

MINUTES

DRAFT

OCTOBER 16, 2012

BOARD OF ADJUSTMENT

LONG HILL TOWNSHIP

CALL TO ORDER AND STATEMENT OF COMPLIANCE

The Chairman, Dr. Behr, called the meeting to order at 8:00 P.M.

He then read the following statement:

Adequate notice of this meeting has been provided by posting a copy of the public meeting dates on the municipal bulletin board, by sending a copy to the Courier News and Echoes Sentinel and by filing a copy with the Municipal Clerk, all in January, 2012.

PLEDGE OF ALLEGIANCE

ROLL CALL

On a call of the roll the following were present:

E. Thomas Behr, Chairman
John Fagnoli, Member
Edwin F. Gerecht, Jr., Member
Maureen Malloy, Member
Felix Ruiz, Member

Richard Keegan, 2nd Alternate

Barry Hoffman, Bd. Attorney
Thomas Lemanowicz, Bd. Engineer
Kevin O'Brien, Twp. Planner
Dawn Wolfe, Planning & Zoning Administrator

Excused: Sandi Raimer, Vice Chairman
Christopher Collins, Member

Michael Pesce, 1st Alternate

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EXECUTIVE SESSION

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

ANNOUNCEMENT

Dr. Behr announced that the application of Robert & Martha Heinkel, Successors In Interest to Charles & Devorah Grunau (App. No. 09-09Z) is carried to November 6, 2012 with no further notice.

DISCUSSION

PROPOSED BOARD OF ADJUSTMENT/PLANNING BOARD

LEADERSHIP COMMITTEE

Dr. Behr stated that at the last Board of Adjustment meeting there was a proposal to form a Board of Adjustment/Planning Board Leadership Committee which he felt is of *significant* importance to the entire town. It was intended to be a cross-functional committee of both Board Chairman, another member of each Board, and two members of the Township Committee. Its intended purpose was to look for ways to cut through the bureaucratic lines that each one of us operates in and look for collaborative solutions to issues that impact the entire planning/zoning and construction process. He said that, unfortunately, at the Planning Board meeting last

Tuesday, this motion failed to gain any support from either the Planning Board or the two members of the Township Committee who sit on the Planning Board and, therefore it is a dead issue. He also noted that Mr. Thomas Delia, Zoning Official, was present, however no members of the public were present.

He said that the reason we are here this evening is that we have known for the last 3 years that the costs for applicants appearing before *both* Boards has been escalating to the point where it is really financially punishing for people to appear before them. For example, when the cost of having a hearing for approval to build a deck or put up a shed actually exceeds the cost of construction, you know you have a problem that must be dealt with. He hoped that the result of this meeting will be to find some concrete solutions to this problem.

He noted that a detailed agenda for tonight's meeting was distributed and asked that the Board members adhere to the time allotted for each topic. (Mrs. Malloy volunteered to be the "time keeper"). He also reviewed the following ground rules: 1) Focus on how to make things work better in the future, not to "re-hash the past". 2) Look for creative solutions and breakthroughs to resolve differences. 3) Listen to understand – one person speaks at a time. 4) Stay within the Agenda time limits (time for any one item can be extended by Board vote). He asked the Board to please refrain from discussing any past application heard by the Board and help focus on how to make the process more effective going forward.

The first topic discussed was "How the Board of Adjustment can further streamline its hearing process to reduce time and expense for applicants". He had distributed a list of the current and proposed order of proceedings and said that he was looking forward to comments from everyone on how the topic can be strengthened.

After discussion, it was agreed to revise the proposed order of proceedings as follows:

- 1) Complete initial agenda items.
- 2) Statement to the public outlining the Board procedures.
- 3) Verify Proof of service with Mrs. Wolfe.
- 4) Swear in Board Planner and Engineer.
- 5) Applicant to come forward, introduce themselves, and be sworn in.

Following a discussion of photographs, Dr. Behr summarized by saying that Mr. O'Brien will continue to take photographs *for his own purposes* and cap his billing to a maximum on 1 hr. for residential applications. In addition, a review of the Checklist will take place with suggestions that 15 copies of colored photos be required to be submitted and that they be a *minimum* of 4" x 6" in size. In addition, as part of the completeness review process, photographs submitted by applicants will be reviewed to determine if additional photos are needed or if the ones submitted need to be improved.

Mr. O'Brien clarified and said that he will have a set of his own photos and, because they are part of the deliberative process, a copy must be put in Mrs. Wolfe's file. He said that an applicant may also request a copy of they wish, however that is a different cost.

Dr. Behr clarified that the recommended procedure is that the Board members *will not* receive copies of Mr. O'Brien's photos. He asked Mr. O'Brien what the cost will be to provide copies of photos for himself and Mrs. Wolfe.

Mr. O'Brien replied, "Typically, less than \$10.00".

Discussion of the current Checklist followed. Dr. Behr said that when the most recent revisions took place, we did not work very well as a team. He said that Mrs. Wolfe was not included as part of the committee working on the revisions and should have been. He also noted that the original deal with the Planning Board was that he was supposed to be looking at the end product to be sure that it was clear and user friendly. He said that *any* recommended changes in the Checklist that might apply to the Board of Adjustment *must* be seen by Mrs. Wolfe and himself to make sure that we get it right *before* forwarding it to the Planning Board.

Discussion followed regarding personal identification when visiting sites. It was suggested that Board members bring a copy of the Application for Development with them, knock on the door and allow ample time for someone to answer. If no one answers, they may walk the property to see what they need to see and take notes.

Dr. Behr moved on to Step #3 of the current and proposed order of proceedings entitled “Applicant to present their case”. He said that, in his mind, the initial step is simply an overview of why the applicant is before the Board and his/her attorney is typically going to make some kind of opening comments and will often summarize the relief requested.

Mr. Hoffman said that, during the opening comments of the attorney or applicant, he will bring out a question that has arisen during review of their paperwork as far as the sufficiency of the notice. He said that these things need to be brought out at the outset of the meeting if there is any question that is going to arise which poses inadequacy or incompleteness of their proofs or service of notice.

