

**MINUTES**

**PLANNING BOARD**

**NOVEMBER 8, 2011**

**LONG HILL TOWNSHIP**

**CALL TO ORDER AND STATEMENT OF COMPLIANCE**

The Vice-Chairman, Mr. Briggs, called the meeting to order at 8:05 P.M. He then read the following statement: Adequate notice of this meeting has been provided by posting a copy of the public meeting dates on the municipal bulletin board, by sending a copy to the Courier News and Echoes Sentinel and by filing a copy with the Municipal Clerk, all in January, 2011.

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

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

**EXCUSED:**

Christopher Connor, Chairman

Mead Briggs, Vice-Chairman

Mayor Nanette Harrington, Mayor

E. Thomas Behr, Member

Donald Butterworth, Member

Kevin Dempsey, Member

Guy Piserchia, Member

Brendan Rae, Member

Michael Smargiassi, Member

Barry Hoffman, Bd. Attorney

Kevin O'Brien, Twp. Planner

Thomas Lemanowicz, Bd. Engineer

Dawn Wolfe, Planning & Zoning Administrator

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

**PUBLIC QUESTION OR COMMENT PERIOD**

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

**DISCUSSION**

**VALLEY ROAD BUSINESS DISTRICT**

Mr. Briggs said that, based upon dialogue that we had at the last meeting, a new summary has been put together by Mr. O'Brien and Mr. Lemanowicz regarding density. He asked Mr. O'Brien and Mr. Lemanowicz for an update on what had been distributed, which he said will be followed by questions of the Board members and then input from the public.

Mr. O'Brien said that at the meeting which was held on October 25, 2011, the Board went through the proposed language for the Valley Rd. Zoning Ordinance. A small number of changes were made, although they were significant, and the Board wanted to see those changes on paper prior to forwarding the Ordinance along to the Township Committee. What he did in the draft that was forwarded to the Board members over the weekend was to make those changes from the previous (baseline) document. The changes discussed at the last meeting are the changes that were highlighted in the draft version.

He said that Pgs. 7 & 8 contain a list of the properties that are in the B-D Business District and the properties that are remaining as they are (in the O-Zone or any other zone), are not mentioned in the list. The list includes *only* those properties that are being moved over into the BD-Zone. On Pg. 9, the LWI (Live Work Industrial Overlay District) is where we discussed we would allow the light industrial uses, the existing light manufacturing, and other commercial uses, as well as the live work residential units, and the listing recognizes those particular block and lots. Referring to Pg. 13, he said that one of the comments from the Board at the last hearing was that Item 8 at the top of the page had a footnote which did not carry over into the version that the Board saw. Therefore, the footnote has been added to the bottom of the page, which will accompany the document. The next changes occur on Pg. 17. He noted Item #4 which he said has been rewritten and, as a conditional use, multifamily uses are allowed, which include Age Restricted, Senior Citizen and Affordable Housing and the conditions are as we discussed – a lot area of 3 acres or more; may only be placed on the north side of Valley Rd.; density based upon the developable portion of the lot; may not be built in any flood hazard area or required buffer; dwelling units of at least 600 S.F.; and the density was reduced from the original Master Plan which stated 12 units per acre, to the 8 units per acre which is where this draft has been probably most of this year.

Dr. Behr asked if we had not discussed a ratio between market value and low income?

Mr. O'Brien replied that we had discussed a ratio and he believed that it has been covered under the mandated by State statute or Township Ordinance language in that they would set aside certain percentages, unless you wanted to specify that outside of that.

Mr. Smargiassi asked what it would be currently. He asked because he did not think there is anything and asked if he was correct.

Mr. O'Brien replied that what is on the books at this moment are the third round COAH regulations which have been suspended by the Appellate Division of the Courts pending a decision by the Supreme Court, but that is the law as it stands right now even though it is suspended and that was a 20% set aside.

Dr. Behr asked if it is 20% low income to 80% market for any particular property.

Mr. O'Brien replied, as it stands at this moment according to the past State mandate.

Dr. Behr asked the Board if it wanted to say something to the effect that conditions apply to all multifamily residential uses and that the ratio of market rate to low income properties shall be 80% to 20%, or as subsequently modified by State or local statute.

Mr. Dempsey said that the only thing would be if the State comes in at 90%/10%.

Dr. Behr replied that that would be "as modified".

Mr. Butterworth agreed that we would then have to do nothing.

Mr. Smargiassi said that part of the concern discussed at the Subcommittee level was that if you assume that COAH is gone and there is not standard, somebody could come in and just build the units and provide no affordable housing obligation. He felt that by the wording that Dr. Behr just offered, that would at least protect us that we would have some affordable housing and whatever the standard that comes back from the State, whether it's the same, lower, or higher. At least if something was built in the meantime while this is done, we would at least be banking/adding to some of our affordable housing requirements. He felt that that was the thought so that we don't end up with this "donut-hole" or period in the middle where we could have something developed and we end up with nothing while actually creating a greater need in the future.

Mr. Dempsey was in agreement.

Mr. Briggs also agreed. With regard to the credits we have and what the maximum build-out would be, he asked Mr. O'Brien if it looked like that would be an issue as far as us getting into a hole to that degree? He preferred to have the markets versus.

Mr. O'Brien replied that the unforeseen part is whether or not commercial development will be included under the mandate. Under the last round of regulations, he said that commercial development also generated a residential component and what our thought as a Township was that we would use our credits to help the commercial along and any scale residential development would have to generate their own component of affordable housing. So if you use your credits for housing, you don't have them for commercial, but we don't know where that's going to wind up.

Mr. Briggs polled the Board to see if there is any agreement or disagreement.

Dr. Behr said that the language would say that the ratio of market value versus affordable housing be 80% to 20% or as subsequently modified by State or local statute.

The Board members were in agreement.

Mr. Hoffman said, "Subsequently modified by State law, not State or local statute". He said that, if it's local, it's by Ordinance. He said that every ordinance that is enacted by the town is subject possibly to further revision, amendment, or modification.

Dr. Behr asked Mr. Hoffman if the language he proposed is in any way inaccurate or wrong.

Mr. Hoffman suggested, "Or as subsequently modified by State statute or other applicable law".

Mr. O'Brien offered to run the language by Mr. Pidgeon to make sure that he doesn't foresee any problems with it and he would inform the Board by memo what (if any) changes are made.

Mr. Briggs thanked Mr. O'Brien for his suggestion.

Mr. Hoffman added that Mr. O'Brien did not need to bounce it back off of him and that he would defer to Mr. Pidgeon.

Also on Pg. 17 under Item e (Prohibited Uses), Mr. O'Brien said under Item #1 the language was changed to include the N.J.D.E.P. On Pg. 19, he said that the title of Sec. 122.8a was changed to Live Work Industrial Overlay Zone. He said that Mr. Butterworth had a question about prohibited uses and these are the prohibited uses for the Township.

Mr. Butterworth said that it is actually shown in two places - there and on Valley Rd.

Mr. O'Brien said that he had mentioned slaughterhouses, which is Item jj on Pg. 23.

Mr. Butterworth said that he had mentioned meat processing (Item w, on Pg. 22) and asked if that eliminates butcher shops and supermarkets, which do process meat in their facilities? He believed that the outcome was that we didn't restrict it to meat processing.

Mr. O'Brien said that he did not see "meat processing" defined in the definition book.

Mr. Hoffman said that it was his understanding that the type of usage intended to be not allowed under the Zoning Ordinance was "slaughterhouses", involving a live animal and killing it and proceeding to process it, as distinguished to taking slices of rib, meat, or whatever portion of an animal that has already been put to rest and it is now just being fine tuned to put on the plate. He said that that is certainly something that happens in supermarkets, butcher shops, etc.

Mr. Butterworth did not believe that "slaughterhouse" was in at that time and that is when it was put in, but "meat processing" should have been taken out.

Mr. O'Brien said that, if the Board is comfortable with that, he will make sure it happens this time.

Dr. Behr asked what would happen if Item w read "slaughterhouses or similar meat processing" with the emphasis on the work *similar* to distinguish if from what might happen in a supermarket.

Mr. O'Brien replied that slaughterhouses are already listed under jj, and we would just take out "meat processing".

Mr. Smargiassi felt that it also needs to come out of Pg. 18, Item 26.

Mr. Briggs asked if there was talk about bringing in animals with a rendering component of it.

Mr. Butterworth did not believe that anyone brought up a "rendering" component and that he did not think anyone would want a rendering operation in the Township.

Mr. Briggs felt that the processing was to a large scale operation versus the butcher in a supermarket.

Mr. Hoffman said that in Warren Twp. there either currently is, or until recently were, a few relatively small scale operations where people bring in an animal that is alive and kicking and it is not in that condition when the person walks out with their cash.

Mr. Briggs said that there are also places that make hamburger and you don't necessarily want that in our town either – it is a large scale operation and has nothing to do with slaughterhouses. He felt that that is the type of operation we were thinking about and that it was not a butcher or in-store market. It was bringing in the carcasses, putting the meat out together and then having the refuse smell, etc. He said that maybe there is a way of cutting out the large scale or incorporating within grocery or butcher itself as part of one of the allowed uses.

