

MINUTES

MARCH 24, 2015

PLANNING BOARD

LONG HILL TOWNSHIP

CALL TO ORDER AND STATEMENT OF COMPLIANCE

Chairman Pfeil called the meeting to order at 7:30 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 2015.

MEETING CUT-OFF

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

CELL PHONES AND PAGERS

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

PLEDGE OF ALLEGIANCE

ROLL CALL

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

Excused:

J. Alan Pfeil, Chairman
Suzanne Dapkins, Vice-Chairwoman
Brendan Rae, Mayor (7:35 PM)
Gregory Aroneo, Member
Ashish Moholkar, Member
Guy Piserchia, Member
Guy Roshto, Member
Timothy Wallisch, Member

David Hands, Member

Kevin O'Brien, Board Planner
Thomas Lemanowicz, Board Engineer
Daniel Bernstein, Board Attorney
Cynthia Kiefer, Board Secretary

Ms. Kiefer advised Chairman Pfeil that he had a quorum and could proceed.

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

PUBLIC QUESTION OR COMMENT PERIOD

Chairman Pfeil asked if there were any questions or comments from the public on any items not listed on the agenda for that evening. Hearing none he closed the meeting to the public.

RESOLUTION OF MEMORIALIZATION

LOUNSBERRY MEADOW
1449 Valley Road
Block 10301, Lot 16.04

#14-11P
Minor Site Plan
Dev. Permit Waiver

Mr. Bernstein advised the chairman that there was one change. On page 4, #4 "Sheet 3 of 4 contains the following notes..." He noted that it should read, "Sheet 3 of 3..." Chairman Pfeil asked if there were any other corrections or modifications to the resolution. Mr. O'Brien stated that he and Mr. Lemanowicz had already given comments to Mr. Bernstein. There were no further comments or corrections.

Ms. Kiefer noted that Mayor Ray had arrived at 7:35 PM.

Mrs. Dapkins moved to approve the resolution. Mr. Roshto seconded. A **ROLL CALL VOTE** was taken of those members eligible to vote. Those in Favor: Mrs. Dapkins, Mr. Moholkar, Mr. Piserchia, Mr. Roshto. Those Opposed: NONE. The Resolution of Memorialization was passed unanimously.

PRESENTATION – ORDINANCE #349-15 *revised*

Chairman Pfeil stated that Ordinance #349-15 had had its first reading by the Township Committee on March 11, 2015. He introduced Jessica Caldwell, Township Planner.

Ms. Caldwell stated that she was present to discuss the ordinance she had written. She added that each board member had a copy of an aerial photograph of the property under discussion. The block and lot numbers were listed on the photograph as well as a light gray shaded area which was the wetlands. This photograph was for discussion purposes only.

Ms. Caldwell said that the ordinance was introduced at the Township Committee and was now on referral to the Planning Board. She reminded the board members that their primary responsibility was to determine consistency with the Master Plan however the Township Committee was also looking for comments and suggestions. She explained that this was in litigation and the ordinance was a result of an attempt to try to come to terms with the property owner and settle the litigation. The courts had urged the municipality to try to come up with a settlement. This ordinance represented that attempt.

Chairman Pfeil asked her to give the board members an overview or some background concerning the litigation and how the Township had gotten to this point.

Ms. Caldwell stated that she was not too familiar with all the litigation and how it had come about. She knew that there was a municipal court proceeding between the municipality and the property owner because of zoning violations. Some of the conflict revolved around what the previously approved zoning variances for the use that dated back to the late 1950's and whether or not that permitted the change in use when they started the soccer and lacrosse which were different uses outside of the swimming club and the tennis club. It was her understanding that the municipality had a municipal court proceeding and there was a fine placed on the property. It had now been appealed. From her understanding of the Township Attorney there was no certainty about where it would go-- to the Appellate Court or to the Superior Court in Morris County. The court had urged the Township to try to come to some sort of settlement.

Ms. Caldwell said that one of the main items in dispute was whether the recreation use that was permitted back with the early use variances was broad enough to include such items as soccer and lacrosse or was it limited simply to tennis and swimming. One of the concerns that the municipality had was that if the court decided, the municipality would have very little control in the future over how the property would be utilized or how that interpretation of recreation on that property would be handled. One of the ideas was that while the municipality was still able to negotiate with the property owner, they could come up with something that was more amenable to all parties. She felt that this ordinance gave the municipality some control over the property while at the same time giving the property owner some of the uses he was looking for.

Mr. Roshto asked Chairman Pfeil if it would be helpful if Mr. O'Brien would give some background on a plan that was presented to the Planning Board a couple of years ago.

Mr. O'Brien stated that enforcement action had begun against this property in 2009 or 2010. A new owner had come in and expanded the uses on the property that were in addition to the uses that had been granted by variance by the Planning Board dating back as far as 1957 or 1958. Over the course of the years since, other approvals had been granted either by this Board or the Board of Adjustment that allowed certain uses. In 2009 in 2010, the Township began an enforcement action which resulted in the Township and the property owner meeting over the course of a two (2) year period. The owner came up with a draft ordinance and a draft Master Plan amendment which created what was called the "Commercial Recreation Zone" and included the three (3) properties that Ms. Caldwell had included on her photograph. During the course of the preparation of those documents, the Township abeyed all of the enforcement actions. In late 2013, activity on the owner's part stopped. The owner did not have the three (3) properties under his control and said that he would not include all three (3) as part of his application to this Board. At that point the matter ceased before this Board. The Township then enforced the ordinances and went to court. Last year the Township won a decision by the municipal court judge that the uses were contrary to those allowed by variance. The owner appealed Judge Bride's decision to Judge Bride on technical issues and that appeal was decided against the owner as well. Mr. O'Brien noted he had no further knowledge as to what had occurred from that point on.

Ms. Caldwell stated that the owner was bringing the appeal to a higher court however that proceeding was abated pending the outcome of this ordinance. A hearing was scheduled for approximately one (1) week after the scheduled adoption of this ordinance. The court was receiving reports on a regular basis indicating that all parties involved were making solid efforts to resolve the situation.

Mr. Roshto said that the two (2) issues in 2013 when the owner came to the Planning Board hinged on the residential property which was located very close to the dome. There was a noise issue. One of the things that the Board stressed was that the noise issue had to be resolved.

Mr. O'Brien stated that the Board had insisted that the three (3) properties be included in the zone and that was part of the ordinance that was prepared by the owner and reviewed by the Planning Board. The Master Plan amendment also included that property. When the applicant withdrew that property, everything stopped before the Planning Board because the applicant was not going to pursue that.

Mr. Roshto said that according to his recollection, the other issue was the significance of the expansion. The applicant was proposing four (4) domes and in 2013 the Board was not prepared to consider something of that magnitude.

Mr. O'Brien stated that he did not recall the specifics but he would check his reports from 2012 and 2013. In addition to those comments, the Board was also concerned about the change in time. The original variances which were approved had time limits and when the applicant appeared before the Board the Zoning Officer found that there was activity on the property towards midnight at times. It was his recollection that the original approvals ended at dusk.

Mr. Wallisch asked what variances were approved in the 1950's.

As Mr. O'Brien reviewed his notes, Chairman Pfeil asked if any other board members had any other historical information to add.

Mr. Moholkar said that the Great Swamp Watershed had said that the pool was fed by a stream.

Mr. Roshto noted that there was a representative from the Great Swamp Watershed in the audience that evening who would most likely discuss that issue.

Mr. O'Brien stated that on September 11, 1959 a use variance was granted by the Township Committee which allowed recreational activities between 10:00 AM and sundown. It was called Copper Springs Beach and Tennis Club and those were the uses that were allowed on the property. In 1976, there was a further resolution from the Board of Adjustment which allowed the dome with four (4) indoor tennis courts. In 1984, there was a resolution that allowed a snack bar and two (2) more outdoor tennis courts. In 2008, the owner of Copper Springs requested an interpretation of the ordinance by the Zoning Board. That application began in 2007. The Board found that the proposed expansion of the facility that the applicant had applied for in 2008 constituted an expansion of a non-conforming use. He did not recall exactly what the applicant was requesting however the Board found that whatever was additional to what was there was an expansion of a non-conforming use and therefore required a use variance.

Mr. Bernstein asked if the applicant got that use variance.

Mr. O'Brien replied that the owner did not pursue that at that time. The next activity was that which was just recounted in 2009 and 2010. There was enforcement action and then the owner came to the Planning Board to discuss the possibility of rezoning. Mr. O'Brien referred to a report that he had written on October 10, 2011 which described the background for the Board at that time.

Chairman Pfeil asked Ms. Caldwell to explain the details of the proposed ordinance.

Mr. Aroneo asked if the property owner was present.

Ms. Caldwell said that she did not see him in the audience.

Chairman Pfeil stated that if the ordinance went through second reading and was adopted, whatever action the property owner wanted to take would have to come back before this Board in the form of a Site Plan.

Ms. Caldwell agreed. She noted that the property owner had seen the ordinance and perhaps did not have any further comment for the Planning Board.

