

MINUTES

PLANNING BOARD

NOVEMBER 13, 2012

LONG HILL TOWNSHIP

CALL TO ORDER AND STATEMENT OF COMPLIANCE

The Chairman, Mr. Connor, called the meeting to order at 8:00 P.M. He then read the following statement:
Adequate notice of this meeting has been provided by posting a copy of the public meeting dates on the municipal bulletin board, by sending a copy to the Courier News and Echoes Sentinel and by filing a copy with the Municipal Clerk, all in January, 2012.

PLEDGE OF ALLEGIANCE

ROLL CALL

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

Christopher Connor, Chairman

Brendan Rae, Vice-Chairman

Charles Arentowicz, Member

Joseph Cilino, Member

Jerry Aroneo, Mayor's Designee

Sandi Raimer, Member

Guy Roshto, Member

Michael Smargiassi, Member

Ashish Moholkar, 1st Alt.

Kevin O'Brien, Twp. Planner

Thomas Lemanowicz, Bd. Engineer

EXCUSED:

Donald Butterworth, Member

Barry Hoffman, Bd. Attorney

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

BUILDING HEIGHT CALCULATIONS

Mr. Lemanowicz said that building height is one of those regulations that sounds relatively simple but can get complicated because of unique lot conditions, unique house designs, etc. As the Ordinance stands right now, he said that there are a couple of issues with it. First is that it has the definition of a basement dependent upon the *use* of the basement which he felt is a little odd for the purposes of determining building height because what goes on inside the basement isn't really a function of what the basement looks like from the outside as far as visible mass and how it impacts the neighbors. He said that it may have a use issue, but that is not a height issue. Second is that the current Ordinance measures height from the lowest point of the lowest grade abutting the building to the highest point on the roof. He said that that is not unique to Long Hill Township, but a more common way to measure it is from the *average* grade. In that case, you pick a number of points or some way to determine how many points around the building, add them all up, and divide by the number of points in order to get to the average elevation and then you go to the top. He said that you must satisfy *both* of these two items and, if you do not, a variance is required. He said that there are two types of variances for height. In the past (perhaps in the mid-1980's), a height variance was a bulk variance (or a c-variance) but that was changed to require a d-variance when the height exceeds the allowable by more than 10%. In other words, in Long Hill Township in a single family residential zone your maximum allowable height is 35'. If you are more than 3.5' over the 35', you go from a c-variance territory to a d-variance territory. He noted that a d-variance is the hardest variance to get, there are different proofs, etc.

Referring back to the two topics of dimensional height and the number of stories, he said that the dimensional height going to the lowest grade against the building could cause some variances that you wouldn't want to see. For instance, he referred to his October 19, 2012 letter (Figure #3) and said that you will see a section throughout a 2-story house that has a basement entrance on the right side. He said that that particular house did not require a variance because the pitch of the roof is about 5/12, which is odd. He said that new houses today have very steep rooflines and will go 9/12 or 12/12 because they want that "look". Architects testifying before a Board will say that it is an architectural standard, is common, and what they do. He said that, if this house had a 9/12 roof and the grade around it was relatively flat, except for that staircase, then it would require a variance. He said that maybe the Board is not concerned with that because maybe it will consider it to be an easily defendable variance. However, if it was *average* grade, all the shots/elevations around the house (except for the one at the bottom of the stairs) would average that out so that you would not need a variance, which is the advantage of averaging the grade.

In response to Mr. Aroneo, he said that, in this case, the property was on a fairly flat lot and the elevation from the grade to the ridge with a standard roof pitch would have been less than 35'. However, because of the basement entrance, the elevation (according to the current Ordinance) would go to that basement threshold to the ridge which would probably cause a variance if it was not averaged in with all of the rest of it – but the downside to the average is that now you are going from average grade to the ridge, so if the house was flat you could bring that whole house up that certain dimension and make that whole basement farther out of the ground because, theoretically, the average grade will be higher than the worst grade. When you get into that territory, now you swing back to what is a basement? With respect to the definition of a basement, he said that currently it is determined by its use. If it is used for the principal use, it is considered a story and what the Boards have considered used is if it is finished. He said that if there is a washer and dryer in the basement, that is really not using it theoretically, although there is very little

that will have a town *know* when a basement has been finished or not. He said that a lot of people finish their basements and do not get permits for the work since it is out of sight and is not obvious. It is difficult to regulate. The current proposal is to say that, if a basement sticks out of the ground more than 50%. He said that, if you take the sum of the areas of all of the basement walls and then the sum of the area of the exposed basement wall, if you've got more than 50%, it is a story. In the case of this particular building, he said that you can see that only about the top 1/3 or so of the basement wall is exposed, so it would not be considered a story. However, if it was on a sloped lot where the back of the building was exposed because you had a walkout basement, then you might trip that 50% and this becomes a 3 story building and needs a variance. When you go back and forth between average grade and lowest grade, if someone tries to use the difference in the average and the lowest and tries to bring that building out of the ground more, you might not trip the height but you will trip the basement, so you will still trip something to send you to a Board.

Mr. Arentowicz asked Mr. Lemanowicz what most towns *had* and what do they have *now* (on average versus lowest point)?

Mr. Lemanowicz replied that it is not very one sided. From his experience, he estimated that maybe 20%-25% use the lowest point and the rest use the average grade. It all depends upon what the town wants to do. For instance, if you see the advantage of the average grade, but also see the advantage of the lowest grade, you can redefine your basement and say that if 40% is out of the ground it is a story.

Mr. Arentowicz asked if the objective is to minimize the number of variances that the Township is processing.

Mr. Lemanowicz believed that what we are looking for is: 1) To try to have the rule such that the minimal ones – you are trying to weed out the ones that really aren't a big deal. In the case of Figure 3, if the whole lot is flat and it is that one basement entrance that is causing the grief, is that really something that you want to see before the Board? On the other hand, with respect to a house on a hill, do you want to be the person on the downhill side of that house that sees a 3 story building? If you are on a steep lot like that, the chances are you are going to satisfy one of the c-variance requirements and that is that you need topography and you can typically get that variance unless someone is going completely crazy in developing a lot. Long Hill Township also has a restriction in developing over critical areas, one of which is slopes, so you've got other ordinances supporting that. His understanding was that you do want to catch the ones with the 3 story faces, but at the same time you are also trying to reduce the number of variances that when they come to the Board the Board wonders why they are here. You want to focus on the variances that you want to see.

Mrs. Raimer said that typically when you get an application for a variance and one of the requests is to exceed the building height, and if it comes in by an amount that is considered slightly de minimis, it is usually combined with some other requests. She asked if we would really be eliminating the variances or would we just be eliminating one element of a variance request?

Mr. Lemanowicz replied that you would be eliminating one element which is one less thing to deal with. He said that some builders just want to build a big house.

Mrs. Raimer said that we seldom see the variance request for building height coming in by itself when you are talking about the minimal increase over the allotted amount.

Mr. Lemanowicz replied that it is hard to say because a lot of times when people hear that all they need is a height variance, they will go back and ask their architect how they can get around it (which is still an expense because they have to redesign the building). He said that height variances can be unique because they are often associated with the slope of the lot and someone trying to build a house on it that really doesn't belong – but with the slope of the lot, you are into critical areas. He then cited examples of the kind of variances the Board is trying to weed out. He said that, on the Land Use Ordinance Change Request that Mr. O'Brien sent out, in the definition of a "story" it was left in "excluding those basements used for the principal use". He said that that is not what he was looking for. He said that he was trying to take the whole use thing away from the basement. He said that he did not care what you are doing inside because he can't see it because there is a wall around it. He was just trying to say, how much of that basement is contributing to the visible mass? He said that that is what building height is all about – what kind of visible mass do you want to tolerate, whether it be on the site from any direction, or from one direction (particularly the downhill side). He said that it is in two pieces and it is good that way because you kind of use them against each other (or with each other – however the Board decides). He said that that idea of the exposed foundation wall helps a lot and catches the ones where people are starting to get out of hand and, for some reason, they have got a loophole and they just start jacking it up.

