

MINUTES

FEBRUARY 22, 2011

PLANNING BOARD

LONG HILL TOWNSHIP

CALL TO ORDER AND STATEMENT OF COMPLIANCE

The Chairman, Mr. Connor, called the meeting to order at 8:03 P.M. He then read the following statement: Adequate notice of this meeting has been provided by posting a copy of the public meeting dates on the municipal bulletin board, by sending a copy to the Courier News and Echoes Sentinel and by filing a copy with the Municipal Clerk, all in January, 2011.

ROLL CALL

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

Excused:

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| Christopher Connor, Chairman | A. J. Batista, 1 st Alt. | Thomas Vetter, 2 nd Alt. |
| Mead Briggs, Vice-Chairman | | |
| Mayor Nanette Harrington, Mayor | | |
| E. Thomas Behr, Member | | |
| Donald Butterworth, Member | Barry Hoffman, Bd. Attorney | |
| Kevin Dempsey, Member | Kevin O'Brien, Twp. Planner | |
| Guy Piserchia, Member | Thomas Lemanowicz, Bd. Engineer | |
| Brendan Rae, Member | Dawn Wolfe, Planning & Zoning Administrator | |
| Michael Smargiassi, Member | | |

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PLEDGE OF ALLEGIANCE

EXECUTIVE SESSION –

In response to Mr. Connor, Dr. Behr made a motion to adjourn to executive session to discuss personnel matters which was seconded by Mr. Butterworth. The Board entered executive session at 8:06 PM.

The Planning Board re-entered public session at 8:23 PM.

Dr. Behr summarized a draft of the annexed Resolution while making a motion to appoint Thomas R. Lemanowicz, P.E., P.P., C.M.E. (or TRL Engineering, LLC, which is an entity in which Mr. Lemanowicz holds a controlling or majority interest) as the Planning Board’s Engineering Consultant for the balance of the calendar year 2011, with the terms of said appointment to be as more particularly set forth in the Agreement for Professional Services to be entered into between the Planning Board and the Consultant in or about February 2011.

Mr. Butterworth seconded the motion.

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

APPROVAL OF MINUTES

The minutes of November 9, 2010 were approved as written on motion by Mr. Piserchia and seconded by Mr. Butterworth. Dr. Rae and Mr. Smargiassi abstained as they were not present at that meeting. Mayor Harrington abstained as she was not a member of the Board at that time.

The minutes of November 23, 2010 were approved as written on motion by Mr. Briggs and seconded by Mr. Butterworth. Dr. Behr abstained as he was not present at that meeting. Mayor Harrington abstained as she was not a member of the Board at that time.

PUBLIC QUESTION OR COMMENT PERIOD

The meeting was opened to the public for questions or comments.

Mr. Dennis Sandow, Millington, called the Board’s attention to the urgent need to move on the revisions, if any, to the Valley Road Business District Ordinance. Since the last meeting, he said that the A & P has decided to close the Gillette Pathmark and rumor has it that it will close on April 15th. He also said that there is no room to expand the parking at the Shop Rite. He said that he also heard a rumor that Blockbuster will be closing soon and that will leave about 40% of the Valley Mall empty. He said that there is “some fuss” going on on the street about petitioning various other supermarkets to move in but nothing seems very realistic if you look at the business models of the supermarkets in question. He said that he smaller supermarkets that people are willing to travel miles and miles to get to just don’t need a space the size of Pathmark and he did not feel that they are likely to apply for it. He did not know what the owner of the Valley Mall will do to rates or cutting up the supermarket space.

He said that he read the final report of the Governor’s Passaic River Commission that he appointed last fall, advised that it can be found on NJDEP website, and urged people to read it. One of the recommendations was that towns in the Passaic River Basin be encouraged to change their Master Plan to avoid development or redevelopment in the flood plain. If we were to do that, he said that half of the linear mileage in Valley Rd. would be off the books as far as any redevelopment which probably means the existing stores could continue to operate, but we couldn’t redevelop it per any of the plans of the B-D Zone if that involved tearing things down or rearranging things. He said that that is a “monstrous unknown” as far as the effectiveness of the B-D Zone is concerned. He did not know what legislation will follow this in terms of changing the MLUL to prohibit redevelopment – especially commercial redevelopment in the flood plain, however that was the recommendation.

In the meantime, he said that we still have some very ugly situations on Valley Rd. and if any developer wants to come in, he is going to want to see a new ordinance. He said that we heard from the public about the residential overbuilds, so a serious discussion needs to happen very soon as to how we go back to the drawing board on that

Mr. O'Brien replied that the B-D Ordinance is currently before the Township Committee – it is not before this Board. The Township Committee is discussing it and, at some point, it will be referred back to the Planning Board for comment as to whether or not it is consistent with the Master Plan.

Mr. Sandow replied that it sounded like there was enough comment at the Township Committee meeting that they were not going to move on it formally in its present form.

