

MINUTES

PLANNING BOARD

OCTOBER 23, 2012

LONG HILL TOWNSHIP

CALL TO ORDER AND STATEMENT OF COMPLIANCE

The Vice Chairman, Dr. Rae, called the meeting to order at 8:05 PM. 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 the Echoes Sentinel and by filing a copy with the Municipal Clerk, all in January, 2012.

PLEDGE OF ALLEGIANCE

ROLL CALL

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

- Brendan Rae, Vice-Chairman
- Charles Arentowicz, Member
- Jerry Aroneo, Mayor’s Designee
- Donald Butterworth, Member
- Joseph Cilino, Member
- Sandi Raimer, Member
- Guy Roshto, member
- Michael Smargiassi, Member

Ashish Moholkar, 1<sup>st</sup> Alternate

- Daniel Bernstein, for the Bd. Attorney
- Kevin O’Brien, Twp. Planner
- Thomas Lemanowicz, Bd. Engineer
- Dawn Wolfe, Planning & Zoning Administrator

Excused: Christopher Connor, Chairman

Barry Hoffman, Bd. Attorney

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EXECUTIVE SESSION:

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

APPROVAL OF MINUTES

The minutes of September 25, 2012 were approved as written on motion by Mr. Roshto and seconded by Mr. Arentowicz. Dr. Rae and Mrs. Raimer abstained as they were not present at that meeting.

PUBLIC QUESTION OR COMMENTS

Ms. Karen Schatz, 80 Woodland Rd., Millington, said for the last 4 years she had been having problems with her neighbor regarding ordinances and that for 4 years she has been calling, writing, and dealing with the Zoning Officer, Mr. Delia, and she cannot seem to get anything through. She said that she was at her wits end and was told to come here and present her case in public. She prepared handouts in which the first page contains a breakdown and subsequent pages explain the problems. She said that her neighbor has had equipment on his property such as backhoes, trailers, a dump truck and brought in fill 4 years ago which has flooded her property. She said that she had her property up for sale but had to take it off the market because she was told that she cannot sell it without correcting the water problem which she never had until her neighbor brought in the fill. She said that he built a patio and wood burning stove with no permits and has about 10 cords of wood on his property. She also said he is nasty. For example, she said that when she asked the town to have him remove a 20’ trailer, 2 backhoes, a dump truck and much more equipment from the property, he lined it all up in front of her house. She wanted to know how she could go about getting the Township ordinances enforced. She said that they are making it out to be 2 neighbors that are fighting and that is not the case – she just wanted him to obey the ordinances. She said that he is in a side business of doing lawns and masonry and is building a garage containing 2,400 S.F., which is probably the size of his house, and encroaches 10’ onto a 25’ buffer zone. She said that, after reading the ordinance, she had no idea how he was able to do that. She included a copy of the ordinance in her handout packets and said she would like to know how he was able extend the extra 10’ into the buffer zone. She said she was tired of complaining.

Mr. Thomas Delia, Zoning Officer, was present. He said he had dealt with all of the matters Ms. Schatz had mentioned and the neighbor has removed all the equipment that he was asked to remove. He said that in his application for his garage, he had to complete a Fill and Lot Grading Application. He noted that Paul Ferriero, Township Engineer, sent him a letter last week stating that *if* any fill work had been done prior to the application being submitted for the Lot Grading Permit for this project, no detrimental damage was done to any neighboring properties. He said that the fill had never gone outside of his property boundaries and Mr. Ferriero said that it was not an issue.

Ms. Schatz replied that it raised his property and put her property below it and she was getting all the water off of his yard.

Mr. Delia said that he was not prepared this evening to answer such questions because he did not have the necessary information in front of him. However, he said that he has been through this for the last 6-8 months and Ms. Schatz's neighbor has received a "clean bill of health". He repeated that the Township Engineer has said that there are no issues with his property as far as fill or water runoff is concerned.

Ms. Schatz asked about water from his property onto hers.

Mr. Delia replied that the topography shows that it can't be done (water from his property going onto Ms. Schatz's property).

Mr. O'Brien did not think that the Board is in a position to consider this matter.

Mr. Delia agreed.

Ms. Schatz said that she had an original topography map from the area and all of the water goes to his property. There are two flag lots and the water gathered from the flag lots and she was sure that the developer had it worked out that way.

Mr. Aroneo said that he has seen this case for the last 2 years as a member of the Township Committee handling it from the zoning violation and enforcement side and he was not exactly sure what type of proceeding we are in right now. He said that he sent an e-mail to the Township Attorney to ask about it. He was not sure if this is the appropriate venue to hear such a matter and, if it is, he was not aware of that. If it is, he said that that is fine and the Board should hear it, but the Board should be more informed of the issue and we shouldn't have people cross-examining each other from the podium to one of our employees. He said that we should have a regular hearing, if this is the appropriate venue, where we can all collect our thoughts and refresh ourselves in the case, and then have a regular formal hearing.

Ms. Schatz replied that that is what she requested.

Mr. O'Brien said that our standard procedure is to hear from any citizen on any subject before the Board and Ms. Schatz has given us her information, however, now that she has told us what she has in mind, it is very clear that this is an enforcement issue and an enforcement issue is something that is in the hands of the Township and not the Planning Board. He said that the Planning Board makes policy and recommends ordinances to the Township Committee – it does *not* enforce any ordinance under any circumstance. He said that that is a police matter (police meaning an enforcement matter) that is issued via the Township itself through the governing body. At this point, he felt that the most appropriate thing to do would be to take Ms. Schatz's information and refer it to the Township Committee and to the Zoning Dept.

Ms. Schatz replied that she was told this was the only way she could see the Planning Board.

Mr. Aroneo asked Ms. Schatz who told her that.

Ms. Schatz replied that it was Ms. Christine Gatti, Municipal Clerk, and an ex-mayor – that once you have gone through all of the channels, you have to go to a meeting.

Mr. O'Brien said it is correct that if you wish to present something to the Board, you do it when the meeting is opened to the public for any matter not on the agenda. However, he repeated that now that it has been presented to the Board, it is obvious that this is an enforcement matter that is under purview of the Township and not the Planning Board itself.

Ms. Schatz replied that she can't get anybody to enforce or explain ordinances or why this man is allowed to encroach 10' onto the buffer zone. She said she cannot get anyone to explain to her where that ordinance came from, why it was used, or other examples of its use.

Mr. Aroneo asked Mr. O'Brien what a resource would be for someone who wanted an interpretation of the ordinances.

Mr. O'Brien said that the only body that is authorized to interpret the ordinance is the Zoning Board of Adjustment upon an application from a citizen.

Mr. Aroneo said that if she had someone within 200' who received a variance then she could surely question it. He asked if it was done by variance.

Mrs. Schatz said it was not.

Mr. Delia agreed.

Mr. Aroneo said that the last time the Township Committee discussed this matter, they were anticipating a detailed bullet point list of things that are still outstanding from Mrs. Schatz's side.

Mrs. Schatz replied that there were bullet points in front of him and said that she would like to know how to proceed.

Mr. O'Brien said that perhaps Ms. Schatz should present this information to the Township Committee.

Mr. Aroneo added, "At a public meeting, perhaps".

Ms. Schatz said she had gone to the Township Committee and they had a closed meeting and she thought she was invited but found that she was not. The meeting was between the Township Committee and Mr. Delia. She said she gave her information and letters with all her concerns (maybe not in bullet points) to the Township and never heard back..

Mr. Aroneo asked her to provide the handouts she had distributed this evening to the Clerk and request her to distribute it to the Township Committee.

Ms. Schatz agreed to do so. She said that she has been dealing with two people in the Township and they are not doing anything. She also said that all the machinery was removed and he (her neighbor) is saying that he can bring it *all* back once the garage is built.

Mr. Roshto suggested that Ms. Schatz bring this information back to the Township Committee via Christine Gatti. He promised that when it is reviewed he would get back to her.

(Ms. Schatz's handouts were returned to her).

Mr. Aroneo said that Ms. Schatz was welcome to present her case at tomorrow night's Township Committee meeting, although he advised her not to expect any action at that meeting because the members need time to review it.

Ms. Schatz introduced her father who lives next door to her.

Mr. Schatz commented that he has lived in the Township for 50 years, but when he sees what is happening to the lot in back of his (turning it into a commercial lot when it is supposed to be a suburban lot), he did not understand it and said it boggled his mind.

Mr. Aroneo assured Mr. Schatz that the Township will get to the bottom of it and enforce all of its ordinances.

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

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**RESOLUTION OF MEMORIALIZATION**  
**VALLEY & PLAINFIELD ASSOCIATES, L.P.**  
977 Valley Road  
Block 10601, Lot 8

**#12-05P**  
**Minor Site Plan**  
**Bulk Variances**

The Planning Board memorized the annexed Resolution of approval for Valley & Plainfield Associates, L.P., as amended, on motion by Mr. Aroneo and seconded by Mr. Butterworth.

