

North Middleton Township Planning Commission

Township Building
2051 Spring Road
Carlisle, PA 17013

Minutes of the Planning Commission Monday, November 2, 2009

The meeting was held at the North Middleton Township building on Spring Road, in Carlisle, PA.

Attendance

Board Members-**Harry Kelso** (Chairman), **Bradley Mitchell** (Vice-Chairman), **Pat McDowell** (Secretary), **Ronald Anderson**, and **Clifford Wolaver**

Solicitor-**Mark W. Allshouse**

Codes Enforcement Officer-**Paul Fegley**

Brehm-Lebo Engineering-**Doug Brehm**

Cumberland County Planning Department-Jim Bennett

Visitors

Judy Johnson-1146 Newville Road, Carlisle, PA
Charles Johnson-1146 Newville Road, Carlisle, PA
Cloyd C. Myers-1116 Karen Drive, Carlisle, PA
William Moore-1200 Newville Road, Carlisle, PA
Norma Gayman-1192 Newville Road, Carlisle, PA
Merle Gayman-1192 Newville Road, Carlisle, PA
Ron Lucas-Stevens & Lee, 17 North Second Street, Harrisburg, PA
Pat Arbegast-1178 Newville Road, Carlisle, PA
Terry Arbegast-1178 Newville Road, Carlisle, PA
Phyllis Kotzmoyer-1194 Newville Road, Carlisle, PA
Ken Lehman-1194 Newville Road, Carlisle, PA
Laura Lenhart-1190 Newville Road, Carlisle, PA
Rick Hoover-1190 Newville Road, Carlisle, PA
Andrew Gaul-1174 Newville Road, Carlisle, PA
Roy Lindstrom-1172 Newville Road, Carlisle, PA
Kim Lindstrom-1172 Newville Road, Carlisle, PA
Nathan C. Wolf-10 West High Street, Carlisle, PA

Call to Order

Chairman Harry Kelso called the meeting to order at 7:00 p.m. and led the Pledge of Allegiance.

Public Input (non-agenda items)

Chairman Kelso asked for any public input. No member of the public came forward at this time.

Approval of the Minutes for Tuesday, July 7, 2009

Chairman Kelso asked for any changes, corrections, or additions to the minutes for the Tuesday, July 7, 2009 Planning Commission meeting. None were requested.

Ronald Anderson moved to approve the July 7, 2009 minutes as presented. Bradley Mitchell seconded. All votes were in favor, and the minutes were approved as written.

Pending Applications

#07-05: Amended Application, Rezone for Concerned Citizens of North Middleton Township

Mr. Fegley read from the agenda:

The Township has received an amended application for the rezoning of that area on the south side of Route 641, approximately between the intersection of McClures Gap Road and Route 641, westbound near the property currently owned by Steve Hurley Excavation.

The amendment request is to bring the current zoning of the property as an I-2 to Neighborhood Commercial rather than R-2 High Density Residential.

The Purpose behind this amendment is to bring the rezoning request in line with the recommendations included in the 2008 Comprehensive Plan.

The Planning Commission will need to make a recommendation to the Board of Supervisors with regard to this amended application.

Mr. Fegley then began to describe the documentation in the Commission members' binders. He referred to a letter of September 29, 2009 from attorney Nathan Wolf, which included an explanation of the amended application. Mr. Fegley noted that this amendment involves "newer parties" than those included in the original application. He indicated that there have been some property transfers in this area and also a couple of individuals who have passed away since the original application. Mr. Fegley continued with his description of the provided documentation.

Mr. Hoover and Mr. Wolf came forward. Mr. Kelso asked who would be representing the Applicants. At this point Mr. Wolf stated that he wished to clarify something that Mr. Fegley had said. Mr. Wolf gave the following statement:

This is not an application submitted on behalf of a citizens' group. This was on behalf of each and every petitioner individually. So, Mr. Hoover is here as the representative resident/petitioner, but not on behalf of the Concerned Citizens for North Middleton. Each one of the petitioners has sought the relief individually, but they are just presenting it together.

Mr. Kelso asked Mr. Wolf if he will be representing them. Mr. Wolf stated, "I will. I represent each of them." Mr. Kelso asked Mr. Wolf to proceed.

(Recording Secretary's Note: Due to the substantial amount of verbal commentary presented, much of the following is taken verbatim from the audio recording.)

Mr. Wolf proceeded. The following is his initial commentary:

As Mr. Fegley indicated, we submitted originally a block rezoning petition in September of 2007, and essentially my clients and the Board had...there was a hearing opened. I believe it was in November, 2007, when the Application was accepted, and we continued that generally until the resolution of the Conditional Use proceedings for Third Pine Floor, so that basically we wouldn't go through this for nothing if that

approval had come through. Because of the Board's vote and the resulting decision, we decided that this would be the appropriate time to move forward. In the interim, as some of you know, I know that two of the members of this commission were also, or at least at one point, were members of the Comprehensive Plan Steering Committee, that you'd be familiar with the recommendation and the ultimate adoption of the Comp Plan, in 2008 that recommended this area to be rezoned to Neighborhood Commercial, and when the Board adopted that in November of 2008, with the caveat that these existing residential properties, that the Zoning Ordinance be authored in such a way to allow these residential properties to continue, to build accessory structures as necessary, and basically to have the protections afforded to other residential zoning classifications, but that would be specific to the Neighborhood Commercial and those residential uses in existence at the time that comprehensive rezoning goes into place.