Mayor Harrington agreed, however she did not believe that the Township Committee came to any consensus or direction on changes to the Ordinance or any agreement on how they wanted to see it changed. She acknowledged that there was some discussion and they heard from the public and each other, but nothing was decided to do anything with it.

Mr. Sandow said that, at tomorrow night's Township Committee meeting, he will suggest that somebody "grab the bull by the horns" and schedule some body to take action so that this doesn't sit around for 2 or 3 years like the Tree Ordinance has.

Mayor Harrington promised that it will not sit around for 2 or 3 years. She said that it will come back on an agenda in fairly short order although she could not say exactly what agenda it will be on since the Township Committee agendas are quite packed with major items.

Mr. Sandow replied that there is so much to do rationalizing the commercial aspects of the Valley Road Business District.

Mayor Harrington replied that she understood and said that that fact has not escaped her.

Mr. Sandow said that, in the meantime, if the Planning Board has any other ideas that they would like to discuss with him while waiting for the Township Committee to take no action, he would be more than happy to entertain their suggestions either privately or publicly.

With regard to not building in the flood plain, Mr. Connor asked Mr. O'Brien what the impact would be of the proposed flood wall to contain the Passaic River? If it is *not* built, he asked if that would now make this no longer a part of the flood plain and buildable?

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

Mr. Hoffman said, or if it were moved along to a certain point, would it be considered to be "grandfathered"? He said that these are questions he did not know if anybody had an answer to.

Mr. Connor said that it is clear that, in its current boundary, there are a lot of areas south of Valley Rd. that are considered in the flood plain. However, once the wall is built, supposedly that will prevent the flooding. He asked, in that case, if it would no longer be considered flood plain and not be subject to any sort of dire problem?

Mayor Harrington was not sure that is the case and that we need to understand that completely.

Mr. Lemanowicz replied that it is something that the NJDEP regulations have not caught up with yet.

Mr. Connor said that a member of the audience that we will hear from later may have an answer to the question. He asked Mr. David Welch to come forward and address the matter.

Mr. O'Brien said that, currently, there is an elevation to the flood plain which he believed is 214.5. Anything above that is out and anything below that is in.

Mr. David Welch said the beauty in the design of the wall is that it takes into account the Army Corps of Engineers with their engineering model and the NJDEP with their interest in the environment and the riparian areas along the Passaic River. It maintains the wetlands and doesn't change the build-out model in Long Hill at all because the flood wall is to be built to a very high level but it is not going to stop all flooding. So, development potential on the north side of the wall is not changed at all in the analysis that was done in 2004 and 2005. A practical environmental reality, is that the wetlands maintain their vigor and importance in our community. What it does is that it prevents 99% of the flooding, although it doesn't eliminate it. So the requirement for flood insurance is going to stay and the flood design elevations on the north side of the wall will all be maintained and so it will have no effect on the build-out north of the wall.

Mr. Smargiassi said that if the State deems that the flood plain stays and it somehow gets adopted that there should be no building in a flood plain, then in that case the wall could be irrelevant. He said that we just went through this process where we increased lot coverage in a flood plain and sent it to the Township Committee. He said that we know from the Army Corp's testimony that you are still going to have flooding on the north side of the wall – they

won't guarantee that that won't happen. He said that there could be implications and we don't know exactly what they may be.

Mr. Sandow said that, given Mr. Smargiassi's hypothesis, he wouldn't say that the wall is irrelevant because there are still existing structures which might be protected although, if the State passes a revision to the MLUL, it might be that new developments would be prohibited in what is currently the flood plain but there are still hundreds of residents in the lower part of Stirling who *might* get some protection from it. He said that it would still be helpful to the extent that there are properties in which the owner doesn't intend to develop.

Mr. Smargiassi said that it depends on how the State wants to rule. They may rule as to how they define the flood plain and maybe it is irrelevant because you will still have flooding from the south side of Long Hill and the Morristown Rd. area and the flood plain designation may stay despite the flood wall.

Mr. Sandow replied that a couple of thousand truck loads of fill would cure that.

There being no further comments from the public, the meeting was closed to the public.

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DISCUSSION

REVISED DRAFT TREE REMOVAL AND PROTECTION ORDINANCE

Mr. Connor invited Mr. Welch to come forward. Since he and Mr. Batista were the co-authors of the original documentation, he said that he wanted to turn the meeting over to them.