Mrs. Dapkins stated that this property had been a problem for many many years. In 2001 and in 2003 there was a different owner and as soon as the owner found out that the Board was insisting that he follow the resolution, he decided to drop the whole thing. The Board got the same result as it had now-- everything was held in abeyance. She felt that this was just a progressive situation. She added that they had not been good neighbors to the people who lived across the street. Those people had been constantly annoyed by various activities that were not permitted by variance.

Ms. Caldwell thanked the board members for their input and began discussing the proposed ordinance. Section 1 established that in the Principal Building Lot more than one (1) principal building would be permitted.

Ms. Caldwell referred to Section 2 which simply stated that the "REC" Recreation District be added to the Township Zoning Districts.

Section 3 identified the three (3) lots that were seen on the aerial photo. She added that they were approximately 26.7 acres total according to the tax lot data.

Section 4 included a new section called the "Recreation Zone." She stated that it was important to note that the definitions she would be going through applied just to that zone and not to other parts of the ordinance.

The first definition was for "Air-Supported Dome Structure." This was what the property owner was interested in putting on the site. It was defined as a newer type of cover for fields than the existing dome structure. It was an air-supported dome structure that derived its structural integrity from the use of internal pressurized air to inflate a pliable material envelope. There would be no rigid aspects to the dome. A requirement was added that the dome was only allowed to be up for nine (9) months out of the year. It would be taken down during three (3) months presumably in the summer. This was the type of structure that the owner was interested in putting up over the recreation fields.

A "Recreation Facility" was defined as a primary use that consisted of land area and buildings used for passive or active recreation activities. The Recreation Facilities were permitted the use of two (2) air-supported structures. "Recreation Activities" included court games, swimming and aquatic activities, playgrounds, summer camps, day camps, birthday parties and catered events serving up to 30 people, training for sports and recreation activities and running and hiking trails.

Chairman Pfeil asked if he was correct in assuming that the existing rigid dome would not be coming down.

Ms. Caldwell said that he was correct. It would be pre-existing non-conforming under this ordinance.

Chairman Pfeil asked if the intention was to allow that structure to continue to be used in addition to the two (2) air-supported domes.

Ms. Caldwell stated that that was correct.

Mrs. Dapkins asked if this meant that two *additional* domes would be built for a total of three (3).

Ms. Caldwell stated that that was correct. She said that it was the owner's intention to fill in the lake. He had a permit to do so and the new structures would most likely be in the vicinity of where the lake was located today.

Mr. Aroneo asked if Ms. Caldwell knew anything about the use of the inflatable domes. He wanted to know how long it would take to inflate them or deflate them.

Ms. Caldwell stated that she did not know. She said that there were several domes that the property owner operated in the area. There was one in Mount Olive and another in Chatham.

Mr. Aroneo said that if it was allowed under the ordinance, the owner would be able to inflate or deflate them at any time.

Ms. Caldwell said that he could but that was not the way they were operated. Once inflated, the dome would stay that way for an extended period of time.

Mrs. Dapkins asked if the pond was going to remain.

Ms. Caldwell said that it was her understanding that the pond would be filled in. The owner had already obtained a permit to do so.

Ms. Caldwell continued with "Permitted Primary Uses." There would be recreation facilities as defined above and public uses. "Accessory Uses" would include signs, parking facilities, fences subject to the standard ordinance regulations, picnic areas, concession and refreshment stands, lifeguard and first-aid areas, stands for offices, management offices, community open space, storage facilities for equipment used on site, dwelling units accessory to the recreational facility in existing dwelling units (she noted that there were at least three on the property along with the one additional adjacent) and other accessory uses customarily incidental.

Ms. Caldwell listed the "Prohibited Uses" as: amplified music, catered events for 30 people or more and festivals. The owner had requested the ability to get permission from the Township Committee to hold up to six (6) events per year at the sole discretion of the Committee. She added that any use not specifically permitted was prohibited.

Ms. Caldwell discussed the "Parking" section. It would provide parking for various recreational uses such as outdoor tennis courts, outdoor basketball courts, outdoor field sports, the enclosed field and the outdoor swimming pool.

Under Section 5, Ms. Caldwell said that there was a section in the ordinance that had prohibited uses. Outdoor Recreation was one of those. A footnote would be added that said, "Except as permitted in the REC Zone."

Under Section 6, Ms. Caldwell explained that there was a Supplemental Use Regulation section which would be amended to add Performance Standards for Recreation Facilities in the REC Zone as follows: outdoor recreation uses and outdoor fields would not be permitted to be lit except for safety lighting that was typical to parking areas, sidewalks and buildings; outdoor swimming pools would be permitted but subject to the typical standards of the ordinance for swimming pools; outdoor recreation uses would be permissible from 8:00 AM to dusk and indoor uses would be permissible from 8:00 AM to 10:00 PM provided that no more than 100 people were on the site after 8:00 PM; any air-supported dome structure would be opaque on any side facing the public road (she added that there were structures that were semi-transparent); no more than 1.5 adults per bedroom of any accessory residential unit (she noted that the owner would bring people in to become trainers and some might be couples); no amplification systems would be permitted; recreational facilities would have to meet state noise standards.

Mr. Roshto asked Ms. Caldwell if she knew what the current hours of operation were.

Ms. Caldwell replied that she did not know the exact hours but she did know that they operated into the evening.

Mr. Roshto asked if she knew if this was an expansion of those hours or a reduction.

Ms. Caldwell replied that she did not know.

Mr. O'Brien did not know the answer to that question either.

Mr. Roshto asked Ms. Caldwell if she knew whether the owner had adults staying at any of his other sites.

Ms. Caldwell stated that she knew that he had people staying somewhere but she was unsure as to whether they were staying at the actual properties.

Mr. Moholkar questioned the parking accommodations. For doubles tennis, four (4) people would show up. There could be five-on-five basketball games. Outdoor field sports such as soccer would be eleven-on-eleven. There still would not be enough spaces to accommodate even a ref. If there was more than one field, he was not sure how the math would work.

Ms. Caldwell stated that some people would come together. The numbers were based on national standards from the American Planning Association for Parks and Recreation.

Mr. Moholkar said that these numbers were based on parks and recreation numbers which were different than this type of activity. In a training facility such as this, a number of parents would stay. He felt that parks and recreation numbers could not be applied to a training facility that was listed as commercial. He noted that his son played on a team such as this and stated that there was no way that these numbers would work. At least not for soccer.

Chairman Pfeil had a question along the same vein. For the enclosed fields, all types, .5 spaces per 1000 square feet was proposed. He asked if that came from the same standard.

Ms. Caldwell responded that it did not. She said that they were no standards for enclosed fields. That number was from the property owner and what he felt was adequate for his facility.

Mr. Moholkar added that they would have to figure out how many fields there were in order to come up with a number.

Ms. Caldwell said that it was difficult because it was usually flex space. They were not set fields. They would be used for all different types of things which was why it was calculated on a per square foot basis. The space would be made into different fields at different times. The owner felt it was adequate and would not want to create a parking problem on the site. She added that he did have experience in this with other sites. She didn't think that anyone would want to create a problem where people could not come to the site.

Mr. Bernstein said that they might park on the grass or on the wetlands and get 20 more children.

Mr. Roshto asked Ms. Caldwell if she knew how many parking spaces were available currently.

Ms. Caldwell stated that she did not have that number.

Mr. Bernstein said that he would like to see what was there currently with an overlay of what the maximum development would be.

Ms. Caldwell replied that she had not gone through all the standards yet. The site was very limited. All of the gray area—

Mr. Bernstein interrupted and said that he had seen instances where the planner, engineer, or even the surveyor would draw up what was there and what *could* go there so that one could make an analysis. He felt that this would help the board members to see what they were actually voting on. It was difficult for him to envision where these buildings would be placed, how much spacing, what variances were required—

Ms. Caldwell interrupted and stated that she understood that boards always wanted more information. A detailed site plan would have to be created in order to show the specificities of the parking location, the building locations—

Mr. Bernstein said that he had seen plenty of conceptual plans drawn by planners. As an example, he said in East Hanover a planner had shown what could go on a property for an application. Without something like this, the Board really didn't have any idea of what they were approving. He also asked if there was anything in the Master Plan that would support this.

Ms. Caldwell stated that she had reviewed the Master Plan. There was no recommendation for this zone to be placed in this location. The Township Committee had the ability to approve ordinances that were not consistent with the Master Plan and they were aware that it wasn't. It was not that the Township Committee did not want to go through the Master Plan process but because there was a court case, timing was of the essence. They were working on it in good faith realizing that it was not identified in the Master Plan as a recreation zone. She felt it could be argued that it was supported in different areas of the plan but ultimately she felt that it would be found inconsistent.

Mr. Piserchia had a question for the Board consultants. He noted for full disclosure that he was a member when it was a swim and tennis club many years ago. He referred specifically to Block 14602, Lot 8 which was the pond and said that overflow parking took place on the grassy area near New Vernon Road. He asked if parking of that sort was allowed.

Mr. Lemanowicz replied that the ordinance stated that parking areas must be paved and striped.

Mr. O'Brien added that in addition there must be curbing and lighting.