A roll call vote was taken. Those in favor: Mr. Arentowicz, Mr. Aroneo, Mr. Butterworth, Mr. Roshto, Mr. Smargiassi, and Dr. Rae. Those opposed: None.

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**DISCUSSION**  
**BRIGID ANNIS & WILLOW POND FARM REZONING REQUEST**

Mr. O'Brien said that the Brigid Annis & Willow Pond Farm rezoning request started out first as an enforcement issue with a horse farm on Meyersville Road. That applicant, the Annis family, applied to the Township for a use variance as an end result of that enforcement issue. As part of applying for the use variance, the applicant realized that the need for a use variance would no longer be there if a horse farm was an allowed use in the C-Zone (which it is currently *not*). Other forms of farming are allowed in the Township but horse farms are not a specifically listed principal permitted use. He said that the Annis family has retained Mr. Michael Bonner, Esq. who is present tonight and has written a letter to the Board which lays out their point of view and they would like the Board to discuss possible courses of action.

Dr. Rae addressed Mr. O'Brien and asked if he had any background as to why horse farms were excluded in the first place.

Mr. O'Brien replied, "No". He said he had reviewed the ordinances and found no explanation, nor was it addressed in the Master Plan.

Mrs. Wolfe was also unaware of why horse farms were excluded.

Mr. Delia said he had researched ordinances back to the 1930's and found no mention of horse farms.

Mr. O'Brien said the Township does have a Right to Farm Ordinance and both the County and the State have Right to Farm regulations and they *do* allow horse farming among their right to farm uses. He said that, since Mr. Delia has mentioned it, to the Township's knowledge there are 3 other working horse farms in the Township, all of which would be non-conforming uses. He said that Mr. Delia identified those particular properties and has contacted them.

Mr. Delia said he had spoken to two different horse farm owners, Stirling Farms LLC, located at 557 Pleasant Plains Rd. and David Major whose property is located at 651 White Bridge Rd. Also, directly across the street at 658 White Bridge Rd., the property is owned by Jerry Sinagra who has horses on his property for his own enjoyment. He said that Mr. Major and the operator of Stirling Farms, LLC, were very receptive to appearing tonight to weigh in on the matter. He said that all of the operations are pre-existing non-conforming uses and have been there for many years and operate in a well maintained manner. There have never been any complaints about any of these facilities and there is no background of any violations on these properties.

Addressing Mr. O'Brien's comment about the Right to Farm Act of the State and County allowing horses, Mr. Roshto asked if there are any restrictions on the allowing of them.

Mr. O'Brien said he would have to check.

Mr. Roshto believed that there is one statement in the Right to Farm Act that specifies something to the effect that you have to be in compliance with municipal regulations. So, in effect, even though we have a Right to Farm Ordinance in our town, if we don't take some action in terms of ordinances they wouldn't be covered under the Right to Farm Act, or would they?

Mr. O'Brien did not know the answer to the question. He said that there is a tension between the two in that we are subservient to the County and State and it is probably more of a legal question than a planning question.

Mr. Aroneo asked if under the Right to Farm Act they could already do this. He said that, as Mr. O'Brien indicated, our municipal ordinances are subservient to State statutes or acts so, in that case, do they have to listen to our ordinance or can they just do this anyway?

Mr. O'Brien said that, as Mr. Roshto pointed out, there is a condition in the County that they have to be compliance with all municipal ordinances.

Mr. Aroneo said that in the past when there has been a dispute between the Township and anyone else looking to hide behind or utilize the Right to Farm Act, they have won the case. He felt it is difficult for the municipality to make the case that we don't have to grant an agricultural use to a Right to Farm Act when people have conditions such as the bulk requirements.

Mr. O'Brien said it would be site and condition specific to each particular property, so rather than to make a blanket statement you really have to go site by site.

Mr. Roshto thought the one difference here relating to horse farms in the Right to Farm Act that is not included in other agricultural farms is a very specific statement. It says that complimentary equine activity is included but not limited to and then goes on to the type of activities that you can have on a horse farm. At the very end it says "and are in compliance with municipal requirements". He said that that is what he was looking for here. He asked what is the definition of that? If we say that a horse farm is not in compliance, then do they qualify for the Right to Farm Act?

Mr. Lemanowicz suspected that what it is saying, going to Mr. Aroneo's comment, is that horses should be allowed there. However, what Mr. Roshto is speaking of is how many horses per acre and what kind of buffer area. He said that you may not be able to stop the horses, but you can regulate them.

Mr. Roshto agreed but wanted to know the legal definition as opposed to trying to guess what it is.

Mr. Lemanowicz said the reality of it is that horses can be, depending on the density of the horse population, very tough on the environment between surface damage, erosion, and runoff. There are a lot of different issues and that may be where the regulatory end might be able to help the town justify changing the permitted use.

Mr. Arentowicz asked what we define? What is a horse farm, how many horses? Is it a horse farm with just one or two horses?

Mr. Aroneo said he would argue, "Yes". He said that he was sort of in favor of this if it helps someone who owns a horse farm and could potentially help others who have horse farms in town so they don't have these zoning complications when they want to do something on their farms. They would have the same benefits that an agricultural farm would have. He said that he did not want to hurt someone who has enough property for one horse.

Mr. O'Brien asked Mr. Bonner to come forward and address the Board.

Mr. Michael Bonner, Esq., said he really did not have a presentation but did want to touch on a few things noting that Mr. Delia mentioned about non-conforming uses. He said that his introduction to Mrs. Annis and the Willow Pond Farm was in 2003. They had certain issues about putting up fences and things like that and realized that they were a non-conforming use. He said that they actually bifurcated an application and came before this Board as well as the Board of Adjustment and they are an approved non-conforming use. He said that there has been a horse farm on this property pre-dating the Township ordinance and they have proven that. He said that they are a legislated non-conforming use and that they dealt the bulk standards as well. He said that the New Jersey Right to Farm Act, New Jersey Farmland Assessment Act, Morris County Comprehensive Farmland Preservation Plan and New Jersey State Development and Redevelopment Plan and the Morris County Agriculture have websites that set out the regulations. He said that his impression is that everything in this area is essentially guidelines that are set up to encourage towns to adopt their own

preservation/conservation type ordinances to do things within their town. They give recommendations as to how to define things. To his knowledge, none of these things say what a horse farm is and how to do it, they just encourage more horse farms. Referring to the Township Land Use Ordinance and Master Plan, he said that they talk about a rural oasis and the rural character and vast open spaces. He said that a lot of that language is mirrored in the County and State Plan - they are simply saying we would like to see more horse farms and direct you to websites for possible grants but none of it dictates *how* you would do it, which is why they are here with this petition. He said that he discussed this possibility with his clients in 2003 and felt that they could solve a lot of their problems if they were an actual permitted use to eliminate a d-type of variance every time they wanted to improve the property. He said that he and Mr. O'Brien have had a long relationship that predated his appearing before this town and they have spoken about this in 2003 and again recently and they seem to be in agreement that there might be a simple way to do it. He said that what he would envision is adding horse farming or equine farming (or whatever definition you choose) to the definition of farming. He said that Mr. Roshto read part of what the County of Morris calls farming and they talk about recreational uses, educational, equine related service activities and complementary equine activities. He said that his client does a fair amount of private lessons but the core of her business and what she would really like to pursue vigorously is that she has agreements with a couple of school districts in the area. She also just started talking with the Wounded Warriors Project and she also works with the Equine Assisted Growth and Learning Association, Professional Association of Therapeutic Horsemanship and the Early Childhood Learning Community. As to horse farm therapy, he noted that Ann Romney rides a horse as therapy for her multiple sclerosis. He said that possibly as much as 40% of their business is therapeutic horsemanship for those with emotional and mental disabilities, as well as physical disabilities. He said that the Wounded Warrior Project has started a large program for returning veterans that are in veteran therapy. She also does private lessons, but this is the area in which she wants to head. He said that she employs 3 people (besides herself) and all have degrees in education or sociology and are members of the associations he previously mentioned. He said that, if the Township moves in the direction of rezoning so it is a permitted use, it would streamline her ability to do that and reduce the annual cost. He said that running a horse farm is an expensive proposition if you are butting heads with the Planning and Zoning Boards every time you want to do something and is something that she wants to avoid. He said that it would help to conserve a large number of acres of open space. He said that she has 2 lots of about 32 acres. He said that he and Mr. O'Brien have been batting around a process where you essentially change the definition to add horse farming in some manner. To move it along it, he said that it could be brought up at the January reorganizational meeting almost as a routine matter of the things the Board is looking at. He said that Mr. Hoffman is more than capable of explaining the entire process, but it has to go to the Township Committee and come back. He said that he would be looking for the Board's recommendation to do something along these lines. He said that he would suggest, in order to develop the bulk standards applicable to all the horse farms in the Township, setting up some kind of an ad hoc committee that includes Board members and the horse farm owners (or their representatives) and figure out what works. He said that they know the type and size of the buildings needed and how many horses per acre.

