

MINUTES

SEPTEMBER 8, 2015

PLANNING BOARD

LONG HILL TOWNSHIP

CALL TO ORDER AND STATEMENT OF COMPLIANCE

Vice Chairman Arentowicz called the meeting to order at 7:35 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 2015.

MEETING CUT-OFF

Vice Chairman Arentowicz read the following statement: Announcement is made that as a matter of procedure, it is the intention of the Planning Board not to continue any matter past 10:30 p.m. at any Regular or Special Meeting of the Board unless a motion is passed by the members present to extend the meeting to a later specified cut-off time.

CELL PHONES AND PAGERS

Vice Chairman Arentowicz read the following statement: All in attendance are requested to turn off cell phones and pagers as they interfere with the court room taping mechanism.

PLEDGE OF ALLEGIANCE

ROLL CALL

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

Brendan Rae, Mayor
Charles Arentowicz, Vice Chairman
David Hands, Member
Guy Piserchia, Member
Guy Roshto, Member

Kevin O'Brien, Board Planner
Thomas Lemanowicz, Board Engineer
Cynthia Kiefer, Planning & Zoning Coordinator

Excused:

J. Alan Pfeil, Chairman
Gregory Aroneo, Member
Ashish Moholkar, Member
Timothy Wallisch, Member

Daniel Bernstein, Bd. Attny.

Ms. Kiefer advised Vice Chairman Arentowicz that he had a quorum and could proceed.

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

APPROVAL OF MINUTES

Mr. Piserchia moved approval of the minutes of June 9, 2015 as written. Mr. Roshto seconded the motion. A **ROLL CALL VOTE** was taken. Those in Favor: Mayor Rae, Mr. Hands, Mr. Piserchia, Mr. Roshto. Those Opposed: None. The minutes of June 9, 2015 were unanimously approved as written. Vice Chairman Arentowicz was in eligible to vote since he was not present at that meeting.

PUBLIC QUESTIONS OR COMMENTS

Vice Chairman Arentowicz opened the meeting for questions or comments on issues *not* on the agenda. Seeing none, he closed the public session.

DOWNTOWN VALLEY COMMERCIAL DISTRICT ELEMENT

Vice Chairman Arentowicz asked Mr. O'Brien to describe the changes that had been made in the element.

Mr. O'Brien said that in 2012, the Planning Board had adopted the Valley Road Business District Element with a number of goals and suggestions for ordinances. Over time it was made clear to this Board that work had to be done on the document to bring it up to date and to reflect current concerns and conditions along Valley Road. As a result, last year the Planning Board asked the Master Plan Committee (MPC) to interrupt its work on the overall Master Plan and to begin work on the Valley Road Element. The MPC took the original 2012 document and rewrote it. A number of changes were made such as consolidating the current Valley Road zones into one (1) zone; a planned shopping overlay replaced the B-3 Zone; a Light Industrial Zone was suggested to allow current nonconforming uses to become conforming; a new Business Downtown Overlay (south of Valley and north of Bay) would allow higher lot coverages in exchange for shared parking, fewer curb cuts, and less pavement overall; an R-5 Zone was established along Metzler Place where some small residential lots were located; a number of flood prone properties were placed in the Conservation Zone; and the element placed a new emphasis

on attracting many different types of businesses to the Valley Downtown District by expanding the number of uses that were currently allowed. The element also established an epicenter of activity between Poplar and Plainfield on Valley. It recommended connecting the Library and Town Hall to Valley Mall to encourage walking as well as creating a walkable loop through Bay and Poplar. Another major emphasis was on stormwater and flooding which reflected current concerns on the part of the township and on the part of this Board.

Mr. O'Brien continued by saying that the draft element in front of the board members was recommended by this body at its June 2015 meeting and placed on the agenda for this evening. It was a revised document which reflected the changes that the Board and the MPC made. He pointed out that on page 8 of the current document where the map of proposed zones in the downtown districts was located, a revised map was being worked on by Mr. Roshto and him. The revised map would reflect the document's revisions and changes and would be inserted into the final document after that evening.

Mr. Piserchia asked if the email that was sent out recently by Mr. Roshto contained the updated map.