Mr. Smargiassi said a butcher would be "B to C" (butcher to consumer), but Mr. Briggs was talking about somebody that would do that and sell it to another business.

Mr. Briggs agreed and said that that was what we were concerned about.

Mr. O'Brien said that, instead of removing it, maybe it should be amended to say something like "commercial meat processing" or "large scale commercial meat processing".

Mr. Lemanowicz added "not associated with a retail facility".

Mr. Hoffman said that that would mean to limit it to a smaller scale and to prohibit only monetary commercial type of facilities where retail or otherwise would mean if somebody goes out and bags themselves a deer, that could be fully processed. You would still have the entrails and that sort of element that was apparently found to be undesirable for a pig or a cow.

Mr. Briggs suggested that Mr. O'Brien be asked to run through his analysis as to what might be a good option.

Mr. Smargiassi felt it was large scale meat processing to be prohibited.

Dr. Behr said that we would then be leaving "w" in and saying "large scale meat processing".

Mr. Smargiassi did not think we would want to be limiting something like Barth's Market in New Providence, but added we don't want a commercial operation in town.

Mr. O'Brien agreed that that will then go in Item 26 on Pg. 18 and in Item w on Pg. 22.

In response to Dr. Behr, Mr. O'Brien said that we currently have O-Zones in a few places in the town. One is on the north side of Valley Rd. between Morristown Rd. and about halfway between Poplar Dr. and Plainfield Rd. There is another on Valley Rd. on the eastern side of Mountain Ave.

Dr. Behr asked if the intent is to get rid of the O-Zones so that we don't have both a Business District Zone and an O-Zone in the same rough geographic area.

Mr. O'Brien said that, in the same area, the B-D Zone was going to supersede the O-Zone in a number of different places, but not everywhere in town.

Dr. Behr felt that it is really important, as this is presented to the Township Committee, to let them know that the intent of this is that the O-Zone in the business development area along Valley Rd. will be subsumed within the larger development of the BD-Zone and not be a stand along zone because what we are trying to do is to create uniform zoning along Valley Rd. wherever possible.

Mr. O'Brien replied that that is correct with the understanding that several properties that are currently in the O-Zone will remain in the O-Zone on the north side of Valley Rd. and west of Morristown Rd. He agreed that we are talking about the Kurz property.

Dr. Behr said that, if he understood correctly, what we have said about the Kurz property is that we are not doing anything with it right now, but we are not *recommending* that that O-Zone continue. We are just saying that we are not dealing with it now. He did not remember any conversations suggesting that to let the O-Zone be the operative zone for the Kurz property is desirable, because we are not looking to replicate the O-Zone as a failed experiment any longer in the Business District Zone.

Mr. Dempsey thought that at the last meeting we actually spoke about saying that it was going to stay in an O-Zone specifically because of the actions of the Township Committee looking to purchase that land as open space. He said that it was a temporary measure in order to get this through with the intent that, if that failed, it would be revisited into a BD-Zone.

Dr. Behr said that it was his sense that it was never the intention of the Planning Board that the O-Zone should continue as a separate zone in the Valley Rd. Business District. He wanted to be clear about that. He said that, until this is resolved, the Kurz property remains what it is, but we are not recommending that it continue to be O-Zoned – it could be either business development or open space or something else, but if we are going to be consistent and clear here, we are saying that the O-Zone disappears along Valley Rd. as a zone and the provisions for the O-Zone are now incorporated as part of what is permitted in the business district.

Mr. O'Brien was not sure that what Dr. Behr was saying is exactly what is going to happen at the end of this. He said that, right now, the proposal is that several properties that were originally going to be put in the BD-Zone are going to remain as they are – in the O-Zone.

Dr. Behr replied, "Temporarily".

Mr. O'Brien said that, because they are remaining as they are and there is no change to the zoning of those properties, we make no mention of those properties in this Ordinance.

Dr. Behr agreed, but he said that as such time as it clears up and it might then be said that this property is not going to be used by the Township for open space – should that eventuality actually happen, at that point the Board would have the obligation to come back and say let's put that into the BD-Zone because the O-Zone in this particular town is not a useful designation – we already have accomplished all of the purposes of an O-Zone in the BD-Zone as it has been rethought. He said that the whole purpose of this was to get rid of this "mish-mosh" of zones on Valley Rd. He felt that it is very important not to lose sight of that.

Mr. O'Brien felt that that sums up the changes that were discussed at the last meeting.

Mr. Briggs felt that the Board members have asked questions as we went along and, if we are good with that document, he suggested continuing on with the density component.

Mr. Lemanowicz prepared two spreadsheets which were distributed to the Board members, as well as some excerpts of the environmental map that he had prepared previously. He said that the intent was to see just what residential was going to be able to fit on those properties based upon the limitations in the proposed Ordinance. He said that the one he wished to look at first is the one that starts with Bl 11515. Those are the lots that are designated in the Ordinance as being available for residential development.

Mr. O'Brien said that Bl 11515, L 3 is 2.64 acres and, on the original Tax Map, it was shown as slightly over 3 acres, but research between the last meeting and this meeting shows that it is only 2.64 acres which means that it does not qualify for the 3 acre minimum.

Mr. Lemanowicz said that, in reality, because of the provision that residential is not allowed in the flood plain, there's not developable area available for residential on that property anyway, so that property can be disregarded. Moving down on the chart to Lot 13, he said that you will see that the gross lot area is 6.35 acres and the developable area is 2.5 acres, the difference being those areas either in the flood plain, wetlands, transition area, or steep slopes. Moving across the chart, he said that the first regulation for development control is lot density. Currently the Ordinance has 8 units per acre net (on the developable land). Based upon that calculation, 20 units can be constructed on Lot 13. Another regulation is for the floor area ratio. Based upon the net area, and he believed the Ordinance currently is gross for F.A.R. the net was more restrictive and he said you will see that it is almost 83 units if that was the only restriction. He said that, obviously, the density would govern here. He said that the other regulation he looked at was building cover and, again, solely by building cover, there could be about 99 units. He

said that the variables are along the right edge and, obviously, if he changed the unit size, he would get fewer units per acre of cover because the units are bigger.

In response to Dr. Behr, Mr. Lemanowicz said that he could change any of the variables and provide the new numbers right away.

Dr. Behr asked if where we see 99.1 for Bl 11301, L 13, that 99.1 assumes 8 unit per acre?

Mr. Lemanowicz replied that the units per acre don't come into that. What is going to change that is the unit size because it computes building coverage – the number of units for building coverage. Obviously, if he has small units, he's going to have more units per that building coverage. For instance, he said that if he bumped the unit size from the minimum of 600 to the maximum allowable of 1,200, that 99 goes down to 49.6. It just depends upon the unit size. If he changed the F.A.R. from .5 to .3, the maximum units by F.A.R. is going to change. He said that the assumption here as far as the units go is shown on the asterisk on the bottom where he assumed 10% common area, which would be staircases, hallways, etc. and basically these are two-story garden apartments. He said that that is the most dense method of doing residential and he didn't account for garages or accessory buildings. Accessory buildings wouldn't come into play with the net density but it would come into effect with building coverage and F.A.R. For instance, if you had a 5,000 S.F. clubhouse, that would count towards F.A.R. and building coverage, so you would sacrifice units. He said that it all depends upon the development. He was just trying to give the Board some idea of how these 3 different regulations are actually controlling the number of units to go on these properties.

In response to Mr. Briggs, Mr. Dennis Sandow, Millington, cautioned not to be led astray by your consultants and that you need to hear very soon what is wrong with this.

Dr. Behr said that this assumes, therefore, that some of the amenities that have been discussed in the Master Plan as goals, such as a clubhouse, common green areas, etc. are not included in the maximum unit number by density, so if we say Bl 11301, L 13 can have 20 units on it, if they build 20 units on it that basically precludes any of the other kinds of amenities that have been talked about.

Mr. Lemanowicz said that, if you put a clubhouse or not a clubhouse, it doesn't affect the unit density, but it will affect the F.A.R. For instance, you could put 20 units on there and still put on a 5,000 S.F. clubhouse because a clubhouse isn't a unit.

Dr. Behr said, therefore, that these numbers don't preclude these kinds of amenities.

Mr. Lemanowicz replied that that is correct. He said that the issue was that he could have spent several days on each lot trying to give 18 different scenarios of clubhouse sizes and does it have a tennis court or a swimming pool. He said that he was just trying to give a very general idea. There is another control in the Ordinance as far as lot coverage goes, but that would have to go into assuming how much road do I need, are there sidewalks, is there on-street parking or off-street parking? He said that we could go on forever trying to "what if" this thing, so he basically took 3 of them just to try to zero in on the order of magnitude of how many residential units you are talking about given the Ordinance as it is right now. He said that, obviously, a customized layout for each lot to try to feel through what could really be done would have been very time consuming and he did not think that the Board wanted him to go that way.

Dr. Behr said that one of the reasons that we went into this level of detail is that, when this was first presented to the Township Committee, there was all sorts of speculation about the number of units that could possibly be built on Valley Rd. and he recalled that there were numbers such as 1,000 40' high condominiums could be put up there – something really demented. He said that if we are trying to put people at ease, as he looked at this if you take the most restricted number of building units that can go into Valley Rd. it is 105.9, and they've got to meet all of these standards.