Mr. Aroneo thanked Mr. Bonner for his recommendations on how to proceed. He asked him if he could give some examples of some of the things he appeared before a Board for (relating to the subject property) - were they sheds, barns, or a driveway?

Mr. Bonner replied there was only one prior application on this property. He believed that his client was putting up a new corral and also enclosing or extending a barn which required the d-standard variances because he was going to need to get a use variance in order to remain open as a horse farm and then to get a bulk variance because they own two properties and one structure was going to encroach on one side yard of their adjacent property but it was within the entire farm itself. He said that he sat down with his clients and went through the history and it was decided to bifurcate because some of the issues of the underlying application, the compliance matters, would be much less difficult if they were an accepted pre-existing non-conforming use. By doing, he said that they got the pre-existing non-conforming use approved by the Board of Adjustment and then the rest of the issues became Planning Board matters.

Mr. Aroneo was not sure of the applicants' precise reason for petitioning the Township to change the zoning and thought it was a matter of convenience for Mr. Bonner's client.

Mr. Bonner agreed and said there is an underlying application to this which has been suspended because his clients enclosed one of their riding rinks in a tent that violates the height requirement. He said that Mr. Delia noticed it and advised his clients that they could not do that and they ended up filing an application. When they came to him for representation he said that he reminded them of the conversation they had had 9 years ago and suggested they do that now and then this application may become meaningless if they convince the Township that enclosing riding structures and 26' high structures are okay. He said that, if the requested rezoning does not happen, the suspended application will be reinstated and his clients will proceed to obtain the requested variances. He said that if the Board proceeds to rezone/redefine, and the bulk standards encompass the underlying application, then the application gets withdrawn because there is no longer a need for it.

Mr. Lemanowicz did not believe that to be entirely correct. He said that if the application for a use variance is withdrawn, they will still need site plan approval.

Mr. Bonner said that they do not need a use variance because they have already been approved for a pre-existing non-conforming use.

Mr. O'Brien agreed that they hold a certificate of non-conformity.

Mr. Lemanowicz said that even if the property is rezoned, the applicants would need to apply for site plan approval for the new structure.

Mr. Bonner did not know the answer and said that it would depend upon what the bulk standards are and what the threshold is for applications but, conceivably, he agreed that Mr. Lemanowicz is correct.

Mr. Lemanowicz said that a building was constructed on a non-residential property without site plan approval.

Mr. Bonner said that he guessed he was agreeing with Mr. Lemanowicz who was stating it somewhat differently, however he said it would be a different application as opposed to the same application. There would be an approval necessary for the structure, but he did not know what the form of that application would be.

Mr. Lemanowicz said that he heard Mr. Bonner say that the application would be withdrawn (rather than revised).

Mrs. Wolfe said that it was her understanding that the use variance that they were seeking before the Board of Adjustment that is now on hold was for the *height* rather than the *use* of a horse barn.

Mr. Delia agreed that it was for height.

Mr. O'Brien said that a use variance for height only applies only to a *principal* structure. If you consider it an accessory structure it does not require a d-variance, it would be a c-variance.

Mrs. Wolfe stated that the applicants' prior attorney had *requested* a use variance for the height of the structure (in writing).

Mr. Bonner agreed and said that he had straightened that out.

Mr. O'Brien said that, perhaps with a horse farm all of them are principal structures, but he did not know the answer to that. However, if it is deemed to be an accessory structure, it would require a c-variance application for height. He agreed that site plan approval is needed for a non-residential use.

Mrs. Raimer asked how many of the acres belonging to the Annis' are dedicated to horse farming?

Mr. Bonner was not sure. He said that there is a significant portion of the property which is considered wetlands, although he did not know what that exact portion is. He estimated it to be about 17-19 acres that are dedicated to the horse farm and said there is also a residence on the property. There are also corrals on both sides of the house which extend onto both of the lots.

Mrs. Raimer questioned the financial benefits to the applicant if approved as a horse farm and asked Mr. Bonner to describe them in more detail.

Mr. Bonner said the direct financial benefit would be that every time they wanted to make a change on the property they would not have to appear before a Board. He said that there are farmland preservation acts and potentially grants available for farmers. Although he had not investigated it, his assumption was that you had to be something more than a pre-existing non-conforming use in order to meet the basic threshold in order to qualify for those things. He said that he is not involved in that at all.

Mrs. Raimer said that she was trying to relate the two questions together. If there are grants that the applicants may be eligible for that support farmers, she asked if they were based upon the size of their farm or based upon the size of their farm that is designated for that particular use?

Mr. Bonner replied that he did not know. As he was reviewing something else, he said he saw a link on the website to something else and when he noticed an article, he passed it on to his clients. He added that he didn't even know if she would qualify.

In response to Dr. Rae, Mr. Bonner said he believed that there are a total of 4 other horse farms in the Township. He said that the horse farm in question has been operating for 40+ years.

Also in response to Dr. Rae, Mr. O'Brien said that if you don't want horse farms, then that would be a downside.

In response to Mrs. Raimer, Mr. O'Brien said that there would be a number of conditions that would go hand and hand with a horse farm.

Mr. Lemanowicz said that horses are tough on the land if they are not controlled in numbers. If the property is not maintained, the paddocks can get trampled so that you only have dirt and rocks showing and there is nutrient runoff from manure. Depending upon how big the facility is, there may be large trucks bringing horses in and out, noise, hay deliveries, etc. He said that it is a different type of use that generates its own kinds of issues. He said that, if there is a way to regulate the use, then the Board may want to consider that. He said that we just have to make sure it doesn't negatively impact people outside that use.

In response to Dr. Rae, Mr. Bonner said that he did not think it would be possible to expand Willow Pond Farm as the Grange is on one side and the Great Swamp is on the other side.

Mr. Delia said that in the Ordinance, we do have a section for the keeping of livestock and that it gives you a parameter for personal use. You can have a horse if you have 45,000 S.F. and the property is buffered by 40' off of each side yard.

He stressed that that is for personal use and not for the operation of a business, but that could be a starting point for the applicants to adjust how many horses they want.

Mr. Bonner said there are currently 10 horses on the property (32.5 acres) along with driveways, structures, ponds and wetlands and maybe 17 acres are dedicated to horse farming. He felt that anyone familiar with the property would know that that is not a high impact. He said that that is why he suggested setting up an ad hoc committee and inviting the horse farm owners in to talk about what works. He felt that it is good for everyone and the town has always expressed an interest in the rural aspect.

Mr. Roshto referred to the Right to Farm Act where it says that it has to be between 15% - 25% usable equine space on the property and asked Mr. Bonner if he knew if it met the criteria.

Mr. Bonner replied that he did not. He said he reviewed these things strictly from the perspective of finding State and County support for the idea of farming and supporting the Master Plan goals of the Township. He said that there is an appendix J of the County or State Plan and there are 22 policies designed to promote and preserve farming in Morris County. He also stressed that he was not speaking for any other horse farm owner but Brigid Annis.

Mr. Lemanowicz read Sec. 124.10 – “Keeping of Livestock in Single Family Residential Zones”. He noted, however, that that is not what is happening here since this is a business.

In response to Dr. Rae, Mr. Bonner said that very loosely the process is, if the Board is interested in proceeding, they need to consider it and make a recommendation one way or the other and then ask the Township Committee to look at it. They will review it and then refer it back to the Planning Board.

Dr. Rae asked if the Board members had any other questions. There being none, he then opened the meeting to the public.

Mr. Shea Dayton, 557 Pleasant Plains Road, said that he and his wife lease their facility from Stirling Farms, LLC, and operate as Red Oak Farm, LLC. He said that a lot of the questions that have been asked can be found on line at the Rutgers Extension under equestrian studies. He believed that, in 1996, equestrian facilities became part of the Right to Farm Act. He said that, previously, you had to produce a product (which he thought was limited to breeding facilities). He said that he and his wife love running their facility. He said that the site contains 14.25 acres, however they only lease 13.25 acres. There is a house on the property which is not a part of their lease. He said that they currently have 38 horses and they do training, lessons, and horse shows. He said that you find on site acreage requirements for pastures for horses, although he was not sure if they are suggested or mandated. He said that the horses don't get turned out for feed – they feed on hay and grain. They get turned out a few hours a day but mostly the horses are worked, so they don't have the great impact that Mr. Lemanowicz was talking about earlier. He said that the essential outbuildings consist of various sheds of all types for storage of grain, hay storage, shaving storage (bedding), equipment, vehicles and a silo on site. He said that they have been on site for 5 years. He said that his wife has been a trainer for over 30 years and actually trained here in 1986 when the barn was new.