Mr. Roshto responded affirmatively. The only change that was going to occur on that map was the name of the overlay. It was being changed from Downtown Valley Overlay to Passaic Valley Overlay.

Vice Chairman Arentowicz then opened discussion of the element to the public.

Dennis Sandow, 29 Windsor Way, Millington, approached the podium.

Vice Chairman Arentowicz asked Mr. Sandow if he was speaking as a member of the Master Plan Committee (MPC) or as a member of the Chamber of Commerce or for himself.

Mr. Sandow stated that his comments that evening represented the interests of the business community insofar as the Chamber of Commerce was involved. He noted that at the July meeting, input from the Chamber was solicited. He said he was also speaking as an insider on the MPC although he was not speaking *for* the MPC. He felt he could not help but bring to the table information that he had from having served on the MPC. He then stated that he was also speaking for himself because his interest in the Master Plan went way back before his involvement with either the Chamber or the MPC. Some of the statements that he was about to make had evolved many many years ago.

Vice Chairman Arentowicz asked if Mr. Sandow could limit his discussion to approximately 15 minutes.

Mr. Sandow noted that his comments addressed a new paragraph on page 5 which read:

"6. Add an overlay zone on the south side of Valley Road and north of Bay Street between Poplar Drive and Plainfield Road which would allow an increase in lot cover up to a maximum of 60% and lesser setbacks between principal buildings to encourage shared parking and fewer curb cuts."

He discussed some of the zoning history involved along with the roles of the Planning Board and MPC in developing the Downtown Valley Commercial District element. He concluded by stating that ... "the issue of lot coverage be remanded to the MPC and the Ordinance Subcommittee..." and added that his presentation had contained 14 points, "any one of which should kill that new paragraph."

In answer to Mr. Piserchia's question, Mr. Sandow stated that 85% of the properties in the business district that had an application since 1990 did not meet the 40%.

Mr. Piserchia asked if 85% of the properties in the district were above 40%.

Mr. Sandow replied affirmatively. He felt that it should be increased to at least 60% to recognize that 40% was unreasonably low. In the case of Thermoplastics, they could hold onto their building or build a new one that was only one third as big.

Mr. Piserchia said that any business along Valley Road, in order to do anything, would have to come in for a variance.

Mr. Sandow said that if they were currently over 40% or even over 60%, they would be more than likely able to get a small site plan approval. The issue was whether it was economically feasible for any business to try to completely redevelop if it meant they would end up with a much smaller building. Every one of them, like Thermoplastics, would be much better off economically to hold onto their grandfathered rights than to try to meet the current standard of 40% which had only been in existence for the past 15 years or so. This was why the township had so few new buildings.

Mr. Sandow discussed the three (3) buildings that were in conformance: Valley Sports, Metro Swim and Walgreens. Walgreens was the only *new* building in the past 25 years that was able to conform to the 40% because the owner started with an eight (8) acre lot and carved off a four (4) acre piece which

allowed him to conform to the 40%. Mr. Sandow felt it was a very inefficient use of land and added that there were only three other lots that were large enough to be redeveloped: the Elks, the carwash and Primavera. If each one of them was as inefficient as Walgreens was in their use of the space they might get 40% but they might be more efficient at 60%.

Mr. Roshto wanted to make a couple of clarifications. First, the Master Plan Committee never asked to fast-track the development of this. It was the Planning Board that asked and the MPC took it on because of that. The second clarification revolved around a mischaracterization of timing. The data that Mr. Roshto requested of Mr. Sandow was for the Ordinance Review Subcommittee, not the MPC which had completed its work on that project months earlier.

Mr. Sandow agreed that Mr. Roshto was entirely correct and that he had misspoken. The MPC had completed its work in the early spring without any mention of bulk requirements because it was never the intention of the MPC that any bulk requirements statement would be written into the element.

Mr. Roshto concluded by addressing Mr. Sandow's comment that he had a difference of opinion. He stated that he had always said that he did not know what the right number was which was why he wanted the background studies for review.

Mr. Sandow agreed and he added that since the 2010 ordinance was written he (Mr. Sandow) had always spoken feverishly in favor of a 60% lot coverage number because that would make at least half of the businesses on Valley Road lawful and it would foster a greater interest by the business community to redevelop.