Mr. Lemanowicz said that that is probably actually on the high side because once you start trying to fit in your parking lots and drainage structures – there is more to it than that. He said that this is basically the worst case. He said that Excel will round, but it will not round down. In other words, you can't limit it to that. When you see 9.9 units, that means 9 because it is to the highest whole number. He said that there is probably a unit or two extra in there but he wanted to show what was there.

Dr. Behr said that with 12 units, we'd get 158.9 based under maximum units by net density.

Mr. O'Brien replied, "Correct, and it's 16 per acre or 212". He felt that it is important to remember that when the original Master Plan was written and adopted back in 2007/2008, it called for residential throughout the entire Valley Rd. corridor from Morristown Rd. to Main Ave. (a mile long) and it allowed residential on the second floor and above and, at one time, a third floor was contemplated. So there were some very high numbers being bandied about which were never quantified because of the extent that residential was being contemplated at that time. He said that the proposal is front of you limits residential uses to 5 lots throughout this entire mile long corridor – a very, very different conception.

Mr. Sandow said that he did not know why the Board bothered to let the public talk at these hearings. He said that everything the public says seems to be totally disregarded. He said that, well over a year ago, he produced an enormous spreadsheet study of every single lot in the BD-Zone. It showed the maximum number of houses or

residences by lot all the way from Valley Auto down to the Kurz property on both sides of the street and on all the side streets. He said he distributed it at least two or three times through the Administrator and yet here we are with a brand new study, which he characterized as “inept, as inane, as counterproductive and as inflammatory”. He said that we know that the purpose of this Planning Board today is to get out from underneath the rejection by the Township Committee that was caused by fear of too much housing and what do we do – we put another piece of paper on the table that talks about 500-600 potential residences. He said that we know that that’s got a lot of caveats but it serves no purpose except that someone will tuck it away and put it in a letter to the editor a few months from now about over-development and then this Board and the Township Committee will have another field day fighting off the challenge from the public who misunderstands it. He said that it is counterproductive to have this document – it is not in line with what the Planning Board is setting out to do, and he did not believe that the Board’s consultant is being helpful with this. He said that the next thing that’s missing, and it is an egregious error, is that he hasn’t bothered with parking. He said that he was not worried about clubhouses, he was worried about parking. He said that if you take a 600’ apartment, which occupies 600’ of ground space and put another 600’ on top of it, you’ve used up 600’ of ground. He said that you also need 2,000’ of parking because each one of those units requires 2 parking spaces and, if you go through these numbers, especially in the last two columns, you’ll find that the amount of parking that is required to support these numbers of residences outstrips the available land area. He said that you cannot simplistically, ineptly ask Excel to grind some numbers and forget about the reality of parking, sidewalks, septic systems, or stormwater structures. He said that he wished this document didn’t exist and he wished that the Board wouldn’t pay any attention to it. He said that, if the Board would like he will resend the spreadsheets that he did on a lot by lot basis and the Board can pick and choose the lots that they want to take them from but he could not see why we are putting numbers out there that talk about 400 and 500. He said to look at the second line on B1 11401, L 13 which is the car wash and the old Valley Sports next to it. On that lot, why would we even think of putting 99 garden apartments? He asked why we would even suggest that that is a number that Excel can put out. He also said that there is a function in Excel whereby you can get rid of the rounding issues. He said that he did a calculation on the big Kurz lot and it turns out that if you actually run those numbers you devote more space to parking than you have as developable land and there is no room for the apartments that would allegedly create that parking. He said that you can’t just look at occupied residential space when you are doing a study like this and the Board certainly cannot rely on these for any decision making at all.

Mr. Smargiassi asked if it wasn’t discussed that the numbers in the far right column would never really come into play? He said that he heard what Mr. Sandow and he was right in that somebody might just take this 500 number and run with it in the future, but with the discussion we just had here, before Mr. Sandow came up, between Dr. Behr and Mr. Lemanowicz was that, in reality, the two numbers that come out of the net F.A.R. and the building coverage would really not come into play whatsoever.

Mr. Sandow agreed that they will not come into play but said that it is counterproductive to even bother to pay a consultant to put them on a sheet. He said that the other issue that we have is the 600 S.F. He said that no one is going to build a garden apartment complex with 600 S.F. in every single apartment - it would be unrentable and it would bring in a much lower financial demographic into the Township than we would care to have. He said that he based all his calculations on building the maximum size apartment of 1,200 S.F., but as Mr. Lemanowicz pointed out, if you go from 600 S.F. to 1,200 S.F., then all these numbers get cut in half. But nonetheless, this is inflammatory. He said that Dr. Behr did raise the point but he was more than gracious about phrasing it and he could not be that gracious because he has been through these numbers with the Board time and time again and here were are again reinventing the wheel and it comes out square. He said that he would have more comments on Mr. O’Brien’s work on the Ordinance when the Board is ready for that.

Mr. Lemanowicz said that if the Board has any more questions, he could change the numbers and provide new information. He said that his point was to give an order of magnitude of a worse case of how many units we could get on here. He said that, obviously, they’d be changed by a property specific design but given the time he was asked to put into this, this gives an order of magnitude that there is around 100 potential units for those properties.

Mr. Briggs said that, if you were to look at the larger (1,200 S.F.) unit by net density.....

Mr. Lemanowicz said that the net density doesn’t change but what does change is the maximum unit by F.A.R. drops down to about 219 and the maximum units by net building coverage drops to 262. He said that the last two columns are net, not gross. If you went to gross lot area, obviously those numbers would go right back up because as you can see in the gross lot area column and developable area column, it shows you what happens when you apply the restrictions to the gross lot area.

Mr. Briggs said that it was his understanding that Mr. Sandow’s analysis excluded critical areas and wetlands that are not allowed in the developable component now.

Mr. Sandow said that he did approximately account for wetlands on the north side by restricting some of the lots developable acreage but he did permit the entire acreage of the lot in the factors. In other words the coverage could go to 100% of the developable as long as it remained less than 60% of the total. He said that you are changing that here and not allowing the wetlands in the calculation at all, which he has complained about before, because that is essentially a taking because you have now made that land totally valueless if it cannot contribute. That is a challenge that the town will have to face in court some day, as to whether or not that taking in the Ordinance is lawful. But in the meantime, he said that he continues to be amazed that Mr. Lemanowicz talks about these numbers and ignores parking. He said that these numbers don’t get cut in half and, unless we are willing to give a variance for no parking places, he said that all these numbers aren’t worth talking about. He said that for every apartment you need 1,000

S.F. of parking, even if it is only for a 600 S.F. apartment. He said that, if you stack another 600 S.F. apartment on top of it to make a two story building, you need another 1,000 S.F. of parking – that is what the numbers work out to. To talk about these numbers as if they were limited by the F.A.R. percentage or any other percentage without including the parking factor, he said is simply a waste of your time.

Mr. O'Brien said that Mr. Sandow's analysis in June, 2011 (the last time it was distributed) showed far greater housing densities, even with the parking, than Mr. Lemanowicz is showing. For instance, the Elks (BI 11301, L 13) is shown as 50 dwelling units.

Mr. Sandow replied that it was probably because he didn't discount the wetland. He said that he would plead guilty to that if he did not discount the wetland in every case.

Mr. O'Brien referred to the next one (BI 11301, L 7) and said that Mr. Sandow had 44 housing units, whereas Mr. Lemanowicz finds only 9.9 and that is a huge disparity between figures. He noted that L 7 contains the existing car wash.

Mr. Sandow replied that, again, he probably did not discount the wetland. But if the Ordinance is going to discount the wetland, he said, "Fine", but you've got to make it even smaller though to include parking. He said that he catered to parking in his numbers.

Mr. O'Brien pointed out that Mr. Sandow's numbers are so much larger, including the parking.

Mr. Sandow replied that that was because he was talking about the two levels over retail configuration and he was assuming that the entire lot was developable which may have been a mistake because he didn't deduct the wetlands. He said that, if we ran on a consistent basis of including parking and the very restrictive numbers that you have put in here, then you would have much smaller numbers.

For clarification purposes, Mr. Piserchia asked Mr. Sandow if the 1,000 S.F. per unit, regardless of whether it is 600 S.F. or 1,200 S.F., is accurate?

Mr. Sandow replied that that is 2 parking places per apartment which is specified all over our ordinances. He said that a parking space is defined as 171 S.F. (9' x 19') and you have to account for aisles, fire lanes, loading docks, and dumpster areas. He said that the answer is that he surveyed all of the moderate sized parking lots with a measuring wheel on Valley Rd. and the average (if you take all of the pavement area and divide by the number of parking spaces) works out to be about 570 S.F. per parking space. He said that he used 500 in his rough calculations today, but the actual average across all of the moderate sized parking lots on Valley Rd., that is to say 15-10, is 570 S.F. per space and you need 2 spaces per apartment.

Mr. Piserchia asked if our Ordinance requires 2 spaces for a 600 S.F. apartment?

Mr. Lemanowicz replied that this would be under R.S.I.S. and it is a fraction of 1. something, so eventually if you have enough units, that 1.8.....

Mr. Sandow said that our Ordinance is specific to 2 – it has nothing to do with any standard.