Mr. Piserchia first said that he wanted to make it clear to the Board that, what was sent to the Township Committee, he very strongly supported. He said that, at the Township Committee level, there was a debate as to whether the Township had a right to tell residents/homeowners what they could do with their property. It finally got to the point where there was no choice but to agree that Long Hill Township, along with every town in the State of New Jersey, *absolutely* has the right to put a tree ordinance in place. He said that Mr. Batista was kind enough to provide them with a court ruling involving a builder versus Jackson Twp. and the Supreme Court of New Jersey ruled that it was legal. He said that then the conversation drifted to where it needed to which was a philosophical debate about whether Long Hill Township wanted to limit or provide some limits as to what could or could not be done on a private property. He said that, unless it is going to have a negative impact or have some damaging impact, the Township Committee questioned why we should tell a resident what they can or can't do on their property. He said that the conversation generated into some members not even listening which he felt was the part that was frustrating – the unwillingness to listen to why a tree ordinance was even discussed to begin with. He said that when he mentioned it to a friend in Chatham Township, his response was that he could not move a twig or cut down a dead tree. He said that what this Board went to great pains not to make the proposed tree ordinance that was submitted to the Township Committee not too onerous. He repeated Mayor Harrington's quote of "Once it's gone, it's gone" and noted that we cannot plant a 50' tree. He felt that the problem this Board has is to educate the Township Committee members so that they understand the reasoning behind the draft ordinance and exactly why it is being presented. He said that he read the opening statement of the draft in its entirety and said that it wasn't for aesthetic purposes, although that is no question a benefit, however it is such a small part of why the tree ordinance is proposed. He said that we are talking about flooding. He said that he happens to be a member of the Environmental Commission and mentioned it to the Chair and Vice Chair and they were somewhat perplexed that they were not involved with it to begin with. He said that he sent them a copy of the proposal of the Planning Board and what was sent back by the Township Committee and, because they would like to be involved, they indicated they would be glad to submit a report to the Planning Board and Township Committee as to where they stand on the proposed tree ordinance or some permutation of it. He said that, as it stands now, he did not think it will pass the mindset that exists now on the Township Committee and he felt that what they sent back is not a tree ordinance at all. He said that he pointed out that it is a "waster of paper" and said he would not even vote for it simply because it does nothing. He said that it also gutted the penalties for what happens on Township property - \$100.00. He said that nothing substantial is going to pass and something substantial has to happen. He said that he did not get a "warm and fuzzy" feeling and what he heard was that they did not feel that we should tell people what they can and cannot do on their property and let's talk about the garbage proposal. He said that no vote was taken and the proposal was sent back to the Planning Board.

Mayor Harrington said that, at this point, she did not know how much education will be effective. She felt that the Planning Board has the difficult choice of having to work within the parameters that have been set by the Township Committee and trying to define something that gives the Township at least more control, if not the level that the initial ordinance had. She said that Mr. Welch has graciously volunteered to try to help define what clear cutting means for the purposes of the ordinance. She said that we could try and do that and get a little more than we have now, or we can leave it the way it is now.

Dr. Behr said that there is a third option, which is to send Mr. Pidgeon's revised version back to the Township Committee if the Board so chooses and say that we find this is not consistent with the Master Plan and, therefore, we cannot accept it. If the Board does that, then the Township Committee by majority vote could pass some other ordinance having given its reasons for why it has disregarded the opinion of the Planning Board. He said that he was not recommending that as something the Board should or should not do at this point. He said that maybe it is wiser for Mr. Welch to say that there may be a valuable compromise here.

Mr. Piserchia noted that the members of the Environmental and Shade Tree Commissions are appointed by this Township Committee or previous Township Committees as people who are experts in providing advice in this very area. He said that he was perplexed, frustrated and, frankly, angry that it was so blatantly ignored. He said that he understood the philosophical difference and about owner's rights, but he said that he was an owner too and would welcome this. He felt that there are owners out there who would welcome this kind of ordinance. He felt that this is a fight worth fighting and he felt that the Planning Board should continue to fight.

Mr. Dempsey said that every day every Board sits here, we tell property owners what to do on their property. He said, "Let's be clear about that". He also said that we sent up a Master Plan and specifically outlined where the new new Ordinance veer away from the Master Plan and we had this discussion on Valley Rd. at the last meeting and Mr. Batista got very frustrated about it. He said that we have a Master Plan that have adopted and now we are trying to put everything in place underneath it. He asked if we are starting the whole thing over again and take everything and throw it all out again and start all over? He said that he has been on the Board for 5 years and that is how long we have been working on all of these things. He said that he was not quite sure what we are supposed to do here. He said that we are supposed to be driving forward but it seemed to him like we have taken a complete left turn.