The first step in that of course, as you all well know, in the comprehensive rezoning is going to be a rather time consuming undertaking. It's going to be a while before there is probably a finished project. I know that it's out for an invitation to bid on authoring the comprehensive rezoning ordinance. I know that that's in process now, so we have some time ahead of us before we would see those changes, but we thought it would be appropriate now to start the process at least for this neighborhood because of what has occurred over the last two years that there has been a long history with these properties of having applications brought to the Township that have not come to fruition. As a result, and I have a distinct recollection of Board members, I don't remember whether they were Planning Commission members or Supervisors, who had made the comment, well, when other projects hadn't come through why didn't you ask for a rezoning at that time, and hindsight is 20/20. If they had had the opportunity, they may have done so previously, but, especially with all the hard work the Comprehensive Steering Committee went through, and the Board of Supervisors in ultimately adopting it, we thought it was a decision that was reached after a lot of thought, and our request is to try and insure that at least some protections exist now, rather than taking the chance that we would be in the same position, still in industrial zoning, and still having these properties without the levels of protection that they would have otherwise.

As Mr. Fegley indicated, unfortunately there have been the deaths of two of the petitioners, one of whom was actually not a record property owner, but was a resident, and that was Mrs. Miller. There was also the death of Mr. Johnson. Both of them we've referenced on my letter of September 29th. In addition, there was one other property that was transferred from the Heishmans to Trevor Onukiavage, who has asked as well to have his property rezoned, and that was at 1162.

There have been some other minor changes. The only additional property was the property at 1142 owned by Jody Bitner. We had actually submitted with the initial application the deeds and the legal descriptions for each of the other properties. We've only submitted Ms. Bitner's at this point because that was the only one that wasn't previously submitted and we didn't want to paper the Township to death.

The only other significant change is that the property that is at 1182, which was previously owned by Jay and Patty Snyder; that property during the course of the Conditional Use proceedings was sold to Mr. Shepley, and I believe is actually held by Third Pine Floor Partners. That property is obviously now removed from our petitioner list, and is not included in the Application. All in all there are, I believe, the grand total was somewhere in the area of 31 properties for which rezoning is sought. Of course, ultimately when the Board gets this matter before them, it would have the discretion to deal with any of the remaining properties that it felt appropriate to rezone in accordance with its comp plan, but at this point obviously I can't speak on behalf of property owners that did not seek rezoning. There were three that are towards the eastern end of 641 going into town of this group that either we had difficulty contacting, or at the time when we originally contacted them, the original request was to be R-2. At that time, one of the property owners had indicated that they were not in favor of R-2, but I believe...I think it's safe to say that that property owner may have changed their mind knowing that it is Neighborhood Commercial, but I wanted to make sure that the Application got moving forward.

We submitted this as an amendment because we believe that the...obviously the vast majority of the property generally remains the same. I think that we actually stand on much better footing now because we are asking to have this brought into line with what the Comprehensive Plan is recommending. I would just point out as well that there are deed restrictions that exist on these residential properties. There are deed restrictions that exist actually on all the properties that were originally laid out as Westminster Manor. This

would certainly bring the zoning closer in line with those deed restrictions, even though that is not really a question that's before the Planning Commission, or ultimately the Board. I wanted to just make sure that for those who were not involved in the comprehensive planning process, that we included those pages from the Comp Plan so that those members had an idea of precisely what was being recommended. As you'll see, the Neighborhood Commercial was offered with the suggested design standards that dealt with what I had mentioned previously which was this special language that would be added, talking about the existing residences would continue to expand or add accessory buildings or structures. The minutes actually, and the motion that was made, aren't clearly reflected in what that Comp Plan language is because it also talked about the ability to have those protections that would be afforded to other residential districts for those existing residential uses, and I have the minutes of that meeting where Supervisor Bucher actually made that motion to adopt the Comp Plan with that addition.

That being said, I think the intention for the property directly to the south is ultimately to be a bit less intense than what the current zoning would provide for, with the recognition that there is a need to have a compatibility between various types of uses and various zones and transition areas from heavier to lighter, and I think that one of the things that became very clear as we were in front of the Board of Supervisors was that the need for the ability to have cohesive and noncompeting uses was evident, and we're looking to simply see that the process that the Township and the Board of Supervisors has already started comes to fruition and hopefully in a time frame that would best allow us to make sure that we don't end up with another application next door that really just would not be consistent with the uses that are already there.

So, Mr. Hoover is here to answer any questions that you have. I'm certainly happy to answer any questions that you have. With that, I'll turn it over to the Commission.

Mr. Kelso asked Mr. Fegley and Mr. Allshouse if it was correct that this matter is not going before the Board of Supervisors until December. Mr. Allshouse acknowledged that this was correct. Mr. Wolf stated that a letter has been submitted which he believed gave the advertised date of November 5th as being the date for the hearing to be opened and then continued to make sure that both planning bodies had enough time to offer comments and suggestions to the Board. He noted that the Cumberland County Planning Department hasn't yet done official comments. He added that this is the reason for the date being extended.