Mr. Lemanowicz replied that the R.S.I.S. trumps the Ordinance in a residential development.

Mr. Piserchia said that, even so, it is still close to 2.

Mr. Lemanowicz said that he did not take issue with that, but the issue is that in a residential, it is 2 parking spaces but if 1 is in a garage, you already counted that impervious coverage because of the roof of the building.

Mr. Sandow replied that Mr. Lemanowicz specifically stated that this does not include garages in his footnote.

Mr. Lemanowicz agreed for the floor area ratio and the building cover, but as far as Mr. Sandow saying parking spaces at 1,000 S.F. per unit, if there are only 2 parking spaces and 1 is in the garage, all you need is the 10' x 25' (250') of driveway.

Mr. Sandow said that Mr. Lemanowicz made a statement that the garden apartment is the most dense way of building residential housing. He said that he disagreed and that the most dense way is a townhouse with a garage and a short driveway because then you don't have to have any external parking.

Mr. Lemanowicz said that that is why he didn't try to guess on lot coverage because there are so many variables. He asked Mr. Sandow, when he did his parking lot, was it a multifamily residential parking lot, or was it retail?

Mr. Sandow replied that it was both because at that time we were talking about a stacked operation.

Mr. Lemanowicz said that a multifamily residential could have street parking, so your streets are your aisles, so that aisle area goes away. He said that you don't need loading zones in a residential area and you don't know about garages, so there are a lot of variables to how impervious coverage is going to be developed.

Mr. Sandow replied to Mr. Lemanowicz, with all due respect, that his footnote for this study specifically says “garden apartments” and, if you want to make other assumptions, and he thought that he has said he could make 18 of them for each case, then make them and put the numbers down for what it would take to have underground garages, in apartment garages, and driveways. He said not to just present a number and say, well if you did it a different way. He said that, if these numbers were supposed to be a definitive input to the Planning Board, they certainly aren’t.

Mr. Piserchia felt that the more important issue was whether you must, could, or should include the wetlands. He did not want to put words in Mr. Pidgeon’s mouth, but he was pretty certain that they had that discussion at the Township Committee level and he asked that question – can we remove the wetlands for the calculation purpose, and his response was that the courts said, “Yes”. He asked Mr. Hoffman if that sounded right.

Mr. Hoffman replied, “No”.

Mr. Piserchia then asked, what *is* right? If it is a 10 acre lot and 5 of them are wetlands, he asked if the Ordinance can require all calculations based on 5 acres.

Mr. Hoffman replied that his initial reaction is to tend to the view expressed earlier this evening by Mr. O’Brien (the case of Rumson Estates) in that, if you exclude the even allowance for wetland in lot area calculations, F.A.R., or other such bulk issues or requirements, then you can’t count if for anything because you can’t count it as developable land and so if you can’t factor it into your mathematical calculation of allowable lot coverage, etc., then you’re totally precluding it from being usable for *any* purpose at all, but are still subject to having to pay taxes on it. He felt that that constitutes a classic example of a “taking”.

Mr. O’Brien said that Mr. Pidgeon disagrees and says that Rumson Estates allows it.

Mr. Sandow asked if was intended in that case that this would be precedent setting, or was this a specific solution to a specific issue that was fairly narrow and might not apply generically? In other words, what is the “gospel” according to Cox?

Mr. O’Brien replied that any Supreme Court decision sets a precedent for that specific type of situation.

Mr. Sandow questioned if we are prepared to assess the wetlands to zero?

In response to Mr. Piserchia, Mr. O’Brien agreed that he had characterized what Mr. Pidgeon said correctly, and he added that that is the communication which he had shown to Mr. Hoffman.

Mr. Piserchia said that there seems to be some grounds that allows any municipality, including Long Hill Township, to do just what you are saying you cannot do.

Mr. Sandow replied, except that we have assessed that land, historically, at a non-zero amount because it has some value. The value of the wetland is the fact that it can participate in the calculation. He said that, if we now say you can’t build on it and you cannot use it to participate in the calculation, then its economic value is zero, we have to assess it at zero, and we have to take a hit on the tax rate.

Mr. Smargiassi said that he would like to offer a completely different solution which gets you at the same point, which is that he did not think anyone wants to drive down Valley Rd. and see 100% lot coverage, because that is what you would see under some of the calculations that Mr. Sandow just said - that he assumed that some of those lots would be developable acres at 100% because you have the wetlands. He said that an alternative to what is currently proposed, with the uses that you just simply restrict the lot coverage and developable acres to such a point that you don’t end up with 100% lot coverage and that is what people see when they drive down Valley Rd.

Mr. Sandow replied that Mr. Smargiassi meant 100% *frontage* coverage. He said that he was talking about frontage, not lot coverage.

Mr. Smargiassi agreed. He said that you can easily end up where we were before with 100% of the visible lot, as you drive down Valley Rd., being completely pavement.

Mr. Sandow replied that that is what a walkable downtown is all about – elbow to elbow buildings and that is in our Master Plan to make it walkable. He said that you don’t want huge gaps in buildings.

Mr. Smargiassi replied that all he was saying is that the idea is to exclude wetlands from the area that is able to be developed and there is also another way to do that and probably end up at the same result.

Mr. Sandow asked if anyone had noticed the article about Bound Brook in this morning’s Star Ledger? He said that they want to get 240 residences on the south side of Main St. between the underpass and the train station, on what can’t be more than 5 or 6 acres with the train track right behind them, in order to spiff up the center of town’s businesses. He said that he was not saying that we want to be like Bound Brook, but that is an entirely different way of looking at the situation if you want a walkable, livable, downtown.



Mr. Piserchia felt that part of the problem with that analogy is that we don't have a train station on Valley Rd. He said that that is what brought us to this to begin with. He said that it is not a transit hub because there is no train station there.

Mr. Sandow said that when he talked about a train station behind it, he was talking about noise, not convenience.

Dr. Behr said that it is fair to say that, depending on where this goes, it is not inconceivable in the future that people might choose to bike or get some other access to a train station.

Mr. Piserchia replied that that is a fair point.

Dr. Behr asked what would happen if we do something right in the middle – to continue to restrict any building in a flood hazard or critical area, so you can't build there, but we take away the restriction of lot coverage to developable area only. Do you not still preserve then, as buffers, any of the natural wetlands within any one of these lots?

Mr. Briggs replied that he felt you do, but then you have calculations come forth as far as the number of units because your lot is now larger. He said that the issue is whether or not it is legal.

Dr. Behr said that the wetlands figure in to the value of the lot in terms of the number of units that can be built, so that you permit development on anything that is not a wetland or a critical area. He said that a critical area's value is that it serves as a buffer and so, therefore, you are not taking value away from the landowner. He still gets the value of them as buffers.

Mr. Dempsey said that there are laws around the wetlands and that is exactly what was talked about before and the concern of his colleague is that, looking at L 7, it looks like it is more than 50% wetlands. If you then take that ratio into account, you could develop the other 48% completely which is what we heard clearly that they didn't want to happen. He agreed with Mr. Sandow that if he owned that property he would be very upset and this is the one part of the plan that he did not particularly like. However, he said that one of our lawyers is telling us that we can. He said that he was not here to debate whether the Township is ready to go to the Supreme Court over this or not.

Mr. Sandow replied that there is an interesting piece of reverse discrimination here. He said that we apply this *only* if you intend residential development. If you intend a commercial development, you can use all of the wetland in your formulas.

Mr. Dempsey said that if you start spot zoning like that, they will just come in and cut us to pieces. He felt that, if we do it here, we are going to end up having to do it for the *entire* town. He said that he could see that happening more than other things, but that is going down the road of many, many laws.

Mr. Piserchia said that we can make the maximum number of units fit across the Board.

Mr. Smargiassi said that you assume that they are going to just consolidate lots and do it across the Board. If somebody wants to develop a lot on their own, so be it, and if somebody wants to go and consolidate lots, then fine.

Mr. Sandow said that there are some self limiting factors here and one of them is that we have a maximum of 1,200 S.F. per apartment. If you were to reduce the number of units per acre from 8 to 4 or 5, you would get the same effect of reducing the number of units and reducing the frontage density that Mr. Smargiassi is so concerned about, and you wouldn't have to go down the slippery slope of discounting the wetland in the calculation for residences but not discounting it in the calculation for businesses. Also, obviously if a developer has a choice of running formulas for his entire property and developing a business versus running a formula for a residential development, how is he going to get the most square feet out of all of this? He said that you are making it very hard to build these residences on a mathematical basis, not that he would think that anyone would want to build a 10-15 unit garden apartment, but he felt that we need to be realistic about just how these lots could be developed rather than dwelling on whether or not we could get 99 units on the car wash property.

Mr. Briggs said that he was still on the impasse as to the legal side effects.