In response to Mr. Roshto, Mr. Lemanowicz clarified that a basement is defined as a story if more than 50% of it is out of the ground.

Mr. Roshto replied that he understood that but was asking for the definition of a story. He was not sure if Mr. Lemanowicz was suggesting to include (in the definition of a "story") basements.

After further discussion, Mr. Lemanowicz said that he would probably take the "story" part out of the basement definition and leave it in the "story" definition. In other words, instead of defining a basement as a story, he would (in the "story" definition) include basements.

Mr. Roshto said that, to be clear, it is going to say “next above it and including basements”.

Mr. Connor said that the way he was hearing Mr. Lemanowicz was, if it is over 50%, it is not a basement and is defined as a story. He said that it is either a story or a basement – it can't be both.

Mr. Lemanowicz replied that a basement can be a story. He said that the definition of a basement needs to be redefined and that any area of a building having its floor sub-grade (below ground level) – that we could probably leave as it is and eliminate the last line, so that a basement is its own definition. Then, under “story” say “including basements that have more than 50% of their wall area above grade”.

Mr. Connor and Mr. Roshto were in agreement.

Mr. Aroneo asked if that was any one wall, or the total for all four walls?

Mr. Lemanowicz replied that the way it is written it is cumulative – it's the *entire* wall. After further discussion, he clarified that when you are looking at the basement, the basement becomes a story when 50% of its exterior walls are exposed.

Mr. Roshto felt that it was confusing. He said that when he thinks of a basement, he thinks about usable space, so he questioned why he would care if it is the exterior. He was not sure why we would want to play games with soil up against the foundation and have to deal with that.

Mr. Connor said that the interior walls wouldn't count. He said that it is essentially the exterior of that particular floor.

Mr. Roshto said that what was confusing him was that they were talking about floors and then we switch to the definition of a basement and then suddenly we are no longer talking about floors anymore, but the height of a wall. He questioned why they weren't talking about the floor of the basement to the ceiling next above it and that distance between them is the 50% average. He did not understand why we have shifted to deal with the exterior.

Mr. Aroneo said that, if you do the cumulative way, you could have 3 walls fully covered on the outside with soil and you could have retaining walls.....

Mr. Roshto said that there are many ways to play a game and that was what he was trying to avoid.

Mrs. Raimer asked Mr. Lemanowicz if it would be proper to respond that, if we are only concerned about the visible mass from the outside, that is why we measure the basement differently than we measure the other stories?

Mr. Lemanowicz replied that the reason we are defining a basement better is to count it as a story or not count it as a story because you don't want more than 2 ½ stories. He said that what we are trying to say is, if your basement is sticking up out of the ground far enough and looks like a story, we are going to call it a story. If it is not sticking out of the ground, then we are not going to call it a story and you can have 2 ½ stories of framing above it. He drew a sketch showing an example of a retaining wall with 2' of exposed basement on 3 sides and 8' exposed on one side and said that scenario is probably possible if you do the 50%.

Mr. Aroneo felt that in every case where we are going to see this is going to be on a steep slope and everyone on a steep slope is then going to do that and they will defeat this ordinance in a second.

Mr. Lemanowicz replied that, in that case, you can go to a 40% exposure, a 30% exposure, or whatever, but the issue is that under the c-variance requirements, one of the primary things people use as a proof is a unique topographic condition. He said that you can write the ordinance, but it is already there. If they can say that their lot is very steep and they can't do anything else with this, even though it is a variance, it is a well justified variance.

Mr. Moholkar referred to Mr. Lemanowicz's drawing of the 2', 2' & 8' exposed basement and said that typically what you are going to find is that where you do have the issue is where you have that large face which is considerably longer than the depth of the house so, unless your house is more square, if you just do the surface area of the math you will still end up with a rather large amount of the surface area which makes it look far bigger and you see some of these new houses around town and all they really did was take the house and build it a little higher and put a little bit of dirt up against it and they really have a rather tall building – not for topographic needs, but because they just wanted a bigger house.

Mr. Lemanowicz said that you can get into more than 50% of *a wall* of a basement is exposed, as opposed to 50% of the whole thing. He said that that would encourage people to decide not to expose the *whole* basement and instead come half way across with a retaining wall with plantings.

Mr. Aroneo said that he like the latter better which is 50% of any one wall.

Mr. Moholkar said that instead of having the whole house being 40% above grade all around, you could also throw in the additional.

Mr. Aroneo said that it sort of softens it if you cover a part of that wall.

Mr. Lemanowicz referred to a photograph of a ranch house in his memo of June 30, 2012. He said that his house is a ranch which is similar only it is located on a hill and his garages are in his basement so, at the end of his house, the entire foundation wall is exposed because his garage doors are there. He said that you could consider that as a unique condition. He sketched a drawing of his house showing the existing grade. He said that, in a case like this, you could also differentiate between 50% of the front or rear walls and not worry about the sides.

After further discussion, Mr. Aroneo asked what if the limiter was from the lowest to the highest (as it is now) – then you really couldn't have 3 stories on the left side (of Mr. Lemanowicz's sketch) because you would hit the 35' limit.

Mr. O'Brien said that you would not necessarily hit the 35' height, but you *would* hit the 3 stories.

Mr. Lemanowicz referred to Figure 2 of his October 19, 2012 memo and said that that house sticks out of the ground and the only reason that it needed a variance is because the builder was up front and said that he was finishing the basement. He said that that house is 32'10" in height.

Mr. Aroneo again asked, what if the only limiter was the 35' from the lowest to the highest?

Mr. Lemanowicz replied that that house would not pass the 50% exposed basement test.

Mr. Aroneo asked, what if we didn't have that at all and just had the absolute height – 2 ½ stories or 35' and forget about the basement test?

Mr. Lemanowicz referred to the back of that house and said that it is 3 stories and, were it not for the finished basement, it would not have required a variance. He said that, if you had the 50% limiter (or 40% or 60%), that house would have required a variance *regardless* of its overall height.

Or conversely, Mr. O'Brien said that, if all we did was to remove the use of the basement from the current definition then it wouldn't matter and would still require a variance. He said that the current definition allows the basement to be defined as living or non-living and, if it is non-living, it doesn't count.

Mr. Lemanowicz agreed and said that in the example he had given, if the builder came in and said he was not finishing the basement, it would not have appeared before a Board in the current ordinance. If you had the 50% rule, it would have. He said that you can see that the house sticks out of the ground considerably.

Mr. O'Brien added that, if you removed the use from the basement definition, it would catch it as well.

Mr. Lemanowicz said that if someone goes to the Construction Office and advises that they want to finish their basement and is told they would have to go to the Board of Adjustment – mixing the use is very strange. He said that if you choose you could leave the 35' minimum to maximum and create the issue with the 50% exposed and that will catch the big face and, if you want to use the 50% for the front or rear elevation (and make it even tighter), that would help. He noted that some houses have crazy shapes and you have to know what is the front and back because you will get someone who is creative who will say it is on a curve and this face really faces the road, so that should be the front.

Mr. Aroneo asked if you could not define that the front of the house is that side which faces the street address?

Mr. O'Brien said that there are some houses that are sideways to the street.

Mrs. Raimer agreed, particularly with ranch homes.

Mr. Lemanowicz said that, in cases of flag lots, a lot of times they will go up and the house faces the stem of the flag. He said that you could say that the two larger faces, although you could get a creative architect to design an L-shaped house.