Mr. Piserchia stated that people parked there and there were usually 30+ cars. Even though this was not permitted because of the ordinance, he wanted to know if there were environmental concerns for allowing parking in such an area.

Mr. Lemanowicz replied that if there was excessive parking or parking in weather that would not allow the grass to be firm enough, the area could be damaged. There could be silt and dust, etc. It could kill the grass.

Mr. Roshto stated that during these discussions he had done a quick calculation as to the number of parking spaces. He said there were roughly 92 parking spaces currently and added that he could be off by two (2) or three (3). If one multiplied the 2013 plan that was given to the Board and subtract one (1) dome (that application requested 4 domes), it would be 98, given these numbers. This ordinance would allow even more parking than what was proposed in 2013. In 2013, the applicant was asking for more impervious coverage. He was trying to justify the filling of the lake since the lake would be considered impervious so it wasn't counted in the total. If an expansion of parking was a concern to this Board, it seemed to him that this was on the fringe of making that happen.

Chairman Pfeil asked what would be the sizes of the air-supported domes. He wanted to know what the footprint would be.

Ms. Caldwell replied that she did not have the exact square footage. Presumably they would be large enough to hold for (4) tennis courts.

Chairman Pfeil asked what the square footage of the existing dome was. He was concerned about what was really required for parking.

Ms. Caldwell said that that would be the next section. The development capacity was limited by impervious surface, the wetlands and parking capacity. She felt that development on the property was fairly limited because of those factors.

Mr. Lemanowicz said that he had measured the dome using Google Earth. It appeared that the existing dome was about 29,000 square feet.

Mr. Roshto said that number agreed with what was on the 2013 plan.

Mr. Lemanowicz added the existing dome required 14.5 to 15 spaces.

Ms. Caldwell said that Section 7 identified bulk requirements. The minimum lot area was 20 acres. The minimum lot width was 250 feet. The minimum principle floor area was 1500 square feet. The minimum principle building width was 20 feet. The maximum building height for a standard building was 35 feet. For the air-supported domes structures it was 50 feet. The minimum front yard for new construction was 100 feet. The minimum side yard was 25 feet. The minimum rear yard was 50 feet. The maximum building coverage was 30%. Maximum lot coverage was 40% with a floor area ratio of 0.4. She noted that buffers would be required on the front, side and rear at the same widths as the setbacks.

Mr. Wallisch asked how tall the existing dome was.

Ms. Caldwell thought it was about 47 feet.

Mr. Roshto asked if she had a comparison with the existing ordinance. He wanted to know how this compared to the Conservation Zone.

Ms. Caldwell said that she did not have the comparison. She did not have the bulk standards tables and asked Mr. O'Brien if he had them.

Mr. Roshto clarified that he was looking to see if this change would have an impact greater than what currently existed.

Mr. O'Brien read from Section 131 in the Conservation Zone: lot area was 3 acres, lot width was 250 feet, minimum floor area was 1500 feet, there was no minimum building width, maximum height was 2.5 stories/35 feet, front yard setback was 75 feet, side yard setback was 25 feet with an aggregate of 30% lot width, rear yard was 50 feet, lot cover was 15%. There was no maximum building coverage in the Conservation Zone.

Mr. Bernstein said that in the Conservation Zone lot coverage was 15%. In this proposed zone lot coverage was 40%.

Mr. O'Brien stated that that was correct.

Mr. Roshto wanted to know what the height was of the tallest building in the Township. He explained that the Township Committee was asking the Planning Board to review something that had a dome of 50 feet.

Chairman Pfeil stated that clearly the dome was taller than anything else in the Township. He wanted to know if 50 feet was normal for a recreation zone.

Ms. Caldwell answered that normally these types of structures were taller than 50 feet. They could be 60 to 75 feet tall. The idea was to try to have a little bit of a peak in the center so that the snow would slide off otherwise they would collapse. They would be lower on the sides.

Ms. Caldwell explained that Section 8 dealt with the language to amend Section 142.1 entitled, "Development within Critical Areas." The amendment would "except out" the REC zone. If the owner received a valid permit from the Department of Environmental Protection, he would be permitted to have buildings within the flood hazard area.

Mr. Roshto asked Ms. Caldwell what the impact of that addition would be on the critical areas. He wanted to know why it was added.

Ms. Caldwell replied it was added because the location of some of the air-supported domes structures would cross into the flood hazard area. This was primarily in the back of the property and cut across where the lake was located.

Mr. Roshto voiced concern that at least one of the streams was a C-1 stream which meant it was highly critical and located in the back area that she described. He wanted to ensure that changing the critical area language would not unknowingly or unwittingly affect the streams or the swamp.

Ms. Caldwell said that the owner would still have to obtain a D.E.P. permit and comply with state regulations.

Mr. Roshto said he was asking why they should change the critical area language. What would be the impact if they were to simply remove it?

Ms. Caldwell answered that the amendment to the critical area language would allow the owner to move the structures further back on the property.

Mr. O'Brien said that currently even if the owner had a D.E.P. permit, the Township's Critical Area Ordinance would not allow the owner to build there without approval. With this amended language, no approval would be required.

Mr. Lemanowicz asked if that exemption was intended to be limited to the floodplain area. Or was it intended to be extended to wetlands also? He noted that most of the property was in the transition area.

Ms. Caldwell clarified that it was just the flood hazard area.

Chairman Pfeil requested further clarification.

Mr. Lemanowicz explained that there were two (2) environmental issues with the property with respect to D.E.P. One was the floodplain and one was the wetlands. While they often shared a property, there are two (2) separate permits involved. One section would be the wetlands or wetlands transition area of the department. Another section would be the floodplain. In this case although they were two (two) separate items, both restrictions affect the property. They are both critical areas.

Mr. Bernstein stated that it probably would not make much difference because with wetlands, the state would preempt the municipality from controlling wetlands. With respect to the floodplain, the municipality could have its own separate ordinance with higher standards which was what this Township had currently. He noted that this proposed ordinance would allow the owner to supersede the Township's ordinance.

Mr. Piserchia asked Mr. Lemanowicz to calculate the lot coverage of the lake using Google Earth.

Ms. Caldwell asked if she could proceed while those calculations were made. She went on to Section 9 which referred to signs that would be permitted in the Recreation Zone. There would be just one (1) ground sign with the maximum area of 32 square feet and a maximum height of eight (8) feet. All advertising signs or business names on the exterior of the facilities would be restricted.

Ms. Caldwell explained that Section 10 dealt with the addition of the buffers to the Buffering section. They would be along the front side and rear lot line. Buffering in the front would require year round evergreen screening utilizing double staggered row plantings of evergreens with a minimum of eight (8) feet in height at time of planting.

At this point, Ms. Caldwell advised the Board that this was essentially the extent of the ordinance. She asked if there were any more questions.

Mr. O'Brien asked Ms. Caldwell if she could discuss the court case in Superior Court further. He noted that she had mentioned that "time was of the essence" for this Board and the Township Committee to act. He asked if the action had been underway for some time.

Ms. Caldwell said that although she did not know the exact start date, she knew it had been underway for some time. She had been told by the Township Attorney that there was a court date set for some time in mid-May which would create an issue if the Board were to request more time.

Mr. O'Brien asked Ms. Caldwell if she was familiar with the previously requested ordinance that the applicant presented to this Board a few years ago.

Ms. Caldwell replied that she was.

Mr. O'Brien said that the name of that zone was the "Commercial Recreation Zone" and this zone was called the "Recreation Zone." He noted that in reviewing it, he could not find the words "commercial" or "private" or some other limitation on the word "recreation." He asked if there was a reason for that.

Ms. Caldwell answered that there was a concern that it would be applied in other areas of the municipality. The concern was to limit it to this property and identify recreation on this property. The "commercial versus non-commercial" aspect became complicated to define. They did not want to define it in this ordinance and then have it applied to some other area.

Mr. O'Brien asked if there were considerations to apply it somewhere else.

Ms. Caldwell answered, "No."

Mr. O'Brien asked if Ms. Caldwell knew what the size of the lot was that had the house on it. He identified it as Lot 4.

Ms. Caldwell answered that it was 3.9 acres approximately.

Mr. O'Brien said that currently this proposed ordinance would call for a 20 acre minimum lot size. He was not sure whether the lots would be merged or where the ownership would go however the residential lot could be separated from the Recreation Zone in the future. He asked if that was correct.

Ms. Caldwell stated that it would still be part of the commercial zone however it might not be part of the development proposal.

Mr. O'Brien said that as part of this zone, it would no longer be a permitted primary use.

Ms. Caldwell stated that that was correct.

Mr. O'Brien noted that under "recreational activities" there was an emphasis on catered events serving up to 30 people. He wanted to know what the thought process was to use "catered events" as opposed to "gatherings." As an example, he said he could get a hoagie from Shop Rite that would serve 100 people and call it a party because it was not catered.

Ms. Caldwell said that that would be considered as catered. Anytime there was food brought in from the outside, it would be considered catering. The concern was that there would be larger parties that would create noise and nuisance but they did not want to limit such things as sports birthday parties where pizza and cake were brought in for a kids' party. They felt that limiting it to 30 people would still allow those types of activities.