Mr. Kelso referred to the three properties on the eastern side. Mr. Kelso asked if it was correct that those people are not part of this. Mr. Wolf stated that they are not. He added, "At least not at this time." Mr. Kelso noted the property at 1132. He asked if this is one of Mr. Shepley's properties. Mr. Wolf stated that this property is owned by William Linsenbach. He said he believed that the first property owned by Mr. Shepley is at 1182. Mr. Kelso asked if 1132 is owned by somebody else that is not part of this. Mr. Wolf acknowledged that this was correct. He indicated that there is a trailer on that property, but that the record property owner is Mr. Linsenbach. He mentioned that he had received an updated address and that notice had been sent out to Mr. Linsenbach last week.

Mr. William Moore was in attendance. Mr. Kelso asked him if he was part of this. Mr. Moore indicated that he was not. He stated that this is the first that he has heard of the change. Mr. Wolf pointed out that Mr. Moore's property is in the area that the Comprehensive Plan had looked at as going to the Light Industrial/Commercial use and that it is beyond what would be the Neighborhood Commercial.

Mr. Kelso asked Mr. Wolf to explain to him why the normal process shouldn't occur. Mr. Wolf responded to Mr. Kelso's question:

As I said, what our primary concern is, is that with the way pending ordinance doctrines work, that if an applicant came in right now and had a proposed use for I-2 on the property to the south, that the Township essentially would be in the same position we were in two years ago where really we are bound by what the Ordinance says and the protections that it has, so I think that the timing...as I said, part of this was in response to the comment that has been made to us directly of why didn't you take action and ask the Township to do something instead of relying on us to do it ourselves, and I think to my clients' credit, they recognized that comment and wanted to respond to that proactively, instead of having it be on the defensive end of things all the time.

To Mr. Wolf, Mr. Kelso asked, "Why wouldn't this be considered spot zoning, to do it without doing the whole thing?" Again, Mr. Wolf responded:

Well, the Board, as I indicated would ultimately have the ability at any time under your own ordinance under Section 240-, I believe it's 133, dealing with amendments to zoning ordinance. The Board at any time could make a decision to rezone property as it felt appropriate, as long as it was able to meet the tests that are in place. When you talk about spot zoning, or special legislation, as it's sometimes referred to, you're talking about zoning a small area of land or an individual parcel in some cases, in a way that is designed to benefit that property owner, in a specific way.

There have been cases where attempts to rezone property have been overturned on the basis that a municipality essentially was carrying out a contract with the property owner, but there have certainly been cases that have survived scrutiny that have said when you have properties that have been given a less intensive zoning. There were...one of the examples that I can give you came out of the Fisher vs. Cranberry Township case where the allegation was made that essentially a de facto taking had occurred by decreasing the intensity of a particular use that I believe dealt with eight parcels, and it basically eliminated the ability to develop a shopping center on those parcels but a business park could still be developed, and one of the things that the court said is you have to look at whether or not there are reasonable factors and reasons that go beyond just to benefit one or two property owners or a specific, very small group of property owners.

I think when you're talking about a neighborhood block rezoning, you're talking about a...for one thing, you're talking about bringing something into compliance with your comprehensive plan, which is going to be required anyway. In order for your zoning ordinance to be completely effective and above challenge when it comes to...it has to be consistent with what your comprehensive plan says.

Obviously, we would prefer to have those other properties included. Certainly, I don't think that the applicant from the Conditional Use proceedings would be in favor of having our zoning changed for those properties that front Newville Road, but as far as the other three or four that are left, I'd certainly be willing to...I'm sure that Mr. Hoover would be willing to contact them to see whether or not their position had changed. As I indicated, our request at this point was to make sure that we had moved forward before there was an amended application, or a new application and a new proposed use for the property to the south. Really, it was a timing issue in terms of trying to make sure that the uses that are there were protected.

Mr. Kelso asked for any questions from the Commission members. Mr. Mitchell referred to the deed restrictions that are currently in place on some of these properties that Mr. Wolf had mentioned in his opening remarks. He asked Mr. Wolf to describe some of these. Mr. Wolf responded to Mr. Mitchell:

Some of those deed restrictions are no longer enforceable. There are some that are unconstitutional, but of those that are still in place that are not unconstitutional...there were race limiting restrictions, but of those that are still valid:

- *Buildings shall be used for no purpose other than that of a private dwelling house or private garage.*
- *No structure shall be erected on any lot or lots other than a single or double detached dwelling house together with their private garage.*

I know that Neighborhood Commercial was not my clients' preference. Their preference was to have a pure residential zoning. It was a pretty long process with the Comprehensive Plan Steering Committee to get to something like the Neighborhood Commercial as a recommendation. We saw it essentially as a compromise that allowed the existing residences to continue, and there are some...unfortunately, if this was done thirty years ago then some of the intensity of the uses that are in the general area, we may have been able to avoid that, but we have left what we have left. Those were the two primary deed restrictions that I was referring to.

Mr. Hoover and Mr. Wolf offered to provide the Commission with copies of the deed restrictions. Mr. Kelso asked if anyone else on that side wished to speak. Mr. Hoover referred to the three properties on the east end which were not listed. Mr. Hoover stated that attempts were made to contact the owners of these

properties. He described these attempts. Mr. Wolf added that these attempts were primarily made in 2007 when the process was being started. Mr. Wolf spoke further:

In the event that the Board would look at this as a different application, as opposed to an amended application, we did not want to take the chance that in the interim, something else was submitted that would be subject to the existing zoning before this was pending.