Mr. Aroneo asked Mr. Dayton if he felt he would benefit from an ordinance that would create an equine zone in Long Hill Township.

Mr. Dayton replied, “Perhaps”, and said that he was not sure exactly what that meant. He said that he moves and replaces fencing and makes repairs as he needs to. He said that he knew that one of the things that came up was Farmland Preservation and the number one criteria for that is that the property has to be developable and they have been told their's is not. He said that Morris County did a study on it and got back to them on it which was all in an attempt to purchase the property which is their ultimate goal.

Mr. O'Brien said that if this were an allowed use and they wanted to build additional buildings or construct additions to the existing buildings, that would require a use variance as an expansion of a non-conforming use from the Board of Adjustment, whereas if they were an allowed use in the Zone, then they would require either site plan approval or a waiver from the Planning Board.

Mr. Arenowicz asked Mr. Dayton how many people are employed at his facility and was advised that there were 6, not including Mr. & Mrs. Dayton.

Mr. Dayton continued by explaining that, besides the uses he had previously mentioned, they do riding and training every day, conduct horse shows 3 or 4 times a year, and hold a charity event each year. They have three riding rings outside and one inside, as well as an indoor arena (which is where they train in the winter).

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

Dr. Rae asked the members of the Board for their feelings about making a recommendation to the Township Committee to allow horse farming in the Township.

Mr. Arentowicz felt that the Board should consider allowing horse farms in the Township given the fact that we have 3 or 4 now.

Mr. Roshto agreed and felt it was an option that the Board should be looking at. He also agreed, from a history perspective, that this is where he would like to see our town go, however, he said this is different. It is not agriculture, it

is living animals. He said that he took what Mr. Lemanowicz said to heart. He felt that whatever the Board sends to the Township Committee should be very clear on what it is exactly we mean by an equine farm and what the rules are for it.

Mr. Aroneo agreed with proceeding. He questioned if the Board should send a test message to the Township Committee first before doing all the work and ask if they want us to pursue it. He said that he would be in favor of recommending an equine zone to the Township Committee and hopefully have them delegate the writing of the ordinance back to the Planning Board before going back to the Township Committee.

Mr. Butterworth said he was in favor of it.

Mr. Moholkar said he just wanted to see if there were any downsides to this and what kind of regulations, if any, would be put in that aren't already there. He said he would expect, since these are already in place, that no neighbors have complained, so it must be mostly okay. He noted that there are plenty of neighboring towns around us that he expected to have some sort of ordinances which allow the use.

Mr. Smargiassi agreed and had nothing further to add.

Mr. Cilino also agreed.

Mrs. Raimer supported Mr. Aroneo's recommendation and felt it allows the Board the opportunity to explore the benefits and detriments.

Dr. Rae also concurred and felt that the recommendation was a unanimous one.

Mr. O'Brien asked if the Board wanted to ask Mrs. Wolfe to send a communication to the Clerk and Committee stating that the Board has considered the horse farm use and would like to seek the Committee's advice as to whether or not they would like this Board to pursue a study of it.

Mr. Roshto asked if the Board wanted any input back beyond that. His feeling was that the Township Committee will come back and say, "Yes" to it. He questioned if that is really what the Board is looking for or if it wants additional guidance. He said that there were a number of bullets in the letter that the Board received talking about alternatives such as rezoning the subject property; creating a new zone; and adding farming language to our existing zone. He asked if the Board was interested in any of them, or would it like the Township Committee to come back and say these are the 3 for which we have an interest?

Mr. Bonner said the letter that had been sent to the Board was in a slightly different form than what was sent to the Township Committee first and they advised to send it to the Planning Board.

In response to Mr. Roshto, Mr. Aroneo said perhaps we could word the communication in such a way that it states there are several options and we could even list them from the letter. He said that the Board could ask if the Township Committee had a preference on any of these or should the Planning Board make recommendations. He suggested leaving it open. He felt that the response will be favorable and it will be back quickly.

Mr. O'Brien said there were a lot of particulars with each one of those options. Without presenting those particulars, he said he would be concerned that a decision could be made without full information.

Mr. Roshto said this can be brought up tomorrow night and bring it back to our next meeting. If you are looking for more than that, he said we will have to send a letter about what exactly it is.

Mrs. Raimer said it would be useful to have much more than just a blessing that it is okay to proceed, especially when Mr. O'Brien mentioned that there are particulars for each option. She felt it would be unfair to present the Township Committee with just this open ended question without presenting the particulars associated each option, because then how do you direct the Planning Board exactly how to pursue this? She said that the Township Committee needs to be as informed as possible and she felt it would be helpful if Mr. O'Brien can give us the particulars associated with each option so that the Township Committee is in a position to guide the Board in an effective and meaningful way.

Mr. O'Brien said he would do whatever the Board suggests, however one of the initial comments was to keep this as high level as possible, not waste any time on it, and just shoot it to the Township Committee. He said that those are two different statements and he will do whatever the Board wishes.

Mr. Cilino thought the Board had heard from the Committee that there is a high probability for a "Yes" response. Given that, he thought that that answers the question and puts the Board in the second mode of finding out more information.

Dr. Rae asked exactly what more information would provide the Board? As he understood it, the rezoning is one way to can go to solve the problem but there are a number of others and this letter has been sent to the Township Committee and they have been provided with the same level of information. He said that it seems that rezoning is something that the Board is in favor of and it appears that the Township Committee is as well.

Mr. Smargiassi said he was *not* necessarily in favor of rezoning the subject property or creating a new zone. From what he heard tonight, he said that there are two avenues that he did not think are the best fit. Based on the limited discussion the Board has had, he said that definitely rezoning the subject property is way down on his list. He felt that what the

Board would want to hear back from the Township Committee is which one of those avenues (or maybe there are 2 of them) they would like us to explore vs. maybe all of them.

Mrs. Raimer questioned if, in order for the Township Committee to be responsive to the laundry list of options, it wouldn't be useful to them to have what Mr. O'Brien is calling "the particulars" to go with each option.

Mr. Aroneo felt that either way the Board chooses would be okay and one of them is faster. He said that he and Mr. Roshto feel that the Township Committee is in favor of this and would entrust the Board to come up with the right option. He was thinking of just listing the options and trust the Township Committee to do their researching. If they need more information about something such as rezoning vs. changing the use or adding the farming ability to a particular property, he said that they will find out. He felt that the Township Committee will kick it back to the Planning Board right away.

Mrs. Raimer again asked if it doesn't help to get more background from Mr. O'Brien so that the Township Committee can advise the Planning Board on which bullets it should focus on.

Mr. Aroneo replied that it was always helpful to have background, although he felt it would be adequate to say these are "The options we are considering". He said that, if the Township Committee offers guidance, that is fine and if they want the Planning Board to proceed with a recommendation, that is fine also. He said that the Township Committee has an attorney who is well versed in land use and has done a lot of Right to Farm Act cases, so he knows what is going on.

Mr. Roshto referred to Mr. Smargiassi's statement (which he felt was "the meat") when he said he was not in favor of rezoning the subject property. If that is something that is off the table then he felt it is a waste of the Township Committee's time to talk about it. He said that this Board will be sending the final recommendation to the Township Committee, so it seemed to him that if you go through at least an exercise of 5 or 10 minutes and just say we are not in favor of rezoning the subject property, then it should not go to the Township Committee as an option. He felt it would reduce the amount of conversation on the Township Committee side if the Board could at provide advice on where this Board would like to go.

Mr. Smargiassi believed that the most logical path forward which would impact all of the existing equine farms in the Township, and bring them all under that umbrella, is to add equine farming to the local farm ordinance and include that as one of the things that is covered under that.

Dr. Rae said that he may have misspoken when he said "rezoning" earlier and that it was not something that he was in favor of. He said that the point we are considering here is making equine farming part of the allowed uses under farming. He said that he was definitely in favor of that.

Mr. O'Brien said there are 4 current horse farms and 1 contains only 1.7 acres and is nonconforming in terms of size, whereas the other 3 are conforming. He said that if you were to make equine farming a conforming use in the C-Zone, that would make the 3 that are conforming in terms of size, also conforming in terms of usage.

Mr. Aroneo it would be as simple that *or* creating a new zone (equine zone) or changing an existing zone to allow equine use.

Mr. O'Brien said that if a new equine farm zone was created, you would put these properties in it and they would be scattered though the town much like the Public Zone. He said that it is not typically a good planning tool but it can be effective and, if it serves the Township and we can justify it, it would make sense.

Mr. Roshto said that roughly 50% of our land area is in a C-Zone and if we add equine to them, then we open the door for more horse farms, correct?