Mr. O'Brien said that, in that case, catering was not needed. They were merely specifying a number of people for a gathering.

Ms. Caldwell said that the type of gathering that would have food that would potentially be a party which could potentially include noise was a concern.

Mr. O'Brien said that another word should be used instead of "catered." He felt that "catered" really did not limit it since there was no definition as to what was catered. Just saying anybody who brought food and more than 30 people would not be a limiter. He felt it would be difficult to enforce.

Mr. O'Brien asked if "amplified music" under "Prohibited Uses" had been defined anywhere.

Ms. Caldwell said that there was no definition however the concern was the noise impact to the neighbors.

Mr. O'Brien said that Ms. Caldwell had mentioned that the required parking spaces had come from an American Planning Association document. He asked her which one it was.

Ms. Caldwell stated that it was on their website. There were national standards for Parks and Recreation.

Mr. O'Brien asked if Ms. Caldwell had had an opportunity to compare the suggested spaces here to the current requirements of the ordinance.

Ms. Caldwell stated that it was her understanding that there weren't any requirements for these uses.

Mr. O'Brien referred to Section 124.15(c), which said that no more than 100 people could be on the premises after 8:00 PM. He asked if there was any limitation to the number of people *prior* to 8:00 PM.

Ms. Caldwell answered it would be limited by what would be permitted by local fire codes.

Mr. O'Brien asked if there would be outdoor activities since the domes would be down for three (3) months of the year. Fire codes would not apply to any gatherings of people outside. There would be picnic facilities on-site—

Ms. Caldwell interrupted and said, "Potentially."

Mr. O'Brien said that he did not see a limitation for the number of people who would use the site then.

Ms. Caldwell said that the zoning did not include limitations on the number of people coming to the site.

Mr. O'Brien indicated that he had no further questions for Ms. Caldwell at that time.

Mr. Lemanowicz referred back to parking. He said based on his estimate of 29,000 feet for the closed courts, 14.5 spaces would be required. On the website it showed that they were running the fields perpendicular to the long axis of the building so there were multiple fields in the existing dome. If there

were multiple field sports outdoors, it would require 16 spaces per field. But if those same activities were indoors, it would be 14 spaces for the entire building which may contain three (3) or four (4) fields. He was trying to understand how they were going to do this parking calculation. He was not sure how to resolve that since it could be lacrosse, it could be soccer, or it could be something else.

Mr. Lemanowicz noted that there were three (3) lots involved. One was approximately 18 acres, another approximately 5 acres and the last approximately 4 acres. If Lot 4 with the house on it did not join in with the other two (2), it would become a nonconforming use and would always have to come before the Board of Adjustment.

Ms. Caldwell answered that that was correct.

Mr. Lemanowicz asked if Ms. Caldwell had a definition for building width because he had not seen this one before.

Ms. Caldwell answered that she did not have the definition.

Mr. Lemanowicz referred to the minimum front yard for new construction and asked if it was intended to grandfather what was currently there. New construction from the building department's point of view could be a new kitchen.

Ms. Caldwell said that it was intended to grandfather in what was existing. Obviously there were buildings that were within that 100 foot setback.

Mr. Lemanowicz noted that even a pylon sign would be considered new construction. He said these were the type of issues that always surfaced during reviews.

Ms. Caldwell indicated that the language could be changed.

Mr. Lemanowicz referred to Section 124.15(f) which said, "No amplification systems are permitted." However in Section 122.12 it said that amplified music is not permitted. He wanted to know if it was *any* amplified sound.

Ms. Caldwell answered, "Yes."

Mr. Lemanowicz said that in addition to music, no one could announce a game with an amplification system.

Ms. Caldwell said that that was correct.

Mr. Lemanowicz said that there were some definition issues that required more cleanup however he had no further questions at this time for Ms. Caldwell.

In answer to Chairman Pfeil's earlier question, Mr. Lemanowicz said that based upon the existing lot that the pond was on which was 18 acres, the pond came out to about 12% of the 18 acres.

Mrs. Dapkins asked why this was not considered spot zoning.

Ms. Caldwell said that it was a large enough piece of property with multiple lots and would not be subject to that type of idea of spot zoning. It also had a pre-existing use and pre-existing rights on the property. It was adjacent to the Swamp and the natural area for recreation. She felt that there were a lot of ideas that precluded it from being spot zoning.

Mr. Roshto said that in 2013 everything that was discussed was predicated on resolving the ownership of Lot 4 because they did not want to change a residential property into a recreation zone. It would then become a non-conforming use that would have serious effects. He asked if she knew where that stood.

Ms. Caldwell stated that there had been intentions of it all being under one ownership however she did not know how that was going to be achieved. She was not part of that negotiation.

Chairman Pfeil asked if the passing of this ordinance was dependent on Lot 4 being part of this parcel. He thought he had heard at one point that that was absolutely required.

Ms. Caldwell answered that she was not part of that negotiation.

Mr. Lemanowicz said that based upon the acreage, none of these lots would be conforming lots in the REC Zone. There would have to be 20 acres and the biggest lot among the three (3) was 18 acres. In order for this ordinance to apply, Lot 4.01 and Lot 8 would have to join. Lot 4 was not needed.

Chairman Pfeil stated that Lot 4 was the property that had historically been the source of the complaints and was the aggrieved upon party throughout.

Ms. Caldwell stated that this issue might be being worked on in another type of resolution but not to the zoning process as presented.

Chairman Pfeil felt that if this moved forward, that would be a very gray area.

Mr. Bernstein felt that it was not gray at all. If the ordinance was adopted, the two (2) lots that were owned by the sports people would become conforming.

Chairman Pfeil added that that would leave Lot 4 dangling.

Mr. Bernstein agreed.

Mr. O'Brien stated that the chairman could discuss with the board members increasing the lot size so that it would have to include all three (3) lots.

Mr. Bernstein said that a representative from Lot 4 was present and might be able to shed some light on the subject.

Mr. Aroneo referred to Section 9, 155.75, and requested an explanation for, "... In no case shall advertising signs, business names or trademarks be placed on the exterior of any structure within the Recreational Facility."

Ms. Caldwell said that there was concern that it would look like the Goodyear blimp where there were giant advertising signs on the outside.

Mr. Aroneo stated that he too spent a lot of time at these fields and the fences were loaded with advertisements. He had not seen a field that did not have this.

Ms. Caldwell said that this did not mean that the interior would not have signs. Only signs on the *exterior* would be prohibited.

Mr. Aroneo asked if she was referring to the buildings only. Or was she referring to the fencing around and outdoor field?

Ms. Caldwell said that basing it on the exterior of a structure would limit the advertising on the fences as well. The concern was more that there would be large advertisement signs for Coke or Pepsi for example on the domes themselves. This was currently a "for profit" scenario so the advertising would be typically for Little Leagues and those sorts of organizations to raise funds.

Mr. Aroneo said that it was a commercial enterprise and he was sure that they would be looking for any sort of revenue.

Ms. Caldwell replied, "Potentially."

Mr. Aroneo said that he had no further questions.

Chairman Pfeil thanked the public for their patience and asked if they had specifically questions for Ms. Caldwell.

Gerard J. Legato, attorney with the *Legato Law Firm, LLC*, Somerville, New Jersey, came up to the podium. He asked if anybody on the Planning Board was a member of Copper Springs right now.

There were no positive responses.

Mr. Legato asked if his understanding was correct that there was no overall limit on the number of people who could occupy the site on any one day and no overall limit on the number of cars that could occupy the site on any one day.

Ms. Caldwell said, "People, no. Cars just to the limit of the parking, amount of parking that would be on site."

Mr. Legato said that there would be a requirement that there be no extra parking on the grass or anywhere else. There would be just a question of parking in the allotted number of spaces.

Ms. Caldwell said that it was up to the regulation of the Township.

Mr. Legato said there was no limit on the number of people.

Ms. Caldwell answered, "No."

Mr. Legato said that they were all too young to remember Palisades Amusement Park. But on a good hot summer day, Palisades Amusement Park looked like an anthill. He thought that they should bear that in mind.

Cecelia Cilli, 11 Sassafras Place, Gillette, asked about parking. She said if the parking was approved which obviously had virtually no limit because there was no limit on the number of people that would occupy this particular property on a hot summer day—

Ms. Caldwell said that zoning did not limit the number of people typically. She said that if one looked through the ordinance, she ventured to guess—

Ms. Cilli interrupted however Ms. Caldwell continued by saying that there was a limit based on the impervious surface coverage which would limit the number of parking spaces that could be built which would then limit the number of people who could come to the site. Any structure would have a fire code limit. It was just like any park, there would be a limit based on what people are going to go to if they couldn't find a parking space. It was also a commercial facility and people would have to pay to be there. It would not be just a free-for-all.

Ms. Cilli stated that she was a member of Copper Springs for over 20 years. On weekends cars were practically parked on top of each other. They were parked in the mud and everything that could possibly be parked on including the road. She was concerned about how that would impact other properties in town as far as parking. Other applications had been rejected because of parking and now there would be an ordinance in another area virtually giving unlimited parking with no sort of policing. How would they say the next time that an applicant could not build something because of parking?