Chairman Kelso asked if anyone else on that side wished to speak. Mr. Moore indicated that he did. Mr. Moore said the notice he received in the mail said that the rezoning was going to start at 1194 and go east. He said that this leaves three properties west of that address, and he asked if these are included in this amendment. Mr. Moore referred to the meeting agenda handed out tonight and noted that it said, "near the property currently owned by Steve Hurley Excavation." He indicated that there are three properties east of Mr. Hurley's, including his and two others. Mr. Moore asked if these are included. Mr. Wolf responded to Mr. Moore:

Other than Mr. Moore's, the other two were not. Mr. Moore's, as I indicated, the reason it was not was because that was not part of what was recommended for Neighborhood Commercial under the Comp Plan. The other two are owned also by Mr. Shepley. There's an option on one of them and we didn't approach the property owner; the Johnson family, because we didn't feel it appropriate since we knew that they were subject to their option, and the Carver property is now owned by Third Pine Floor, also obviously Mr. Shepley's partnership, so we did not approach those property owners to ask if they would be part of it. Certainly it was within the area that Neighborhood Commercial was recommended for, but we anticipated that Mr. Shepley would be opposed to that change.

Mr. Wolf mentioned the description of the property as being near Steve Hurley's. He stated that this did not come from him, and that he did not know the source of it. At this point Mr. Fegley stated that this was his description that he had placed on the agenda to provide an idea of where this location is. Mr. Kelso asked for any other commentary from the Applicants' side. None was offered. Mr. Kelso asked if there were any questions from the Commission. Again, none were offered.

Mr. Kelso asked Mr. Lucas if he wished to speak. Mr. Lucas indicated that he was present to represent Third Pine Floor Partners. What follows are his initial remarks:

Our client's property was included in the original request without us knowing it, and it was taken out of this request without us knowing it when it was revised at the end of September. The request was to rezone our property, initially it was R-2, and then it was taken out, and we weren't notified of that either. The map that we have a copy of, and I think your copy is clear, which was submitted with this revised application, it shows what's been talked about, the three properties to the east. There's also properties owned by Third Pine Floor Partners to the west, which creates these islands. What's not shown clearly here is that there are also alleys that aren't owned by these properties. It's separated. There's at least three alleys, and possibly more. So, it's even worse than this. It's really a lot of fingers in here. It looks like a carved pumpkin with the teeth out of it, and that's a classic case of spot zoning. There's no question about it. You can't rezone property that has islands or that has spaces in between. That's just classic spot zoning, any definition of spot zoning, treating a property different than surrounding property for no apparent reason, because it's owned by somebody else, or you couldn't reach them, that's not a reason to treat it differently. So, spot zoning, it clearly should not be adopted.

Also, it's not consistent with the Comprehensive Plan because these properties towards the east that are south of the first lot deep, they're shown as Commercial/Light Industrial under the new Comprehensive Plan, so that's not consistent with the Comprehensive Plan, so also it's another reason this amendment, as submitted, just can't possibly be adopted. It's just not good planning. It's not legal. It's not valid.

We simply would ask that this should not be adopted in its current form. Our client would like to work with the Township in public workshops and meetings next year, as soon as we understand the first of the year this process is to begin on the new Zoning Ordinance, and we would like to find a zoning district that's compatible for our client's property and our neighbors; the neighbors in front of us. It may be the same zoning district. It may become Neighborhood Commercial, but we want to see what that zoning district is. It may be a

residential district, but we want to see what that district is. We don't know what these districts are going to call for in the new Ordinance. We'd like to work with the Township. We'd like to do this in a cooperative fashion. Our clients don't want to be in a battle again. Our clients are two individuals who bought Industrial Zone property and came in with a use that was called for in that district. Never wanted to have the long battle that we had, and at this point they want to find something that the Township will accept and will adopt. We realize that's going to require that the interests of the residential properties in front. Our clients have bought the properties that people are willing to sell. They're still willing to buy properties, but they're not...we're not going to submit an application next month, or the next couple of months and get into another battle again with the Township. We just don't want that.

So we don't want to see...there's no purpose, there's no reason to adopt something that's clearly illegal and bad planning, so we think you clearly should recommend against this for all the legal planning reasons; the spot zoning. It doesn't follow the Comprehensive Plan and we would ask that the process in the new Ordinance, that if the...we understand proposals are at the Township. The Board has to put the funds in the budget for next year and has to award it to somebody by the end of the year, hopefully. And as that process begins, we'd like to participate. Our clients want to participate in those public meetings and find a zoning district that will work in that area of the Township.

Clearly this was added in at the last minute. This is not in the text, this location, of the Comprehensive Plan. We know it was added in at the eleventh hour. So, there is appropriate zoning in that area. Maybe it's something different. Maybe this new Commercial/Light Industrial district will work for both parties. We don't know what that's going to be. We don't know what use is going to be in there. Maybe a residential district works. Our clients are going to be open to anything that works for them and the properties that people don't want to sell to them. They own the property. They have owned it for two years now. They want to use and develop it. It's probably going to be a different use than we submitted, most likely, because we're not going to go to battle like that again. So all we ask that there's no reason to rush into something that is not valid or proper or legal and let's start the process to work out something that works for everybody. That's what they would like.

Mr. Kelso asked if anyone else wished to speak before moving on. No other comments were offered.

