiver process will no longer be available to them.

Mr. Arentowicz said that he was hearing that they have been very cooperative but this has been going on for 22 years and he understood that there have been County issues with the sidewalk. He said that he would not consider that being cooperative.

Mr. Connor replied that they weren't cooperative until about 5 years ago.

Mr. Arentowicz noted that the Board has not received a response from this with the latest correspondence and he still did not think that that is being cooperative.

Mr. Connor replied that he tended to agree with Mr. Arentowicz and felt that it is time to remind them of that in a legal way.

Mr. Roshto noted that Mr. O'Brien had sent an e-mail out talking about the TDR Study and its relationship with Tifa. He asked if he should know something about it and what is the relationship between the TDR Study and the Tifa property when they come before the Township Committee?

Mr. O'Brien replied that the answer is to listen to what they have to say and see where they are going because he did not know.

Mr. Hoffman asked if they have any protected or vested rights by virtue of the TDR?

Mr. O'Brien replied, "No".

In that case, Mr. Hoffman said that it is just something on paper and doesn't give them a higher standing to negotiate or deal with the Township.

Mr. O'Brien agreed. He said that it is not even on paper and the study is underway. He said that we have worked with Tifa in the past to discuss possible redevelopment of the property and that is what led to the idea of using that for TDR site, plus the various incentives that were being offered by the State in terms of transit oriented development in and around a train station. At this point, he suggested listening to what Tifa has to say and see how that will impact our study as it goes along.

Mr. Roshto asked how close we are to finishing the study.

Mr. O'Brien replied that he was close and then he heard that this was happening, so he felt that we should wait and see what they have to say. He said that there is no sense in finishing it or even coming up with a draft until we see what they have to say and then we can either include it in our draft or we can address it as we, the Township, see fit.

Mr. Hoffman said that it sounded to him like they don't have that to use in any way as a bargaining chip in their dealings with the Township because they don't hold those rights – it was just a discussion item.

Mr. Cilino asked if Advanced Realty is representing Tifa.

Mr. O'Brien that the Planning Board has no knowledge and that it is a Township Committee matter right now.

Mr. Aroneo said that he did not know the entity presenting but it is the same thing. From memory of a couple of years ago he *thought* that Advanced Realty is who is representing the property.

Mr. O'Brien said that there was a different representative in a concept that was presented 5-6 years ago which came in with a fairly high density residential and retail proposal.

The meeting was opened to the public for comments.

Addressing Mr. Roshto, Mr. Sandow said that neither of the Boards has any jurisdiction once they have passed a Resolution and sent it off for construction and from then on it is an enforcement matter. He said that, if you don't like the way something looks, you as a member of the Township Committee, can go read Chapter 16 of the Revised General Ordinances which is the Property Maintenance Code. He said that you may want to review it closely and review it and see if it meets or exceeds your needs. He said that you can do everything from mow the lawn on a property that doesn't mow its lawn up to and including demolishing the property if you don't like the way it looks.

Mr. Roshto thanked Mr. Sandow and said that he *has* read that and that is one of the reasons he had asked the question tonight about the Element. He said that there seems to be some inconsistency with the way the Valley Road Business District Element is stated in that Ordinance and he was asking if we, as a Planning Board, are going to look at possibly changing some of it.

Mr. Sandow replied that, if you decide that there are buildings on Valley Rd. that are unfit for human habitation, send the DPW in with a bulldozer and put a lien on the property. He said that you *can* do that under Chapter 16.

Mr. Roshto replied that it is not quite *that* easy.

Mr. O'Brien added that any property that has been before either Board that was approved by a Resolution has a Resolution document which outlines and lists conditions of approval which may include a number of things including appearance, so that is an item that is also enforced by the Code Enforcement Officer.

Mr. Cilino felt that extending liberties to Tifa up to September or October of this current year to complete their task is *extremely* generous and, in fact, "over generous". He felt that the Board should demand a plan within the next month and the actual construction to be done before or by June 30th.

Mr. Connor replied that he felt that the problem there was the winter and some questions about when they could do it.

Mr. Cilino replied that we are now getting close to spring time and to extend it another 8 or 9 months, he felt is too liberal.

Mr. Connor replied that we will take a look at that.

Mr. Briggs asked if a bond was requested to be posted.

Mr. O'Brien replied, "Yes".

In that case, Mr. Briggs said that, take it or leave it, we are going to be going ahead.

Mr. O'Brien said that the bond request was within 60 days of the letter dated June 19th and all improvements were to be completed by September 1st. He said that the Board discussed it and decided that they would give them time to get through the winter.

Mr. Connor felt that they need to be reminded that they need to do it and also of the bond.

Due to the lateness of the hour, the meeting adjourned at 11:05 P.M.

DAWN V. WOLFE
Planning & Zoning Administrator