Mr. Moholkar said that the intent is two-fold – one is to prevent people from building a really large house and simply elevating it a little bit and putting a little bit of basement around it and having a large face on multiple sides, as well as to allow people to finish their basement or not finish it and not have it could against them, in this case adding a little bit more to the top of the house.

Mr. Connor felt that there is a third intent to the extent that there are times when it is almost automatic that a variance gets passed to force a property owner to come for and go through the expense of a variance when it is almost an automatic "yes". He felt that that ought to somehow be in the Ordinance so that they do not have to come before the Board. He asked, especially when such cases are 100% approved, why are we charging people money to do something that absolutely the Township will let you do?

Mr. Lemanowicz said that if someone is coming for a variance, the Township has some ability to request improvements, for example to protect neighbors.

Mr. Connor questioned, if that is what we always say, then why don't we put it in some language so that we don't need to say it repeatedly. He said that in cases of a single variance that would be approved (almost by rote), why make them come in?

Mrs. Raimer said that, although she was not looking for people to come in and spend money needlessly, it is hard to capture every circumstance. She wondered, when Mr. O'Brien and Mr. Lemanowicz have meetings with applicants in advance of coming before the Board, assuming that they had to pay an application fee and are making a deposit into their escrow fund, and the applicant is able to make the adjustments, then they could pull out their escrow and maybe there would no longer be a need to appear before the Board.

Mr. Lemanowicz said that we just had our first TRC/CRC meeting which included a height variance in it. He said that they asked why they included a height variance and said that they could raise the grade by 6", although they also had other variance issues. However, if someone had come in and that was it, they would have paid their completeness review and walked away. He said that rather than coming here and the questions are asked and the escrow is started, notices are complete, etc., he said that a lot of times he could see where we would be able to catch things.

Mrs. Raimer asked if that wasn't the value of the TRC/CRC?

Mr. Lemanowicz replied that it is possible that he and Mr. O'Brien could tell a property owner basically what his/her professional did not tell him/her and say if you just do this, you don't need a variance.

Mr. O'Brien added, in that case, whether the applicant withdraws the application or changes it would be up to them, or they could proceed before the Board with what they presented – it is their choice.

Mr. Lemanowicz said that if the applicant insists on the variance, or can't do his proposal without the variance, he will come in. But in the TRC/CRC meeting what we are telling them is to expect that they will be questioned on certain items and advised of what has been done in the past in similar instances. He said that he could already tell that it will move things along because, by the time they reach the Board, a good part of the Board's consultants comments are already done.

Mr. Roshto said that, if we are trying to reduce the costs to residents who appear before the Boards, before we make decisions about height changes, shouldn't we get some information about the cost to applicants over the past 2-3 years, who has come in, what were the costs, etc.?

Mr. O'Brien said that the Planning Board already receives a report from the Zoning Board of Adjustment annually. He said that the costs are very wide spread because some applicants take 3 meetings to do what other applicants do in 1 meeting and part of that could be their professionals or their understanding or not understanding the process. He said that comparing applicant "A" to applicant "B" to applicant "C" may certainly be worthwhile in showing the spread in expenses, but it doesn't necessarily parlay to what they went through to get those variances.

Mr. Aroneo said that he understood but felt that it would still be helpful to see that information and the overall numbers. He said that he would like to avoid applications whenever possible and felt that people should not have to come here for something that we can legislate and is happening anyway.

Discussion followed regarding adding such things as a landscaping/buffering requirement in the Ordinance.

Mr. O'Brien said that there is no buffer requirement for residences. He said that it is the kind of thing that the Board does in the process of going through an application. He added that no application that has been presented to either Board within the last 15 years that he was aware of has been approved in its original form. He said that they all went through some type of process, the Board reviewed it, made changes or suggestions, so the finished produce is very different from what originally came in and is one that, hopefully, satisfies the concerns of the Board and citizens as well as meets the needs of the applicant.

Mr. Connor felt that the buffering question is important if, in fact, there is a large face exposed which is only 40% above ground. He also said that he was aware that some people do not wish to appear before a Board and will either not proceed with their proposals or, alternatively, will proceed with their proposals without receiving approval.

Mr. O'Brien felt that one of the impetus' for this was that, within the last 5-10 years, the Board of Adjustment saw the more difficult properties being developed noting that a lot of them include steep slopes. He said that the Board of Adjustment was looking to get away from the lowest to highest definition of height and, instead, seeking to see if there is another way to accommodate that without triggering a variance every time.

Mr. Roshto said that that was the point that bothered them. He said that when we talk about Long Hill Rd. and steep slopes, we are talking about the vista/view from a distance. He felt that it would be almost heartbreaking to see Long Hill Township with large 2 ½ story homes across Long Hill Rd.

Mr. Connor added that some of those slopes are so steep, even if it is the maximum exposure the back using even an average, you are still not going to build much above the street level. He said that he did not know what the angle is, but it has to be 45 degrees or more and with that sort of angle you could have significant exposure.

Mr. Lemanowicz said that the idea of having the Ordinance such that the 3 story exposures come in, even though the Board is going to get some pretty strong proofs so that you can manipulate what you are approving, such as landscaping, a little smaller, etc., you could still tweak it for that particular lot. He said that the other thing you have to worry about, however, is that if the house is only allowed to have 50% exposed and the topography simply doesn't

allow it, what you wind up with 10' off the house is a 15' retaining wall to catch up to the grade. He said that when you first start out you think it is just height, but when you start getting into all of the possibilities and how lots are developed, it gets very complicated because you may want to limit "this" but you don't want to create "this". He said that you put a ranch on the side of a hill and 10' off the back of the house you have a 15' modular block retaining wall because the Ordinance would count it as a 3 story building otherwise.

Mr. Aroneo questioned if we would not be better off just letting it be the way it is and then the Zoning Board would look at it on every instance on its individual merits and question if we want to create another problem or do we want to allow this as an easy variance.

Mr. Lemanowicz said that the reality is that, if you are on one of those lots where you need an exposed basement because of grade, you are before a Board for critical areas anyway.

Mr. Aroneo agreed that they would be before the Board anyway and will probably get their variance but the Township is going to get its buffer, trees, etc.

Mr. O'Brien said that, whatever the rules are, a clever builder is going to figure out how to use the rules to their advantage.

In response to Mr. Aroneo, Mr. Lemanowicz said that the definition of a basement says that *the slab* has to be below grade.

Mr. Connor felt that the use definition of a basement doesn't make any sense.

Mr. Roshto said that the building height is more difficult for him. He said that the current definition is 35' from the lowest to highest and we are talking about changing it to the average grade. He questioned what the maximum average grade is that we could possibly have.

Mr. Lemanowicz said that, if you had an 8' basement, you would have 39' from the grade to the highest ridge because, if you have more than 5', you will trigger the 50% rule.

Mr. Roshto said that if we go with what we are defining in front of us we are going from 35' to a *possibility* of 39'.

Mr. Lemanowicz agreed, if you go with the average grade. He said that, currently, if you walk around your neighborhoods, for the most part the foundation exposed below the siding is already 25% of the allowable 50%. He said that you could take the rest of it and put it all in the back and have an exposed basement.

Mr. Moholkar said that you could say 50% and less than 80% of a single wall to soften it.

Mr. Roshto asked, if we do an average grade, couldn't we say "not to exceed 35'", or something to that effect.

Mr. Lemanowicz replied that you could stick with the minimum to maximum.

Mr. O'Brien added that 35' is elsewhere in the Ordinance already.

Mr. Roshto agreed but said that we are changing the definition of average grade which, in effect, gives an additional 4' for certain houses.

Mr. Moholkar asked if a lot of people wouldn't build a basement with an additional course anyway.