Mr. Batista said that some of the sentiments we have spoken about here we have seen coming down the pike in various ordinances which we have sent to the Board. He said that this, truthfully, did not come as a surprise. First and foremost he felt that we need to remember how this Ordinance came about – it has been many years in the making. When the Conservation Element of the Master Plan was adopted in 2009, he said that the Ordinance Subcommittee immediately began its meetings to start drafting the Tree Ordinance and, in April of 2009, they came up with one which they then sent to the Shade Tree Commission, after approximately 3 or 4 meetings at the subcommittee level. He said that they also sent it to the Environmental Commission at that point and noted that Dr. Hamilton was a part of those meetings. After various revisions and meetings with the Shade Tree Commission and Dr. Hamilton, in October 2009, they embarked on a journey where they had the Planning Board come together with the Shade Tree Commission and drafted a compromise that they felt was fair to property owners. That analysis did not take a cursory 2 hour review at one Planning Board meeting – it reviewed the ordinances of approximately 20-25 municipal ordinances passed in this State and required the evaluation of various case law in this State, because at that point there was a question as to whether or not this type of legislation would withhold judicial scrutiny. He said that we ended up drafting a version that would be separate and apart from the Shore Builders Assn. case, differentiating itself from there. After the Appellate Division's decision was overturned by the State Supreme Court, he said that we were given clear leeway and guidance as to what we were supposed to do. He said that we came nowhere close to putting the restrictions on property owners that the Supreme Court of the State of New Jersey allowed – nowhere close. He said that when they completed their draft revisions, they discussed it before the Planning Board and on March 23, 2010, the Planning Board made recommendations and various changes. He said that they returned on April 27, 2010 and, at that point, the Resolution was approved *unanimously* 10-0. He said that Dr. Behr moved to approve the draft Shade Tree Ordinance and Mayor Aroneo seconded the motion. He said that he was curious as to, from April 27th until this matter came before the Township Committee in October, what changed? He said that we have not been provided with an answer. What we have gotten back is, 10 months later, a letter from the Township Attorney which is telling us that at the end of the discussion at the Township Committee there was no clear consensus, but it was agreed that the individual members of the Township Committee would submit their thoughts to him and that he would revise the Ordinance to reflect those comments. He said that it appeared to him that there was no vote taken, but instead the Committee Members submitted their thoughts. He said that he was not sure whether that violates any type of Sunshine Law, in that there were discussions off the record with the Township Attorney, and things are being sent back to us when we don't know where our Committee Members stand. He said that there are no votes – there is no clear guidance. He said that this letter and the draft Ordinance provides us with no clear guidance other than saying that we will not approve a tree ordinance. He said that what we have here is an anti-clear cutting ordinance, which we already have, and it is weaker than what we already have on the books in our Ordinance. He said that, what we have here is the Zoning Enforcement Officer being given the powers of the TCO which we previously had the benefit of a Board certified tree expert on the Shade Tree Commission. Now we are giving that power to someone who has absolutely no knowledge whatsoever in the field. He said that one of things he found most offensive in the memorandum that came back from the Township Committee is the sentence stating that the Township Committee is not interested in negotiating a compromise ordinance. First and foremost, he said that the Planning Board received its mandate from the MLUL, *not* the Township Committee. He said that we are given our guidance by the Master Plan that has been accepted. He said that, should we draft any sort of ordinance that does *not* coincide with the goals set forth in the Master Plan, then we are not doing our job. He said that Dr. Behr wrote in his e-mail to the Board quite succinctly that the 2009 revised Conservation Element, Goal #7, states "To encourage greater tree preservation and planting efforts in the Township through more stringent tree removal regulations, the formation of a tree bank and street tree planting programs and the continuation of development review procedures aimed at tree preservation". He said that the Ordinance that we got back does *exactly the opposite* of what we have previously approved in the Conservation Element. He said that we have a mandate from our Township residents to protect the trees and it was started in the 1987 Master Plan. It was followed up with more stringent recommendations in the 1997 Master Plan where it was finalized in the 2009 Conservation Element. He said that our direction doesn't get any clearer than what it says there. He said that to send something back to us that is worse – that is weaker than what we currently have on the books, does not satisfy what our responsibilities are to the people of this Township. In reviewing and drafting the Tree Ordinance, he said that we had the *unanimous* approval of this Board, *unanimous* approval of the Shade Tree Commission, and *unanimous* approval of the Environmental Commission. That is approximately 20-30 residents that were appointed to these various Boards by various Mayors and various Township Committees. He said that we had land use attorneys, engineers, and Board certified tree experts, approved arborists, landscape architects, former Mayors, former Township Committee members that participated and volunteered their time – over 100 years of experience of residents who participated in

drafting this Ordinance. He felt that, for it to be cursorily thrown away with a review that was probably less than the Stirling Downtown Parking Ordinance got at the Township Committee level, is offensive. He said that he could not support any revision of the Ordinance that merely calls for clear cutting and does away with the protections that we already had. He did not believe that this forwards the goals of the Master Plan and he believed that it works in direct contravention of the Master Plan. He agreed with Dr. Behr that we should send this back to the Township Committee with our reasons for why we approved of this Ordinance and allow them to vote. He said that it is about time that they voted and put “No” as their answer.