Mr. O'Brien agreed.

Mr. Roshto said he just wanted the Planning Board to understand that if we just add a line like "equine" there is a ramification to that.

Mr. Lemanowicz said that one of the ways you can help with that situation, half way between allowing it and rezoning it, is a conditional use, which means it is allowed in that zone but with its own set of conditions such as lot area, horses per acre, setbacks, etc. It is still a permitted use in the zone, but it's just "special".

Mr. Roshto liked that idea. He asked if a conditional use could be something like "meet the criteria of the Right to Farm Act?"

Mr. O'Brien thought it would.

Mr. Roshto said that the Right to Farm Act solves all the issues. It talks about fees, usage etc. He asked, if we put that into our conditional use ordinance, is that even allowed?

Mr. Lemanowicz said you could make reference to another set of regulations as long as someone keeps up with it to make sure that it stays to what you want. If there are some holes in it, you can stipulate that you have to meet the Right to Farm Act. Secondly, you have to have "x" acres per animal, or whatever else you want to put in there as conditions. If you have a horse farm that meets the conditions and they want to do something, they would go to the Planning Board. If you have a horse farm that does *not* meet a condition, then it goes to the Board of Adjustment just like a d-variance.

Mr. Bonner said you would have to start with an analysis of all 3 horse farms and come up with criteria that meets all of the existing farms now, otherwise 1, 2 or possibly *all* of them might not meet the criteria and you would be pushing them back before the Board of Adjustment for every single use. He said that you can do what you are contemplating and it doesn't have to be a conditional use, but a permitted use within the Zone. He said that that is why he suggested that this Committee and the horse farm owners meet. He did not know how many lots within the Zone would meet the criteria that are set forth for the pre-existing farms.

Mr. Roshto said that, if the goal is to make them all conforming, he would agree. However his concern was that perhaps one of the farms isn't meeting even acceptable standards. He said that he would not be in favor of setting our standards based just to make them conforming. He felt that the Board needs to be conscious of density, space used for equine, etc.

Mr. Bonner said he was here on behalf of Mrs. Annis and the Willow Pond Farm and anything that is put in place that doesn't change the dynamics between the Willow Pond Farm and the Township, such as a conditional use or permitted use for which they don't meet the criteria, it doesn't do anything for his client and he wouldn't be in favor of that, obviously. He said he was looking to accomplish something on her behalf that streamlines her relationship and makes it a better working relationship with the Township.

Mr. Roshto asked Mr. Bonner, if the ordinance was written as he suggested (permitted use or conditional use) that said something to the effect of a conditional use and meeting the requirements of the Right to Farm Act, would his client not meet the Right to Farm Act?

Mr. Bonner replied that he had not looked at it that closely.

Dr. Rae proposed sending a letter in the form that was originally proposed by Mr. O'Brien to the Township Committee seeking to know if they are in favor of horse farms in the Township. He noted that there has been a lot of discussion as to how this could be accomplished which could mean a very long and involved discussion at the Township Committee level. He felt that, if the Township Committee advises the Board that they are in favor of it and they ask the Board to bring forth its recommendations, that may be the best and most expedient way to move forward.

Mr. Bonner felt that that was the genesis kind of recommendations and discussions that he and Mr. O'Brien have had.

Mr. Aroneo agreed with Dr. Rae and felt that thought both were in order. As liaisons, he said that he or Mr. Roshto will bring it up at the Township Committee meeting tomorrow. He said that he also would like to have some type of memorandum from the Planning Board to go with it.

Dr. Rae concurred with Mr. Aroneo and asked Mr. O'Brien to prepare the memorandum to the Township Committee.

Mr. O'Brien felt that a letter, which he felt would be more suited coming from Mrs. Wolfe, requesting that the Township Committee review this topic, would be more suitable than a detailed study.

Mrs. Raimer felt that the letter should say something more. She said that, if the Township Committee is looking for more information, it would have to defer to the Township Planner in advance of sending it back to the Planning Board.

Dr. Rae said that we are asking the Township Committee members if they are in favor of horse farming within the Township. If the answer is in the affirmative, they would then charge the Planning Board with going back and looking at the various ways and making recommendations.

Mr. Roshto said that the Township Committee has already sent this back to the Planning Board and has asked the Board to look at this already.

Mr. Aroneo suggested that the letter should say that the Planning Board has looked at this and do you want us to proceed? Do you want us to proceed with creating a Zone or rezoning?

Mr. Roshto said that the Board was asking the question, do you want us to proceed, as opposed to the Planning Board looked at it and agrees that equine is a good thing for our town and we'd like to explore it more, do you want to give us some advice?

Dr. Rae announced that the Board will take a 10 minute recess.

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**DISCUSSION**

**MORRISTOWN ROAD REZONING STUDY**

Mr. O'Brien said that Morristown Road is a unique area in the Township in that, between the railroad to the north and the sewer pumping station to the south there are 6 properties, each of which have unique characteristics and uses on them. Over the years, 2 of those properties (the Stroh and Stenzel properties) have either/both been the subject of enforcements on the part of the Zoning Officer or have applied for relief from the Zoning Ordinance to the Zoning Board of Adjustment because of nonconformities that exist on those lots. In addition, there are large areas of wetlands to the east of those properties. There are also 2 individual residences among those 6 lots and, in addition to that, there is also a farm. The industrial property is allowed by variance; the farm is allowed by ordinance; however, the Stroh and Stenzel properties are

nonconforming and the 2 residences are conforming. He said that the Stroh's requested that the Township Committee look at rezoning the area because of the number of nonconformities that existed on the several properties. The Township Committee accepted their request and asked this Board to study the issues. The Stroh's have proposed to this Board a suggested zoning ordinance that would be applicable to this area. He said that the Board has received that proposed zoning ordinance, as well as a planning report from him that shows the various uses as well as the history of the Master Plan and the Zoning Ordinance in this area. He said that the Board has also received from Mrs. Wolfe various backgrounds that have been provided from the Zoning and Planning Office which includes correspondence to and from the Township Committee concerning enforcement, as well as a discussion that was held at this Board in 2010 on this matter. He said that it may be appropriate for Mr. Delia to provide some background and, also in the audience, is Mr. James Knox, attorney for the applicant, as well as Mr. John Leoncavallo, who is their planner. He said he was sure they will be making their own presentations but asked Mr. Delia to present testimony concerning the application first.

Mr. Delia referred to the Planning Board meeting of August 12, 2008 and said that a question was brought to the Board regarding the property at 339 Morristown Road, which is Block 11203, Lot 5. A question arose about parking equipment there which was transferred to him and he opened an investigation. He said that he reviewed satellite images of the property; looked up all the pertinent information in both his zoning background and also in the Building Department files. He found that there were no records in either Board of Adjustment or Planning Board files indicating that the use of the property for businesses approved at the location. When he did his site inspection, he said that there were several different types of businesses being operated there. There were a landscaper and a mason contractor parked there; some trucks and machinery and material; a heating and cooling company; and a small two bay car maintenance garage. He said that it is set back quite far off Morristown Road and is not noticeable from Morristown Rd. and has a small driveway leading into it. Other than the question that was brought before the Board in 2008, he said that there were no zoning violations there or complaints regarding the property. Subsequently, he said that some letters were written as well as e-mails between Mr. Stroh and himself and the Township Attorney and there was correspondence between the Township Committee and the different Boards. He said that the Township Committee told him to hold all violations in abeyance for a period of 90 days and that was last year. He said that he still held off on it as he was waiting for some word from the Board to find out what they wanted done.