Mr. Kelso asked Mr. Brehm if he had any comments. Mr. Brehm indicated that he had a couple of questions. Mr. Brehm pointed out that the Ordinance requires a legal description for the property to be rezoned. He referred to the exhibit in the packet in front of him, and asked Solicitor Allshouse if what the Applicants have submitted rises to the level of adequately describing the property. Mr. Allshouse responded:

They gave us the deeds for every property. We have legal descriptions of every property to be rezoned. The way they've structured it is each individual owner has joined in a petition that came before us, but they are each asking for their own property to be rezoned. So, that's adequate for the Ordinance.

Mr. Brehm then gave what he described as his standard comment, which is that when a property is rezoned, everything that is permitted in that zone is what now becomes permitted. He noted that other issues come in to play. Mr. Brehm added, "That's for you guys to sort out." He also pointed out that there is no use proposed with this rezoning like there normally is, so there isn't much discussion about what conflicts could occur there. He suggested that this be kept in mind as this is being contemplated.

Mr. Brehm then directed a question toward the Applicants. He referred to area and bulk standards in the Neighborhood Commercial requirements of sewer and water, 15,000 square feet, and 100-foot wide lots. He asked Mr. Wolf if he knew how many of the lots would comply individually with the area and bulk standards. Mr. Wolf stated that he wasn't 100% certain, but that he believed that the vast majority, if not all of the lots comply with the 100-foot requirement. Referring to the water requirement, he said he wasn't certain of but that he believed that some of the discussion in the adoption of the Comp Plan was that that requirement would be eliminated as it related to the existing residential. Mr. Brehm asked if they were all on public water and sewer. Mr. Wolf indicated that they are. Then he stated that one is on a well and is not served by public water. He identified this as the Cloyd Myers property at 1116 Karen Drive

Mr. Brehm asked how many existing commercial uses are on these properties now. Mr. Wolf stated that the vast majority of the properties are 100% devoted to residential use. He noted that there are two that have a business operating out of the home.

Mr. Brehm spoke at this point:

That's really all I had. I guess my point about the area and bulk is, and it's zoned Industrial now. Being zoned Industrial now really doesn't...unless the properties are acquired by a larger property, they don't really lend themselves to be developed that way, and I guess if you're going to make a change, you know, you should look at that again and say are you really accomplishing anything. If you can't lump these together again, some of these may not be suitable for even these uses at this requirement.

Mr. Kelso asked Mr. Bennett for any County comments. Mr. Bennett responded to Mr. Kelso:

My comments are basically unofficial because our committee has to meet with it, and then our planning commission meets. Our committee meets the 16th at our office, and our planning commission meets the 19th of this month. That's at 7:30 in the morning. We invite everybody, if you want to get up that early and come. That's when we're meeting on it. Like I said, so these are unofficial comments. I have five. These are what came off the top of my mind. There will probably be more comments once our committee and Planning Commission do have a chance to review it.

Like I said, everybody knows that the Comp Plan has this for Neighborhood Commercial and Light Industrial. The second comment is that our County Comprehensive Plan has it for industrial use. One thing I did find when I was doing a little research on this, the Land Use and Traffic Impact Study of Interstate 81 for Exit 44 actually recommends the tract of land behind everybody's properties as Open Space/Conservation. We've got three different things thrown at us as like what recommendations are, and that's for the ones south of your guys' properties. The one just says it's developed, so it doesn't really say what for, what type of development.

Another comment that came off the top of my mind for this was that any future proposed use for the tract of land south of the adjacent residential uses; they should be required to supply adequate buffering, so if it is something for Light Industrial/Commercial, it should have some kind of adequate buffering for the residential uses there. The last comment I came up with is lighting for any future development on the tract of land proposed for Commercial/Light Industrial should be minimized and oriented away from the adjacent residential uses, and if that's not in the Zoning Ordinance now, when they do the re-amendment, that's something they might want to look into, so that any noncommercial use does not have lights blasting into residential uses properties.

We're working on our comp plan right now, and I got the job of doing the Future Land Use Map right now, and actually when our comp plan committee meets in a few weeks, we have some areas circled for what we'd like to see with that property. This is one that we did highlight. That's something to take into consideration. The County Comp Plan might be changing come next year from industrial to whatever they find it out to be. That's my comments for now.

Mr. Kelso asked for any questions from the Commission. Mr. Mitchell directed a question to Mr. Allshouse. He referred to the issue before the Board that was voted on and ended 2-2, and is subject to appeal. Mr. Mitchell asked Mr. Allshouse if there is a need to wait until the appeal process has exhausted itself. Mr. Allshouse responded that that has nothing to do with this application. He pointed out that an appeal may or may not come. He stated that the Planning Commission is charged with making a recommendation on this application as it has been presented. Mr. Allshouse added that the recommendation has to come before December 3rd. Mr. Kelso said he felt that he would be able to make a recommendation on it tonight. Mr. Kelso spoke at this point:

The Comp Plan; we got the things back. We're going to be discussing it next Thursday. There's money already been allowed in the budget to do it, and my guess is we're going to start it pretty quick. To me it makes a whole lot more sense to leave that process carry through because that way you're going to be looking at the whole Township, all the land up there in that area, and do everything at once. I'm afraid if we

would just do this, we would have all kind of problems associated, unless everybody up there from Neville Road back to the railroad tracks would come in and say I want this zoned a certain way, and everybody agreed to it, but not everybody agrees to it right now. I don't think we can just change that strip of land unless everybody in that whole area, including your neighbors, basically agree to that, unless we go through the changing the Ordinance, and so on. That's my feeling of it, and hopefully we can get that started very soon.