Dr. Behr agreed that that is our usual practice and should not change. He said that, where it gets to be new begins with “Invite Applicant and/or architect to present the proposed site plan **overview** and architectural plans”. First, he said he felt that it is useful to get an overview and once that has been done, his thought was to move immediately into Mr. O’Brien’s report. The next piece would be to invite the applicant to turn right to the report from our professional and work through it item by item. He said that the hope is that we might be able to get resolution on a significant number of those items right at the start of the hearing. He said that we will also have a much clearer understanding of where the applicant is still at odds with what seems to be the intent of the Board. Once the applicant has responded to Mr. O’Brien’s report, we then have a better understanding of what open issues still exist and then business is as usual – Board members question the applicant, architect, or other professional. The Board consultants question and, at the end of that, invite the public to question. If a member of the public wants to produce an expert witness, that will take place at the complete end of all of the applicant’s testimony, unless the applicant’s professional is asking questions (which has been the Board’s standard practice). He said that he had started off assuming that the Board would want to hear first from the applicant’s architect and then from his/her engineer. He said that Mr. Lemanowicz and Mr. O’Brien have suggested that some applicants may not want to use that particular procedure and they have the right not to want to do that. Therefore, he said that a modification to the proposed order of proceedings would read “Expert witness #1, #2, etc.” and the procedures would be the same throughout.

Mr. Lemanowicz said that his reports start off with general comments followed by technical comments. He said he was thinking of splitting technical comments and actually breaking out architectural, engineering, traffic, etc. which may be helpful to everyone.

Dr. Behr said that we should be mindful of that when we take a look at how to strengthen the completeness review and the technical review because, ideally, we shouldn’t have two consultants working on the same issue if we can avoid that and that the goal is to work out that teamwork between our consultants, which has pretty much been our practice anyway. At that point, he said that he was proposing that the Chairman summarize the previous testimony and Board responses. He said that that will be a way of saying that, on this particular set of issues, here is where we stand. This will also allow Mrs. Wolfe to note the time count on the recording to that moment where the Chairman starts to summarize so that in preparing the minutes, she can skip some of the back and forth discussions and the minutes can easily reflect what came out of the discussion. He said that Mrs. Wolfe no longer has the time to prepare comprehensive minutes of meetings and the Township Committee *may* authorize some help for her, however with the amount of money they are willing to pay, that person cannot produce comprehensive minutes. He said that, as has been our practice, if there is an important issue that still is not agreed to by the applicant and the Board, the Chairman can exercise the right to unofficially poll the Board. He said that the last item of Step #3 of the new proposed order of proceedings is that the applicant may, if desired, amend the proposal.

After further discussion, Dr. Behr gave an example of an applicant appearing with his/her

architect. He said that, if possible, he would like to find a way for the Board to get its business done with the architect in that meeting (rather than have the architect have to return to re-testify).

Mr. O'Brien replied that, if you can actually pull out the individual issues per discipline (if you have several witnesses), that's fine. But if you have overlapping or a witness who says he is not going to address a particular issue and that it is going to go to somebody else, then you have to wait on a particular issue.

Dr. Behr said that he would have no problem with that because that is no longer part of the testimony that we are dealing with. He said that his intent is to make the process tight; and identify those issues in which we have agreement and understanding; and identify those issues where it is pretty clear by the Board's questioning that the Board is not convinced that what the applicant is proposing is either necessary, desirable, or both and highlight those for the applicant at that moment so that the applicant has a chance to, with his expert in the room, think about it and get back to it where it is appropriate and where we can. If the applicant wants to modify the plan, once that's been done, it's been done and we can move forward. He recalled an instance in a prior application where the Board was bringing issues up 2 or 3 times during separate meetings and that should not have happened.

In response to Mr. Hoffman, Dr. Behr said that the summation and the opportunity, when necessary, to poll the Board will happen *only* after all public comment has been given, including any questions by an expert witness. He said that, if you create a process that is designed to include every single contingency that might happen, you have a process that is so cumbersome that it becomes impossible to try to manage it effectively. He said that we are talking about something which in the experience of this Board is very, very rare. He said that he would much rather have a process that is reasonable, cost effective, and time effective for the kinds of applications that we do hear and then if we happen to get objectors and they happen to have an expert witness, then we will have to modify the procedure. He said that the polling of the Board is in no way a vote because it is completely wrong for the Board to deliberate until every single piece of evidence of any kind, whatsoever, has been fully heard and all cross-examination has taken place. He said that that is the process the Board has followed since he became a member and that will not be changed.

Mr. O'Brien said that maybe the Board just wants to be cognizant that there may have to be changes to this on a case by case basis in rare cases.

Mr. Hoffman felt that it is an excellent idea to add a footnote that this is a general guideline which may not work in 100% of the cases and that he would be comfortable with that.

Dr. Behr said that that had been his premise going into the entire proposed order of proceedings anyway. He summarized by saying that at the end of each expert's testimony and questions from all parties involved, and opportunity to ask questions, the Chairman will still summarize (and Mrs. Wolfe will make note of the time count on the recording) for the purpose of seeing if that will help in the preparation of minutes. If it seems appropriate, the Chairman will have the option of asking Board members how they feel about a certain issue with the clear understanding that this is not a vote, nor is it an expression of approval or disapproval of the application. That information will simply go with the applicant and they can do with it what they wish. He said that we do not ask them if they want to modify their application. The language says, "If desired, applicant may amend proposal", but that is entirely up to the applicant. A footnote will be added that this is a general guideline which may not work in 100% of the cases. He asked if the Board and its consultants were comfortable with the process that was discussed to be used with each of the applicant's experts or if there was anything they would like to see modified or changed.

In support of that, Mr. Lemanowicz said that, if we do that, the first expert provides testimony and the Board asks its questions. But, before he sits down, if not comfortable, the Board tells him they are not comfortable with certain items. He said that he can now say that he understands or the Board misunderstood and it clears up some questions so that they don't simmer through the whole application.