Mr. Lemanowicz said that, with an 8' basement, it is from the slab to the bottom of the floor joists. He said that with a lot of older homes it is less than that.

Mr. Moholkar said that he has been in a lot of homes where there is 8' to the lowest part of the ducts – forget about the joists. He was concerned about a person putting in a basement that has got literally 9'-10' walls. Even if the joist comes below, he said that he was still at 9' with a finished wall and it actually gives *more* than 4'.

Mr. Lemanowicz said that, if the concern is going from the potential 39' because you are going from *average* grade, maybe you don't go from the average grade and stick with the minimum to maximum.

Mr. Roshto asked what the benefit was for proposing using the average grade?

Mr. Lemanowicz replied that it was for where you've got the isolated basement entrance in the case of a basement garage and, because of the pitch of the roof, it needs a variance because it is minimum to maximum.

Mr. Roshto said that he was not understanding what is wrong with the 35' 1/2 stories and why we need to change it.

Mr. Aroneo agreed and noted that there are only a couple of instances per year when applicants come in and most of them need a variance anyway and we want to get something (such as landscaping, buffers, or trees) out of it. He said that he did not see what we would change it, although it sounded like a good idea at the beginning in order to keep

people away from the Boards but, if they have to appear anyway, he felt that it further complicates things by adding new conditions.

Mr. Connor said that, if he was going to build or renovate a house where he lives (where there aren't too many slopes), where the lights are and where he chooses to do landscaping is his choice. However, if he was in a similar house on a hill where he could easily build or renovate, he would have to come before the Board of Adjustment and, not only have to get a variance which he did not want to pay for, but would be told how to put in his lighting and landscaping and why not everybody else? He questioned why there isn't a residential lighting ordinance or a residential landscaping ordinance and asked why this would only apply to a house that happens to be on a slope? He felt that there is some fairness that has to be considered.

Mr. O'Brien replied that it would have to meet the goals of the Master Plan in order for a variance to be approved and those are parts of the goals of the Master Plan.

Mr. Connor understood but asked why those goals shouldn't apply to any homeowner that is now rebuilding to ensure that the lighting is done properly and the property is properly landscaped.

Mr. Roshto asked if the difference isn't that, when applying for a variance, you are asking to do something beyond that. It seemed reasonable to him, if you are going to ask for a variance, that the Board of Adjustment can say that it is going to protect your neighbors because it is giving you something a little bit extra.

Mr. Connor said that you are taking a particular location and putting additional requirements on those property owners even though the variance would normally be granted. He felt that you are putting a burden on anyone who owns or wants to renovate a home that is on some sort of a slope versus one on flat lands. He said that he would like to minimize the expense and give as much freedom to the people who own such properties, within reason.

Mr. Aroneo agreed that he likes to keep residents away from the Boards too. He said that, in some instances, he did not see a good solution or some way to make it go away.

Mr. Lemanowicz said that, as Mr. Roshto said, the idea is to get them here because if they are doing something that is not in compliance then you will want to mitigate that.

Mr. Aroneo said that, if they are in a critical area which is nonconforming, they will be here anyway.

Mr. O'Brien said that that is when the goals of the Master Plan kick in about protecting neighbors, making the site look better, and having an effect on the area. He added that any application before the Board of Adjustment has to meet a very strict set of statutory criteria unlike a site plan before the Planning Board.

Mr. Roshto said that he thought he heard some agreement on the Board related to the definition of a story, but he did not know if he was hearing about building height or the definition of a basement.

Mr. Moholkar said that, if we put down a couple of different scenarios such as the 50%, less than 80% - a couple of items and compare it against a handful of requests that came to the Zoning Board for a variance and see if it helps or hinders any of them, then it would make sense to make a decision based upon whether it really works or not. He said that you could have 100-200 different variables that you move around to come up with Variation 1, 2, 3, 4, or whatever, just by changing the maximum height/coverage, but if it doesn't really help any of the ones we are trying to help or if it doesn't really prevent anyone from getting around the rules, then he felt the Board will go through an exercise that doesn't really do anything.

Mr. Connor said that he would appreciate some additional information from the Zoning Board because it is really 90% their issue rather than the Planning Board's.

Mrs. Raimer said that she would be happy to take this information back to the Zoning Board next Tuesday. She said that it is not the applicants, but the nuisance requests should be minimized whenever possible to avoid people from spending unnecessary money. However, in those cases where it is combined with other requests, she found that the completeness review is very, very valuable from everyone's perspective. She said that, if we were trying to address visible mass, it becomes easier to measure minimum to maximum and not have to include the number of stories. She said that, for her, when we start to measure the number of stories, she felt that we are playing a game of "gotcha" with the applicant. She said that, either they have been advised properly and they know not to say that they are going to develop their basement, or they have not been advised properly and they say that they are going to develop their basement and all of a sudden they have a story where they might not have had a story before. She said that she found it easier, to avoid any kind of complication, to measure it from the lowest grade to the maximum point and not even consider the number of stories. She said that she did not know if that is an option that the Planning Board can address.

Mr. Lemanowicz said that you can do 3 floors and a roof within 35'. All you have to do is put your basement floor 1' below grade and then you have a full height basement with a full height first and second floor. In fact, he said that you could even do a ½ story on top of that if you don't define the basement as a story.

Mr. Moholkar asked if the Board could see some examples of "nuisances" (what we are trying to prevent) in order to understand why it works or why it is a bad idea.

Mr. Roshto questioned if the Board is “over thinking” this. He said that the Ordinance today says 2 ½ stories/35’ He asked what is wrong with just doing the little thing where it remains as is, but we remove the one definition about basements? In that case, he said that it seems like we are solving the big problem which is this branch issue that is being called a 2 story.

Mr. Aroneo agreed that it would fix a lot of it.

Mr. Moholkar said that he would like to see examples of what we are fixing versus examples of what is going to sneak through.

Mr. Lemanowicz replied that the one issue you would fix is Figure 3. Using minimum to maximum, if that roof was a standard pitch roof, that would likely require a variance because of the basement entrance. Even though it is only a 4’ x 4’ slab that is tucked on the side of the house, that is your minimum. He said that the rest of the property is relatively flat with only 3’ of foundation showing all around the house, but because of the basement entrance, that is where the minimum and maximum are measured from.

Mr. O’Brien added that, depending upon the definition, the basement *could* be a story which means that this is a 3 story house.

Mr. Lemanowicz said that, in that case, it wouldn’t be a story because only about 25%-30% of the wall is showing. Assuming it is a 50% rule, he said that you will not have that exposure to trigger a story.

Mr. O’Brien said that, if it is not a 50% rule and it is any area of the building having its floor sub-grade, it remains a basement which means it would be 3 stories, so you would not only trigger it on the minimum to maximum of 35’, you would also trigger it because it is over 2.5 stories. He said that 10% of 2.5 stories is 2.75 stories, so a 3 story house would not be allowed under the Ordinance either.

Mr. Roshto felt that Figure 3 is an interesting question for the Board. He said that, for him, if he was looking at that house sitting on a slope on Long Hill Rd., it is too big from the exposure. It looked to him like it is 3 stories tall and is out of scale for Long Hill Township. He was curious about how the rest of the Board felt and said that it is really how we are going to drive where we do here in terms of our Ordinance.

Mr. Lemanowicz said that that house is not on a slope, it is on flat land and there are window wells required because the grade is above that window sill.

Mr. Roshto said that he understood from that example, but that is the exact picture of what would appear on the south side of Long Hill Rd. that would concern him.

Mr. Aroneo and Mr. Arentowicz said that it concerned them as well.

After further discussion, Mr. Lemanowicz said that he wanted the Board to understand where the grade is on his drawing and pointed to it. He said that it would have required a height variance had it been with a standard pitched roof or with dormers only because of the slab. He said that he was trying to zero in on what “below grade” means.