Mr. Bernstein noted that that was a good question. He asked Ms. Caldwell if she could answer that question.

Ms. Caldwell stated that parking was not going to be permitted wherever anybody wanted. There would be limits and constraints due to the ordinances and impervious surface coverage, setbacks, and other requirements. The parking requirements in this section only applied to this zone and would have no bearing on development in any other part of the municipality.

Ms. Cilli wanted to know if there was a guarantee that this would not impact any other zone in the municipality. She felt that this was spot zoning.

Chairman Pfeil told Ms. Cilli that she had crossed over into the comment portion. He felt that those were for a later part of the meeting.

Mr. Bernstein said that Ms. Caldwell could not answer the question. He advised Ms. Cilli to introduce her idea during the comment portion of the meeting.

Mr. Moholkar had a quick comment related to Mr. Legato's question. He said that his son would be involved in a class at Center Court in April.

Mr. Bernstein asked Mr. Moholkar to leave in order to avoid any conflict.

Mr. Moholkar agreed and left.

Mr. Roshto asked for clarification. He noted that this was not an application. It was a request from the Township Committee for the board members to support or not, whether or not this ordinance was consistent with the Master Plan. He felt that when people were being treated as witnesses in an application, there would be a misconception as to what the Board was trying to do here.

Mr. Bernstein said that the problem was that a conflict of interest would apply in these situations as well and depending on what this Board did, there might be additional litigation. He was trying to limit the number of issues that the Board could face and he didn't want anyone to say that the Board voted on a matter one way or another and it was tainted. It would throw out all the good work that the board members had done. He was trying to be conservative so that if there was a challenge it would be on the merits and not on a potential conflict. For the record, he stated that the conflicts discussed would not impact any of the board members' minds however a judge could feel otherwise.

Mr. Aroneo told Mr. Bernstein that his daughters had attended soccer camps and lacrosse as well.

Mr. Bernstein asked if they were still attending those camps.

Mr. Aroneo answered no but there was nothing to say that they would not in the future.

Mr. Bernstein said that he would prefer that Mr. Aroneo disqualify himself.

Mr. Piserchia said that he was troubled by this.

Mr. Bernstein said that it made sense to him not to take a chance. It would not be a conflict if a board member bought something from a bakery or Shop Rite. This was more of a personal instruction type of thing.

Mr. Aroneo said that he would comply but he felt that this was much closer to the "Shop Rite" context.

Chairman Pfeil noted, for the record, that he and his wife were on the Board of Trustees of the Great Swamp Watershed Association.

Mr. Bernstein stated that he had called Sally Rubin and asked her if the Great Swamp had a position on the rezoning. She said that the Great Swamp had no position and she would not speak on the rezoning. She was present in the audience as an observer. That would take it out of the conflict realm. If the ordinance was adopted and they came back for Site Plan and the organization had a position, Chairman Pfeil should recuse himself.

Chairman Pfeil asked for a 10 minute recess at 8:58 PM.

RECESS

Chairman Pfeil called the meeting back in session at 9:08 PM.

Debra Schmitt, 486 Meyersville Road, Gillette, asked Ms. Caldwell why she, as a professional planner, felt that a special designation for a recreation zone was needed in this Township.

Ms. Caldwell said that it would acknowledge a pre-existing use that had been there for over 50 years. It had been used as a recreation area and was also adjacent to the Great Swamp which was considered a recreation area. She noted that there was a municipal park in that area also and therefore felt it was well-suited to recreation.

Ms. Schmitt said that if it had been used in this way for all this time without there being a special designation, why wasn't the owner coming to the Board of Adjustment for variances to allow him to continue using things the way they were rather than trying to do a spot zoning situation. She noted that there was an additional property which had been residential for 100 years that would be part of this recreation zone. This would encumber the owner of that particular piece of property.

Ms. Caldwell responded that Ms. Schmitt had heard all the history that had led up to this point.

Ms. Schmitt felt that this would condone a lot of bad behavior that had been allowed to go on for many years. She asked Ms. Caldwell if she knew of other towns that have a specific recreation zone.

Ms. Caldwell answered that a lot of municipalities had recreation zones however she could not remember one off the top of her head.

Ms. Schmitt asked why Ms. Caldwell felt it was sensible to increase the total lot coverage permitted on these lots located in a conservation area. She noted that she owned property on the swamp side of Meyersville Road and had agreed to have her property rezoned Conservation along with the rest of these properties because of the flooding issues. She wanted to know why 40%, as opposed to the current 15%, was appropriate for this property.

Ms. Caldwell responded that it recognized that the existing impervious on the site was approximately what it was being rezoned for. A residential use would not apply to a commercial use.

Ms. Schmitt said that although she recognized that a lake was considered as impervious coverage, it was hard to deny that the lake could handle additional water when it flooded but a building and a parking lot could not.

Ms. Schmitt wanted to clarify that Ms. Caldwell did not know the square footage of the two (2) additional proposed domes.

Ms. Caldwell said that that was correct. At this point they were just looking at zoning and not at any specific plans.

Ms. Schmitt asked, if they were looking at just zoning, why they were discussing how many extra domes there would be.

Ms. Caldwell responded that in zoning, typically the number of structures was discussed along with their heights and where the setbacks would be located, however there would be no specifics such as building sizes and number of parking spaces.

Olga Argumova, 691 Meyersville Road, Gillette, asked what the capacity was for the three (3) bubbles.

Ms. Caldwell said she could not answer that without a site plan.

Ms. Argumova said that according to the ordinances, recreation should be for the public and affordable. She asked how these facilities would comply with this.

Ms. Caldwell said that she did not know what Ms. Argumova was referring to.

Chairman Pfeil said that Ms. Caldwell did not represent the facility. She was the Township Planner.

Ms. Caldwell stated that this was a private facility.

Ms. Argumova continued questioning Ms. Caldwell as to how this complied with the Township's recreation ordinances.

Chairman Pfeil advised Ms. Argumova to ask questions.

Ms. Argumova asked how the new ordinance could be discussed when there was no limit on cars and no limit on people. If 1000 cars came to the facility, what would happen?

Ms. Caldwell stated that zoning did not apply limits to people on properties. Cars were limited based on parking spaces and access.

Ms. Argumova continued this line of questioning and Ms. Caldwell responded that the questions did not make sense.

Chairman Pfeil said that it was like trying to find a parking space two (2) days before Christmas. The person would have to drive around until they found an open parking space.

Ms. Argumova questioned the height of the proposed bubbles and how they would comply with the Township's ordinances.

Ms. Caldwell stated that first of all, this was a proposed *new* ordinance so it would not be relevant to try to comply with existing ordinances. She said that the existing structure was approximately the same height as the proposed structures would be.

Ms. Argumova asked questions about how the bubbles would look and if they would raise property values.

Chairman Pfeil instructed Ms. Argumova to ask direct questions only.

Ms. Argumova asked what would happen if the cars parked in the wetlands areas.

Mr. Bernstein told Ms. Argumova that she had some good questions but she was basically testifying. These were rhetorical questions which could not be answered.

Robert Kielblock, 53 Lacy Ave., Gillette, asked if his understanding was correct that the lake was possibly going to be filled in.

Ms. Caldwell said that it was her understanding that the owner and applicant was applying for a permit to fill in the lake.

Mr. Kielblock noted that it was an artesian spring fed lake. He asked where the water which kept that lake full was going to go.

Ms. Caldwell stated that she could not answer the question.

Arthur Brown, 479 Meyersville Rd., Gillette, stated that the owner had not conformed to any of the ordinances currently in place. He wanted to know why the zone was being created to accommodate even more things that the owner might not conform to.

Chairman Pfeil said to Mr. Brown that he had missed the beginning of the meeting. He summarized by saying that this had been to court and the court sent it back to the Township to try to resolve it. This was the effort that the Township and Ms. Caldwell had spearheaded to create an ordinance that would satisfy both the court and the owner.

Mr. Brown asked if the court had said that it had to be rezoned or did it say that the owner had to come for a variance.

Ms. Caldwell answered that they could not settle by variance because that would be decided by a board which could turn it down. It had to be decided in a way that was more concrete than that and that was why the Township was looking at an ordinance.

Mr. Brown expressed concern that anyone could request a rezoning.

Rosemary Agrista, 205 Long View Terrace, Gillette, asked a procedural question. She wanted to know when the judge told the Township to "work it out," what that actually meant.

Mr. Bernstein said that judges will often ask the litigants to try to settle so that they don't have to make the decision. According to the Township Attorney, that was what happened. The Township Committee was sending the proposed ordinance to the Planning Board for its recommendation as to whether it was consistent with the Master Plan. The law did not even require that this be done at a public meeting however it had been this Board's policy to allow the public to speak.

Ms. Agrista asked, given that "time was of the essence," if there was a court date in May. What would happen if it was not resolved by then?

Mr. Bernstein answered that the judge would have to decide. The planner was making the point that it could go either way and to limit the risk the thought was that this would settle it.

Ms. Cilli asked, if the Board made a recommendation that this proposed ordinance did not conform to the Master Plan, what the Township Committee would do.