Mr. Smargiassi said that this got in here because, as part of the discussion between Mr. Piserchia, Dr. Behr, and himself, who talked about the various things that the Township Committee was considering and open to and there was a very open discussion. He said that this is one of the things that Mr. Piserchia had noted that the Township Committee was discussing and considering and so it was brought to the table. It is not something that he felt we need to sit here and say that this is something that we have to do. He felt that we are free to come back and say, no we don't like the way it is going and maybe you cut the number of units in half and you include wetlands as calculable, whether it is residential, commercial, or whatever it is. He said that one of the reasons why we asked Mr. Lemanowicz to do this is so that we didn't end up with 2,500 units built in town. He also felt that there was a lot of thought put into why these properties are unique and should have housing units and he did not think we will having people going around town and saying that they should go other places. He said that this was just brought up and inserted as a point of compromise and he did not feel very strongly that we have to do it. He felt that there are other ways to get there and get to the same look and feel of maybe what we want.

Mr. Briggs agreed. He said that he worried about the legal side of it and also worried about the rights of land owners. So, if there is another way of getting there, whether it is 4 or 5 units, then maybe we should look at that

route because it would not put the Township in any predicament going forward, but also may get us to the same point. He said that the Township Committee has a certain view on how this should be and the residents have a particular view, but he would rather not compromise the landowners as landowners since they have been paying taxes on their property. He said that perhaps there is a median ground that can be fleshed out a little more as to parking and we could fill in that piece. He said that we don't have to know with regards to roads and catch basins and the rest of that, but be a little bit tighter as far as the detail on that.

Mr. Hoffman said that what struck him as to all of this dialogue is the distinct impression that there is no fixed or immutable correct set of numbers or calculations by which to go through this exercise in responding to concerns from members of the public as to how many residential units could get in there. He said that it all depends upon the underlying or baseline assumptions or criteria that you factor into the formulas in arriving at certain numbers. He said that he would respectfully say to Mr. Sandow that, rather than charging our consultants with miscalculation or misunderstanding, he should be (as everyone here should be) trying to come up with a reasonable working set of numbers because ultimately the Township Committee is going to have the final say, but if what we're suggesting is a reasonable formula, maybe that is as far as we can go with it. He said that, ultimately, it is going to be the Supreme Court, not what the Planning Board in Long Hill Township or what Mr. Sandow, he, or Mr. Pidgeon may say is the correct number. If you have a sound, reasonable basis for the projections to offer, he suggesting putting it all together to try to work that out in a way that is constructive rather than through crossfire between ourselves that he was not sure was productive.

Mr. Sandow said that it does help with clarification.

Mr. Piserchia said that it is not Long Hill Township or any township in the State of New Jersey that came up with the idea of wetlands and limiting factors in terms of what can be developed. As that happened, he said that he imagined, for example, that the lot across the street containing 70 acres fifty years ago could have been built on all 70 acres. He said that Long Hill Township didn't limit that, the State did under the N.J.D.E.P. He said that each year that has come forward has limited the value of that property, not our Township.

Mr. Lemanowicz agreed and said that that is a State regulation and the Township has no ability to change that. He doubted that things will get easier as far as State regulations go. He agreed that whether that is wetlands, flood plains, highlands, etc. – they are all State mandated restrictions.

Dr. Behr said that we are taking it one step further and he was not sure that that step is necessary. He said that we are dealing with a funny kind of conflict of goals here. He said that the original Master Plan contemplated more density than it appears the Township Committee was comfortable with.

Mayor Harrington recalled that it was a well attended meeting.

Mr. O'Brien estimated that 70+ were in attendance when this Ordinance was discussed.

Dr. Behr said that whether or not the comments from the public were well informed by facts is a different question, but certainly the Township Committee came back to the Planning Board and said that they were not comfortable with this level of density and, in fact, we are not comfortable with any residential uses at all. He said that the Master Plan is very clear that there is a specific intent for residential uses on Valley Rd. with the notation that you would combine residential uses and commercial uses in some kind of synergistic way so that you would decrease the drive in your car to Valley Rd., shop, get back in your car, and leave – that was the intent. If we so restrict residential uses on Valley Rd., then it becomes impractical for builders to put any residential uses there at all. He said that we have to redo the Master Plan because we are talking about a different fundamental concept.

Mr. Piserchia said that Dr. Behr was 100% right in the way he described it and he felt that it was that "phantom" or "non-defined" number that spooked the Township Committee, adding that it spooked him. He said that it started at 1,200 and then by the end of the meeting it was up to 2,000.

Dr. Behr said that maybe if we came back with a rational sane number, we could get a different conversation. He asked Mr. Lemanowicz to take a look at the gross lot area and take 12 units per acre and take a look at Bl 11515, at 2.64 acres, 8 units per acre x 2.64 is going to be something like 18 units, correct?

Mr. O'Brien replied that, if you did all 31 acres (all gross lot area), it would be 375 units.

Dr. Behr said that 375 units is somewhat smaller than 2,000 and that is 300 units for *all* of Valley Rd., not including the Kurz property.

Mr. Sandow replied, "Yes, including, even though we are not proposing to put it in the BD-Zone".

Dr. Behr replied that, at this point, it is not in our calculations.

Mr. Sandow replied that it is in Mr. O'Brien's calculation.

Dr. Behr disagreed.

Mr. O'Brien asked how it was included in his calculation?

Mr. Sandow replied that he had said 31 acres which is the Kurz property.

Dr. Behr said that 31.33 acres is the number that you get from the information that Mr. Lemanowicz gave us.

Mr. Lemanowicz said that it is the 6 lots *total* which is 31 acres gross, 13 developable. So by taking the 31 over 13 and multiplying that by the 105 gives you the number if you went with the maximum units by gross density instead of net density.

Dr. Behr said that the developable lot area is minus wetlands, correct?

Mr. Lemanowicz replied that it is minus wetlands, flood plains, and steep slopes.

Dr. Behr said that we are still stuck with 13.24 acres. So that the thing that we are talking about is simply saying that the building coverage may include all of the developable lot acres so that we are still down with a very small number like 105 units, because they are not going to build in a flood plain. He asked Mr. Lemanowicz if he had missed something.

Mr. Dempsey said that they could put more in their developable lot because you are now allowing the *gross* lot to be calculated as lot coverage, so you are really back up to 300.

Dr. Behr said that we start off with the number 31 x 8, but then you do have to subtract for parking.

Mr. O'Brien replied that it would be 250.48 at 8 units per acre.

Mr. Lemanowicz said that, depending on the size of the units, there is going to be space in there for parking and depending on the *type* of unit, if it is street parking or off-street parking – the whole parking thing is really nebulous.

Dr. Behr said that, if you take the 13.24 and multiply that by 8, and then figure in some factor for parking, he said that he just wanted to get a reasonable number that is legitimate and rational that we can go back and say that here is the maximum number that could be built on these lots.

Mr. Lemanowicz said that he could take one of the middle sized properties (such as L 7) and actually sit and do a layout and see what he could fit on there. He did not want to do it for all of the lots because that would take a considerable amount of time.

Dr. Behr asked if there is any way to come up with a reasonable estimate that could be on the conservative side. He added that we have been working on this thing since the land of the ark.

Mr. Smargiassi agreed with Dr. Behr. He felt that you could go back and forth and slice and dice these numbers until we are all dead, but at some point you have got to pick some type of number and say that this is what it is and let's get some estimates and a rough idea. He said that he was just taking 8 times the 76 acres for L 1-3 and the 8 times the 31 and you end up with 850 units.

Mr. Dempsey said that we cannot talk about the O-Zone – it is not part of this Ordinance.

Mr. Smargiassi replied that Dr. Behr had just said that we would revisit it and it would not stay O-Zoned.

Mr. Dempsey strongly disagreed and said that it is not in this Ordinance and shouldn't be talked about in this Ordinance.

Mr. Smargiassi said that he would propose 5 units per acre, include all developable land, and go with a lot coverage of 50% as a discussion point, from 60 and see what the calculation looks like. He said that you could end up with hundreds of units and not thousands and end up in the low hundreds and you end up with something that is not 100% concrete as you drive down Valley Rd.

Going back to Dr. Behr's point, Mr. Lemanowicz said that he looked at L 13 because it had 20 units on it and, again, that was net. He said that twenty 1,200 S.F. units is going to be about ½ acre of building – actually it would be less than that if it is two floors, so figure ¼ of an acre out of the 2.5 acres that are available, so that still leaves you a lot of area for parking. He said that with that unit size, you are not going to need a reduction to get your roads, parking, or whatever in there because you are only using 1/3 of an acre for your footprints and, if one of the parking spaces is in the footprint, you've got the other parking space in the driveway and all you need now are streets to run up between the buildings and you are not going to eat up the whole 2 acres that you've got left over.

Dr. Behr said that what he heard is that the maximum unit per net density, that number could realistically include parking.

Mr. Lemanowicz replied that the maximum units by net density that you see right now will have room for parking. If you want to get away from the net thing, he said to just treat the developable lot area and so the maximum units by gross density would be 20. If you've got 20 units at 1,200 S.F., that is 24,000 S.F. of unit. If you are stacking them, that's only 1,200 S.F. of footprint which is roughly 1/3 acre and you still have 2.2 acres left for parking, roads, sidewalks, detention basins, and whatever. He said that basically you would probably have two buildings with 5

units on the first and second floors and you've got to send a cul-de-sac up the middle with driveways and you are done. He said that you are not going to eat up 2 acres of asphalt doing that.

Dr. Behr said that, hypothetically speaking, if we had 12 units per acre, that would take us to 30 gross density. He asked how that would work?