In response to Mr. Connor, Mr. O’Brien said that he was not sure how you get input from the Zoning Board of Adjustment other than through its representative here. He said that it is not a deliberative Board or a policy making Board.

Mr. Connor said that that he felt it was time to say that the Planning Board has talked about it and the representative can at least go back and share the discussion. He said that he would like to get some guidance because this is something that will come before the Board of Adjustment rather than the Planning Board anyway.

Mrs. Raimer added that it is not uncommon for the Planning Board to look at something and share its thoughts about it and pass it on. She said that it is comment – it is not deliberating and those comments would be forwarded just like a member of the public’s comments would be forwarded. She said that it is not intended to provide the all and end all, it is just some input.

Mr. Roshto said that he would be interested in knowing from the Board of Adjustment the data. He said that if he had the data in front of him he could figure this out. He said that he did not need more people at a second Board giving comments.

Mr. Connor said that they have had years of experience that the Planning Board has not.

Mr. Roshto said that this Board needs to have some responsibility to do its job, but repeated that what he needed from the Board of Adjustment is their data.

Mr. O’Brien replied, “You already have that”.

Mr. Roshto disagreed.

Mr. Connor said that the Board receives the Annual Report on Variances Heard by the Board of Adjustment, but it basically says that this is what we did and didn't do. He said that looking and seeing that over the past 10 years it has averaged 2.5, he was not quite sure what we do with that number.

Mr. Arentowicz said that he did not believe that he has seen these Annual Reports that everyone is referring to. He said that he has seen a 3 year study that Mrs. Wolfe prepared for the Fee Committee, etc., but if it is available for what the Zoning Board did last year, he has not seen it.

Mr. O'Brien said that it was forwarded to the Planning Board and Township Committee some time in the first half of the year.

Mr. Arentowicz said that he felt that there has been agreement on the 35' that we don't want to go average grade, but added that he would like to get everybody's input so that Mrs. Raimer can relay the feeling of the Board.

Mr. Moholkar said that he was in agreement but, as Mr. Roshto said, he would like to see one or two tangible examples of where this would help or hinder in the favor of what we are trying to do as opposed to in favor of a builder trying to get around it.

Mr. Connor said that he wished to poll the Board on whether the basement should be defined by use. (The consensus was a unanimous, "No"). He then asked if it should be calculated by average height or minimum to maximum. The majority was in favor of minimum to maximum but some members were not sure, therefore Mr. Connor said that data is needed. Mr. Connor asked the Board members if they had any other issues. There was no response.

Mrs. Raimer questioned, if the Board of Adjustment is going to discuss it at a public meeting, does it need to be noticed and is there enough time?

Mr. O'Brien replied that it does not need to be noticed like an application but, if it is an agenda item, notice must be sent to the newspaper of record as well as being posted in Town Hall at least 48 hours in advance.

Mr. Lemanowicz said that the Board did not get into the basement as it relates to a story. He felt that the Board still needs to deal with when does a basement qualify as a story?

Mr. O'Brien replied that it is the exposure you are going for.

Mr. Roshto said that his main concern is the slope along Long Hill Rd. and the possible potential of destroying the view. He was less concerned about flat lands and where we have already developed. He asked if it was possible to zone an area like the hill differently than other areas? He asked if the Board can change the definition to put it into the Zoning as opposed to General Land Use.

Mr. Lemanowicz replied that it is possible.

Mr. O'Brien said that you could make a definition that is extremely specific such as the zones that are affected or the frontage on various streets. For instance, he said that right now we have a conservation easement on various streets in the Township and it only applies to those particular streets. He said that you could have a sub-set of the definition that only applies to: 1) a property that is in a critical area; and 2) properties that front on, or have any frontage on this street and this street.

Mr. Connor said that he saw it as a much bigger problem and that is the fact that there are a lot of places where the slab is slightly below ground and he said that he certainly wouldn't want to see all of our houses built with another story. He asked the Board members if they had any thoughts as to should there be consideration on fixing a maximum exposure for the largest wall.

Dr. Rae asked if it could be defined based on where the slab is placed rather than thinking about the walls?

Mr. O'Brien replied that we currently do that and that if the slab is sub-grade on all sides or more than 50% of the sides – you could do it either way.

Dr. Rae asked if you could say that the slab, in order to be considered a basement, has to be at 4' or so below grade?

Mr. Lemanowicz said that a slab is flat but the grade around the house changes.

Dr. Rae said that if a slab is at least 4' down (or whatever is decided) for it to be considered a basement, with an 8' basement you wouldn't necessarily get a 3 story effect.

In that case, Mr. Lemanowicz said that the basement slab has to be at least "x" feet below the adjoining grade.

Dr. Rae agreed. He said that, rather than thinking about doing an area of the wall calculation.....

Mr. Cilino asked Mr. Lemanowicz if it could be simplified by just using a percent grade? He said that that would actually define the parameters of how much the back wall will stick out at a certain grade level.

Mr. Connor said that the other thing you could say is that the slab has to be at least 4' below the lowest point of exposure. In other words, it has to be 4' in the ground before you start and you have to take care of the door.

Mr. Lemanowicz replied that you might wind up with a problem with a basement garage, adding that it is similar to the 50% rule but you are just going at it in a different way.

Mr. Roshto said that he was missing the point about the garage.

Mr. Lemanowicz asked, when the garage is in the basement, how would we count that?

Mr. Roshto asked why it is any different visually, noting that he did not want to see his neighbor's garage. He said that if it is an exposure that he did not want to see, why would we treat that any differently (exempt it from being a story)?

Mr. Aroneo said that all homes built now are required to have a garage and what you are doing is creating a nonconformity for them, so if they need anything done with their house they are going to need a variance. In response to Mr. O'Brien, he said that what he *thought* was trying to be done is to be lenient on existing homes that have garages that would now be considered a third story if they have a garage that is the exposed wall.

Mr. O'Brien added, "Or a two-story on a ranch and if they want to go up it makes three".

Mr. Aroneo said that, even an existing one if they wanted a deck, they would need a variance because you have now created a non-conformity.

Mr. O'Brien agreed that it is possible.

Mr. Connor questioned the best way to define a basement using some form of exposure or something of that order?

Mr. Lemanowicz replied that the way he has seen it done is a percentage of the exposed wall. He said that the idea of a dimension from grade to slab would probably also work and is something that you could do. He said that when the Ordinance comes in it has got to be understandable and relatively easy to do and, if you chose a minimum distance (i.e. 4' from the grade to the slab), that would essentially be a 50% exposure if you have an 8' ceiling in the basement.

Mr. Moholkar felt that the difficulty you get is putting in some rule that automatically makes a whole bunch of homes that are already existing with a garage in the basement on a hill automatically non-conforming.

Mr. Lemanowicz said that there are some cases, as in his own house, where that is the way the grade goes.

Mr. Aroneo felt that you are trying to help 2 people per year and you could wind up hurting 50 people a year that want decks or patios.

Mr. Connor said that it seemed to him that a definition that is a percentage of the largest wall may be put in, with the exception of a garage, or something of that order.

Mr. Moholkar said let's say you had a house with just a small space where the garages are and they are exposed and you do the math to figure out how much the doors take up of that exposed wall. If they take up "x" percentage it is okay, but if the garage doors are on the large side of the house and so, instead of the short side if the garage is on the gable side, it is still going to be a wide open space.

Mr. Lemanowicz said that you could set the end exposures at 80% and the front and back exposures at 50%.

Dr. Rae questioned the fact that we are helping only a small number of people per year and asked why couldn't we just leave it as it is at the moment. He said that we have been discussing this topic for about 1 ¾ hours and he was still not hearing a resolution which he felt is indicative of how complex the question is. He said that you have to think about who you are helping and who you are hurting and he still came back to the point that Mrs. Raimer made at the beginning of the meeting that the few people could be helped with the completeness review.