Dr. Behr thanked Mr. Lemanowicz for his input. He said that this will be viewed as an option for applicants to follow and, if they want to do something else, they may. He then moved on to Step #8 which reads the “Chairman/Board Consultants summarize all conditions that would need to be met were the Board to approve the application”. He said Mrs. Wolfe notes the time on the recording and gets the conditions out to the applicant and his/her consultants the next day. That means that the Board’s consultants do not need Mrs. Wolfe’s minutes to be able to move forward. Therefore, he said that we are deliberately and thoughtfully bypassing a step there because the conditions are all listed before deliberation. He then moved on to Step #9 which reads “Board members respond to/confirm any open issues regarding conditions for approval”; Step #10 “Board members deliberate; Step #11 “Motion to approve or deny application; Step #12 “Vote on approval or denial”; and Step #13 “If approved, explain the next steps (Resolution – Memorialization)”. He asked the Board members if he may revise the Proposed Order of Proceedings based upon the comments/changes made this evening. (Many Board members expressed approval and no objections were expressed).

Mr. O’Brien referred to Step #13 and said that, in the past, something that was done regardless of whether an applicant was represented by an attorney or not was to read a paragraph that outlined the next steps in regards to not only the Resolution, but to permits and when people can start doing things.

Mrs. Wolfe said that a copy of the statement is located in the drawer at the Chairman’s seat on the dais.

Dr. Behr located the statement. He then said that the discussion will continue with “How the Completeness Review Committee can further streamline the application process beginning with the initial zoning review”. He said that what you are now doing is saying, “How can you make the Completeness Review and the Technical Review support this process?”.

In response to Dr. Behr, Mrs. Wolfe said that currently applications are submitted to her, after which she performs a cursory review for obvious things that may be missing. Once all items are submitted, she said that she will schedule a Completeness Review Committee meeting with Mr. O’Brien and Mr. Lemanowicz, usually prior to a regularly scheduled Board meeting. They go over each Checklist item and she said she makes appropriate notations for completeness and then sends a letter the following day to the applicant or attorney for the applicant explaining the results of the completeness review. She said that she quotes each checklist item found to be deficient so that it is clear as to what is missing. Recently, permission was granted to hold Technical Review Committee meetings. Although one has not yet been held, she said that she has scheduled one for next Tuesday evening. She said that Mr. Lemanowicz has attended Technical Review Committee meetings in other towns, but she and Mr. O’Brien have not. Therefore, they arranged to attend a Technical Review Committee in Warren one recent morning. She said that her thoughts are that perhaps Technical Review Committee meetings should be held *instead of* completeness reviews. While generally they are associated with larger applications, she said that she has found that recently in cases of homeowner applications, after an approval is granted a *lot* of changes are requested which in several cases have caused additional time back before the Board, as well as additional expense. She felt that if the applicant is invited to go over each checklist item and see for themselves what is missing on a plan rather than to simply receive a letter in the mail, they will get a better understanding through the one on one conversation afforded to them during the completeness review of why a missing or incomplete item is needed.

In response to Dr. Behr, Mr. Delia said that he did not think he had anything to add because when a Zoning Application is submitted to him, he reviews the proposal as to whether or not it complies with the Zoning Ordinance. He said that, in the case of denial letter, he lists the reasons for his denial and advises the applicant to contact Mrs. Wolfe in order to proceed with the variance process.

In response to Dr. Behr, Mr. Lemanowicz said that, in the past when he did completeness reviews for Boards, he would then hold a Technical Review Committee (TRC) meeting with the applicant present. He said that the purpose of that was to grant the completeness waivers because he could deem an application complete or incomplete, but could not grant waivers. He said that

it gave the applicant some direction on which way to go. He said that, in the case of the first TRC meeting which Mrs. Wolfe scheduled for next week, the applicant will be there to hear the reasons certain items are needed and they will not be allowed to offer any testimony, but can ask questions. He said that this will help them understand the process because he felt that a lot of the frustration on the part of an applicant is not understanding the process.

Mr. Lemanowicz said that, if an application is not complete, a technical review cannot be done. So, when an application is submitted, Mrs. Wolfe schedules a Completeness/TRC Meeting and we sit down and go through the completeness items. If deemed incomplete, the applicant can be told that, while fixing the completeness items, you now understand because we have explained them to you, but we noticed over here (for example) that you calculated the height wrong and the grading over here is a little steep – look at that when you resubmit for completeness because we are trying to get you through some of the technical things that are *glaring* because if we are going to do a full technical review, we must have a complete application.

Mr. Hoffman said that it was not crystal clear to him that what is contemplated by way of a streamlined, technical review (much less a completeness review) which wouldn't apply in cases where there is a d-variance and we are now inviting the applicant to come in and talk or “negotiate” with the Board.

Dr. Behr disagreed. He said that the Board's consultants understand that they are not negotiating a d-variance.

Mr. Lemanowicz said that the issues the Completeness Review or Technical Review Committees would discuss are clear issues against the Ordinance. He agreed that no opinions are expressed.

Dr. Behr said that he wanted to focus on finding ways to *significantly* streamline the process that will result in a cost savings to applicants over what we are currently doing. He said that the test for us about what we are talking about is, is this going to be *significantly* more efficient so that the burden on the applicant to get a quality job done is less. He said that, with that as a model, he was trying to get a sense from the Board and its consultants as to what the initial contact with an applicant *could be* that would have a positive result.

Mr. Lemanowicz said that he felt that the TRC and going through the completeness review with the applicant is a *much better* first step rather than receiving a cold letter outlining the things that are wrong with your application. He felt that is something where we can give the applicants an indication that we are not here to “bust chops”, we are here to make sure that the application is legally correct to allow the Board to act on it. He noted that there are situations where the Board is not allowed to do things until the applicant does something and if the applicant doesn't know what that something is, we all sit here and flounder.

Dr. Behr said that we have seen cases where we receive an application and there are errors and problems with the application and we say that we don't have the factual information in front of us that allows us to even discuss this and the applicant must then return at a later date. To the extent that our process at least reduces the opportunities for those things to happen, he felt it is an improvement.