Mr. Roshto also addressed the inference that the conversation about ranges of bulk standards in the elements was a new conversation. In fact, Mr. Roshto had spoken about it for over a year during the MPC meetings along with a number of conversations with the planner on the subject, debating whether or not it made sense.

Mr. Sandow stated that it was his intention to point out that it was part of the sudden appearance of this whole lot coverage issue in front of the Planning Board. He noted that Mr. Roshto had stated at least twice during that discussion that he believed that the range was appropriate. It was the first time that it had been brought to this board because it was the first time that the whole issue of lot coverage was brought to this board. Mr. Sandow respected the fact that Mr. Roshto had been saying it for a long time although they still had a difference of opinion.

Mr. Hands asked Mr. Sandow how he would modify this.

Mr. Sandow replied if the paragraph was removed there would be no reference in the element to lot coverages and as a next step, the Ordinance Review Subcommittee could evaluate all the facts and conclude that 40%, 60%, or a range was the appropriate language to put into the ordinance. Then the Township Committee would have a shot at it.

Mr. Hands asked Mr. Sandow if the element should indicate or make suggestions that bulk standards could be increased in this district.

Mr. Sandow replied that in the 1996 Master Plan, the opposite was done. It suggested that the bulk standards be *decreased* but there were no numbers associated with that suggestion. At some time after 1996, the ordinance was changed to the current number of 40%. Mr. Sandow stated that this master plan could suggest that the number be greater because in the introduction, re-development was encouraged. It did not want people to preserve existing buildings and fall back on grandfathering in order to keep more square footage.

Mr. Hands asked Mr. Sandow if the element should have some guidance language to the Ordinance Review Subcommittee to suggest that there should be a change. If so, how would that be framed in the element?

Mr. Sandow answered that he would take the language in the 1996 Master Plan and reverse the sense of all the verbs not because they were desirous of a relatively small low intensity commercial development but because now they were desirous of encouraging redevelopment of a more uniform and aesthetically pleasing downtown area.

Hearing no further comments from the board or the public, Vice Chairman Arentowicz thanked Mr. Sandow for his presentation.

Mr. Roshto brought up the topic of the new overlay and the properties around Bay Street. The debate during the last meeting centered around whether the entire length of almost a mile of Valley Road should allow more lot coverage or should it be brought down to a smaller area. It was debated at length and a decision made to use an overlay. The MPC was trying to strike a balance between development and maintaining the character of the township when it put this together. When the Ordinance Review

Subcommittee began discussions about this, it was clear that they needed some guidance. That was where the concept of a range came from. Although this was a new concept to Long Hill Township, Mr. Roshto stated that putting bulk standard ranges in elements had been used in other townships. He added that this had been under discussion for quite some time.

Mayor Rae felt that Mr. Sandow had made some valid points concerning lot coverage and redevelopment. He was not convinced that maintaining the 40% figure would be conducive to the goals of the element. He also did not feel that this issue had been tackled by the full board.

Mr. Piserchia asked if 85% of the properties had over 40% lot coverage.

Mr. Sandow responded that that was correct. He added that about half of the properties were over the 60% number but those tended to be the older properties that were developed even before the 60% number was applied in the ordinances of the mid-eighties. For example, Valley Auto and Little Orphan Annie's came in at over 100%. They would never be able to come down to 60%. There might be some in the 70% range that could be convinced to redevelop nicely and hold to 60%.

Mr. Piserchia stated that he agreed with Mayor Rae and that although 60% sounded like a lot more than 40%, in a context of what existed it really wasn't much of a leap because 50% of the properties were already above the 60% number.

Mr. Sandow added that 60% was also the limit in the village zones and the office zone.

Mr. Roshto felt that the entire board should be present before they had this discussion.

Mr. Piserchia noted that these numbers were based on those properties that had had an application before one of the boards. He asked if there was any way to determine the lot coverage of those properties that had not had any applications.

Mr. Sandow stated that he and Mr. O'Brien had reviewed the applications from the 1990s to the present and found on the applications or on the drawings the coverage statements. He said that in 25 years they could only find numbers for 19 properties therefore all the other properties on Valley Road had never come before a board. He acknowledged that they were dealing with a small sample however he felt it suggested that for the last 25 years most of those properties had not done anything.