Mr. Lemanowicz said that he was concerned that the example he gave could be done.

Mr. Connor said that, interestingly enough, it could be done in a lot of places and it hasn't been done yet (which doesn't mean that it won't be done).

Mr. Lemanowicz said that the issue of the basement has been a variance issue but we have already taken care of that. He cited the Shah application where a percentage of the basement was used as a meeting or family room and the question we discussed was how much is finished.

Mr. Connor suggested leaving it for 2 weeks and having a discussion with the Zoning Board.

Mr. O'Brien said that his understanding of the Board at this point is that a consensus has been made that the use of the basement should have no bearing on the definition and that the Board (at this point) prefers a minimum to maximum height definition.

Mr. Connor noted that half of the Board was uncertain and the other half saying "maybe – but we want more information before saying yes".

Mr. O'Brien questioned what information the Board wanted. He noted that Mr. Arentowicz discussed the Annual Report.

Mr. Connor said that that is available from Mrs. Wolfe.

Mr. Roshto said that he was never asking for the Annual Report – he was asking for data that would help the Board understand this issue better. He said that what he thought he heard was that the Annual Report has some information that may be helpful, but not all information.

Mr. Connor said that he could guarantee Mr. Roshto that it does not have enough information.

In response to Mr. O'Brien, Mr. Roshto said that he would defer to Mr. O'Brien, as the expert, to tell him what information would be helpful to the Board. He said that we just spent approximately 2 hours deliberating about building heights, how to reduce the variances, and the definition of a story. He said that the kind of information that he would find helpful is how many variances have come in, what were the costs, and how many of them were related to building heights.

Mr. O'Brien replied that you will not get costs because that has not been tracked.

Mrs. Raimer said that, to the only extent that it has been tracked, is how much they have paid in escrows and how much they paid in fees if it was *only* for a height variance.

Mr. O'Brien replied that he was aware, but did not know personally, that recently the Board has on its own looked at data concerning some costs. He said that he has not seen it and did not know it. He felt that whatever they have should be shared and he did not know how valuable it is.

Mrs. Raimer said that she was working from a list of applications that were closed out over the course of the last 3 years which contains the name of the applicant and the type of application, but it does not contain specific detail. For example, looking at the list that goes back 3 years, she said that it contains the Bochner/Tsao application which involved a height variance. She said that none of the other variances listed specifies height. She did not know if, in the Bochner/Tsao case, if height was the *only* variance requested. She said that that is one case where we could discuss in more meaningful terms what height meant for that applicant and how would a change to the Ordinance affect that applicant. She could not tell in greater detail if there are other applicants that had height variances.

Mr. O'Brien said that perhaps that could be parlayed with the Annual Report which lists the variances that were sought.

Mrs. Raimer replied that she was also trying to be mindful of Mrs. Wolfe's workload.

Mr. Arentowicz asked for a consensus on the issue of defining a story when it is at the basement and the soil coverage/topography. He said that we were talking about 50% surface coverage and 80% on one wall.

Mr. Connor asked the Board if it wanted to pick a number or say that they want to have a percentage definition developed. He asked Mr. Arentowicz which he preferred and said that he would poll either one.

Mr. Arentowicz felt that an overall percentage is needed.

Mr. Connor said that the issue is whether the Board wants to have an overall percentage coverage and a specific percentage coverage for one or more walls.

Mrs. Raimer felt that it was premature for her to answer the question.

Mr. Cilino agreed.

Mr. Moholkar said that he would go with a "Yes" with the exception of looking at a few actual data to see whether it makes any sense or it doesn't help.

Mr. Connor and Mr. Aroneo said that they would say "Yes", depending on the data.

Mr. Roshto felt that the Board is "shooting in the dark here". He said that none of this was really making sense to him. He asked if a study was done before this was originally developed. He said that someone wrote down 50% and he asked where that came from?

Mr. Lemanowicz replied that it came from another ordinance he was involved in.

Mr. Roshto asked if a study was done to tell us that that would be good for our town or is it just because that is what other towns are doing?

Mr. Lemanowicz replied that it was something that seemed to work in a town that had similar topography and similar building types.

Mr. Roshto asked in what sense did it seem to work?

Mr. Lemanowicz replied that it caught ones that when you look at the plans you would feel that the Board would want to see t his one. He said that it was number that seemed to work.

Mr. Roshto said that he thought he agreed with a number of Board members and Dr. Rae had said it last – t his is more complex than he imagined. He said that he did not know how the Board could answer these questions without some type of a study, even beyond just this data. He was hard pressed to vote on anything like this, even if he saw the data come from the Board of Adjustment. He said that he was just not seeing it.

Mr. Connor said that he when he said “data”, he meant data that would result in a conclusion and not just “data”.

Mr. Arentowicz said that he was for the percentage.

Dr. Rae concurred with Mr. Roshto.

Mr. Connor said that the majority would like to see the percentage but they would like to see data that they would make their decision on. He said that, if data doesn't exist, we will have to develop data that does.

Mr. Cilino said that we have discussed something for 2 hours that has passed him by because he could not catch anything and put it in his mind what the Board is actually talking about. He said that we don't have dimensions or examples and we have talked about grades of 50% and 40% for a whole wall or a half of a wall, and a basement slab that is only 1' underground, but we don't know how many this affects or how many of the houses in our Township would be nonconforming based upon a decision that we would make. He said that there is no study or data that we can actually grab a hold of and known that we are actually making a very valid decision for the majority or all of the residents of the Township and not throwing a number of residents into a nonconforming status based upon the decision. He felt that there is no way to make a decision or come up with a conclusion.

Mr. Connor suggested giving it a couple of weeks.

Mr. Roshto said that he said what he said based on a point that Mrs. Raimer made and that was that we are about to give more work to people and he was not sure if this is a good idea to put more work on our employees or our volunteers when they are already worked and that we are going to come to a conclusion. Without a real study, he felt that the Board will be here again in 2 or 4 weeks talking for 2 hours with no conclusion and that was what he was concerned about.

Mr. Connor said that we do not know what data is or isn't available. He said that he knew that there is some data available and apparently it might be cross-referenced with some other data which could be a relatively simple thing to do. He said that, obviously, we are not going to ask for studies and Mrs. Wolfe needs to be here too who knows what's there. He said that he would not like to put this completely to bed without at least looking at the possibility of getting some of the data that would be useful.

Mr. Lemanowicz said that, in preparing his second memo, Mrs. Wolfe did put all of the height variances for about 5 years and there aren't that many of them. He said that his issue was that he was trying to do this economically and to do a town study to see how many individual lots would get way out of hand.

Mr. Connor said that he was not proposing that. He was wondering what could be picked out of files to be looked at.

Mr. Lemanowicz said that he was hearing 50% overall with no one wall greater than 80%. He said that he could make those up rather than to try to find one in the files. He said that a lot of the lots we are talking about are fairly uniform. Long Hill Rd. goes along the face of the hill and slopes to the back and that is a pretty basic condition on that whole hillside. He felt that it would be faster if he took a 30' x 60' house, put it on a lot, and showed what it would be with 50% overall with no wall greater than 80%.

Mr. Aroneo felt that the Board also asked for real numbers on how many homes this affects and what damage could be done if we do pass an ordinance about how many homes it could *potentially* affect. He asked if we could come up with some kind of an estimate on that.

Mr. Lemanowicz said that he would talk to his G.I.S. person and he could get the County topography (without title blocks) and tell them that he wants to see all slopes greater than 15% to see where those lots are. He said he would ask how long it would take and felt that it would not be that big of a deal.