Mr. O'Brien said that when the TRC was introduced and accepted by the Township, it was intended to be the last step of the completeness process. He felt that the later in the process that the TRC meeting occurs, the better off we all are because the maximum amount of information has been presented at that TRC meeting. In the past, he said that applicants have provided everything on the Checklist but the *quality* was not there, which did not allow us to proceed properly. He said that, even though something is there does not mean that it is right or good. Whereas, if we are looking at it at the end of the process, we can see if it is right and if it is good, but if it is not, and we say that you need to do “this” (for instance a lighting plan or a site plan change) and they go away and do that and we don't see them again, we have no control over what the quality of that is and whether it is right or good and it can still go to the Board.

In response to Dr. Behr, Mr. O'Brien said that he was not necessarily suggesting that there be two meetings.

Dr. Behr said that he would like to get it down to one meeting and follow-up if we can do that. He stressed that he wanted everyone to rethink the process and not go on based upon what we have done in the past or what the Township Committee approved because that may not have been the best solution.

Mr. O'Brien agreed. He said that the break-through solution was to try to eliminate as much time before the Board as possible, which is an efficiency for the Board and a time and cost savings to the applicant. He said that, if that requires one or two meetings before hand, just from there you are at an enormous savings. He said that to go to one meeting would have to be as late in the process as possible with as much in front of the committee as possible so that we can make those comments and get the right and the good stuff to you.

Mr. Lemanowicz said that his idea of having the applicant at the initial completeness meeting and whatever completeness meeting needed to follow is that the applicant is hearing us first off that we are trying to get through this. He said that he will be able to hear our frustration if he has a survey, but it is missing items. He said that we are still spending the same amount of time, but they are *hearing* us. He said that, if we do want to invite them in to make a comment as to why they did something this way, they will explain, and we will advise them that they have to show that. He said that it is similar to an e-mail train where you go back and forth 6 times and still can't get the information across and then you pick up the phone out of desperation. He felt that having the applicant present is helpful.

Dr. Behr said to keep in mind that for homeowners, all of this is "Byzantine". He said that his concern is that there is no way that any communication in writing can have the same clarity as a person to person conversation.

Mr. O'Brien replied, "There is no doubt about it".

Dr. Behr said that, hypothetically, if we talk to an applicant about items which we see on a routine basis that can delay an application and, if they have any sense at all, they will understand the importance of modifying what they have submitted to make it easier for them to have an efficient Board hearing. He said that we can't make them do that and, if we have done our job properly and they choose not to be thoughtful or prudent, we can't help them out there. He felt that a conversation might have a *significant* positive impact on the quality of what the Board gets to listen to as a Board.

Mr. Fagnoli suggested that we say up front that our goal to get this done in one meeting, however, if it is incomplete, more than one meeting may be required. That way, they are on notice that it is up to them to provide as much information as possible. He felt that it should be put in writing and that way they are on notice.

Dr. Behr liked Mr. Fagnoli's suggestion and asked if anyone disapproved of it or had a problem with it. (There was no response).

Dr. Behr asked Mr. O'Brien to explain what he meant by "as late in the process as possible".

Mr. O'Brien replied that Mrs. Wolfe is the gatekeeper and as long as we have as much as we possibly can get.....

Dr. Behr said that the applicant has to make a submittal that matches each item on the Checklist or nothing else happens.

Mrs. Wolfe agreed.

Dr. Behr said that, once the submission comes in, the applicant gets a letter stating that the next step is the completeness review process and we are inviting you to come. If an applicant chooses

not to come, that is their choice. He said that we will have to draft that letter carefully and the Board consultants will have to take a look at it to make sure that it is legal, clear, and accomplishing the things that we want to accomplish. Addressing the Board's consultants, he asked them to think about the homeowner applications the Board has heard and, to what extent would the process that we are talking about have facilitated a smoother hearing with only one meeting. He asked if they could see this new process having a significant positive impact?

Mr. O'Brien replied, "Yes" and Mr. Lemanowicz replied, "Definitely, particularly for the homeowners who choose to represent themselves". He said that there have been a couple of them that have their act together, but there are some that feel that all they have to do is smile and say they love their town and will get whatever they want and it just doesn't work that way. He said that they need to understand that we are not trying to stop them, we are providing them with the tools that they need to create a case to allow the Board to vote positively.

Dr. Behr agreed and said that the goal of the Board is to get applications that we can look at and say that the applicant has got some problems, but they have presented us with an application that is *worthy* of being approved.

Mr. O'Brien felt that the application should be worthy of being *considered*.

Dr. Behr disagreed. He felt that the Board has a responsibility to try to serve the Township, as well. He said that worthy of being approved means that the application really has satisfied all of the requisite burden of proof so that the Board can look at the application and say – tough site, small lot, old house, want to make it better for their family and they have done and taken into account of all the things that a Board could reasonably expect them to do for the it to say, "Yes". He felt that the bottom line is that the Board is in the business of trying to approve *worthy, legitimate* applications. He said that an application is worthy of being approved when, in the decision of the Board, the applicant has fully met their burden of proof to demonstrate that there is no harm to the application and that granting it far outweighs the detriments. He said that we are not in the business of making life difficult for applicants.

In response to Mr. Keegan, Mr. Lemanowicz said that he will have done a site visit by the time the application is reviewed for completeness. He said that, at a completeness meeting, he is going to look at the report. He recalled a recent application where there were some drainage issues and said that, if he would go in there and if he did not see a drywell, he would let the applicant know that we will go through all the completeness items and get to the drainage and he may have a request for a waiver for additional drainage appurtenances and he will advise that that waiver is not something that we will recommend be granted and point out the Ordinance requirement of what is supposed to be done to meet the requirement and the applicant really should consider doing that because that is what is normally done.

Mr. O'Brien added our comment will be that the Ordinance *requires* some type of amelioration be done and what it is is up to the applicant. He said that, at the TRC meeting, the conversation would say that in the past the Board has suggested that the applicant do this, this, or this and that there are several possibilities and we suggest that you think of it and come in with a suggestion, *or* discuss it now, *or* go to the Board and plead your case and say that you are not going to do it.