Mr. Bernstein read from the Municipal Land Use Law, 40:55D-26, "Referral powers. Prior to the adoption of a development regulation, revision, or amendment thereto, the planning board shall make and transmit to the governing body, within 35 days after referral, a report including identification of any provisions in the proposed development regulation, revision or amendment which are inconsistent with the master plan and recommendations concerning these inconsistencies and any other matters as the board deems appropriate. Governing body, when considering the adoption of a development regulation, revision or amendment hereto, shall review the report of the planning board and may disapprove or change any recommendation by a vote of a majority of its full authorized membership and show record in its minutes the reasons for not following such recommendation."

Ms. Schmitt said that if this was not spot zoning, it could be deemed that other parts of the Township in the future could be recreation zones. She asked if that was correct.

Ms. Caldwell said that she did not think that that was the intention. This was a specific case with a very specific background but at any time the municipality could rezone anything in the municipality.

Ms. Schmitt said according to Ms. Caldwell it could happen but that was not the intention right now.

Ms. Caldwell agreed.

Ms. Schmitt said that in the recommendations she saw one (1) parking space allotted for every eight (8) swimmers. She asked when was the last time anyone took seven (7) children to the pool with them.

Ms. Caldwell said that it was based on maximum occupancy and usually pools were not completely jam-packed where there would be one person per square foot.

Ms. Schmitt referred to Mr. Piserchia's comment about how busy the complex was every weekend in the past.

Mr. Piserchia clarified that his comment referred to a time in the past when the entire property was used as a lake.

Ms. Caldwell stated that the pool was an accessory use. It was not thought that it would be a large pool.

Ms. Schmitt asked that the Board and Ms. Caldwell look at that number because it concerned her for this property and any other where things might not go as "currently intended."

Ms. Caldwell said that the parking standards were just for this zone.

Ms. Schmitt said that other properties could become a recreation zone.

Ms. Caldwell repeated that that was neither the intention nor the thought process.

Ms. Schmitt asked if this would be the only area in town that would be considered for a recreation zone.

Ms. Caldwell stated that that was the intention, at least at the moment.

Ms. Schmitt asked if that was not spot zoning.

Ms. Caldwell said no. She felt that there could be one specific commercial zone and have that be the only commercial zone.

Ms. Schmitt said that that usually involved a lot of properties and not properties that were already being used. Two (2) of the three (3) properties that are being reviewed were already owned by the same owner.

Chairman Pfeil asked if there were any further questions of Ms. Caldwell. Seeing none, he opened the floor to comments on the proposed ordinance.

Mr. Legato reintroduced himself and advised the Board that he was representing Patty Badding who was the owner of Lot 4. He wanted to give the Board some history. He stated, as Mrs. Dapkins had pointed out, "Copper Springs has been a bad citizen for years and years and years." They were noisy and overburdened; the traffic was horrendous; the uses beyond their variances were many and frequent. Being about 75 feet away from that property, his client had borne more than her share of that abuse. It had been going on for years and she rightfully and arguably had been the most vocal in complaining about the fact that Copper Springs routinely and often went beyond the uses of their variances. It came to such a head that the Township Committee brought Copper Springs to court and won. Judge Bride found that they were in violation of their variances and that they had to stop whereupon Copper Springs appealed to the Superior Court in Morristown. It was his understanding that the judge asked everyone to work this out. He put his ruling in abeyance while a solution was reached. He was told by a representative of the Township Committee, the entire purpose of this ordinance was to resolve the court matter. On the one hand they hoped to have Copper Springs satisfied by getting everything it had wanted and everything it had done in the past legalized. As he understood it that evening, they would be able to have unlimited crowds, camps, outdoor recreation, indoor soccer, indoor anything else-- they would be able to do legally and with the blessing of a statute as opposed to a variance, everything about which the public had complained over the many years. The only thing the Township would get in return was resolution of the lawsuit. As an aside, he felt that they could simply capitulate and get the same result. The key to the whole thing and the reason that Mr. Legato was present was that he was told, as part of the solution, Patty Badding's property would have to be purchased by Copper Springs, otherwise, no deal. The mechanism for that was that there would be 26 acres as a minimum thereby rendering it impossible for Copper Springs to qualify for the new recreation zone without purchasing Patty's property. Somehow as "the truck was riding down the street and hit a bump, the cabbage fell off the truck." The new minimum area for the new zone became 20 acres there by absolutely removing any incentive whatsoever for Copper Springs to buy Patty out. He had written a note to the Township Committee to ask them to restore the 26 acres immediately because he did not know how it got to 20. The deal that was proposed to him was described as a global settlement. Patty would not be left out of this. She would be bought out contingent upon Copper Springs getting a rezone and contingent upon a resolution of the lawsuit. Now it had morphed into a 20 acre minimum. With a 20 acre minimum, Copper Springs could get everything that they needed without any further purchase of anything and all of their activities which the Township had fought to a standstill would now be allowed: the indoor soccer, the day camps, the swimming, whatever. He requested that it be expanded to a 26 acre minimum so that his client "did not get cut off at the knees." He emphasized that it was his understanding that this zone was created to resolve a lawsuit and his client was not going to be left out. He didn't know how it happened however the way it was written with a 20 acre minimum, his client was "cut off at the knees." He added that she would also be left with a non-conforming lot which he described as "inverse spot zoning" against his client.

Mr. Roshto asked Mr. Legato if he was representing his client at the beginning when he was asking his questions.

Mr. Legato answered that he was. He added that that was his only representative capacity at this meeting.

Mr. Wallisch asked if there had been agreed upon sales conditions and a price for that property.

Mr. Legato responded that there was no agreed-upon price. At one time, historically they had an agreed-upon price until the whole thing metamorphosed into a lawsuit whereupon the owner of Copper Springs said that he would not go forward with the closing because it was no longer in his interest to do so.

Mr. Wallisch said that if it was 20 or 26 acres, they would have considerable leverage in negotiations for the property at that point.

Mr. Legato said that at 26 acres, Patty Badding would have considerable leverage. At 20 acres, Patty Badding would have zero leverage. That was his point.

Mr. Brown commented that he was appalled. He wanted to know why the Township was giving them a zone so that they could increase the volume of what they could do. He noted that he lived about half a mile away and could hear the intercom all night every night in the summertime. If 200 or 300 people were going to be added in a bubble, he would hear them screaming. He felt it was crazy that the Township was resolving the problem by giving Copper Springs carte blanche. He asked the Township not to give in and to save Meyersville.

Ms. Cilli said that apparently everybody had been doing what they were supposed to because she had all the records from 1959 to 2001. There were letters written by Jack Pigeon during that time advising them that they were non-conforming. Copper Springs had been violating the zoning laws for years since 2001 under the last two (2) owners. This person bought it knowing that there were violations to the zoning laws. There was a variance to operate the tennis courts and a swim club. He was currently operating indoor lacrosse and soccer facilities. In addition, it violated the noise ordinances repeatedly. The Township Attorney had sent letters. The Board of Adjustment had sent letters. There were repeat citations from the Zoning Officer. They were taken to court and they lost. They appealed and the Township won. On appeal, the judge said to work it out. He also said that Copper Springs could continue to do what they were doing in the meantime without any citations. They had been working this out for months *behind closed doors*. She had asked the Township Committee about it and she could not get any answers. She knew about it because she had OPRA'd it. She wanted to know how it would be policed in the future. The proposed 50 foot level would be taller than any structure in the Township. This ordinance would give them permission to construct that. She noted that the Master Plan said that the Township needed more recreation but it was very specific in saying that it should be public and affordable. This would not conform to that or to the Master Plan in any way. She stated that this was spot zoning. A piece of property was being made to conform for one particular property owner. She felt that if it was done here, it could be done in other parts of town. She was aware that the Township Committee could override the Planning Board's recommendation however she asked the board members not to allow that to happen.

Mr. Kielblock stated that he had lived in the Township for 56 years. He noted that he had grown up on Lot 4. His grandfather hand-built that house in 1947. When they first "big garbage bag" appeared, he felt it took 10 years off of his grandmother's life. In the mid-60s, he was a member of the Copper Springs Swim Club. He noted that it was enjoyable to be at his grandmother's house until the tennis bubble went up. There was no noise however he had been at Patty Badding's house at 10 PM or 11 PM, and it sounded like a concert hall coming out of that bubble. The noise, the racket, the hooting and hollering, the whistles, kids screaming, loud music was a nightmare.

Kirsten Kielblock, 53 Lacy Ave., Gillette, stated that she had spent a substantial amount of time in the evening at 260 New Vernon Road also known as Lot 4. She noted that the noise occurred well past 10 PM and can be heard inside the house with all of the doors and windows closed and a sound machine was used to drown out the noise. She found it appalling that a resident would have to put up with this despite numerous complaints over many years. She noted that the Township Planner stated that recreational activities such as these were in line with the area however she felt that hiking, bicycling, and observing nature were congruent with the National Wildlife Refuge not soccer, tennis, lacrosse, loud music, whistles, PA speakers, and people screaming. She added that parking on the grass had more of an environmental impact than just killing the grass because cars leak fluids. She was appalled and in disbelief that Copper Springs was allowed to operate against the Township's ordinances for so long and instead of changing the way that they operated, they were requesting that the ordinance be changed. The Township had allowed them to continue this way without consequence. Ms. Kielblock was upset that someone could just cut down trees and build an outdoor soccer field on conservation land without permission.