Mr. Connor said that you will get Long Hill Rd. and maybe a few other isolated areas and that will give you 80%-90% of the answer right there.

Mr. O'Brien said to remember that nay house under those circumstances is going to need additional relief.

Mr. Lemanowicz agreed because we also have our Critical Areas Ordinance. He said that the reality of it is that we are putting a lot of thought into this but there comes a point where you are going to wind up making an ordinance and which will be a new ordinance and you will see new variances and problems because things aren't getting caught and you fine tune it. He said that height ordinances are difficult because you are dealing with real topographic conditions and creative architects and builders and are trying to catch all this stuff.

Mr. Roshto said that when he is still here after 2 hours and cannot get his head around the problem we are trying to solve, he worries. He said that he was not seeing a return on investment here. He said that nothing anyone has said has proven to him that we have a significant problem. He said that he really was not interested in changing our ordinances just to change them. He said that he would like to know that we have a problem that is not going to cause other problems. He said that he understood that there might be 2, 3, or 4 variances coming in and that there might be other residents that *don't* come in because they are afraid to get a variance, but that is all hearsay. He said that it is all secondary information that without knowing in our town that what we are going to change is going to cause other problems, he would not be in favor of it.

Mr. Connor said that this came to us at the recommendation of the Board of Adjustment and that was t he reason he wanted to send it back to them.

Mrs. Raimer said that she appreciated the courtesy being extended to the Board of Adjustment. To continue the courtesy, she said to let her take it back to them see what comes of that and then the Board can decide where it wants to go.

Mr. Roshto, Mr. Aroneo and Mr. Connor thanked Mrs. Raimer.

Mr. Connor suggested sitting on the matter until the Board of Adjustment provides some input. He said that there are a couple of things the Board has said that they want to do with it and the percentage issues are certainly ones that are up in the air. He said that the things that the Planning Board can do are the simple things such as the reports and things that are already available. He said that, if the Board of Adjustment feels that the percentage issue is one that they would like to look at, Mr. Lemanowicz can probably prepare an example in a matter of a few hours.

Mr. Lemanowicz felt that, for the purposes of spending time, perhaps we should wait to hear from the Board of Adjustment first before he spends any more time on this because, if he does start doing examples, he would want to address *their* questions, as well as the Planning Board's.

Mr. Connor agreed and added that, if the Board of Adjustment doesn't feel it's a good idea, there is no sense in Mr. Lemanowicz doing any work. He then called for a 5 minutes recess.

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DISCUSSION
STATUS REPORT & WORK CALENDAR

Mr. O'Brien said that due to the emergency and devastation over the last few weeks caused by Hurricane Sandy, his firm was shut down for a number of reasons and, therefore, has performed no constructive work whatsoever, therefore he had nothing to report. He said that, as of 4:00 PM this afternoon, all of his services have been restored. As a result, he said that what he wanted to talk about tonight and at the next meeting has not occurred. In a brief discussion with Mr. Connor prior to the meeting, he said that their discussion evolved around what they could do for the next meeting that would be profitable. He said that the architectural standards have been floating around for a while and have not been put on the agenda because he was waiting for availability from the parties that will present it, as well as for an opening in the Planning Board's schedule. He said that, with the Board's permission, he would invite the architectural standards folks to come in and do their presentation *if they are available*. In addition, he said that he would also reach out to the Copper Springs representatives to see if they are available for the following meeting so that they can come in and speak about what it is that concerns them about their current concept plan and they may have questions for the Board in terms of which direction they go to. He said that those are two possibilities for the next meeting as well as a report from the Board of Adjustment on height. He said that perhaps they will pick up on the discussion on that topic based upon that report.

With regard to Copper Springs, Mrs. Raimer said that she knew that there was something floating out there that was not concluded involving indoor soccer and the rezoning. She asked if that is something that is part of this Copper Springs concept plan?

Mr. O'Brien said that he was not using the full title and apologized. He said that Copper Springs is the recreation area and Indoor Soccer is the current applicant who owns the Copper Springs property and their application was put forth as Indoor Soccer, Inc. He said that they are discussing a possible rezoning of the property which would allow a number of different recreational uses to be allowed there rather than the current situation of which the only things that are allowed are those that were granted by use variances dating back to 1957-1958 in a very limited scope and that scope of uses on the property has expanded. He said that their suggestion to the Board is should we rezone the property or should they apply for a use variance for the uses that they wish to put on the property.

He said that the topics that we wanted to discuss tonight (the Open Space Element) has got to be revised in accordance with the discussion that the Board had about a month or so ago and the Chairman has advised that the best procedure would be to take that revision and run it by the Open Space Committee first before coming back to this body. He said that that would put that topic off for at least a month presuming that everything would flow in time.

Referring back to Copper Springs, Mr. Aroneo said that he wasn't aware that they were waiting for the Planning Board. As a matter of fact, he said that the Township Committee is waiting for Copper Springs because it was more than a year ago that the Township Committee had a meeting with Copper Springs and an agreement was reached to hold enforcement of our own ordinances in abeyance until they filed an application with this Board (which he said they still have not done as far as he knew).

Mr. O'Brien said that he *thought* they had actually filed an application, although he was not 100% sure.

Mr. Aroneo said that the Township Committee has inquired about it several times throughout this year and the answer has been negative every time. He said that he was concerned of their status and asked if they have actually been waiting on the Planning Board's calendar.

Mr. O'Brien replied affirmatively and said that they have been on the Planning Board calendar and his status report for most of this year.

Mr. Aroneo asked if they get pushed to the top if they file an application and they don't wait on the calendar for a discussion item or to seek guidance.

Mr. O'Brien replied that he would need to check. He said that what is in front of the Planning Board is a concept plan from them as to what happens on that property.

Mrs. Raimer said that she had some notes from Mrs. Wolfe on another matter but Indoor Soccer is on them because they were looking at rezoning items. She said that the status, as far as she knew about Indoor Soccer, LLC, is that they appeared before the Planning Board on 2 occasions. The applicant's attorney suggested that the applicant's planner, Peter Steck, and our planner work on Master Plan amendment language so that the Board would have it one week prior to its December, 2011 meeting and then it would be discussed at the December, 2011 meeting and, if everybody was in agreement, notice would be served for a subsequent meeting on January 13, 2012. She said that none of that every happened. She said that she knew that there was a balance in their escrow account and there never was an application fee, so she did not know where the Board would like to take this.

Mr. Connor said that his recollection was that they then informally came to Mrs. Wolfe and wanted to hold off on any formal hearings because of a particular issue that they wanted to resolve before coming before the Planning Board and, the last he had heard, that issue had not been resolved but that was a few months ago, so perhaps they have now decided to move forward.

Mrs. Raimer said that, either way, reaching out would be in everybody's best interest to find out where to go with this.

Mr. O'Brien replied that the most recent information he had indicates that it was basically in concept plan mode and their planner reached out to him and said that they had a problem in how they define this site per our Ordinance and per N.J.D.E.P. based upon the flood plain elevation and, since part of their application is for structures in the flood plain, that issue has to be discussed and/or resolved before they can proceed and the suggestion was made that there be a staff meeting and his understanding was that we did not want a staff meeting and instead wanted a presentation before the Board. He said that for the last couple of months they have been on notice that it was up to them to come to this Board and tell us what their problem is and how to proceed.