Mr. James Knox, attorney for Mr. & Mrs. Stroh who own property on Morristown Road known as Block 11203 Lots 4 & 5, said that there are a number of properties along Morristown Rd. which have problematic zoning histories. He said there is an overall land use policy issue relating to his client's property that is probably fairly unique in the Township because they had an unsettled zoning situation. He said that for decades this area was viewed as a prime industrial development area where Long Hill Township was going to develop tax ratables and that process started to a certain extent. He said that at least one building was built along commercial lines of that type and then suddenly the Township for valid environmental reasons went to the total opposite extreme - from industrial (or economic) development to conservation. It placed all of the property owners along Morristown Road in a unique and difficult situation. He said that his client's grandfather first started operating various types of uses on the subject property in 1932 or so which was before the Township had a Land Use Ordinance and before the Municipal Land Use Law was enacted. He felt that the concept at this late date - asking Mr. Delia to commence enforcement actions under that fact pattern would be an enforcement nightmare and would raise legal and factual issues that he thought no one needs to get into, especially since no one has complained about any of the uses on this property except perhaps someone who may have been upset that the Zoning Ordinance was being enforced as to him, so why not go over and look at the Stroh property. However, in terms of neighbor against neighbor, to his knowledge there has never been an issue or a complaint. He said that he knew, however, that there have been enforcement actions threatened with respect to the Stroh property, as Mr. Delia had outlined. He also knew that there have been enforcement actions taken with regard to the property up toward the railroad (now owned by the Stenzel's). He said that he knew from professional experience there was an enforcement situation regarding what he called the Arnold Farm property both before and after it was approved as a farm market. He said that we have a "mixed bag" land use situation with enforcement actions taking place and there is currently a use variance pending on one of the properties that has been held in abeyance. He said that Mr. Delia had written his clients a letter and since put it on hold but basically telling them to seek a use variance (and it might not be one use variance - it might be a group of them). He said that some of the uses on his client's property are almost unquestionably valid pre-existing protected non-conforming uses and some may not be and we would have to get to the bottom of a long, long factual and legal history to ever figure that out which he felt would be long and complex. He said that his suggestion, as of about 2010, in a letter sent to the Township Attorney seeking to "bury the hatchet" in this neighborhood and try to figure out a way to not create a problem where there currently is none. On the other hand, he said let's not set the stage for people for unlimited development rights that they shouldn't have in this environmentally sensitive area. He said that the simplest answer to that is to pick a year like when the Township rezoned to Conservation (1997) and simply say in the Ordinance in the pre-existing non-conforming use section that any use that was in existence as of that date is protected. You couldn't expand it, nor could any new property owner come in and say, "I want that too" - it is a simply amendment to the pre-existing non-conforming use ordinance. He said that he drafted that language and, in addition, his client's planner, Mr. Leoncavallo is present to address the matter if need be. He said that he has worked with Mr. O'Brien and tried to weave some other new things in the Conservation Ordinance to make it better. He acknowledged that what he and his clients are asking for is unusual, but added that that doesn't make it bad. He said that we need to try to work together instead of spending our time in municipal courts and elsewhere sorting this out.

Addressing Mr. Knox, Mr. Aroneo confirmed that he was asking that a clause be added to allow the pre-existing non-conforming use to back to 1997. He said that he knew that Mr. Knox had spoken to Mr. Pidgeon about this several times in 2010 and he thought that when it came up it was not a viable alternative.

Mr. Knox replied that he had no recollection of *anyone* not saying it was not viable. He asked Mr. Aroneo if he was referring to it legally.

Mr. Aroneo said it could be legally or under good principles of zoning. He said that he was told that when you change a zone it is supposed to be changed and that is it and that use is supposed to be no more as we want to phase it out and look toward another use for that zone.

Mr. Knox replied that you very often see ordinances which say things like “Notwithstanding this new amendment, any person who has a lot that is substandard in size may develop that lot provided he can maintain certain yard requirements, certain impervious coverage ratios, etc.” which is quite common. It is a way to basically say you are kind of grandfathered, not if it’s crazy, and we can’t have any new person running in and creating a *new lot* that is substandard, but if you are stuck with a situation, you’re okay within reason. He did not see the difference between that and this.

Mr. Aroneo thought that was a tidy way to fix a problem and asked Mr. O’Brien for his thoughts.

Mr. O’Brien said that once they are established prior to the zone change is what Mr. Knox is referring to. He said that his clients could come in and ask for a certificate of non-conformity for the various uses on the property, but they must prove that they were there before the zone was changed so that they were no longer allowed.

Mr. Knox thought that some of them might be easy to prove while others might not and then you can go down the street to another property owner and you might find the same problem. He said that you have a neighborhood-wide enforcement problem here that is going to go on.

Mr. Aroneo said it was his understanding that it was difficult to prove that the use was in effect before the zone change.

Mr. Knox thought if he spent enough time, he could prove that a lot of the uses on the subject property are protected. He said that, although he did not know them, he expected that the neighbors down the street might have arguments to make too. Meanwhile, these property owners and the Township are spending a lot of money fighting over a problem that isn’t really bothering anyone. He said that his suggestion made in a letter to Mr. Pidgeon in 2010 was that we try to find a way to accommodate everyone. He asked, should you do this everywhere in the Township - no, but everyone in the Township doesn’t have the unusual combination of history and zoning and other issues that this particular area has. He did not see a legal problem with it.

In response to Mr. Aroneo, Mr. O’Brien said the primary purpose of rezoning is to institute different uses in a zone. The rezoning is supposed to take non-conforming uses and allow them to “wither on the vine”, so at some point they go away. In this particular case, as far back as 1981, the properties on Morristown and across the street (what is known as the old Kraft property) was all in an ED-3 zone which allowed a whole host of commercial enterprises. In 1986, that was changed so that just the Morristown Road properties stayed in the ED- Zone and the property across the street became a different zone. In 1996-1997, it was changed from an ED Zone to the Conservation Zone. So, for a long period of time this was in an ED-Zone.

Mr. Knox said that the zone was quite liberal in terms of allowed uses and so any use established during that period of zoning is a protected non-conforming use. Proving that is another story, but that is the historical background. He believed that it had been an ED type zoning from the 1960’s.

Mr. Aroneo asked Mr. O’Brien if he thought that adding that language about accepting existing non-conforming uses in that zone would be good zoning.

Mr. O’Brien thought that it was a policy question that the Board had to answer. Are there benefits to it? Yes. Are their detriments to it? Possibly. He said that you would have to look at those and that would be where he would help the Board with identifying those benefits and detriments.

Mr. Moholkar questioned, from a detriment prospective, are there a lot of other properties that could follow suit by saying this is the precedent and this is what I want because so and so did it? He questioned if there would be a number of properties that fall under the same category and if it would be just on this street?

Mr. Delia said that he couldn’t say how many other properties would be able to follow suit of the Stroh property or what is now the Stenzel property.

Dr. Rae asked if there was a list of the uses that are currently non-conforming. He was advised that they were in the proposed ordinance.

Mr. Knox said the issue would be if all of those issues are indeed pre-existing non-conforming uses. He said to keep in mind, because we are trying to solve the whole problem, that is only the Stroh property. He said that there are other issues on the street and he and his clients do not feel it does any property owner or the Township any good to keep throwing money at this thing.

Mr. Smargiassi referred to the Pg. 2 of the proposed ordinance and asked Mr. Knox how they came up mason contractors, carpentry contractors, etc?

Mr. Knox replied that, among other things, they identified the various uses that have been on the Stroh property since some time subsequent to 1932. He said that they got to the point in this exercise where he realized how complicated this was going to be and that is when he wrote to Mr. Pidgeon and said that they did not want to go down that trail. He said that, he and his clients want to see if there is a way to have an ordinance amendment and, when the Township Committee seemed willing to consider that, that is what brought him here tonight.

Mr. Arentowicz asked which uses were there in 1932?

Mr. Knox replied that he had not put together an exact chronology of when each use commenced and ended. He said that, if he had, he would not be putting it before the Board tonight. He said that if they are getting ready to have an enforcement action here, then he would be getting ready for the Township to prove its case just like he has to prove his. He said that what he was here to do tonight is to try to say is, "Isn't there a better way to go at this thing. Isn't there a way that everybody wins so that we get a better ordinance and a better end result and don't waste a lot of money doing that".

Dr. Rae asked if the uses enumerated on Pg. 2 were current.

Mr. Knox was not sure. He said he thought it was a pretty comprehensive list of every type of every type use that has been on the property *at some point* between 1932 and today. Some have come and gone; some came recently and some have been here for a very long time – it's a "mixed bag". He said that it would be possible to identify what is currently on the site. It was his thinking that, if the ordinance is passed in substantially the form in which it was drafted, and took that concept, maybe another provision would be added that said "Any property owner in the Zone has one year (for instance) to come forward and invite the Zoning Officer to the property to go through and determine what is in fact there and that is what gets protected.

In response to Dr. Rae, Mr. O'Brien said any use in existence at the time of the zone change is grandfathered until that use ceases operation.

In response to Mrs. Raimer, Mr. O'Brien confirmed that it has to be continuous from that first point.

Mr. Smargiassi said that as he read the proposed ordinance it doesn't have to be continuous and (as an extreme example) someone manufacturing something like arsenic on any of these lots would be able to go back and do that even if it was not continuous and if you had a one year period, somebody could just start something and do it and it would be grandfathered in. He saw a lot of potential pitfalls and felt it needed to be much more tightened up.

Dr. Rae thought he was more in favor of the idea of the one year period where they are able to ascertain the uses that are currently ongoing, rather than using a list.

In response to Mr. Smargiassi, Mr. Knox said that the ordinance should clearly talk about uses in place as of the date of enactment of the ordinance - not new ones created during the one year. He said that we don't want a race to see how many new tricky uses people could think up before the year runs out. He said that you would have to demonstrate during the one year period that, as of the date of enactment...or you could even have a looking back clause.

Mr. Roshto asked Mr. O'Brien if he had any details or history on the decision or deliberation on why this was converted to a Conservation Zone.