Mr. Welch said that this has been an interesting process. He thanked Mr. Batista, Mr. Connor, and the Shade Tree Commission for the work that they had done. He said that they voted unanimously for the approval of the Ordinance, even though there were differences in opinion, but he felt that it fulfilled the needs of our community and certainly the spirit and intent of the Master Plan. He noted that Mr. Piserchia was wondering why the process seemed to come unraveled. He said that it was very concerning to him that the proposed Ordinance wasn't treated like all the other ordinances he has ever seen go through the process, especially following the MLUL and the way that various Boards interact. He said that, although it was scheduled to be introduced, it has never been introduced and, instead of it not being introduced, it became kind of an ad hoc, ad lib, discussion with a few people who weren't in favor of the Ordinance and it got off on the wrong foot. From his observations over the years, he said that he has never seen this happen before. He believed that if the Ordinance was introduced in the proper way and was read into the record, and the time periods were allowed for the entire community to digest what was in it, members of the Planning Board, Environmental Commission, and Shade Tree Commission could answer the questions that would legitimately be brought up in a very predictable and proper way. He said that he did not know how to “put the genie back into the bottle”, but he did want the Planning Board members to be aware of it because, as they move forward, they will be spending a lot of time on ordinances and he would make darn sure that it follows a procedure that is appropriate. He said that this was a very biased and unfair way to do anything – it was doomed from the first night of discussion. He said that no one with any expertise in the proposed Ordinance that was supposed to be introduced was there to answer any questions and the reason being that it was just being introduced. It wasn't supposed to be a topic of discussion and the Township Committee did not vote to introduce it. He said that he has committed to the Mayor that he would stick with this and with Mr. Batista until the end and try to be of help as he could, adding any expertise he had on the technical (horticultural and arboricultural) side of it.

Dr. Behr asked Mayor Harrington and Mr. Piserchia to help him understand something. He asked if he heard correctly that there was no vote taken on the Ordinance, but the sense was that the Township Committee members would individually communicate their thoughts to Mr. Pidgeon and that he would draw up a Resolution based upon the communication outside of a public meeting?

Mayor Harrington replied, “Yes, you did”.

Mr. Piserchia replied, “You heard it correctly”, and added that he did not respond to Mr. Pidgeon.

Dr. Behr said that it would be very interesting to know then, what was the source or sources that Mr. Pidgeon drew upon in changing the Ordinance? He asked if we were talking about the consensus of all 5 members of the Township Committee, or are we talking about the very strong voice of perhaps one or two members of the Township Committee who are able to guide this document to reflect their own personal bias'?

Mr. Piserchia again replied that he did not respond to Mr. Pidgeon and added that he didn't think he needed to.

Mayor Harrington replied that she did not know how many Township Committee members actually responded to Mr. Pidgeon. She felt that mostly what he did get was in the public meeting. She said that the concerns, with respect to the Ordinance, were well articulated by members of the Committee and she said that there was some discussion, some dissension, and there were also some members of the Committee that remained fairly silent on the issue.

Dr. Behr said that you could see his concern. We've got two Ordinances. One was the result, as Mr. Batista had pointed out, of hundreds and hundreds of hours of really well qualified people and the other is perhaps one or two members of the Township Committee – no one knows, getting Mr. Pidgeon's ear and saying, “This is the way this thing ought to look”, and none of it taking place in a public meeting. He said that the discrepancy in the process is “startling and disturbing”. He said that he shared with Mr. Batista the sense that, regardless of its demerits (and it has some), the way this was created is all wrong.

Mr. Connor asked for confirmation that there was no public hearing of the original proposal.

Mayor Harrington replied that they didn't have a public hearing, they had a great deal of discussion about the problems that the Committee members had with the Ordinance. She said that they were well articulated and the issue came down to, “These are my trees on my property, and nobody is going to tell me whether I can come them down or not”.

Mr. Connor asked what the agenda said?

Mayor Harrington replied that the agenda said that there was going to be a *discussion*, not a public hearing. She said that it would have to have been introduced before a public hearing would be held.

Mr. Connor said that it looked like it was never discussed officially by the Township Committee – only through some sidebar discussions.

Mayor Harrington said that you can call them sidebar discussions – they were advertised, on agendas, and discussed publicly. She said that they did not introduce the Ordinance as it was because, “Why introduce something if you know you don’t have a snowball’s chance of getting it passed?”

Mr. Connor replied, “But why introduce something when you haven’t given the public the right for a hearing?”.

Mayor Harrington replied that that was part of the discussion.

Mr. Hoffman said that, in listening to the accounts of what transpired and what did not transpire, he heard an intimation that somehow there was an impropriety in the Township Attorney’s seeking or soliciting ideas or input from individual members of the governing body and then, perhaps, putting together some type of alternative draft ordinance. He felt that Mr. Pidgeon is entitled, legally speaking, to draft or craft ordinances as he deems to be legislatively and governmentally appropriate and the key is not whether he gets the idea or the specific wording from Committee Member “A”, “B”, “C”, “D”, or “E”, but rather whether the action that will ultimately be taken, following the introduction of such a proposed piece of legislation, attains the requisite vote. That is what matters, not whether he gets the wording from this person or that person. He felt that that is chasing around in a circle getting nowhere. He said that the test of whether the substantive legislation is appropriate or reasonable and serves the proper governmental and Master Plan aims, that is something that he felt, as an observer, is worth pursuing.