Mr. Keegan asked Mr. Lemanowicz if he would get so technical that, for instance, he would say that having visited the site, it is my opinion that this location is not adequate for your plan as it stands now.

Mr. Lemanowicz replied that it *could* get into that kind of detail if it is a single house addition, detached garage, or deck. However, if we get into a larger project such as the Walgreen's – they will know what they need to do and he would not get into that with them. However, for a homeowner application, he said that he would advise that when he comments on the application he is going to say, for example, that "this should be over here" and, if his engineer is there, they will talk and he will point to things. He said that he may advise the applicant to think about something and call him tomorrow. He said that that develops a much better relationship and the applicant doesn't come in thinking bad things because the report was so long and all his engineer

did was say that that is all they do – beat up on residents. He said that, if the homeowner is present and hearing the discussion, they will see that we are not quite as bad as we are sometimes made out to be.

In response to Mr. O'Brien, Mr. Keegan said that, for the sake of efficiency at the meetings, Mr. Lemanowicz will go into soil types, etc. He said that for most Board members, unless they are civil engineers, this is over their heads. He said that he looks at it from the viewpoint of whether a stormwater management system can be installed and does not need to know the technical reasons behind it.

Mr. Lemanowicz said that when he makes those comments, he is telling the applicants that they need to be on the application. He said that, in order to prove that point, it has to be there. He said that, if he is talking to the engineer before coming to the Board and they get all of those details ironed out beforehand, it is a lot better. For example, in the case of Walgreen's, where there were a lot of drainage issues going back and forth, he finally suggested an on-site meeting and went through the plan page by page. Then on the next submission, there was a comment or two.

In summary, Dr. Behr said that the Board, whenever possible, is going to follow this procedure: 1) The applicant will submit his/her application to Mrs. Wolfe. If there are simply omissions, where they haven't supplied what the Checklist calls for, Mrs. Wolfe will send back a letter advising of the missing items. 2) The next step is that a letter will be issued explaining our intent and a completeness meeting with the applicant will be scheduled where any qualitative issues will be raised in an effort to head them off before the applicant meets with the Board. 3) The applicant will be resubmitting certain items which will be reviewed and, at that point, we can advise the applicant that their application is complete and ready to be scheduled. He said that, ideally, we will get done with applications for most homeowners within one meeting, but it *may* require an additional meeting. He said that this will not apply to d-variances and Mr. Hoffman's point was well made. He said the Board's consultants are not in the business of telling an applicant what they should do or what they shouldn't do and they would never be in a position of saying that think the Board would approve. He then called for a recess.

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Dr. Behr said that the next item to be discussed is how the Board of Adjustment can better communicate with applicants to help them. He said that there is one issue that is new and a couple of issues that draw out of what we have already talked about. He said that when he was a member of the Planning Board, a lot of work was being done at that time on the new Checklist. He said that his job in the process was to write an Applicant's Guide for the Planning Board and the Board of Adjustment that would help them understand what was expected of them and how to effectively use the Checklist in order to get a very efficient hearing process. He said that he is no longer on the Planning Board, but for the Board of Adjustment, he felt that it is essential that we do everything we can proactively to communicate to applicants how they can make it work for them. He said that he would undertake to do that with a deadline of January 1, 2013. He said that he may reach out to one or two Board members to assist him because, in his mind, the primary criteria is going to be, can a homeowner who knows absolutely nothing about engineering read this thing and have a reasonable chance of understanding what they have got to do. He said that it will become very important that what we produce as a document be as user friendly as we can possibly make it. In that regard, he said that it may be necessary to look at the Checklist and ask if, for homeowners, do we need a simplified way of approaching the Checklist that really explains to them the things that they really need to do? He said that, although the new Checklist is complete, comprehensive, but it is "daunting" and a serious piece of work. He said that he was completely convinced that the average homeowner will look at it, throw their hands up, and say "Ahhhhh", which is a problem that must be solved.

He said that the second thing that has to do with communication has to do with the last conversation we had about increasing the value of the face to face communication with applicants *before* they get into a hearing. He felt that these are the two things that we can agree to and put into place that will represent a significant improvement in applicants' ability to

understand how to make it easy and reduce the cost of their application.

He asked the Board members if they felt that there is anything else that we should be doing from the point of view of effectively communicating with applicants that will help make the process easier for them.

Mr. Fagnoli said that there are two things that have been annoying him for years and the first is getting the applications complete. The other item is that he felt that the Board spends a lot of time on unnecessary questions and that we come across as ill prepared and kind of “petty and silly”. He recalled arguments over whether a paint color is tan or mauve, which he felt is totally inappropriate and is something that should be left up to the homeowner. Another item is the “window question” – should it be 3’ this way or 3’ that way, which he also felt is unnecessary and inappropriate. He said that his biggest recent annoyance was in the Walgreen’s application where the building was located at a slant. He said that everyone here this evening is sitting in a building that is located at a slant to the road. He asked why we are asking such questions that make the Board look “stupid”. He said that we want to save people money and we want to look professional and, therefore, we should not ask stupid questions. He felt that relevant questions, such as drainage, are good but he felt that some of the questions being asked have nothing to do with the deliberation process.

Dr. Behr said that he agreed. He noted that there have been times when we have settled an issue with an applicant and it is done, and then it gets brought up again 3 meetings later. As a Chairman, he felt that he should “ride heard” on such instances a lot more. He said that we have got to do a better job in getting our job done and when something is finished and completed, it is done and is no longer open or able to be re-visited.

Mr. Fagnoli recalled instances when a question has been asked and answered and 1 ½ hours later the question is asked (and answered) again. He felt that this makes the Board look totally unprofessional. He felt that a lot of the fault in dragging on applications is that the applicant is not prepared, which we discussed addressing this evening. He said that he has come to meetings thinking that a topic will take 1 ½ hours and yet two meetings later, it still is not resolved.