Mr. Wolf responded to Mr. Kelso:

I suppose one of the ways that issue could be dealt with, and I appreciate Mr. Lucas's comment that there isn't going to be a revised application that's going to be submitted to have another battle. The neighborhood just really couldn't take much more of that, but I suppose the other possibility is, it's been held off for quite a while, we could certainly do an extension of the Application to make sure that the rezoning process, or the comprehensive rezoning process begins early in the year. I mean, all the best intentions could be there but if that doesn't come to fruition, then the possibility could still exist of moving forward on this if something else were to come up. These residents have already invested quite a lot money in, particularly in the advertising expense alone we're looking at over \$2500 right now, that they've put into this to get this moving forward, but I think that they would be willing to allow it to be generally extended certainly into January, February, see where we are with the comprehensive rezoning process. It's there and pending so anything else would be subject to it. It would be my understanding, and I don't know if your solicitor feels differently, but if that's the case, then we still have that protection and if somebody came in and offered Mr. Shepley a lot of money to sell all those properties, and was willing to engage in a battle that he might not be willing to do, I don't want to leave my clients unprotected and not have anything else in place that they would just still be industrial and not subject to a pending application.

At this point Mr. Kelso asked Mr. Wolf how he would be leaving them unprotected. Mr. Kelso indicated that he didn't understand that process. Mr. Wolf continued:

If tomorrow somebody offered Mr. Shepley money, and this was not pending, then everything under the new application that came in, if Mr. Shepley sold, or if Mr. Shepley himself brought in a new application, would be subject to the zoning as it is today.

Mr. Kelso acknowledged that that was correct. Mr. Wolf continued:

So, all these properties would be I-2. All the houses would be I-2. There aren't the setbacks. There aren't the buffering requirements. There aren't the screening requirements that hopefully will exist in the new Ordinance, but certainly Neighborhood Commercial is an improvement, particularly when it comes to the amendment that Mr. Bucher suggested and was part of his motion and passed that any Neighborhood Commercial should have a provision that would allow for the continued existence of the residential uses. I think it goes to the intent of the Board in terms of trying to protect the residents that live there, but my fear would be that if somebody came in and said this is what we're going to do, we heard a lot of testimony in the last hearing about what the actual requirements were and whether or not screening and buffering were required and, depending on the use, we would just not want to be in the midst of another battle ourselves to have to convince the Supervisors that something else should be adjacent to these houses. So, rather than waiting for it to come in...that's why we're here. But I believe that because this is pending, that there is a doctrine known as the Pending Ordinance Doctrine, that once a township has advertised its intent to consider and take action on an amendment to a zoning ordinance, or the enactment of a zoning ordinance, within the limitations of the doctrine, any new application would be subject to that pending ordinance, and it prevents applications from coming in when the Township has already taken steps to make changes to its ordinance, so that the applicant could take advantage of the ordinance as it existed previously.

Mr. Kelso pointed out that until the Ordinance is changed, anybody who owns land on that parcel can come in and submit an application. Mr. Wolf acknowledged that this is what he was just addressing. He stated that it could be subject to the new ordinance, if passed. He suggested that Solicitor Allshouse could provide clarification. Mr. Allshouse spoke at this point:

Think of the word "pending" and think of this process. To a limited extent, when we advertise an ordinance and say we are going to consider passing an ordinance, and we notify the public this is what we're thinking

about doing, in this case it's changing zoning. Anybody who comes in is then on notice that we are considering an ordinance to change the zoning. Therefore, their application is subject to that pending ordinance. Now, there's a limitation. We can't extend the thing for years and hold people up, and that's what Mr. Wolf was saying, that the Pending Ordinance Doctrine has a limitation on it, but it's to allow the township to...here's what it prevents, us advertising that we're going to change an ordinance, drafting the ordinance, advertising it, and having someone run in at the last minute and trying to beat our ordinance.

Mr. Kelso suggested that this has happened before. Mr. Allshouse continued:

Hasn't been advertised. Difference between discussing and taking action and advertising for an action meeting, and that's what's existed here. You've advertised the ordinance. It's posted at the County Law Library. It was delivered to Carlisle School District. There's a copy here. It was posted in the paper. You now have an ordinance that everyone's on notice of of what the changes could be. So if John Doe came in with an application involving one of those properties, the Board could reasonably say to John Doe, you understand that we are considering changing the ordinance on this piece of property. If we change the ordinance, tell me how you're going to comply with it. Now, the reason there's a limitation is we can't hold up John Doe for three years while we figure it out. So there's a time limitation. I think that's why Mr. Wolf's indicating that generally until January or February he would continue it, because I think much past that we're running afoul of the intent of the Pending Ordinance Doctrine. So, the answer is what he's saying makes sense for a limited period of time. It's a limited time offer, but it does provide his clients some protection for a limited period. Right or wrong, or whether you want to do, it's all your decision, but generally what he said to you is acceptable legally for a limited period.

Mr. Kelso asked Mr. Allshouse if this request basically stays open until January or February. Mr. Allshouse continued:

Well at some point this board has to make a recommendation and if this request isn't going to change, it doesn't matter when this board makes its recommendation; today, tonight, January or February, because we don't grant the extensions. The Board of Supervisors does, and we don't know what the Board of Supervisors would do. So, I can't in good conscience say necessarily put it on the back burner and just wait and see, because your recommendation is required. So, I don't know the answer to that one. I think that one goes back to the Applicant.