Mr. Welch was not concerned about anything that happened after the Ordinance was listed on the agenda in 2010 to be introduced. He felt that it was late in the year. He said that then, at the next meeting, they could have people with expertise who could answer questions that the Township Committee may have regarding the Ordinance, but that never happened. The Ordinance was never introduced. He did not think that anything that Mr. Pidgeon or the Township Committee did in trying to resurrect this was inappropriate, he felt that the problem started right out of the gate and that it was purposely derailed and no one had the opportunity to thoughtfully comment on the Tree Ordinance because it was never introduced. It was a discussion that started on the wrong foot and we were never able to get back and start fresh and explain how un-onerous the proposed Tree Ordinance is and how *little* it would affect the average resident and how much it would protect the goals of the Master Plan. He said that we never got that opportunity and we were on the defensive and he felt that that process is inappropriate and he had never seen it done before. He felt that everything *after* the meeting in 2010, involved trying to save the Ordinance and try to come up with something that would be beneficial to the community. He felt that the process was unfair the way it started in the beginning.

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

Mr. Butterworth said that we have spent many, many, hours for many years refining this Ordinance. He said that he was sure that Mr. Pidgeon had wished that we had gone even further to protect the trees, so already it has been a compromise over what the ideal would have been. At this point, he felt that it should be returned to the Township Committee with no change and request an up or down vote from the Township Committee. He could not see the Board going back to try to make any revisions to make it more palatable.

Mr. Dempsey said that they have already told us that there is no compromise on their side. He felt that the Board should send it straight back to the Township Committee and tell them that there is no compromise on our side. He said that this is what they have told us to do. It is in the Master Plan and they appointed the Board to do this. He said to let them stand up in front of the public and vote on it.

Mr. Briggs felt that one of the benefits of when it is introduced is that the Committee give the opportunity to Mr. Welch and Mr. Batista to speak. He said that there were a lot of interruptions and inability for comments to get through during the commentary. He felt that it was embarrassing to watch on TV. He felt that what was conveyed by Mr. Batista and Mr. Welch this evening would do a lot to educate if they are given the floor and ability to convey exactly the history and expertise behind it because, quite frankly, that is what it is there for and what these people have volunteered to do. He felt that there is a possibility for a fresh basis and a fresh look based upon what we have already.

Mr. Piserchia thanked Mr. Batista for what he had said. He noted that the Environmental Commission has changed and there are a few new people who did not realize that Dr. Hamilton was intimately involved in the discussion. He said that his recollection was that the Planning Board vote was “x” to 1.

Mr. Batista said that he reviewed the minutes of that meeting (April 27, 2010) this morning and he read that it was unanimously approved – proposed by Dr. Behr and seconded by the Mayor at the time.

Mr. Piserchia asked Mrs. Wolfe to confirm that. He said that that was an interesting observation that he did not recall.

Dr. Behr said that there are two issues here. The first is the Ordinance that Mr. Pidgeon put together. He felt that it is the Board’s responsibility, if it so feels, to send it back to the Township Committee listing the reasons why we believe that this Ordinance, as written by Mr. Pidgeon, fails to meet the goals and objectives and the test of being consistent with the Master Plan. The second is that he felt it was imperative that the Ordinance that the Board

proposed be afforded the proper due process which means that it be heard and that people such as Mr. Welch and Mr. Batista, who are in a position to explain to the public what obviously some members of the Township Committee did not understand, in the hopes that maybe they will come to some reason. He said that we have a document in front of us and he felt that we have to respond to it and he felt that our response *has to be* that this is not in keeping with the Master Plan and we cannot support it.

Mr. Batista said that this goes along with some of the frustrations that he has echoed in the past. He found it difficult, as someone who is a volunteer on these Boards, hopefully providing good service to the town, free of charge. He said that we don't know where to go. When we are drafting these ordinances, we are looking at the Master Plan and are dealing with the guidance at the public hearings that we have here. It is an impossible task to try and guess what a Committee member's philosophical differences are going to be with the ordinances they are drafting and proposing. He said that the only way they could possibly do their job is if the Master Plan is changed, but they would have to announce what they wanted before they have a chance to review it and that would be backwards. He did not know where we go from here if every time they spend hours and hours of meeting with experts and drafting legislation. He said that he did not know where they go when they have to consider what philosophical objections someone above them may have.