Mrs. Malloy said that she felt that the Board “goes on” more during summations than we need to. She wondered if the Board could set time limits (as they did this evening). She felt that often the Board could be deliberating in one meeting and noted that this past year has been a better year in that regard. She hoped to see that trend continuing and not be a phase that will end. She said that she did not want to turn meetings into ones in which the Board members are here just to hear themselves speak, but to focus on the application on hand and get it done.

Mr. Keegan recalled an issue in an application where there was an issue over windows and the presence of them on one of the walls. He said that we got into the placement of windows and the solid expanse. He said that, if members of the public (especially the neighbors) aren’t here, he felt that the Board should refrain from having an applicant go back to their architect to re-imagine things.

Dr. Behr said that we have very clear design standards in the Ordinance and one of them, which he felt is based on principles of effective design and buildings that look appropriate, is that you don’t want to have a blank wall facing a public street with no windows in it.

Mr. O’Brien agreed.

Dr. Behr said that that is no longer something for the Board to have an opinion about – it is something that the Ordinance calls for. He said that the applicant also had an opportunity to look at the Ordinance and the architect also had an opportunity to look at the Ordinance and say, do I want to design a building that is consistent with the Township’s design standards, or design a building that is going to create issues with the Board?

Mr. Keegan asked if that would be addressed at the TRC meeting?

Dr. Behr was not sure. However, he noted that Mr. O'Brien always brings such matters up in his report (if they exist) and the applicants all receive a copy of that report. He also noted that he and former Chairman, Patrick Jones, are also working on the final revision of the architectural design standards for the Township. He asked, to what extent we should attempt to communicate to applicants and their architects that there are design issues that the Board is going to be concerned about?

Mr. Hoffman said that the answer is that, at times, the issue of design and appearance of buildings was a matter that weighed very heavily in how this Board or the Planning Board viewed applications, particularly along the Valley Rd. corridor and they are still on the books. Whether the Board wants to let things "slide" a little bit, he said that he could not speak to the wisdom or lack thereof of doing that, but the first thing that should change (if there is no longer going to be an emphasis on that) is the legislation that provides the guidelines and rules under which we operate.

Dr. Behr replied that he was not sure the Board is talking about the same thing. He said that we have a set of design standards in the Ordinance (Sec. 152) and the Board's job is simply to ensure that the Ordinances are adhered to or the applicant has proved a good case for saying that they should either get a variance or a waiver from those. He said that his question is, if we have an application where the architect has *significantly* varied from the design standards in our Ordinance, when might that conversation appear?

Mr. Lemanowicz replied that it should be during the completeness hearing because one thing we must look for at that time is whether we have dimensional floor plans, elevations, dimensions of building heights, etc. He said that, if an entirely blank wall is shown on the plan, it will be obvious.

Dr. Behr said that, as a Board, it is absolutely legitimate that we discuss such matters.

Mr. Fargnoli said that he was not saying that – he was saying that the Board gets into too much detail a lot, such as should we have a 3rd window there or is it balanced enough. He felt that that is where the Board wastes a lot of its time and the applicant's time.

Dr. Behr felt that there is a dual responsibility here that lies with the Board. He felt that part of the responsibility is for Board members to be more prepared and more professional. He said that the bottom line is that the issues that the Board is called to deliberate are those issues where the applicant needs relief from one or another statute and Mr. O'Brien summarizes those at the end of his report. He said that that is actually our only business, so that the Board should be mindful of why we are having such a conversation with the applicant in the first place. He said that, if the Board loses focus, it is the job of the Chairman to refocus the Board.

Mr. Gerecht felt that it will also help if the Board goes through the reports of its consultants and addresses each one of the points made.

Dr. Behr agreed, but added that ultimately the management of the hearing itself is in the hands of the Chair. In summary, he said that the key issues in terms of communication are the Applicant's Guide; to enhance the face-to-face conversations with applicants that can streamline the process when they get to the Board; we need to explain to the public its role in the hearing; and there is some important communication to the applicant that we must give at the conclusion of the hearing. As a group, he said that we have to be mindful to make the Board process clear and productive.

In response to a question raised by Mr. Keegan, Mr. Hoffman said that, in the Applicant's Guide, you can say that the applicant may want to (or is encouraged to) obtain legal counsel. Whether we can require it, he said that if somebody wants to go ahead and risk running afoul of the prohibitions on unauthorized practice of law by representing a corporation without a lawyer being present, all we can now do is advise them that they run those risks and let them do their own thing.

Dr. Behr said that asking an applicant to consider having an engineer or architect present really depends upon the application and could vary *enormously* from application to application.

In response to Mr. O'Brien, Mrs. Wolfe that that the only time she *strongly* recommends the use of a land use attorney is in connection with applications for use variances.

Dr. Behr said that he expected the Applicant's Guide to go through a couple of drafts before getting it right. Noting the time, he said that he did not expect to get to the last item on his agenda. Moving onto the next item, he asked how we can significantly reduce and simplify reports and Resolutions without diminishing quality because those are some of the biggest costs that are incurred by applicants. He said that he read approximately 15 different initial reports written by Mr. O'Brien and Mr. Lemanowicz for a range of applications. He said that the initial reports are foundation documents in a number of different ways and that they contain all of the legal issues and site specific issues that Board will need to take a look at. He said that they are inclusive and comprehensive. He said that, if the Board looks at an issue that Mr. O'Brien or Mr. Lemanowicz brought up and does not feel that it is significant, it has the ability to rule in that way, but the members wouldn't know to do it if they didn't see it. Therefore, he said that he did not think that the Board would be well served to change anything about them. He said that the only thought that came to him is there is an initial boiler plate that describes the property in question; the variances and relief that are required; and there is typically a summation of the reports that have been looked at. He said that he would leave it up to the consultants that, if it is written by one person, can it just be cut and pasted into the other's report. He asked if there could be coordination amongst Mr. O'Brien and Mr. Lemanowicz in that regard and said that he did not know the answer. He said that it would be a small enhancement for economy and asked if it would be possible/feasible.