Mr. Piserchia asked where the trees had been cut down.

Ms. Kielblock replied that it was where the outdoor soccer field was located, behind the bubble. That was all bulldozed, and a field was put in there. There was never a field behind that dome.

Mr. Piserchia asked when they were cut down.

Ms. Kielblock replied about four (4) years ago.

Ms. Argumova stated that for a long time Copper Springs had done illegal things. Now the Township was going to make everything that was illegal, legal. She didn't want them too close however she wanted the Township to keep them under control. She also didn't understand how the Board could discuss the ordinance when they didn't know the capacity of the three (3) bubbles. Where would all the cars park? They would park on the grass and destroy it. She questioned the Township's ability to enforce the ordinances and asked why they would allow this. Her final comment was that if the Township did something special for one owner, the next owner would want it also.

Larry Fast, 498 Long Hill Road, Gillette, stated that his property overlooked the bubble. He noted that he had been involved in several aspects of planning in the Township over the years. From the time that Copper Springs went in, there was no federal Great Swamp protected area. There was a jet port proposal that was coming in and a lot had happened over the 50+ years that this had been in existence. What had changed, which he felt was the more global issue, was that the Swamp was protected and the Port Authority was fought back all the way to Washington, superseding the New Jersey State Government and the Department of Environmental Protection's precursors. It went all the way into Congressional action in the House and the Senate to protect this area. In the surrounding towns, Harding, Chatham Township, Long Hill Township, Bernards Township, the stakeholders that were located immediately on the Swamp plus the 10 towns that had conforming ordinances, it has been a case of de-intensification over the decades around the swamp area. That was consistent with some of this Township's Master Plans as they evolved and were projected to evolve in the future. Meyersville at one time would have been seen as a blank slate for intense development of one sort or another. But it had been de-intensified to the point where it was no longer considered a village, but a hamlet. It was not a magnet to draw more people but rather they were trying to respect the ecology and environment around it that the Great Swamp exemplified and be neighbors with its federal partners in this. It was a matter of finding uses that were compatible with this. One of the overriding things that he had seen in other cases and surrounding areas from the Port Authority action on out had been a case not only of de-intensifying but if something was a pre-existing use, allow it to continue at about the same intensity until times moved on and it became part of the federal preserved area or some other less intense use came along. Based on Copper Springs' use, there could be more of a settlement rather than a wholesale rezoning. Make it a draw-except some of the previously non-conforming uses but don't up the intensity. This seemed to be a common thread throughout the years since 1959 and the Port Authority announcement to the present day and this was how it had evolved.

Mr. Roshto pointed out that Mr. Fast was a member of the Master Plan Committee.

Phyllis Fast, 498 Long Hill Road, Gillette, asked who actually wrote this ordinance.

Ms. Caldwell responded that she had written the ordinance in coordination with a subcommittee of the Township Committee, members of the Planning Board, as well as members of the Zoning Board.

Ms. Fast pointed out that the citizens of Long Hill Township were paying for the services of two (2) planners that evening and she was not sure why. She expressed concern that the ordinance did not take into consideration the location of this property in reference to the Great Swamp Wildlife Refuge. These properties were contiguous to the Swamp and the idea of expansion was a bad one for the environment. In the ordinance it said that more building could be approved if the D.E.P. approved it. What about the Township Planning Board and the Township Committee? Would the Township have any say in the matter if the D.E.P. approved additional building?

Mr. Bernstein clarified that with respect to floodplain, if the D.E.P. approved it, the Township's ordinance would not apply. It would not take away the Township's Site Plan approval however it would take away that portion of the critical areas ordinance that governed the floodplain which was more strenuous and demanding than the D.E.P.

Mr. Lemanowicz added that the Township had its own set of requirements for construction in the floodplain. The way this ordinance was written, it would be exempt from local restrictions.

Mr. Legato revisited his comments in reference to the 20 acre minimum versus the 26 acre minimum portion. If the ordinance went through with a 20 acre minimum, there would be a much easier way to resolve the court case then with a new ordinance. Simply withdraw the Township's opposition to the appellant and completely capitulate in court. Copper Springs would win the case and its interpretations of the variances would become binding. It would be a lot less expensive for the Township.

Mr. Bernstein said that that decision was for the Township Committee. This Board's responsibility was to issue a recommendation as to whether or not the proposed ordinance was compatible with the Master Plan.

Mr. Legato said that he understood that but he was urging this Board to make sure that the 26 acre minimum was included in the recommendation.

Mr. Bernstein said that the Board's first recommendation would be whether or not it was consistent with the Master Plan. Other recommendations could be made after that.

Mr. Piserchia said that over the last few years there had been talk suggesting that there may or may not have been an agreement between the owner of Lot 4 and the owner of Copper Springs. He asked if there was an agreement. What form did it take? Was there currently an agreement? Was the sale based on a fair market appraisal?

Mr. Legato responded that there was once an agreement that fell through because Copper Springs backed out of it since the owner felt it was no longer in his best interests to purchase it. Jack Pigeon had proposed a consent agreement by which Copper Springs would buy Patty Badding's house at "fair market value." It was contingent upon getting the zoning that he needed. It would be a three (3) way global settlement. Patty would sell her house, Copper Springs would buy it at fair market value, and the Township would have to pass the ordinance allowing Copper Springs to do everything it wanted to do. That agreement was still pending. Mr. Legato and his client had not agreed to abide by that because what was the fair market value of Ms. Badding's house to Copper Springs as opposed to any other member of the universe. The value of Ms. Badding's house to any other person in the universe would be pretty low because it was located right next to a "terribly objectionable site." The value to Copper Springs would be very high because they would get to settle globally and get exactly what they wanted. So far there had been a failure to understand that difference and therefore there had been no meeting of the minds.

Ms. Schmitt stated that even though she had read this before the meeting, she had no clue that there would be two (2) additional domes approved by the creation of this recreation zone. She felt it was "some fine way to punish somebody who had been a perpetual violator of our ordinances." She felt it was too high and too ugly and the lot coverage was too intense especially in what was a conservation area. To allow business lot coverage to exist in a conservation area seemed horrendous. The current violations would be allowed to persist while increasing the imposition on the Great Swamp. She continued discussing the fact that the violations that had been ignored for years would continue. She also pointed out that the people from Center Court were parking the parking lots for the ball fields which indicated that they already had parking problems with just one (1) bubble. What would happen with two (2) more bubbles since the parking would not be significantly increased? She also felt that the surrounding properties would become valueless because of this proposed recreation zone. If the Township Committee did decide to approve this zone, she implored them to increase the parking requirement, decrease the lot coverage, decrease the floor area ratio, prohibit additional bubbles, and not allow intensification of this property.

Chairman Pfeil asked Ms. Schmitt to conclude her comments so that others would have an opportunity to speak.

Ms. Schmitt said something off mic that was inaudible.

Marylyn Kitchell, an employee of the U.S. Fish and Wildlife Service representing the Great Swamp National Wildlife Refuge stated that this property directly adjoined the property in question to the west and north. As a national wildlife refuge, this was part of a national system whose mission it was to conserve, protect, and enhance wildlife and their habitat for those trust resources as well as for the American people. She was present to represent those concerns. The property in question was important for breeding land birds as well as for reptiles and amphibians and other "critters" as well as plants. She appreciated Mr. Fast's comments on the history that it took to acquire protection for these properties. When they evaluated their own activities for consideration, they had to flow everything through a federal process and be transparent. One of the things that was routinely considered in evaluating their proposed ideas was disturbance factors in terms of noise and light and volume of traffic. With regard to the proposed zoning change, anytime there was a change in zoning adjacent to their property it became a concern because it signaled a change in use which might have a differential impact on their resources. The site plans at the moment were not forthcoming because this was all theoretical therefore there was nothing to comment on. With regard to that, she appreciated the consideration that the Committee had given previously to the refuge resources and she asked that in deliberating this potential zoning change as well as any future consideration of site plans, the Committee would continue to give fair consideration to the refuge resources that she was there to protect. She asked that they very carefully consider any changes in uses and how that would affect those resources.

Richard Pfluger, 129 Hickory Tavern Road, Gillette, noted that the house across the street from Copper Springs was owned by Gus Schmitt so everything that was happening to Patty Badding was happening to him also. He said that it seemed counterintuitive to increase the intensity of that property. He felt that the proposed ordinance was written by Copper Springs and was totally inappropriate for this property. It was a private swim club and private tennis club. He noted that the owner ignored all of the ordinances and restrictions. Settling the lawsuit by capitulating and tripling the nuisance was insane and ludicrous. This would affect the quality of living in Meyersville. The Township had allowed this owner and the prior owner to run this establishment without restriction at all. He felt that the Township should stand up in court and say that this was wrong.