Mr. Hands stated that he had been a part of the Ordinance Review Subcommittee and he liked the concept of an overlay area. He liked the idea that there could be an increased density in a smaller area that would try to support the idea of a walking environment. There were two parts involved. First, could a small area have a slightly different character than the larger business district and to him that made sense. Second, what would the percentages be? He felt the discussion of the actual numbers should be left to the entire board.

Mayor Rae agreed that there could be a small area of more intense lot coverage. If the percentages could be removed, he felt that they could move forward with the adoption of the element. Then whenever there was a meeting of the full board, the issue of lot coverage could be discussed.

Vice Chairman Arentowicz stated that he agreed with the intent of the overlay zone to have a denser lot coverage area. He acknowledged the problems associated with the current 40% lot coverage in the zone. He asked Mr. O'Brien if most communities have bulk standards in their elements.

Mr. O'Brien responded, "Generally yes, in terms of guidelines." He noted that there were general bulk requirement numbers in the 1996 Master Plan and that it had been done in other communities. It was not unusual.

Vice Chairman Arentowicz asked if the board members would agree to take out the 60% number and then proceed forward to a full board discussion where advice and direction would be given to the Ordinance Review Subcommittee on the appropriate ordinances for this element.

Mr. Roshto stated that at the last Planning Board meeting, it was at the request of the five (5) board members present that these numbers be put in and then they voted on it. Now the five members present at this board meeting want them taken out. He suggested that they wait until the full board was present for discussion.

There was further discussion amongst the board members as to whether or not to vote on the element as it was presented that evening.

Vice Chairman Arentowicz wanted to take a straw poll. He outlined the options as follows: (1) vote on the element as presented or (2) wait for a full board discussion before voting.

Mayor Rae offered a third option: take out the references to percentages and then vote on it. He noted that he would not be in favor of the element with the percentages left in. Conceptually, he liked it.

Mr. Piserchia stated that he felt they were in agreement that the only holdup was the percentages. That was the only issue being debated.

Mayor Rae added that he preferred that the elements give *guidance* to the Ordinance Review Subcommittee and not contain any percentages.

Mr. Piserchia said that the 1996 Master Plan gave bulk numbers but there were no percentages. He felt there was a difference between bulk numbers and lot coverage even though it was considered a bulk standard. He felt that if the percentage was removed, there was consensus on the element so that was a third option.

Vice Chairman Arentowicz agreed that there were three (3) options.

A non-binding straw vote was taken on passing the element as written. The result was 3-2 against approving the element as written.

A non-binding straw vote was suggested on passing the element without the words "up to a maximum of 60%" but with an overlay zone allowing for increased lot coverage and lesser setbacks between principal buildings. Mr. O'Brien stated that this would be an "encouragement" to the writers of the ordinance. The result was 3-2 in favor of approving the element without the 60% number.

Mr. Hands then stated that he felt the vote was too close and that he would change his vote.

There was concern about carrying the vote on the element to another meeting because a date certain would have to be established in order to preserve public notice. There would be no guarantee that any more members would be able to attend that meeting. Ultimately, it was decided to carry discussion of the element to the next meeting which would be September 22, 2015 without any further public notice given. Mr. Piserchia motioned and Mr. Roshto seconded. A **ROLL CALL VOTE** was taken. Those in Favor: Mayor Rae, Mr. Hands, Mr. Piserchia, Mr. Roshto, Vice Chairman Arentowicz. Those Opposed: NONE. The motion was approved unanimously.

Vice Chairman Arentowicz stated that the next item on the agenda was the Annual Fee and Escrow Report. He noted that the first recommendation involved use variances. The report recommended that, as is done with bulk variances, there should be one fee and one escrow charged regardless of the number of variances involved in the application. Mr. Roshto stated that he had read all of the recommendations and agreed with each of them. Mr. Piserchia motioned approval of the report and all its recommendations. Mr. Roshto seconded the motion. A **ROLL CALL VOTE** was taken. Those in Favor: Mayor Rae, Mr. Hands, Mr. Piserchia, Mr. Roshto, Vice Chairman Arentowicz. Those Opposed: NONE. Motion to approve the report and its recommendations was passed unanimously. Ms. Kiefer was instructed to forward a copy of the report to the Township Committee for its future discussions concerning the fee and escrow ordinances.