Mr. Connor said that there are more deletions than substance in this particular version. He said that he attended the Township Committee meeting when it was discussed and he heard comments indicating that the current Ordinance takes care of injuries that are caused by inappropriate cutting. From personal experience, he said that he could tell that those are so buried that nobody who is going to normally cut down a tree is going to find them. He said that it would take them 3 hours to try to figure it out, they are not going to look for it, and they are going to cut the trees down and anyone downstream from the trees is going to experience a flooding problem that they never had before and will have ducks show up in their backyards that weren't there before simply because somebody above decided to have a swimming pool and cut down about 20 trees. He said that the option is to sue them which is not the way we want to do business around here – it makes no sense. He said that he was not only talking about himself, but of his neighbor. He said that it is impossible for folks, unless they have some sort of guidance, to know what their rights are and what they need to do, and this certainly doesn't do it. He said that, when we are presenting major elements and things of the order of the Shade Tree Ordinance or other future ordinances such as the Valley Rd. Business District, the process should be fairly straight forward and when it is presented for introduction, the Planning Board, Shade Tree Commission, and Environmental Commission should have the right for a 15 minute introduction and get to lay out the history and major provisions and start to inform the Township Committee and public as to the reason for it and its positive aspects rather than having everyone go through it and ramble around, one at a time. That is not a process he felt should be allowed when introducing ordinances. He recommended to the Township Committee that we work together and set up a reasonable way and reasonable amount of time when there is going to be an introduction and be allowed to put together their own presentation and at least get out the information and let people comment and then introduce the ordinance and have a public hearing and follow a procedure that allows the people who spent the time in developing the ordinance to actually respond in a positive way rather than being a member of the audience, as he was. He said that he had the same stature as anybody else and yet he had a lot more knowledge of what was going on and was in a reactive mode rather working off of positive information. He said that his recommendation was, not only for this ordinance, but other future ordinances that come before the Township Committee, that a procedure be established so that they don't get into this position again.

Mayor Harrington agreed.

Mr. Connor said that the last bit is how we should handle this and what the Board should do in the way of a response. He said that one option is to readopt and resend the original proposed Shade Tree Ordinance as it was originally sent to the Township Committee, together with some sort of wording that indicates that we ask that they introduce it at an appropriate meeting and go through the process and see who shows up. He said that some people will show up that don't like it but, hopefully, some will show up that do like it and we will get a more balanced look. Secondly, he questioned Dr. Behr's suggestion of rejecting it or just say "Thank you very much" and not do anything.

Mr. Hoffman said that he was duly impressed by the intensive efforts that the Planning Board and other municipal agencies and officials have put into the entire draft Tree Ordinance, and the history behind it. He thought that consistency calls for nothing in the way of a just halfway measure saying that we got back your inaction that was not taken at the most recent meeting and we were disappointed and leave it at that. He said that he would respectfully suggest that there should be a Resolution adopted by the Planning Board reiterating the previous recommendations that the Planning Board had put forth and that summarizes a substantial part of the history of this and the evolution of how this got to the point of even being sent up from the Planning Board to the Township Committee, as summarized ably by Mr. Batista, that shows that this has some history and import to the Township. He said that a lot of home effort was put into this and he felt that it warrants reciting and then put in as well, as a third component, the positive recommendations that he heard put out a short time ago as to, without being disparaging, but suggesting the way, constructively, to continue the legislative process in a productive manner would be to, as suggested, designate one or two key members who have been involved extensively in the process to introduce and comment upon and explain the purpose and goals in this proposed piece of legislation and have that person or persons available for questions right there, on the scene, on the floor, on the table, at the lectern, of the Township Committee so that you are out there fighting for what you believe. He felt that was an entirely property and appropriate goal of the governmental process and he said that the Board shouldn't take just a half measure, it should go full blast in terms of putting the best effort and the best individuals on the front lines to fight for the effort that it spent so much time in putting together and put it right there as a duly adopted Resolution of the Planning Board that sets forth the Board's sentiments in the matter.

Mr. Connor said that he would like to recess the meeting for 15 minutes to give Mr. Hoffman, Mr. Batista and Mrs. Wolfe an opportunity to put something together that would be reasonable.

Mr. Hoffman replied that it may need a little more time than that.

Mr. Batista agreed. In addition, he felt that there should be a 4th prong to the Resolution since we were specifically asked by the Township Committee with regard to our input as to limiting the Ordinance to clear cutting and making suggestions as to the improvement in the Ordinance within the limited scope favored by the majority of the Township Committee, that we should also put our reasoning down for our determination of why the Ordinance, as was sent back to us, does *not* coincide with the goals of the Master Plan.

Mr. Hoffman said that he had no problem with also including in the draft document the critiques or criticisms for what may have been done wrong or not done properly but he would not let the negatives overcome the positives. He said that he would just put that somewhere in the text of what we are talking about doing and conclude, on a constructive note, of saying this is how we feel, and feel strongly, the process should be done, rather than ending on how you did it wrong the first time around.

Mr. Dempsey agreed that 15 minutes is not a lot of time but he felt that it would be much more powerful if we were to send it back *today*. He said that we have to send the message *now*.

Mr. Connor said that we can send a brief Resolution tonight indicating our plans and then do a more complete Resolution at the next meeting.

Mr. Hoffman said that he felt it could be done tonight if we don't mind spending up to an hour.

Mr. Connor said that he would adjourn the meeting until 10:00 PM which will allow 25 minutes to see where we are.