Mr. O'Brien replied that it is, because what they do is used by Mr. Hoffman in his Resolution and there are occasions when Mr. Lemanowicz has other documents included.

Dr. Behr noted that a document entitled "Sample Planning Report #2" by Mr. O'Brien was distributed to the Board members and consultants. It includes the resources utilized, a project description, a listing of the relief requested, planning comments, lot coverage, trees, property slope, backyard drainage and ground elevation. He said that all of the information that was in his first report is shown in non-bold text and all is an example of the types of things that the Board must take a look at. What he felt was tremendously helpful is that Mr. O'Brien copied his first report and added his updates below each item in bold type. He said that this kind of follow up struck him as a model that should be made the standard practice for the Board because the amount of time to modify the report is significantly less than generating a whole new report.

Mr. O'Brien said that he tried that in the case of the Parthenon Realty, LLC application and then realized after he did it that it was far too confusing and the report was far too long because there were far too many changes and, even though the model was essentially the same, it did not work for in that instance.

Dr. Behr said that, in that particular instance, he felt that the applicant's professionals did everything in their power to make it as confusing and complicated as they possibly could and exceeded the wildest expectations. In addition, it was noted that their architect had to return to the Board 3 times because his testimony wasn't clear and complete the first and second time. It was also noted that it took a little while to get some requested information, therefore he was not sure that he would cite that application as an example of *anything*. Dr. Behr noted that whenever you strengthen a process, there is a ripple effect through everything else that happens, so the things that the Board is deciding at any one point in tonight's agenda can have a positive effect every place else in the process because, if our completeness review and technical review is better, the likelihood of the kinds of problems that can really screw up a hearing and make this process more difficult *significantly* decrease, so that there is a collective efficiency that he felt the Board is starting to get its hands around.

Mr. O'Brien said that his hope was that his reports will be shorter as a consequence of the Technical Review Committee. He said that if he could knock some items off through informal

conversations with the applicants, that is one less thing for the Board to look at, one less thing in his report, and one less thing that takes time both here and within the report writing process.

In response to Mr. Lemanowicz, Dr. Behr said that in Mr. O'Brien's case, he felt it is helpful to note in his report *if* a comment has been addressed and *how* it has been addressed. However, with respect to Mr. Lemanowicz's reports, in some cases it is different. He asked Mr. Lemanowicz to speak as to how he sees the most efficient way to handle a second report.

Mr. Lemanowicz said that his first report has all the comments. For a second report, he said that he calls up the first report, changes the dates/revisions, etc., and then goes to his technical comments. He said that he looks at the first one and, if it is addressed, he deletes it entirely and everything else gets renumbered automatically. He said that he *could* instead add a note that an item has been previously addressed, leaving all the comments in, but that is up to the Board.

Dr. Behr asked if there was a middle ground.

Mr. O'Brien felt that it goes back to the Board and asked if it helps the Board to see that it has been dealt with, or does it help the Board to just have it go away completely.

Mr. Lemanowicz said that the work involved is minimal.

Mr. Fagnoli said that, if you see it addressed, you don't have to worry about it.

Mr. Keegan suggested using a strike-through. In this way, he said that members will see it but they will know that it has been dealt with. He said that, for him, it is more visual.

Dr. Behr reminded that it would be in bold text.

Mr. Lemanowicz said that there may be an occasion where some words would be helpful – at most a sentence.

Mr. Fagnoli felt that "Resolved" would be fine.

Dr. Behr said that the sense of the Board is that in a second report what you are basically doing is creating another copy of the first report and simply taking those issues and in bold text indicating where we stand. If an item is still open, it is still open, and we need to see that. He said that he could think of other instances where we have had a problem with an applicant and sometimes it is just that they haven't gotten items to us on time, or we have asked them to resolve something. He said that, if we see something that is not being promptly and appropriately resolved, highlight that for the Chair so that maybe we can go to the applicant and try to exercise some influence on our end and say that this must be resolved.

Mr. Lemanowicz said that, as he is adding the word "Resolved", he could add that this item has been outstanding since my October 15th report (in bold).

Addressing Mr. Lemanowicz, Dr. Behr said that when he sees such instances, to please e-mail him so that, if it is possible, we can get ahead of the problem before it occurs instead of dealing with it retroactively.

Mr. Lemanowicz agreed to do so.

Dr. Behr noted that once it has become a problem, applicants are not at all reluctant to blame the Board.

Mr. Lemanowicz noted that, in addition to writing a letter, he has started calling applicant's engineers to ask where the missing information is. He said that many times there is a designer working for the person signing the plan and the person signing the plan is the principal in charge of the office. He said that a lot of times that person is not doing a detailed review.

Dr. Behr said that it sounded like it is a useful practice for *all 3 consultants* to call the appropriate person for the applicant if they feel there is something that can be accomplished.

Mr. Hoffman said that, as Board Attorney, he had no problem picking up the phone and reaching out to the applicant's attorney, engineer, or architect if that will help to expedite the whole process. However, if you are talking about lay persons, that presents other issues.

Dr. Behr asked the Board members if they want to make sure this point is something that happens. (All were in favor).

Dr. Behr said that he would now like to talk about Resolutions.

Mr. Hoffman said that the first thing he does when talking about a major Resolution (and the same facts are true with lesser applications on a smaller scale) is to get the list of conditions which are pronounced by his colleagues (or the Board Chairman) at the conclusion of the hearing at the time the vote was taken. He said that he uses that invariably in conjunction with other Resolutions because as good as his colleagues are, he said that nobody can produce (on their feet) all of the terms and conditions that have consistently been utilized in similar Resolutions in the past. He said that you want to include as much as you can in a major Resolution based upon the historical precedent that has been established and that provides consistency in that way. Examples would be the way in which a Shade Tree buffering requirement is established or conditions pertaining to drainage.