Vice Chairman Arentowicz to the next item on the agenda was "Old Business."

Mr. Roshto stated that the Board Secretary had forwarded the Township Committee's agenda for the following night's meeting. It listed three (3) ordinances including one ordinance from the Planning Board asking for an extension of time to review a proposed ordinance. If the second two ordinances were approved, they would render the first ordinance moot. He asked for clarification from the Committee Liaison and the Mayor.

Mayor Rae stated that after the last Planning Board meeting, they met with the Township Attorney, Jack Pigeon in order to move the Temporary Sign Ordinance over to the police power and out of zoning. They decided to move forward with the Township Committee on these three (3) ordinances. They would be introduced at the next night's meeting. Two weeks later there would be a public hearing. He felt it was the best way to move these forward.

Mr. Roshto noted that when he was on the Township Committee, ordinances were never introduced when there was an existing ordinance that had passed first reading.

Mayor Rae felt that it had become obvious during the last Planning Board meeting that there were some fatal flaws in the ordinance so the Township Committee felt it was necessary to rescind that ordinance and introduce two (2) new ordinances. He added that Mr. Pidgeon felt it was well within the Committee's authority to do so. There would be input from the public, the committeemen and the Planning Board members, if they chose to attend.

Mr. Roshto said that the Planning Board had met with the Board Planner to correct the fatal flaws. He added that after quickly reviewing these two (2) new ordinances, he felt there might be fatal flaws in them

also. He wanted the Planning Board to have some input on this and he suggested that the Planning Board meet with the Township Committee's representative to review these ordinances so that when they were reviewed after first reading, the Board would be able to say that the ordinances were consistent with the Master Plan.

Mayor Rae reiterated that it was Mr. Pidgeon's opinion that the Planning Board did not have the authority to opine on this because it was not a zoning issue. If there were fatal flaws in these new ordinances, they could be brought to light during the public hearing.

Mr. Piserchia said for the record that they were discussing the proposed Ordinances 360-15, 366-15, and 367-15.

Mr. Roshto stated that that was correct.

There was further discussion as to whether or not the last two proposed ordinances required Planning Board input.

Mayor Rae reiterated that the issue of temporary signs was under the authority of the Township Committee (police powers). They encouraged the Planning Board to state its opinion however in order to move these forward, he felt it was pretty straightforward to do it in this manner. He added that he respected Mr. Pidgeon's opinion and he was following his lead.

Vice Chairman Arentowicz asked Mr. O'Brien to give the Board his opinion on this.

Mr. O'Brien quoted the Municipal Land Use Law (M.L.U.L.), "Prior to the adoption of a development regulation, revision, or amendment the Planning Board shall make and transmit to the governing body a report." He noted that Ordinance 366-15, Section 1 discussed a section of the Land Use Ordinance being repealed. That would be an amendment to the ordinance. In Ordinance 367-15, Section 1 stated that Section 111 of the Land Use Ordinance was amended by removing the following terms. It would seem that those two ordinances did amend the Land Use Ordinance which would require review by the Planning Board.

Mayor Rae stated that he had spoken to Mr. Pidgeon earlier in the day and from a legal perspective, Mr. Pidgeon felt they were moving on an acceptable path.

Mr. Roshto said that the Planning Board could not pass the ordinance because of all the fatal flaws and as a courtesy to the Township Committee, the Board offered to work with the Committee to rewrite the ordinance if the Committee would give them more time.

There was further discussion surrounding these ordinances and how the Township Committee and the Planning Board should work together on this issue.

Mayor Rae stated that the latter two ordinances would be moved forward under police powers which were under the Township Committee's authority according to the Township Attorney, Mr. Pidgeon. The Planning Board would be able to opine at the subsequent public hearing.

There was further discussion revolving around the proposed ordinances. Mr. Piserchia said that it was his understanding from Mr. Pidgeon that temporary signs were under the purview of police powers in other towns also.