Mr. Lemanowicz replied that we would have 3 ten-unit buildings of two stories, 5 on each level, one on each end with a cul-de-sac in the middle, at 1,200 S.F. if they were 30' x 40', that would mean each building would be 150' long, with 50' of frontage and 50' between, and you would need about 250' of road at 24' wide for the cul-de-sac to go up inside. He said that that would be about another 6,000 S.F. of coverage for the road and you've got sidewalks, etc. He said that there would be 36,000 S.F. in building footprint, which together would equal 42,000 S.F. He said that you've got roughly 50,000 S.F. of impervious, or an acre on 2 ½ acres, so it fits.

Dr. Behr said that anything from 8 to 12 units would fit as a general principle and, if it were 12, you would still have 160 for the total residential units for this whole area.

Mr. Lemanowicz agreed.

Mr. Smargiassi noted that that is *developable acres* and he thought we were trying to move away from that, to gross.

Mr. Lemanowicz replied that he had his computer set up for everything else but that. He said that he could probably drop columns and take the gross lot area and developable lot area and maximum units by net density and maximum units by gross density and redo it and e-mail it and you could just plug in the 4 numbers on the variables.

Mr. Smargiassi replied that he had just taken Mr. Lemanowicz's gross number and multiplied it by 12, 8 and 5. Assuming that there are 600 and not 1,200 and keeping all the variables the same, he said that 12 is 372, 8 is 248, and 5 is 155 (total units).

Dr. Behr said that the number we are working with is the developable lot area because no development is permitted in a wetland.

Mr. Dempsey said that Mr. Smargiassi is using the gross area because we've just said that we are not going to limit the steep slopes.

Dr. Behr replied that you cannot build in a wetland.

Mr. Smargiassi replied that you can then increase the density in the developable areas, so if you are going to move from developable to gross, the number of units would go down.

Mr. Dempsey disagreed and said that the number you could build on that lot just went up.

Mr. Smargiassi agreed that the number goes up but said that if you want to try to keep it the same that we've just had, you have to reduce the number of units you allow per acre. He said that he was going by gross and said to assume that Mr. Lemanowicz's original calculation was 100 units for the lots we discussed. If you go to 5, he said that it actually bumps it up to 155 because you can now have increased density on the front portion of all these lots, because you get to calculate the rear part in your lot coverage calculations and other calculations.

Dr. Behr said that we are again forgetting the infamous parking lots, etc. He said that if we go back to Bl 11301, if you take 6.5 acres and you fill that up with units per acre, can you still fit in your parking and all the other things we've talked about?

Mr. Smargiassi said that he understood, but said that part of the thing he was dealing with is that someone a lot smarter than himself is going to come here and figure out a way to make all this fit. He felt that we can debate these numbers in 20 different ways and Mr. Sandow can go home and recalculate them for weeks on end and we can still have discussions about "what-if's". He said that, at some point, we have to get a general picture of what it is that's good enough for us to roll the dice on and if somebody comes in with some grand plan and all of a sudden people want to sleep and live in little pods like they do in Japan, then so be it – we are going to have more. He felt that the discussion is becoming futile.

Mr. Sandow said that if you look at the map of the property between the medical office and Sovereign Bank and look at Lots 6 & 11, which are two deep lots near the right hand edge, those two lots taken together are Primavera – a grand total of 8 acres. He said that we all know what Primavera looks like, but if we go to this calculation for Lots 6 & 11, we find that we can build 12.4 apartments and 12 apartments requires 24 parking spaces. He asked what is the likelihood that Primavera, with its hundreds of parking spaces on two lots in the back (one of which is entirely in a wetland) would come down so that it could be redeveloped into 12 garden apartments with 24 parking spaces, or any other combination of townhouses – 12 of them.

Mr. Dempsey replied that, with all do respect, that is exactly what we did think about because he has said this before 2 years ago, who would have thought that Lehman Brothers would have collapsed, 5 or 20 years ago? He said that you have to think about it and we don't know what's going to happen so we have to plan for it.

Mr. Hoffman said that Primavera might find it almost impossible to get employees and might want to provide the housing right there on their site.

Mr. Dempsey agreed that there are 100 things that could possibly happen.

Mr. Smargiassi referred to Mr. Piserchia's earlier comment that no person in their right mind is probably going to bulldoze it because the N.J.D.E.P. State regulations say that you are never going to be able to build that parking lot there again. So, chances are they are going to keep it and maybe do something else with the property but they are probably going to keep the parking lots in tact. He said that it gets back to his previous comment that someone a lot smarter than himself (and probably all of us) is going to come up with some idea of how it works and we need to provide some type of framework that is not so narrow that it restricts them but allows them to do that and also allows them to provide some comfort to the town that they are not going to have 1,000+ units here. He said that the "what-if" game could go on forever and has been going on forever with this Board for years.

Mr. Sandow replied that, on the other hand, it has to provide certainty to the developer that he is not going to get caught in a crossfire of variances and ordinances which are changing after we see his proposal.

Mr. Smargiassi replied that that is his responsibility. He said that he knows what the ground rules are and he comes in with his proposal and knows already what he may need variances for, so the ground rules are not going to change for him, they are going to be set. If he wants to come here and propose other things, that is his right to do so.

Mr. Sandow replied that, if he proposes through a loophole – and he reminded the Board of Mr. Butterworth's neighbor who discovered a loophole that we had no residential F.A.R., and so right in the middle of a very expensive variance proceeding before the Zoning Board, we changed the Ordinance and introduced a residential F.A.R. so he couldn't build the house he wanted to.

Mr. Smargiassi replied that you are not allowed to do that anymore.

Dr. Behr agreed but also noted that the issue of a residential F.A.R. had been on the table and under discussion *for years* before the Shah application.

Mr. Sandow replied that it is amazing how it got prompted to action.

Regardless, Mr. Smargiassi said that you cannot do that anymore. Once your application is in, those are the rules you play with and you can't change.

Mr. Sandow replied that they have also go to be rules that permit development without seeking variances which means that they have to be a broad enough framework that the developer can work within them.

Dr. Behr replied that that is the intent of this Ordinance, for better or for worse, it is to reduce the number of situations that would force an applicant to have to get variances.

Mr. Sandow said that once he gets in a little box and has to come to the Zoning Board and say that he needs a variance because he just doesn't have room for all the trees that are required to be planted, then he opens up the whole can of worms.

Dr. Behr replied that this is a dead horse. He said that the Ordinance is going to say, here are the number of trees and this is what it is and either he gets his application and figures out how to make money meeting the terms of the Ordinance as they have been figured out to the best of the Township Committee and the Planning Board, or he comes and gets a variance. He said that it is not as if those things are going to change every month.

Mr. Briggs said that he wished to refocus the discussion and acknowledged that we are not going to get it all right.

Mr. Sandow replied, "You have to get it all right".

Mr. Briggs said that the Board will work on where Mr. Smargiassi left off with the number of units looking at the full gross area. He believed that he had left off at 5.

Mr. Smargiassi said that he had taken Mr. Lemanowicz's sheet and used the gross lot area and did 5, 8 and 12, assuming all of the other variables that he has done before and not trying to factor in parking or if they are townhomes, which would reduce the amount of parking necessary, and every other variation. He said that 5 is 155, which is actually slightly higher than the calculation that started at the beginning of the night through Mr. Lemanowicz's sheet and 8 is 248 and 12 is 372.

Mr. Dempsey said that you also proposed a 50% lot coverage.

Mr. Smargiassi replied that it is 50% of everything (not just the non-wetlands).

Mr. O'Brien added that that only applies to the residential area that we are talking about and not to entire zone. He asked if that was correct?

Mr. Dempsey replied, “Yes”, and said that we are only talking about these lots.

Mr. Lemanowicz said that if you drop the unit density down to 4, you wind up with 115 units for the same land that we are talking about gross. He said that 4 units per acre gross gives you 115, where the 8 units per acre *net* gave you 105, so that is close. He said that, if you want to try to be in that 100 unit range, you’ve got to be down to around 4 units per acre.

Dr. Behr said to keep in mind that the intent of this was to get a sufficient number of residences so that you would have some sense of community and, at some point, you get so few residences in a particular property that you are defeating the purpose of what we are trying to do in the first place.

Mr. Lemanowicz said that, again, he understood this to be that there was this question of what we are going to wind up with with this Ordinance as far as residential units and he was trying to find some way to approximate that. He said that we are talking about 115 – is it 100 or 125? When you actually do the designs, you are going to find out. In an order of magnitude, is it hundreds or thousands? He thought that that was the point of doing the review that he did.

Dr. Behr said that 8 units gives you 250.

Mr. O’Brien replied that it is 250.8 and 12 would give you 375.72 and 5 would give you 156.55.

Mr. Sandow said to remember that the actual number that you can build is limited by your wetland boundary, so you’ve got to apply both factors. He said that he would like to be able to maximize 8 per acre for the gross acres, but the number that you can actually squeeze in depends on the dry land and what that forces you into then is that the dry land is up front and, therefore, you have to crowd your residential housing up front and that clutters up the street.

Dr. Behr replied, “Maybe, but maybe not”.

Mr. O’Brien added that that is where the other limiters jump in and, as he had pointed out, in terms of parking, F.A.R., and net building cover. He said that they all combine together as limiters.