Mr. O'Brien replied that the Master Plan in 1996 refers specifically to these properties and stated that the conservation category has been expanded to include these properties which were previously designated for economic development purposes. Before that, it discusses environmental protection measures and the natural resources of the area.

Mr. Aroneo said that it is a heavy flood area and that all of those properties flood in the back and are not suitable for building.

Mr. O'Brien felt that it was a fair interpretation to consider that there were environmental reasons for the change.

Mr. Arentowicz said he would not restrict the flooding to the back of the properties because the fronts of the properties on Morristown flood as well.

Mr. Lemanowicz said the current I-Map for the NJDEP website shows, at least for Lot 5, a little less than half of the rear is in wetlands and the flood plain takes up essentially the entire lot with the exception of an approximate 100 ft. wide strip near the road. Actually, he said that the whole area between Madison St. and the railroad is mostly flood plain. He said that there is a little high spot approximately 100 ft. wide on the east side of Morristown Rd., including Lot 5, that is out of the flood plain, but for the most part that whole area is in the flood plain. He said that there is more flood plain than there are wetlands in that area. He said that the vast majority of the property is in the flood plain from Madison St. all the way to the railroad tracks and approximately half of it is in wetlands.

Mr. Roshto raised the question of improving the properties as a tradeoff. For example, reducing the impervious surfaces or raising building so that more land is available for the flooding issue, or is it off the table?

Mr. O'Brien said that all existing structures can continue.

As far as changes go, Mr. Lemanowicz said that you could make them conform. If it is destroyed and more than 50% reconstructed, he said that you could put ordinances in place to that effect. He noted that there are multiple State requirements for doing anything in this area.

Mr. Roshto said he was looking for compromise. He said that we have an environmental area and we have a resident who is asking for some relief mostly related to cost and they have to prove onerous uses. He asked, if we were to allow something similar to what is being asked tonight, is it possible that in exchange there could be an agreement on putting in retention basins, raising structures, or anything of that nature. It sounded to him in the 1996 Master Plan was trying to

say that they were converting this to Conservation to protect the properties and surrounding areas from flooding issues. So, rather than say we are just going to let them do what they have always done and simply ignore, he asked if we can do a little bit of both and compromise.

Mr. Lemanowicz said that, in absence of an application, he didn't think you could ask for anything.

Mr. O'Brien said that conditions could be put in an ordinance for any future application.

Mr. Knox reminded the Board that their draft says "no expansion". He said there is no protection given by our draft ordinance for any kind of new activity and everything stays right where it is. Percentage wise, he said that a relatively small percentage of the overall properties developed and the rest are undevelopable due to either wetlands or flood plain. In terms of jacking buildings, reducing impervious coverage and things like, he said that the economics are not there. The next step is either to "duke it out" or we let the tenants go and seek a tax reduction. He noted that this property pays more taxes than anyone else on the street. He said that you would lose a good tax ratable if we abandon the buildings and call it a day as this is not a highly profitable rental situation. He said that a lot of the tenants go way back and, if the Township doesn't want to go in that direction, then he thought there is a distinct possibility that they will "fold their tent".

Mr. Aroneo thought the least harmful approach may be to do one of the suggestions presented which was to add the clause into the ordinance that says that they can continue their use. In 2010, he said that there was some evidence that some of those business had been there since the 1930's. He said that there probably is a good chance that they are grandfathered, they just can't prove it and he guessed the Board would have to decide how harmful this would be if we give them the tool to grandfather that use. He also questioned if we want to do that? He said that he knew that street has not changed over the 40 years that he has been around. He said that, if we grandfather them, they are all locked into what they are doing right and nothing else. He said that, if we give them a zoning change, then all of a sudden one guy can operate a masonry yard down the street that is not doing that right now and another guy could have a light industrial building because there is one down the street.

Mr. O'Brien said that, in the past, the Board has looked at the Master Plan and made changes to it as they did in 1996. Also in 1996, he said that the Office Zone was put on Valley Road which this Board recently took away as they felt it was not a working policy. He said that planning is a dynamic venture that changes on a constant basis.

Mr. Aroneo said his recommendation is to keep it in the C-Zone and add language to the ordinance that grandfathers the existing uses.

Dr. Rae concurred and said that he actually liked the idea of looking at what is happening right now, say as of June 2012 to June 2013, and those would be the uses that would be grandfathered. He felt it was a good way of resolving the situation.

Mr. Moholkar said that he would add "per property" though. To Mr. Aroneo's point, he said that you do not want 5 items at "Location A" and the other location has a different 5 items and then all of a sudden you have 2 locations with 10 things going on. He asked if there was a time line on "withering away." He questioned, if there is no intent to change what is already there or add/modify the buildings and it is supposed to wither away and has been there since, what is broken? By adding it to the Ordinance, he asked if the withering away is supposed to take care of the fact that it can stay as long as it is running, or is it really supposed to "die on the vine" and that is why we are putting this in?

Dr. Rae thought the "withering" could take 5, 10 and up to 100 years.

Mr. Aroneo said that you literally see the properties wither away because they can't change anything – they get in disrepair and survive in an ugly fashion for years.

Mr. Smargiassi asked, if something was not specifically noted on the list but I say it existed prior to 1997 and, if I want to bring it back, I could but I have to prove it, or I don't?

Mr. Knox replied that the property owner has the burden.

Mr. O'Brien replied that they are saying that they will take this list and there will be no expansion and nobody else, only the people on the list and that is it. He said the property owner would have the burden to show proof that it existed before 1997. They are also saying that there will be no expansion of the use. He said that Mr. Knox is offering limiting language that would say only what exists is allowed and only on the other properties where they are.

Mr. Knox said the list was what he had developed with the Stroh's. He said that the next question would be if you want this to be comprehensive to the neighborhood, how will you find out what the other uses are? He said that that is something that he can't do as I does not represent those people.

Mr. O'Brien thought that Mr. Delia and Mrs. Wolfe would be very helpful.

Mr. Knox asked if a letter from the Township saying that, if you wish to have the Planning Board consider protecting existing uses, tell us with the are (backed up by Mr. Delia's visits).

Mr. O'Brien said that you may not want to do that at the Planning Board level, but perhaps the staff level can identify those uses and the properties. He said that we have one example in front of us because they applied for a use variance, so we already know what uses are on that property. He said that the other two properties are residential and we can check

with those property owners and another one has already been given a use variance, so we know what uses are allowed there. He said that it is not hard information to obtain.

Mr. Delia felt that at least 95% of that information is probably in Township files.

Mr. Roshto said that we have in front of us a recommended new zone called the Morristown Road Business and Conservation Zone with suggestions made by Mr. Aroneo of keeping it in the Conservation Zone, but adding a line. He asked Mr. O'Brien if he had any comments on which way is the appropriate way.

Mr. O'Brien replied that you could rezone the neighborhood and give it its own zone, overlay zone, or leave it in the C-Zone with limiting language.

Mr. Roshto asked how many violations are on Morristown Rd.

Mr. Delia advised that it was just the one (the Stroh's property).

Mr. O'Brien also noted the Stenzel property.

Mr. Delia agreed that the Stenzel property involved a past zoning violation, but it was not brought up to him.

Mr. Roshto suggesting that the discussion continue with the Stroh property on Lot 5 and asked what the violation entailed.

Mr. Delia replied that it involved an industrial use that was not permitted. He said that *all* of the uses on the site were not permitted. He said that his records show that from 1937 to 1973 there were chicken houses, feed houses and hen houses – it was a chicken farm.

Mr. Roshto asked, from a zoning perspective, if we wrote an ordinance in the Conservation Zone with a one line type of statement that attempted to resolve all of the infractions that could be possible, would that be enough for you (Mr. Delia) to stop this?

Mr. Delia replied, "Absolutely" and said that as long as he had an ordinance number to follow and someone violated that ordinance, that is when they get his letter with time to correct it. Without an ordinance, he said that there is nothing he could do, which is where we are right now.

Mr. Knox assured Mr. Roshto that over the last 5-7 years there have been at least 3 or 4 enforcement actions on various properties in this area and noted that he was personally involved in several of them. He said that it is an ongoing battle involving parking of trucks, are the farm vehicles really farm vehicles or someone's paving/landscaping business. He said that the uses are not "withering on the vine" because it is so impossible for landscape operators, driveway pavers, and users like that to find a place *anywhere* in this part of New Jersey where it is legal to park their equipment and once they find a place, they do not go away easily.

Mr. Roshto said his concern was that we don't know the history. He said that Mr. Knox has explained in detail about 40+ years of history, but that still doesn't tell me that these other 5 properties have changed or not changed in terms of use.