Dr. Behr said that he understood Mr. Hoffman's practice historically, but asked him to notice that the Board has changed its procedures significantly so that, before an application is deliberated, there will be a recital of *all* the conditions upon which an approval would be based and then will double check that (before deliberation). He said that what our procedure has been change to is that, before we deliberate we enumerate were this application to be approved, what would be the conditions that the applicant would need to satisfy. For example, he said that we may say there needs to be additional buffering or stormwater measures; the applicant has agreed to reduce the patio around the pool from 10' to 3'; the applicant has agreed to take that part of the driveway he is no longer using and turn it back into sod. He said that the goal is to get those conditions down *before* deliberation because we need to know and have agreement and understanding of what those conditions are or we can't approve the application. He said that that means that Mr. Hoffman doesn't have to do any research at all. He said that the Board needs to do its job at the meeting and Mr. Hoffman will receive an e-mail from Mrs. Wolfe containing the total and complete list of conditions upon which an approval would be based.

Mr. Hoffman said that he did not know of any single application that he has ever prepared for any Board that he represents that can be produced just from recollection or statement made at the conclusion of a hearing. He said that it requires a list of items that have been concluded in similar types of applications over many years.

Dr. Behr said that we will have to double check that because he has looked over and reviewed approximately 15 Resolutions that this Board has done. He said that the process that we are committed to following is the process he has outlined. He did not think that it is useful or efficient in today's world for Mr. Hoffman to go back and do a ton of research when the conditions that are required for an applicant to complete in order to get approval are those conditions enumerated by the Board at the time the application was approved. He said that, typically, Mr. Hoffman's Resolutions will go into detail about the conversations and the testimony that have taken place. He said that that is a *preliminary* to whatever agreements are finally reached. His question to Mr. Hoffman was, how much of a blow by blow can be taken out of the Resolution? He said that the Resolution needs to demonstrate in detail the Board's opinion on how the applicant has satisfied his or her burden of proof and that has to be complete, detailed, and comprehensive so that it withstands legal challenges.

Mr. Hoffman replied that those are the findings and conclusions. He said that the way he completes a draft Resolution is to first get the conditions, because that is ultimately what the Board is deciding and the action that is going to be taken by the applicant to meet the approval,

so you must know (as scribe of the Board's action) where it is going to end up so that you get a clearer picture and direction in your mind as to where you are going with the Resolution. He said that he then goes back to the beginning and describes in one paragraph the recital of what the application is all about; the usage existing on the property and what is proposed by way of development; identification of the plans; a listing of the variance and waiver relief that is needed; and finally, the testimony of the witnesses at the hearing. He said that, undoubtedly, it could be trimmed but, ultimately, it is not just recital of the testimony in a vacuum. It is skewed towards the result that is achieved. He said that the recital of the testimony has selectively culled from the record, minutes, and his own notes and recollection from the hearings that testimony which will put the Board's decision (whatever it is) in the best light and best prospective and make it very un-challengeable if somebody seeks to question or legally attack the Board's decision because it is findings that is based upon the record.

Dr. Behr replied that there are two ways to do that. One is to say that this person said this and this person said this. He said that all of that leads and is guided towards the conclusion that is reached in the Board's decision and the conditions. He said that he completely believed that it is possible to achieve *significant* reductions by really focusing on the Board discussed "x" and, after discussion with the Board, the applicant agreed to "y". He said that, in this way, we have really focused on the outcome of the discussion as evidence justifying the decision made by the Board. He also felt that the follow-up action from tonight's meeting is for him to sit down with Mr. Hoffman to see what makes sense that we can do. Secondly, he said that the thing that Mr. Hoffman does that is essential to the Board is to produce Resolutions that will withstand legal challenge. It was noted that the last lawsuit involved Commerce Bank which was a Planning Board application many years ago. Dr. Behr said that Mr. Hoffman's caution and prudence in that regard serves the Board well and certainly serves the Township well. He said that he believed that we can meet that criteria of an appropriate, legally sustainable, document in *significantly* less work output than we currently do and he felt that we have to find a way to do that. He said that his last point is that we need to think about the application itself. In the case of a homeowner application for a deck which is approved and the applicant is happy and there have been no objectors, what is the likelihood that that application will be brought up to the Superior Court of New Jersey? He said that we can make a reasonable case in saying that if we meet the test of saying that the Board's process was legal, appropriate, and in accordance with the dictates of the M.L.U.L. and the conclusion that was reached is consistent with the record of the evidence, we are fine.

Mr. Hoffman said that, actually, we are *not* fine because you have to show the courts the basis for how you arrived at the conclusion.

Dr. Behr agreed to discuss the matter further with Mr. Hoffman and said that he felt this could be done in half as much language as it is done now and meet the test, noting that they agree on what the outcome needs to look like. He felt that it can be done in a far more time efficient way, without sacrificing the things that Mr. Hoffman is particularly cautious in ensuring.

Mr. Hoffman said that, what we would be derelict in doing is not keeping in mind the critical need to establish the reasoning process by which this Board decides that those legal criteria.....

Dr. Behr interrupted and said that he and Mr. Hoffman are in complete agreement, but it can be done simpler. Going back to his notes regarding reports, he said that we will use the sample he had distributed for follow-up reports. For the first report, there will be no change. He said that we will look for the additional communication with the applicants (or their professionals) that might be handled simply by a phone call in order to reduce the amount of items showing up in reports. As a side note, he said that there would be head-up to the Chair if a member sees a problem coming on. He said that we will also continue to examine ways to make our Resolutions be shorter without sacrificing the necessary quality.

Mr. Hoffman said that one thing that occurred to him that could aid considerably in shortening Resolutions without sacrificing the points which he expressed he was concerned about is by using more and more simple incorporation by reference. For example, instead of spelling out everything that is in 8 pages of his colleague's reports dealing with drainage, simply say that

Paragraphs 2, 7, 9, 12, & 14, all of which are set forth on the next report of Mr. Lemanowicz dated (such and such), saving perhaps 2 or 3 pages of typing to repeat the verbiage. He said that that is not costing anything as far as the ultimate decision of the Board is concerned.

Dr. Behr felt that was an excellent suggestion. He said that he would get the results of this meeting to the members and consultants in the form of a draft. He invited corrections or additions to his document.

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

DAWN V. WOLFE
Planning & Zoning Administrator