Dr. Behr proposed that the Board recommend 8 units per acre; we use the basis of the gross lot area (and that will give us a maximum of 250.48) with the understanding that in all likelihood the real number is going to be quite a good deal less than that for all the factors we have discussed. If the Township Committee in its wisdom wants to lower that number, he said that they can because, ultimately, they get to write the Ordinance.

Dr. Rae said that he had a much simpler solution. He said that he was against building any residential, so his number would be “zero”. He said that the extensive discussion he heard this evening has not altered his position on it. He said that there are just too many “what-ifs”.

Dr. Behr asked Dr. Rae if he understood that he is then buying another 2-3 years, probably, of redoing the Master Plan for Valley Rd. because, if you say no residential units, you have voided the existing Master Plan for Valley Rd.

Dr. Rae replied that he did, indeed, realize that. He said that he could be the one voice here, but he felt that there is a problem with it and, if there is a problem with it, we should address it. He said that he came here with an open mind and nothing said this evening had persuaded him otherwise. He said that, as Mr. Smargiassi had said, there are people who are much smarter than we are and they could come in and make a mess which the town would eventually have to live with. He said that we can’t even contemplate at this point and we’ve been talking about this for 1  $\frac{3}{4}$  hours.

Mr. Dempsey said that, if you look at the lots, no matter what you do residential or non-residential, the Smargiassi factor applies because the only place to build is the front of the lot.

Mr. Lemanowicz said that he had a minor clarification which was that 8 units per acre gets you about 230, not 250 because the 250 came from using 31.31 gross area but, at the beginning of the conversation, we took out Lot 3 because it was under 3 acres.

Mr. Sandow said, before you arbitrarily take out lots because they are undersized, you’ve got to understand the value of common ownership. He said that Lot 3 is owned by the property owner in front and the Primavera owns two lots and so the second lot’s wetland acreage contributes to his formulas and so you can’t simply dismiss the lot because it is small – you have to assume that consolidation either has occurred or will occur.

In response to Mayor Harrington, Dr. Behr said that his suggestion was 8 units per acre, yielding us 250.

Mayor Harrington suggested dropping it to 6. She said that ultimately it is the Township Committee that is going to be hearing this and she said that she felt we can wrestle and wrangle to try to come up with something that we think will pass the Township Committee and she had no idea what ultimately will pass the Township Committee. She said to pick a number, go with it, and put it in front of them.

Mr. Lemanowicz said that 6 would yield 172.

Mayor Harrington said that it would be 170 when you round everything down.

Mr. Lemanowicz said that this also assumes that all of the lots that are available for residential will actually become residential, noting that there are other permitted uses on these lots.

Dr. Rae asked, if that is the case, doesn't it defeat the whole purpose of the community and the people living there and cutting down the traffic? He said that potentially you could have isolated patches of residences which completely defeats the purpose of what we are supposed to be doing here.

Mr. Sandow said that, for calibration purposes, the most dense multifamily housing we have in town right now is Stonehedge at that is about 6 and a little bit of change per acre. He said that, in Stonehedge, when you compute the acreage and the number of units, you are talking about the acreage of the individual property – the street doesn't count and so, for any one of these properties if you were to develop it at 6 per acre, which is the density of Stonehedge, you'd have to decrement it by the street that would be required to be dedicated which, in fact, reduces the net of the existing acreage because you would first have to subtract out the street before you can compute the 6 per acre. He said that you probably would wind up with more like 4.5 or 5 per acre based on the existing lot shapes which do not have streets running through them.

Mr. Butterworth and Mr. Dempsey said that they would go with 6 units per acre.

In response to Mr. Briggs, Dr. Behr agreed to amend his preference from 8 to 6. He added that, since we are making up a number anyway and the Township Committee is most likely to know it down to zero anyway when they finally get to it, he felt that 6 is as good a number as anything else we could use.

Mr. Briggs felt that there is general agreement on the number 6.

The meeting was opened to the public.

Mr. Sandow said that he did not know why the Board bothers to let the public talk because nobody ever pays attention. He said that Mr. O'Brien has done an artful job of crafting this document by making changes from a prior document that the public doesn't have and, therefore, you have to dig deep to find out that this long list of block and lot numbers that go into the BD-Zone does, in fact, exclude 5 lots which are being retained in the O-Zone. He said that, at our last discussion, he asked the question if he was talking about the 4 lots immediately west of Morristown Rd., or are you talking about the 4 lots which are currently vacant lots. He said that there was some confusion and disagreement amongst the various players as to which you had in mind and it turns out that it is 5 lots and it includes 2 lots which are not vacant and are not part of the Township's application for a County open space grant, one of which has a use that is non-conforming in the O-Zone where it resides. He said that I.M.A., formerly Smooth-On, is an industrial use in the Office Zone and yet we are going to leave it in the O-Zone even though we haven't asked the County for money to buy it and that was entirely confusing to him. He said that he supposed that the funeral parlor is conforming in the O-Zone if you left it there but, nonetheless, it's not one of the open space application items, so he was still a little bit confused as to why the boundary is drawn the way it is. He said that he understood *how* it is drawn, finally, but he did not know *why*.

Dr. Behr asked Mr. O'Brien if those properties should be part of the BD-Zone since they are not part of the parcel that is being considered by the Township for possible open space?

Mr. O'Brien replied that the problem with the funeral home and I.M.A. is that they are isolated from the other BD-Zone lots.

Dr. Behr asked why that would make a difference? He asked why we continue to call them an Office Zone when we do not want an O-Zone in the BD-Zone district? He asked why we can't just say that they are part of the BD-Zone?

Mr. O'Brien replied that the Board may choose to do that. He said that during our last discussion on this at the last meeting, after Mr. Sandow reminded us and pointed out that I.M.A. and the funeral home are on those two lots, the Board decided to leave them in the O-Zone.

Dr. Behr did not recall that and said that he would have protested it vehemently as he is protesting it now because he felt it is fundamentally illogical and nonsensical to his mind to persist in having this strange little remnant of the O-Zone lurking around.

Mr. Smargiassi said that his feeling was to leave it all unchanged and not consider the whole piece and then come back and re-examine it based on the whole piece and what that whole area would look like. He said that if you change it today, that may or may not be an island surrounded by something entirely different. From what he remembered from the discussion, the thought was to look at that whole piece and whole area at once, at the proper time.

Dr. Behr replied that that was not what he recalled. He said that logic simply doesn't work because the reason you exempt these properties is to honor the fact that the Township is looking at the Kurz owned properties potentially for recreation and the Township is *not* looking at those two properties. So either they belong in the BD-Zone or we have this bizarre anomaly of a persistence of an Office Zone where we have said that the O-Zone is not a logical, sensible, zoning solution for this area.

Mr. Smargiassi said that his thought was that you don't just look at the Kurz property, but you look at that whole area as a contiguous area that would be developed in the future and, if you want to plan for it, you would plan for what that whole area looks like – does it get incorporated or not? He said that it probably doesn't matter.

Mr. Dempsey said that your thought is logical, but the Township didn't think that way.

Dr. Behr suggested voting on the matter and moving on.

Mr. Dempsey said that he wanted clarity that this is BD, non-residential. He said that, if we look at the funeral home and I.M.A., it would be BD, nonresidential.

Mr. O'Brien replied that it would be nonresidential because both of them are less than 3 acres.

Mr. Smargiassi replied that they are north of Valley Rd., so they would be included, if combined.

Mr. O'Brien agreed, if combined, but currently they are less than 3 acres.

Mr. Sandow said that the only thing that separates these two lots from the remainder bulk of the BD-Zone is a 200' wide strip of road frontage of Lot 3, which is currently a vacant lot with a tumble down little shack on it. He said that it is basically the little piece of land opposite the driveway of Bank of America. If that little piece of land were thought of as a commercial property (just the front dry portion of it), he said that it would link to the funeral home and, ultimately, to I.M.A. and would extend the BD-Zone, at least as far as frontage is concerned, all the way down. He said that you would still have the big wrap-around in the back which is mostly wetland, the only thing which is questionable is the 200' of frontage opposite Bank of America and, if you thought of that as the concession stand for a park, you could call it commercial use.

Dr. Behr reminded the Board that it has not resolved the issue yet.

Mr. Briggs said that, if we include it, we would have to go back and make sure that everyone is comfortable with what we have just been through. He said that he had no problem in putting this off to make sure that it is done right. He liked the idea of putting it into the BD-Zone but asked what that would mean to the numbers. He said that, if we can come up with a cleaner piece at the end of this because it is included, he would much rather have that done.

Dr. Rae asked if this is being put off until another meeting?

Mr. Briggs replied that the problem is that those two properties weren't included in the potential residential, so the theory is that if they are combined, we could see a larger number which wasn't part of our original analysis, so we either include it or exclude it and, if we exclude it, then we are going with what we had, but then we are going to have to revisit anyway down the road, depending on where the town goes with the Kurz property. He felt that we have done most of the yeoman's work as far as the units per acre, it is just what that looks like including these two pieces.

Mr. O'Brien said that the lots that you have on the list in front of you are the ones that are currently 3 or more acres. He said that there are a number of lots along the north side of Valley Rd. that *could* be combined or subdivided. He said that you could go on through many iterations of combinations and splitting of lots, so do you go by what is on the ground now, or do you assume that they are all combined or subdivided at some point?