Mr. O'Brien's stated that, at the request of the Ordinance Review Subcommittee, he looked at the surrounding towns. Harding, Chatham, Berkeley Heights, Warren, and Bernards Township all had temporary sign ordinances under Land Use. In Berkeley Heights there was an allowance for special signs by the Township Committee for signs that were not addressed in the ordinance. That stipulation was in the Land Use Ordinance as well.

Mayor Rae agreed that that was worthy of discussion however the committeemen were all in favor of moving the temporary signs to police powers because it really didn't make any sense to have applicants request a variance if they wanted more than a certain number.

Mr. Roshto felt that that situation could be accommodated with a single line as part of the zoning ordinance. It could be part of a waiver process that would be faster and at no cost to the applicant.

Mayor Rae stated that, as a committee, they had decided in public to move temporary signs to police powers so that it would move forward and not languish as it had for the past year. If the ordinances were passed at the next night's meeting, there would be a public meeting and any member of the Planning Board would be more than welcome to come and express any concerns or reservations to the full committee. He reiterated that as a committee, they had decided that this was under police powers.

There was further discussion on the appropriate timing for the Board to opine on the proposed ordinances.

Mr. Piserchia reiterated that the Township Committee had voted 5-0 to move temporary signs to police powers upon the advice of Mr. Pidgeon who said in most towns that was the way it was handled.

Vice Chairman Arentowicz interjected that according to the Board's Planner, it was just the opposite.

There was discussion as to when it would be appropriate for the Planning Board to present its opinion on these ordinances. Mayor Rae felt that it should be done during the public hearing. Mr. Roshto questioned whether that was the appropriate venue for the Planning Board Planner and board members who are all considered township officials, not members of the public.

Mr. Roshto advised Mayor Rae that, after a one hour review of the proposed ordinances, he had made at least 25 comments to improve them language-wise. He felt those should be considered *before* the ordinances were presented for first reading.

Mr. Piserchia agreed that in the past there had been discussion prior to the introduction of ordinances. However in an effort to expedite the process, the committee had started using the introduction to serve as the discussion. He felt that the Mayor was trying to expedite the conversation.

Mr. Roshto noted that there was a significant difference of opinion legally.

Mayor Rae reiterated that these were under police powers.

Mr. Roshto asked Vice Chairman Arentowicz to direct the Board Attorney to make a determination as to whether or not the Planning Board should receive the two ordinances. He believed they should be directed to the Board and he felt the planner agreed. He then made a motion to that effect.

Vice Chairman Arentowicz asked if a vote was necessary.

Mr. O'Brien said that a vote could be circumvented if the committee agreed to send 366 and 367 to the Planning Board for their comment since the Land Use Ordinance was involved.

Mayor Rae felt that this was a difference of legal opinion. The committee was moving forward on the advice of their attorney. He felt that there should be a conversation between the two attorneys to iron out the issue once and for all.

Vice Chairman Arentowicz added that there was a big discrepancy in what this township was doing compared to all the surrounding townships.

Mayor Rae stated that resolving the legal issue seemed to be the first step.

Mr. Hands felt that the Planning Board Attorney and the Township Committee Attorney should meet to discuss the issue of moving said ordinances out of zoning and into police powers. The Township Committee members that were present that evening had based their decision on the Township Attorney's opinion and if his opinion was incorrect, the whole thing would have to be redone.

Mr. Hands reiterated that there was a fundamental legal discussion to be had between both attorneys so that they would be "on the same page." He seconded the motion that Mr. Roshto had made earlier. A **ROLL CALL VOTE** was taken. Those in Favor: Mayor Rae, Mr. Hands, Mr. Piserchia, Mr. Roshto, Vice Chairman Arentowicz. Those Opposed: NONE. Motion to direct the Board Attorney to make a determination as to whether or not the planning board should receive the two ordinances was approved unanimously.

Vice Chairman Arentowicz asked if there was any further old business to be discussed. Hearing none he asked for a motion to adjourn. Mr. Piserchia moved and Mr. Hands seconded. A **VOICE VOTE** was taken and the meeting was adjourned at 10 PM.

Date: _____

Cynthia Kiefer
Planning & Zoning Coordinator