Mr. Knox said his concern was on the other side – it is spot zoning. He didn't like the idea of the Township and the Stroh's working something out that reads great but, if you look at it, it only deals with one property. He said that that is not normally the way we like to do zoning – we like to think in terms of neighborhoods that have consistent problems, challenges, and environmental issues like Morristown Rd. does. From the get go, he said he was hoping that a number of the property owners would get together and join the Stroh's.

Dr. Rae thought that from a particular date through perhaps a year, that any uses that are proven to be there we grandfather on the Stroh's property. If we were to do that with the other 5 properties, he said that that resolves the situation for everyone and it is not too complex. He said that we talked about things within a year, perhaps starting June 1, 2012 thru June 1 2013.

Mr. Knox said that, if I were you, I don't know if I would give up on the idea of going back to 1997. He said that that has you dealing with long standing uses that haven't been a problem to anyone. He said that, if you let all of us pick just the last year, then that is a little more problematic.

Mr. Aroneo felt it was less arbitrary to go back to 1997.

Mr. Roshto felt it was beyond that and is not fair. He said that, in 1997 the laws changed and so if we were to now come and say that, because it is 2012 and you decided you wanted a horse farm, you can have it.....

Mr. Aroneo said that that was why he liked the exemption language at the end of the ordinance which was crafted in 1997.

Mr. Knox said that that is why they put 1997 in there – to pick some reasonable event far enough back that we are all comfortable and we don't have somebody there doing something crazy for 6 months and claiming he is locked in. He said that nobody wants that.

Dr. Rae asked if Mr. Knox if he could prove that the Stroh's uses were continuous as of 1997.

Mr. Knox replied, all of them – probably not. He said he had to go through all that. He said they had done the first draft and would like to see the Township Planner take a stab at it.

Mr. O'Brien said that the Stroh's planner should give us a list of what was in existence in 1997 continuously to today.

Mr. Knox agreed to forward such a list. He said that he still felt that you would want the one year period in which the property owner (in this case the Stroh's) would have to demonstrate who is there.

Mr. O'Brien felt that we may be talking about two different things. He said that you seem to be putting in or suggesting that we have a hearing on certificate of non-conformity and he felt that the Board is actually saying just show us it has been there since 1997. We will then put it on the list of not to be expanded, not to be allowed elsewhere, but can continue on the in place forever list on that property but may not expand in any way. He said that we are talking about two different processes.

Mr. Roshto questioned the need for a list.

Mr. O'Brien replied that it would be to justify the uses.

Mr. Roshto felt that that would be the burden of the property owner (from an ordinance perspective). He said that, if we draft an ordinance and it says that from 1997 to today any uses that you can prove were continuously in existence over that period of time are non-conforming pre-existing uses. In that case, he asked why we need a list?

Mr. O'Brien said this could be done in two ways. The first is that you are given a list by the applicant which is verified amongst the other properties and at the same time they give you proof that these uses have been there. The second is whatever use is there in 1997 and can be proven before the Board can remain which means that a separate process would have to happen and that each individual use would have to come to a Board for a certificate of non-conformity or something close to it and prove to that Board that they have been in existence for that period of time. He said that it seems to be easier for us, if the intent is to grandfather these uses in, to let them do it in all in one fell swoop before this Board and write the ordinance in accordance with the data and facts given to us. The other way, basically pushes it off to the other Board by saying that you have to go to them to prove how long you have been around. Each individual use A-L or whatever it may be, has now got to go through its own individual process.

Mr. Knox said that he did not think that we want that. He said that we are not talking about a statutory process, we are talking about a process that has been created in this ordinance. He felt, for example, the property owners could go to Mr. Delia with an affidavit. He would then look at the property and see if it was consistent with reasonable observations and the affidavit, which is a sworn document. If he had any doubts it would go to a Board, otherwise he did not think a Board would have to get involved. At the end of the year, he said that Mr. Delia has to have the list for the property so when someone else has a new use, there can be no argument.

Mr. Roshto asked if the list was going in the ordinance or in the file cabinet.

Mr. O'Brien replied it would depend on the process you are going to use. He saw more specificity as being better for the Township.

Mr. Roshto thought that, if it was put in the ordinance, he would like to see it for all 6 properties, not just for 1. He asked if there was a possibility, if it came back and the property owner claimed not to be contacted or they were not given enough opportunity, is it, "Sorry"?

Mr. O'Brien said it was on us to notify the property owners by certified mail and adequately document that. If said that if this is a goal of the Board to accomplish, then it is up to us to get out there on the street and knock on doors in order to find these folks and see what is going on.

Dr. Rae called for a motion to extend the meeting for another 10 minutes.

Mr. Aroneo made the motion which was seconded by Mr. Moholkar. All were in favor.

Mr. O'Brien thought the Board could probably come to an agreement that Mr. Knox and his team will provide us with a list that dates back to 1997 and Mr. Delia, himself, and Mr. Lemanowicz will undertake looking at the other properties and finding out what they can of the uses. At some point in the near future, he said that they would come back and report their findings.

Ms. Raimer asked, if it turned out that only one property benefits (the Stroh's), would that equate to spot zoning as Mr. Knox had referred to.

Mr. O'Brien replied that if the only change that is made benefits one property in particular, it could be.

Mr. Knox said it was not a problem because you benefited all of the properties. If property owners elect not to come forward and submit any claimed uses, he said that that would be their business. He said that you don't have to avail yourself of every right you are offered. He felt that the Board is doing something that is neighborhood wide and that it's a neighborhood which is identifiable along planning standards that you can defend. He was sure that a couple of others are going to protect whatever they can.

Dr. Rae asked for any other comments from the Board.

Mr. Cilino didn't see any issue with the non-conforming. He felt it was incumbent upon the Board to write a document and send it registered mail to each of the 6 people and explain exactly what we are doing and what their responsibility is and request a signed document back to us within a certain period of time. He said that that would fulfill the obligation and give us the proof we need in a simplistic form. He did not see where the complexity is at all.

Mr. O'Brien said the Board could send a registered letter to the property owners. In addition to that, he said that the staff will reach out to the individual property owners as well.

Dr. Rae also asked that the property owners all provide some evidence of the uses on their properties since 1997.

Mr. Roshto noted that earlier the Board had discussed that we wanted to send something to the Township Committee. He asked if we are discussing getting a list and doing all this work with our staff, and asking residents *before talking to the Committee* to see if they are interested in doing this. He asked, what if the Township Committee does not agree? He suggested we put together the ordinance but leave it blank (the list of properties) and then it can be discussed at the Township Committee.

Mr. O'Brien referred to what Mr. Roshto had said and commented that it sounds like what we need is some concept paragraph that says what the Board is considering.

Mr. Roshto said he was under the impression that Mr. O'Brien had most of the ordinance in mind.

Mr. O'Brien said he had the *concept* but not the wording.

Mr. Knox said it would not take them long to put the concept together.

Mr. Roshto said it could probably be on the meeting two weeks from today.

Mr. Knox asked if the whole problem could be solved by having the ordinance *not* list them and just say that every use in existence since 1997 through this date. Then you don't have to contact these other property owners until *after* the ordinance is in place.

Mr. O'Brien asked how Mr. Delia would enforce the ordinance?

Mr. Knox replied that, because you have the one year clause the property owner *must* submit an affidavit to Mr. Delia.

Mr. O'Brien said that we then have to come up with a process as to what that is and whether it is Mr. Delia or this Board that retains jurisdiction of it or whether we consider a certificate of non-conformity and kick it to the Zoning Board.

Mr. Aroneo said the only reason he would like it in the ordinance is because it stays in one spot, whereas with a list, maybe the Board is responsible it, or the Zoning Officer, and that will go away with time.

Dr. Rae thought everyone was in agreement and confirmed that the Board wants the list identified in the Ordinance.

Mr. O'Brien added that the properties should be identified in the ordinance by Block and Lot number. He said that the Planning Board will send a communication to the Township Committee and wait to hear from them. After that, the Planning Board will proceed if it so wishes.

A discussion ensued as to whether or not Mr. Knox should be present when the Township Committee discusses the proposed ordinance. The consensus was that Mr. Knox would be able to make a better presentation as he has all the history of the property in question.

Mr. Knox agreed to attend and said that he would call the Municipal Clerk to coordinate a date.

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**DISCUSSION**  
**FINALIZATION OF THE MEYERSVILLE ORDINANCES**

Mr. O'Brien said that the Meyersville Ordinances were revised by the Planning Board last month. He said that he took those revisions and put them in a draft and sent them to the Board members via email about two weeks ago. He asked if anyone had any changes, corrections or additions to make to that document. Hearing none, Mr. O'Brien said he would forward it to the Township Committee unless instructed not to do so.

After a brief discussion, Dr. Rae suggested that Mr. O'Brien move forward with the ordinances.

Due to the lateness of the hour, the meeting adjourned at 11:20 P.M.