Dr. Rae said that he would go with what we have right now and get this off our plate. He said that the Township Committee, in its infinite wisdom, will work this one out, or we can point it out to them. He did not want to see another meeting taken up by this at this point because he felt for the Copper Springs situation which he said was something that we were going to address sooner rather than later.

Mr. O'Brien said that Copper Springs did not submit their proposal to us in time, so it is on the agenda for 2 weeks from tonight, so we did not hold them up as of yet.

Dr. Rae replied that, even without that, he would just like to get this done today. He felt that the Board has done enough.

Mr. Briggs asked the Board if it wished to go with what they have and address these properties when the Township decides what to do with the O-Zone, or do we put this off again?

Mr. Butterworth and Mayor Harrington said they wished to wrap it up and go with what we have now.

Mr. Briggs thanked Mr. Sandow and said that, when the property comes forth, the Board will look at those other properties at that point.

Mr. Sandow referred to Pg. 17 and said that Item #11 reads "big box stores". He thought that big box stores was pulled out of the Ordinance and it was replaced with a definition that had to do with square feet because no one could properly define big box.



Mr. Butterworth, Mayor Harrington, and Dr. Rae felt it was defined early on.

Mr. Sandow asked if the definition actually says “big box” as part of the definition?

Dr. Rae believed that it does. He said that it seems that the big box stores are going to smaller sized stores now.

Mayor Harrington said that it was her understanding that big box stores such as Walmart, even when they downsize from 150,000 S.F., still don’t downsize it small enough where it would fit into this Ordinance.

Mr. O’Brien noted that elsewhere in the Ordinance it states that anything over 30,000 S.F. is prohibited, except for a supermarket. So, anything over 80,000 S.F. is considered a big box and is illegal as well.

In response to Dr. Rae, Mr. O’Brien said that he preferred to leave “big box” in as insurance, noting that it defines the large size. He said that we also define the medium size, but we want to make sure that none of them are allowed.

Mr. Sandow referred to Pg. 19 and said that the Industrial Overlay Zone continues to be a moving target. He said that under purpose it states that the purpose is to allow currently nonconforming uses. He said that he thought the purpose that we agreed on many, many meetings ago was that the current uses would not be deemed to be nonconforming and that other uses that are appropriate in the industrial zones of the Township would also be brought in and legal in this overlay zone, not just the existing uses of an auto repair, construction yard, garden center, and warehouse. He said that we did not want to confine it to only the existing, but to say that any like industrial uses would be permitted.

Mr. Dempsey said that he brought that up in the overlay and he remembered it because it was originally a BD and Mr. Sandow came up and said what about everything that’s there and he said can we do an overlay to protect the people with what they have. He said that we didn’t want light industrial on that road and what we wanted was what was there to continue to be there without having to go for a variance whenever they wanted to do anything.

Mr. Sandow said that we also discussed about opening it up to say a printing plant (which is not really an industrial use) – any of the light industrial uses. As a matter of fact, he said that this is the place where the entire slaughterhouse discussion came to bear. If we were going to allow all of those industrial uses in the overlay zone, what we didn’t want was a slaughterhouse.

Mr. Dempsey replied that that came out of the BD area. He said that we did not want light industrial because we were worried about the traffic, trucks, and everything else.

Mr. Sandow replied that his response to that was that you know what the Shop-Rite trucking is.

Mr. Dempsey said that he understood and agreed with Mr. Sandow, however the Board went totally with this and *not* light industrial.

Mr. Sandow said that he believed that Mr. Dempsey was incorrect, however, since he only got this as he walked into the meeting and it was not available in advance, he didn’t have a chance to do the appropriate research of old minutes and old copies, but he said that he would and would return at the next meeting to discuss it.

Mr. O’Brien said that, right now, that has been written to allow all light industrial uses in that overlay zone and that iteration goes back several versions, although he could not recall which one. He noted that it is on Pg. 19, Item 5.

Mr. Sandow then apologized and said that he read right over it.

Mr. O’Brien said that the sentence under Sec. 122.8a(a) “Purpose” is correct. He said that, if you wanted to add a sentence stating that you want to add the uses from the Limited Industrial Zone, you could certainly do that if the Board so chose. But the statement to allow currently nonconforming uses to conform is correct and is accurate.

Mr. Sandow replied that it is accurate but not complete. He then referred to Pg. 24 and asked if it was the Board’s intention to not show the existing B-2, B-3, and LI standards in there for comparison?

Mr. O’Brien replied that it was taken out a couple of iterations ago. He said that they were only there for comparison. He said that this document now is an actual ordinance wording.

It was Mr. Brigg’s feeling that it was the pleasure of the Board to move this ahead to the Township Committee with the recommendation that it be adopted.

Mr. O’Brien said that there had been a motion and discussion on the floor to go with 6 dwelling units per gross acre.

Dr. Behr said that he wished to modify his original motion from 8 units per gross acre to 6 units per gross acre.

Mr. Hoffman suggested, assuming that it is adopted, that Mrs. Wolfe and Mr. O’Brien work out, jointly, the exact verbiage of the transmittal of this document to the Township Committee, taking into account the points that have been noted.

Mr. Butterworth seconded the motion.

A roll call vote was taken. Those in favor: Dr. Behr, Mr. Briggs, Mr. Butterworth, Mr. Dempsey, Mayor Harrington and Mr. Smargiassi. Those opposed: Dr. Rae.

Dr. Behr made a motion to forward the document to the Township Committee, as amended, with a recommendation that it be adopted which was seconded by Mr. Butterworth.

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

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

Mr. Briggs said that Dr. Behr has prepared an idea on how to present the Board's findings to the Township Committee. He asked him to present his thoughts.

Dr. Behr referred to a document entitled Presentation of Revised Valley Road Ordinances to the Township Committee. Under concerns, he said that he suggested listing the issues that came up at the Township Committee that represented the concerns or objections about the original Ordinance that was presented that troubled the Committee. He said that he intended, under each one of those under the Ordinance revisions, to say here is how we have attempted in a reasonable and fair way to respond to their concerns. He said that it will have to get revised because of the changes that took place at tonight's meeting. He said that his proposal is very simple – that we take a look at the concerns and make sure that that list is complete. He asked for Mayor Harrington's help. He then suggested that the Subcommittee meet. He said that he would prepare a revised draft based on what was discussed this evening for the Subcommittee and let the Subcommittee decide the best way to present it to the Township Committee. His thought was that the actual presentation of these revised Ordinances to the Township Committee be preceded by a power point presentation that would highlight the concerns and what we have tried to do to demonstrate to the Township Committee that we have listened and tried to meet them fairly with their concerns in these revisions. He said that the action step would simply be for this Board to say okay, we agree in principal and just trust the Subcommittee to be able to put the thing together. He said that the Board members would get copies of it, but he did not feel that the Board would want to schedule another meeting.

Mr. Hoffman suggested that the document not be the initial, somewhat detailed but necessary explanation, but that it instead be accompanied by a short, two or three sentence communication which simply states something to the effect that at its meeting of November 8, 2011, the Planning Board concluded its lengthy hearings and discussions held with respect to the proposed Valley Road zoning amendments and recommended that the Township Committee take favorable action with respect to the findings then reached by the Planning Board.

Dr. Behr asked Mr. Hoffman to help him understand the purpose of what he had just said and asked him if he understood what he wanted to do.

Mr. Hoffman replied that he wanted to provide background and he was in favor of that. But what he was saying is that, before you get to the background and history....an opening sentence before getting swamped with the nitty-gritty details....

Dr. Behr asked Mr. Hoffman if he understood that there is no nitty-gritty detail in here? He said that we are talking about something that is going to be very simple....here are the 6 concerns that you had, we have handled each one of these 6 in a final way. He said that you are talking about a 5 slide power point presentation.

Mr. Hoffman said that he would defer entirely to Dr. Behr on power point presentations. He said that all he was saying is that there should be a topical heading as to what this is all about that reaches out and grabs the listener.

Dr. Behr acknowledged that he understood and thanked Mr. Hoffman. He asked the Board members if anyone could think of any other issues that were troubling to the Township Committee about the initial Ordinance that was sent up to them, in addition to the 5 that he had listed?

Mayor Harrington told Dr. Behr that she felt he had captured them very well.

Dr. Behr said then that the action step would be to take a look at the 5 and make sure that we have provided brief explanations for how the revised Ordinance attempts to mitigate or positively respond to those things. He suggested that the group to do that would be the Subcommittee. He said that he would take responsibility for putting the printed materials that would go to the Township Committee. He asked Mayor Harrington when it might be presented to the Township Committee.

Mayor Harrington replied that, unfortunately, it will probably not be presented this year.

Dr. Behr said that that would give the Subcommittee time to have read it and thought about it and also would give the members a chance to look at what Mr. O'Brien has put together to make sure that everything is zipped up and accurate.

The Board members were in agreement. Mr. Briggs thanked the Subcommittee members for volunteering their time.  
There being no further business, the meeting adjourned at 10:30 P.M.

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DAWN V. WOLFE  
Planning & Zoning Administrator