Mr. Kelso pointed out that it is known that the Ordinance is going to be addressed, but that how long it will take is unknown. He said he didn't feel that the zoning can just be changed now and that it should just wait until the Ordinance gets done. Mr. Wolaver asked if there is in fact a statute for the Pending Ordinance Doctrine and what that is. Mr. Allshouse explained that it is case law. Mr. Wolaver asked what the time period is. Mr. Allshouse suggested that Mr. Wolf be asked this since he had it right in front of him. Mr. Allshouse asked Mr. Wolf what the time period limitation is on the Pending Ordinance Doctrine. He clarified the question as to how many months can this be delayed before the Township is running afoul of the Doctrine. Mr. Wolf stated that his recollection was this was not statutory, but was out of case law. Mr. Allshouse said that this was also his recollection and that this could take a little research. Mr. Wolaver asked for an estimate of what this time period could be. Mr. Allshouse responded that his estimate was 90 days. Mr. Kelso pointed out that the new Ordinance being put together will not be ready in 90 days. Mr. Allshouse noted that it will be 2011 until it is actually passed. Mr. Wolf stated that the fact of the matter would be that the comprehensive rezoning would be pending at least for some period. He pointed out that the Board is going to advertise public hearings on its pending ordinance and on taking public input on what the ordinance revisions will be. He said that at that point that will be the pending ordinance that is being worked on. Mr. Allshouse paraphrased Mr. Wolf and asked if what he is trying to do is to bridge the gap between now and when the Board starts advertising public meetings for drafting of their new Zoning Ordinance. Mr. Wolf replied, "If I can't have Plan A which is to get a recommendation and an approval and a rezoning, then yes." Mr. Wolf added that to bridge the gap would be appropriate. Mr. Allshouse spoke further to clarify:

Okay, what he's saying is, I want to cover the gap between now and when the Township advertises that it's going to start having public meetings and begin the actual process of drafting the Ordinance. At that point, our new ordinance...the process of drafting the new Comp Plan, he believes will cover him under the

Pending Ordinance Doctrine. So I think what he's trying to say is he's hoping by January or February the Township is moving ahead and advertising its zoning revisions under its new Comp Plan.

Mr. Wolf spoke again at this point:

If I could just point out one of the things I think is important, there was not a lot of public participation in that Comp Plan committee, in terms of people who were coming out and trying to give input and trying to give feedback, but I know one of the groups of people that were represented out there were my clients. They've been very active in this. Respectfully to Mr. Lucas, I'm not sure where the...I'm not sure that it matters to the Commission but, I'm unaware that any other property other than the house that now belongs to Third Pine Floor but formerly belonged to Jay Snyder and his wife, other than that I don't know what property belongs to Mr. Lucas's client that was included or eliminated. We tried to be very careful that the only properties we included were individuals who we had authorization to proceed on their behalf.

I don't think it would fair to say that on one hand, and in the Conditional Use proceeding, I just want to address the spot zoning issue, that these development alleys were...somehow create fingers of a spot touching Newville Road. Ironically those development alleys that the applicant testified, or his engineer testified, that essentially the parties owned to the center line of it because they had been abandoned because they haven't been used, but the way they were laid out was as residential development alleys so, yes, we have four properties that are not owned by Mr. Shepley that we would like to have included and we will redouble our efforts between now and the time of the hearing to see whether or not that can be accomplished. I don't know whether or not...I don't believe that that would be a substantial change that would require re-advertisement, but if one of your concerns is spot zoning, with the exception of some of the properties at the back that are residentially used, everything that's within the recommended area to change to Neighborhood Commercial, those are the only properties that we really looked at to have them changed to Neighborhood Commercial, and I think that that was reached, and you may have been part of those discussions, that the recommendation that went to the Board of Supervisors as part of the Comp Plan was to protect the existing residences, number one, and to allow a continued development of some sort to the south on the open property now that would be more consistent. I know that my clients have pushed for a Village/Mixed Use to better accommodate the residences. I know that the Comp Plan Steering Committee was reluctant to go to that level of reduced intensity because it wanted to make sure that the tax base is adequately served by the properties.

Just to address one of the things Mr. Bennett noted, that the Exit 44 study, the Exit 12 study, did talk about making sure that there were restrictions in place that until all of the properties were bought out in bulk that this township...and I think that was five years ago, 2003-ish, and there hadn't been action taken on that. I understand your concern and your desire to make sure the comprehensive zoning process goes forward in an orderly fashion, but I think that the point is, if we leave it to those processes to simply happen, I don't want to be back here with these folks in two or three months if the comprehensive rezoning process hasn't started, with a new application that, again, would just be inconsistent with their continued use of their homes, and that's a lot to ask them to say, okay, now you've taken the steps to come out here, to be a part of the comprehensive planning process. They intend to be part of the comprehensive rezoning process. They intend to be part of the Township as a whole, and they've taken part in two years worth of hearings where they've basically said what's proposed for next to us? We can't live next to that. I don't...if not now, when would be an appropriate time? Because if something else comes in and we have to wait for two years, I don't think that anybody would be able to look these folks in the eye and say well, you didn't do all you could have. It just wouldn't be fair to them.