Michael Behr, 176 Hickory Tavern Road, Gillette, reiterated everything that Mr. Pfluger had said. He asked if he was correct in saying that the zone was currently conservation and proposed to go to recreation.

Ms. Caldwell stated that it was proposed to go to a commercial zone. There were existing use variances on the property which provided rights to the owner to conduct commercial uses which were now being litigated in court as to the extent of those uses.

Mr. Behr said that it was his understanding that the Master Plan was looking more towards recreational sites and facilities. He noted that he was new to the area, having only lived in the Township for two (2) years. He referred to Kantor Park and discussions about a possible park located across the street from the municipal building.

Mr. Piserchia stated that that was correct. The Township had purchased that property and the Township Committee was soliciting input from the public as to what they would like to see on the property.

Mr. Behr asked if the property in question be a place that he could take his children and their friends and just play or would this be private property that would cost them money and therefore make it commercial.

Ms. Caldwell stated that it was a commercial training facility which was open to the public and that anyone could sign their child up to go to training and pay for training courses in soccer and lacrosse.

Mr. Behr said that it was his understanding that that was not the intent of the Master Plan.

Karen Sankus, 486 Meyersville Rd., Gillette, said that she had grown up in Meyersville. During that time she had seen Copper Springs create more and more traffic and more and more noise. In the hamlet of Meyersville during the summer, everyone heard all the noise all the time. After reading the Master Plan, she felt that it was looking for more bike paths, more walking paths, and things that she felt the Township needed. She had never done anything at Copper Springs because it was always too expensive. She felt that this was not for everyone; it was for a select few. Last November she was on her way home and she noticed that there were a "ton of cars" there. She counted 99 cars in that parking lot at about 10:30 PM. If there were going to be more bubbles, there definitely had to be more parking because it was already full with just the one (1) bubble. She was confused about how changing the zoning would automatically give the owner more bubbles.

Chairman Pfeil asked if there were any further comments.

Mr. Bernstein stated that the first responsibility of the Board was to decide whether or not the proposed ordinance was compatible with the Master Plan and secondly if there were any other recommendations to the governing body. He asked the board members for specific reasons for their votes because he felt it would have a bigger impact than simply a yes or no vote.

Chairman Pfeil said it was his understanding that they could vote to support the ordinance as it was written which was option number one. Option number two was *not* to support it and list the reasons. Because of the number of comments and questions raised by the audience, the third option would be to refer the ordinance to the Ordinance Review Subcommittee for suggestions and modifications and then bring it back to the next meeting.

Mr. Bernstein noted that the Planning Board had only 35 days from when it was sent from the Township Committee to make its recommendation.

Mrs. Dapkins suggested that they make a decision that evening. There was general consensus among the other board members.

Chairman Pfeil asked for a motion to extend the meeting. Mr. Piserchia motioned and Mr. Roshto seconded. A **VOICE VOTE** was taken and by unanimous approval, the meeting was extended 20 minutes.

Mr. O'Brien asked Ms. Kiefer if she had the referral date.

Ms. Kiefer said that it was first—

Mr. Roshto interrupted and said that because they were going try to make a decision that evening, the date was irrelevant. He then asked if he could begin the deliberations. For the purposes of full disclosure, he stated that he was on the Township Committee and on the subcommittee that worked on this. He felt that there were a number of issues that had to be resolved and they were not. He advised them that if they were not resolved, he would not be able to support it. The Re-examination of the Master Plan done a year ago more than doubled the number of conservation goals. To him that was a signal that this Planning Board and the Master Plan believed that conservation was very important. He

had also heard that during public comment that evening. Just that alone along with the extensiveness of the parking, the extensiveness and impervious coverage that would be created, was justification that this was incompatible or inconsistent with the Township's Master Plan. Further, stormwater goals increased in the Re-examination Report. He felt that there would be some detrimental impact here as well. The Recreation Element was focused on public uses and nowhere in the Master Plan was a commercial recreation zone discussed. That type of that activity would be best served if it were done through a comprehensive Master Plan process which was what was being done right now. He added that, in good planning one always sought to reduce non-conforming uses. In this situation, a non-conforming use was actually being added. This potential zoning would create a residential home that would be non-conforming which would be Lot 4. Finally, Mr. Roshto said that the Master Plan was looking for things that were in scale with the surrounding neighborhood. Multiple 50 foot high domes were clearly not in scale with the goals in the Master Plan. For those reasons he highly recommended that the Planning Board send this back to the Township Committee and explain to them that this was inconsistent with the Master Plan.

Mrs. Dapkins agreed with everything that Mr. Roshto had said. It inconsistent with the Master Plan because it was not for the general public or easily affordable and it was spot zoning.

Mr. Wallisch found it disappointing that the party that would benefit from this was not in attendance at this meeting. Beyond that, he was very concerned about the potential spot zoning, the parking requirements the future compliance given the past performance which he felt was an ugly record, a requirement of buying Lot 4 which was not built into this proposed ordinance and the noise issues. Most of all the board members had to decide whether it fit within the Master Plan. For all the reasons that Mr. Roshto had given, he completely agreed that this did not fit.

Mayor Rae agreed with all the comments that had been stated up to that point and agreed that it was inconsistent with the Master Plan.

Mr. Piserchia stated for the purposes of full disclosure, that he too had served on the subcommittee regarding this. He thanked Ms. Caldwell for her efforts, saying that she had done what she was asked to do. He had wanted to resolve the situation which caused the lawsuit however it appeared that it had not been resolved and he was troubled by that. As pointed out by a member of the public, there seem to be two separate issues. There was the lot where the bubble currently existed and then there was Block14602, Lot 8. He was troubled by the environmental impact. The expansion of the use on this property in the manner that had been proposed should have its full day in court when environmental people could come in and speak to that in addition to the visual impact. Clearly, it was not supported by the Master Plan as it was written. Given that, he was not in favor the ordinance as it was written. He reiterated that it was not Ms. Caldwell who had suggested this. She did what she was asked to do however it seemed that they had mixed apples and oranges. There were two different lots. The situation on Lot 4.01 was one thing with a legal issue which they were asked to resolve and he was hopeful that they could do that. That was entirely different than the property where the lake was situated.

Chairman Pfeil stated for the purposes of full disclosure, that he too had served on the subcommittee that reviewed the initial draft, made some comments and directed that these details be worked out with the property owner. He was disappointed that it hadn't happened. He said that he could not agree more with Mr. Roshto and his comments relevant to the Master Plan. Chairman Pfeil added that all of the comments he had written down during this meeting were bad however he was pleased to see that the actual process was working so well. The members of the public had given the Board wonderful feedback on this. He apologized to Ms. Caldwell for the "barbs and the arrows," stating that she had done a wonderful job. He then stated that he could not support this.

Mr. Bernstein said that the next step would be to vote that the proposed ordinance was inconsistent with the Master Plan for reasons stated. He offered to write a recommendation based on the testimony and commentary from that evening. First he would note the inconsistency with the Master Plan and then some of the comments and concerns of the board members. After circulating it amongst the board members for comments, it would be submitted to the Township Committee.

Mr. O'Brien noted that this should be in the form of a resolution.

Mr. Bernstein stated that he would write the recommendation in the form of a resolution. There was general agreement among the board members.

Ms. Schmitt asked if the resolution would say that the Planning Board did not feel that the creation of a Recreation Zone would be compliant with the Master Plan.

Mr. Bernstein said that it was inconsistent with the Master Plan for the reasons stated earlier. In addition there were other issues that the Planning Board had with the ordinance aside from the Master Plan issue. Therefore it was the position of the Planning Board that the Township Committee should not adopt this ordinance.

Mr. Brown asked if the Planning Board could ask the judge for more time.

Mr. Bernstein stated that it was not the responsibility of the Planning Board. It was the Township Committee which was involved in the litigation. He suggested that Mr. Brown bring that comment up at a Township Committee meeting.

Mr. Legato said that according to Mr. Bernstein part of the resolution would say—

Mr. Bernstein interrupted and said that Mr. Legato’s client would be mentioned as well. One of the issues was the 20 acre versus 26 acre minimum lot size.

Mayor Rae clarified that the Township Committee would not be discussing this ordinance until its May 13, 2015 meeting.

After discussion Ms. Kiefer, it was decided that the resolution would be placed on the agenda for the April 14, 2015 meeting of the Planning Board.

Mr. Bernstein formulated the following resolution: “Be it resolved that the Planning Board vote that the proposed resolution is inconsistent with the Master Plan and second, we recommend against adoption for other reasons that have been discussed tonight.”

Mr. Piserchia moved approval of the resolution as stated by Mr. Bernstein. Mrs. Dapkins seconded that motion. A **ROLL CALL VOTE** was taken. Those in Favor: Mrs. Dapkins, Mr. Piserchia, Mr. Roshto, Mr. Wallisch, Mayor Rae, Chairman Pfeil. Those Opposed: NONE. The motion was passed unanimously.

Mrs. Dapkins motioned to adjourn. Mr. Piserchia seconded the motion and by unanimous **VOICE VOTE** the meeting was adjourned at 10:45 PM.

CYNTHIA KIEFER
Planning and Zoning Secretary

Date