Mr. Smargiassi said that he was not a part of the drafting process and is new to the Planning Board. He said that he followed it somewhat as a resident and had some issues, personally, as to how the Ordinance was proposed originally and sent up to the Township Committee. For example, if a neighbor cut down 20 trees for a solar project, it would cost them \$15,000 or \$16,000 and that struck him as being very punitive to a homeowner who may want to do that. He said that there are probably more trees in the Township than there have been in the last 100 years, noting that farms don't have trees, they have hedgerows. As yards grow in, he said that people want to make their yards bigger. It said that that was one of the concerns that hit him and he thought it was a 4 to 1 ratio which he felt was a little bit much. He said that there are also areas where we talk about structurally unsound trees being removed and the need to hire a N.J. Tree Expert to say that the tree is no longer structurally sound. To him, these are things that could be changed in the margin. Again, he questioned why a homeowner would have to go out and see half of their tree falling over and then have to pay somebody to come in and give their expert opinion. He said that he has trees on his property for which he can see the inside of them rotting out and structurally they are not the soundest things, but he did not see why he should have to pay somebody to give that opinion. He said that perhaps it could be the approving authority and reworked so that the resident doesn't have to spend that money. He said that it was also his understanding that people could opt out of the Big Tree list like more of an ad hoc type thing. He questioned, if you are going to have a Big Tree list, is it going to be mandatory? Or, if you are going to tell people that have a Big Tree and want to put an addition on, maybe they are not going to be able to put that addition on. In that case, the person may say that they do not want their tree on the Big Tree list. He said that hearing everything here, he would be in favor of its proper introduction. As far as having it introduced and people giving the testimony that needs to be given so that everybody is on the same page and it can be given its fair shake and due process, he said that he was fine with that. However, he said that he wanted to go on the record that there are certain aspects which he felt could be marginally addressed. He said that he would have to see the wording before deciding if he will vote or abstain because he did not know exactly what he is going to do yet.

Mr. Batista replied that, if we had the chance to address your questions, we would be able to satisfy every one them.

Mayor Harrington said that that was the conversation the Township Committee needed to have and never did and that is the frustration of everyone sitting in this room right now. She said that all of those things could have been addressed and the Township Committee could have suggested some changes and that is the frustration.

Mr. Welch said that you bring up 3 or 4 points that are very powerful and they have no merit in your argument because we did not have an opportunity to point out to you that, for example, solar systems at some point may be viewed as inherently beneficial which would allow for relaxing the Ordinance.

Some members replied that they already are.

Mr. Welch said that what happened was that information was put out there in a biased way *purposely* to send this thing off track and it was successful. He said that this meeting tonight is a result of that deflection that took place. He felt that the Ordinance should be introduced, without discussion on the night of introduction, and then the members should step back for 2 weeks. He said that there are people who will read it in the newspaper and watch it on TV and everyone needs to find out what the debate is about. He said that we have never had that opportunity and we didn't even have it tonight because the Ordinance was never introduced. He said that there are problems in the proposed Ordinance that he and Mr. Batista saw coming down the pike and they knew they would have to address

them after the Ordinance was introduced – some typos, things that were left out, and things they did not realize. He said that we don't even know what we are discussing because it has not been introduced.

The meeting was opened to the public.

Ms. Susan Jeans, Shade Tree Committee Chairwoman, said that one thing she heard up here had to do with private property. She said that the current Ordinance from 15 or 20 years ago never dealt with private property – it *only* dealt with *undeveloped properties*. She said that we don't have any Ordinance that deals with a person's private property. She said that the reason you have a certified tree person come in is to say that (a tree) is or is not a problem because the average homeowner does not know. She said that you have no idea how many people have come to the Shade Tree Commission wanting to remove trees that they were sure were dire dangers that were not and are still there 15 years later because someone from the Shade Tree Commission visited the site and explained how to trim the tree. She said that if a homeowner thinks there is something wrong with a tree, having someone to come out and look at is an advantage.

Mr. Connor called for a recess.

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In response to Mr. Connor, Mr. Hoffman said that the ad hoc drafting committee engaged in a more mutual effort of him trying to give some outlining of the document, Mr. Batista giving the benefit of some of the historical involvement of the Planning Board and the agencies of the town, Mr. Lemanowicz providing some secretarial services, and Mrs. Wolfe's able participation at appropriate times. He said that what he believed was produced is a document which Mr. O'Brien is going to read. He pointed out that this is not something that is necessarily perfect and no one has seen the entire document in any written document, so whatever might be favorably approved by the Board this evening would necessarily have to give latitude to the Board's consultants and administrator to make minor typographical or clerical corrections of that nature, but the broad purpose and recitals of the document would read something as follows in the form of a Resolution of the Planning Board adopted on this date.

Mr. O'Brien read a draft of the annexed Resolution which was adopted on motion by Dr. Behr and seconded by Mr. Dempsey.

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

The meeting adjourned at 10:40 P.M.

DAWN V. WOLFE
Planning & Zoning Administrator