Mr. Lemanowicz added that the applicant's engineer had called him asking for his impression because the FEMA maps show that that property is in a flood plain. However, he said that the FEMA map doesn't give you the elevation of the flood – floodway maps give you that and the stream that that property is affected by is not studied because, in order to study that, you would have to model the entire Great Swamp which is an *incredible* amount of work. He said that they went to the N.J.D.E.P. and they said that they are temporary structures and they would give them the permit even without the flood elevation but the issue is that, because they are in the flood plain, they need a variance for developing in a critical area. He said that they contend that the property never floods but the only accepted method by the N.J.D.E.P. is exceedingly conservative and shows the 100 Year event with 4' of water on the property. He said that he advised that the Township obviously has concerns about businesses, but it also has concerns about flood plains and this will be a real balancing act to decide which way this will go and that he is not going to make that call, the applicant is got to go to the Board and see what their next step is. He said that that was probably 2 months ago, at least.

To summarize, Mr. Roshto said that the understanding is that if they want to talk with the Planning Board they will be coming back to the Board.

Mr. O'Brien said that that was his understanding.

Mr. Lemanowicz said that, if the Township Committee said that they would hold this in abeyance unless they file an application, if the Township Committee is looking to move that along, maybe a reminder is in order.

Mr. Aroneo replied that he felt that a reminder has been done and, at this point, the Township Committee is going to question why they haven't acted. He felt that it has been even more than a year and there was written contact with them. He did not think that the question of why they haven't filed an application has been answered yet. He said that there is money in escrow which means that they did *something*, which is good news.

Mr. O'Brien added that they have also been active in front of the Board. He said that that brings us up to the 11th of December and, hopefully, we will be able to do Open Space and Recreation Elements pending their review by the other bodies. In the meantime, he said that the Millington TDR Study unfortunately came to a complete stop and it is probably *not* a good idea to be doing planning reviews of the community and traffic studies under the current circumstances until things are somewhat more normal.

Mr. Connor said that that will lead into early next year and the Land Use Element piece. He asked what remains to be done on that?

Mr. O'Brien replied that Millington has the background studies that have to be done and then the Master Plan Element has to be written. He said that the Committee has been meeting regularly since the beginning of the fall and, presuming the pace is picked up again in the next month and it is worked on in the next few months, he felt that they should be done fairly quickly and then that effort can be turned over into the Land Use Element. He said that, if the consensus is that we can finish Millington up in the first month or two of the new year, then that would give us time to work on the Land Use Element which is due in November of next year. He said that there is a statutory 10 year requirement but it does not have to be done on that day.

Mr. Connor said that he would prefer to get it done quicker rather than later and said that he would like to meet the statutory requirement.

Mr. O'Brien said that traffic studies and reviews of the state of the businesses and structures that are there need to be done. He added that the last thing we need as a community is for staff to be out looking around for a long term study when things are not that good right now.

Mr. Arentowicz said that he was under the impression a few months back when the Board discussed what was required for the State mandated Master Plan on November 25, 2013, that the Millington Element wasn't a requirement, therefore he asked if we can do the Land Use Element without the Millington Element?

Mr. O'Brien replied, "Yes, you can" and confirmed that you don't require the Millington Element to do the Land Use. Up until now, he said that the thinking has been to finish Millington and take those goals and put them in the Land Use Element.

Mr. Arentowicz said that he was concerned that the Board's ability to meet the State mandate of November 25, 2013 given the fact that we have 3 meetings left, followed by reorganization, and for this Board to hit it running in January and February is going to take some time. He asked Mr. O'Brien if there is anything that the Board should be doing now, given the fact that we had to have some public hearings on Valley Rd. which takes announcements and meetings. He asked if there is anything the Board should be doing now at our next meeting and the meetings thereafter of this year so that it would make that State mandated Master Plan easier for us to get that on line?

Mr. O'Brien replied that, if the Board wishes to take the responsibility for the Land Use Element as opposed to a committee (such as the Millington Committee) and if the members wanted to take a look at the 1996 Master Plan Land Use Element and the background studies, they could start the ball rolling and decide what you want to study as part of that Land Use Element, then let's get those studies underway now, quickly, at the beginning of the year so that whenever you do start your review as a policy making body (or committee), the data is there to use.

Mr. Connor asked Mr. O'Brien if he had a recommendation as to how this would be segmented and what studies might be necessary for the Board to consider.

Mr. O'Brien replied, "Not at this time". He said that, if the Board wishes, he would have a recommendation at the next meeting or the following meeting.

Mr. Connor said that, obviously, one of the things that we would want to see completed would be the Millington Element but that doesn't mean that they can't be done in parallel for a little bit. He suggested putting it on the December 11th agenda.

Mr. Roshto asked Mr. O'Brien, if the Board is getting close and is running out of time, how long does a re-examination report take?

Mr. O'Brien replied that some boards have done it in a meeting and held a noticed open public meeting (as required by law). He said that the whole process takes a month or so. He said that you would require a draft of a re-examination and the draft, at the Board's direction, can be extensive or fairly simple. It can reiterate the current goals you have or revise the current goals. He said that it could be very simple and noted that, in 2003, the Master Plan was re-examined and, based upon the statutory requirements, in addition to that there was a lawsuit concerning

the Township and our Land Use Ordinance and the fact that the Master Plan Re-examination buttressed the existing goals and reinforced them at a very appropriate time was of great help to us and that was done in a very short amount of time. He said that, depending upon exactly what you wish to achieve, it could be done very quickly and narrowly or it could be the entire Land Use Element of a broad scope. He said that the minimum, from the day you have a draft in front of you, the quickest that it could possibly be accepted by the Board and hold a public hearing is 5 weeks.

Mr. Connor then asked Mrs. Raimer to comment on the status of the Fee & Escrow Subcommittee.

Mrs. Raimer said that they had a draft that was ready for circulation in September which was shared with Mr. Connor and Dr. Behr and at just about that time it also came to their attention that there were two rezoning requests that were made and no accommodation was made within the Ordinance for rezoning requests. Therefore, the fee team took it upon themselves to take back its draft and see if it could address a possible application fee and escrow deposit for rezoning studies because those were currently on the agenda and there were now enough of them historically for them to do some meaningful research to find out what such costs should be and so, in the course of taking it back to add that in, Committeeman Roshto was good enough to offer some additional suggestions. She said that they are planning to meet next Tuesday, Nov. 20th, before the Board of Adjustment meeting to go over some final edits to reflect the research on rezoning and some of Committeeman Roshto's suggestions.

In response to Mr. Connor, Mrs. Raimer said that it *could* come before the Planning Board this year. She felt that there are more issues of principle to discuss with respect to it. She said that the concern is that when we go back and look at some of the fees that were to be adjusted it is an upward adjustment rather than a downward adjustment. She said that from their point of view it is very difficult to present the need for an upward adjustment in these hard times and so, from a political perspective, she said that she would also like the Fee Team present to the Board efforts that are underway so that, even if an upward adjustment is presented, what the plan of action is going forward so that this is just a temporary upward adjustment and that downward adjustments could be expected within a fixed period of time. She said that when you have the escrow deposits reflect actual costs, the number is grossly different than the number that is in the Ordinance right now.

Mr. Arentowicz added that the fees hadn't been adjusted since the Year 2000. He said that they used the CPI index and indexed those fees to where they needed to be for the last 11-12 years.

Mr. Connor said that they were also compared to the fees of other towns.

Mr. Arentowicz said that, in the study Mrs. Wolfe performed of some 38 projects, what the application and escrow fees ended up being compared to what is in the Ordinance, there is a very big gap of between 2-5 times.

Mr. Connor said that, ideally, this should be brought to the table early next year.

Mrs. Raimer felt that the Fee Team could have something to the Planning Board before early next year. She said that the Fee Team could better advise after its meeting of next week.

Mr. Connor suggested scheduling it as a possibility because he felt it was an important area for everybody. Rather than to attempt to go through Mr. O'Brien's 14 pages of Planning Board status, he asked Mr. O'Brien to update it for distribution to the Board members to review.

There being no further business, the meeting adjourned at 10:50 P.M.

DAWN V. WOLFE
Planning & Zoning Administrator