So, buying properties or not doesn't address the issue of whether or not the potential for something to come in that would be more intense as the zoning exists today, and we have to deal with the zoning as it exists today. That's the fear that my clients have and they're asking that this commission simply allow the recommendation to go forward in a positive light to bring about what the comp plan envisions anyway. With some additional properties added to it, I noted that Mr. Lucas is correct that not every property that we have sought rezoning for was included in that area, but it's pretty close, and some of the other properties that are listed to be light industrial and commercial in that new zone, I believe the Westminster Manor trailer park sits on right now. I was trying to compare those maps, but hopefully that addresses some of those concerns

Mr. Kelso mentioned that he was as confused as ever now. Mr. Mitchell referred to the properties that are not part of the petition and asked what happens with those. He asked if they stay as the I-2 or R-2. He observed that they would actually be, in this scenario, Neighborhood Commercial, R-2, Neighborhood Commercial, right next to it. Solicitor Allshouse explained that the Board has the ability to rezone all of them in a block and even rezone properties that haven't applied, but he noted that this is not what is being presenting. Mr. Wolf spoke again:

The Ordinance is very clear that the Board at any time can take action to rezone other properties that it deems appropriate. I couldn't speak on behalf of those other property owners so I couldn't present you a petition that way. The Board could say this looks like a good idea. Let's fill in the gaps. Let's do the rest of it, and that's in line with our Comp Plan, and I think that that would be a completely legitimate and appropriate use of its legislative authority.

Mr. Kelso again said he felt that the zoning process needs to take its place. Mr. Allshouse said he wished to address one comment. He spoke as follows. These remarks were directed to Mr. Wolf:

I'm not sure adding other properties doesn't make a substantial change because I'm required to advertise adjacent property owners and now I've got new adjacent property owners. The Ordinance also requires an outline of the property to be rezoned and I've got to advertise for all the public which properties are being rezoned and that would change, so I'm not sure I'm in agreement that that wouldn't be a substantial change that we wouldn't be back to advertising again. I'm not trying to put you into a bigger box but I didn't you want to leave here under that assumption.

Mr. Wolf stated that other than Mr. Shepley's four properties, the only other neighbor that's not already a petitioner is Westminster Cemetery. He added that he could be wrong about that and said that everybody else who would get notice with those properties has already gotten notice. Mr. Wolf indicated that Mr. Hoover wished to speak. The following are Mr. Hoover's remarks:

Mr. Chairman, with all due respect, since 2005 we've had three land use proposals for the property behind us that we've had to defend ourselves against. This neighborhood has spent \$90,000. We've participated in all the public meetings. We've been to the Comp Plan committee. We compromised from residential to what the Comp Plan committee recommended, which was Neighborhood Commercial, and, you know, I think the Township has also spent a pile of money, which is the taxpayers' money. I think \$60,000 is roughly right for the Conditional Use proceedings. After 2005 when they tried to put a train yard back there, there was talk that we should have got on the rezoning then, and we didn't. One time we were dealing with a condominium plan. A couple months later we find out that there is going to be a truck terminal in our back yards. This is the problem at hand here. This needs to be addressed. This cannot happen again. This has happened three times. For a small neighborhood to spend these resources to defend itself, we need protection. We're asking for protection now. The Board has the legal discretion to do this. It's within their jurisdiction to get this done. It's been recommended by the Comp Plan committee. Our neighborhood is simply asking for protection from this township. We need it. We cannot continue to live this way without protection. It needs to be done. Two years is too long. Empty promises from a developer who has shown no good will to this neighborhood is not going to cut it with us. We have been through the ringer up here in more ways than one and three times over, and all we're asking is for this town to please protect us. We need your protection.

Mr. Kelso asked Mr. Hoover, "And that's by rezoning your land?" Mr. Hoover stated that this is what they have compromised and come to agreement with with the Comp Plan meetings. Mr. Kelso asked Mr. Hoover why he doesn't then allow the zoning process to take its place. Mr. Kelso acknowledged that this will take time. Mr. Hoover asked what will protect them in the meanwhile. Mr. Kelso referred to the property values. He pointed out that changing the zoning of Mr. Shepley's land will immediately change the value of that land. Mr. Kelso noted that it is one thing to change the zoning as a "whole chunk." Mr. Hoover stated that this is what he would like to see happen. Mr. Kelso said that this whole area and the whole township will be addressed during the zoning process. Mr. Hoover replied that they will sit for another two years with I-2 zoning and who knows what's going to happen. He stated, "If we're back here again with the same scenario, then I think it's a losing situation for everybody."

Again Mr. Kelso said that if everybody in that whole area agrees, then it's an easy matter. He added that the Township rarely ever changes zoning unless it is part of a comprehensive plan of a study of a whole area. Mr. Hoover said that to get all but three property owners at the east end of the development that they can't get a hold of is "pretty complete." Mr. Kelso pointed out to Mr. Hoover that he would still have industrial zoned land right behind him. Mr. Hoover replied, "We're not asking to have that rezoned." Mr. Kelso responded that he knew that, but said that this will impact what can be done with that industrial zoned land located behind the residences.

At this point Mr. Wolf asked if this was what the comprehensive planning committee already envisioned. Mr. Kelso stated that they envisioned changing the whole thing through public hearings and everything else. He further stated that just taking one piece of it and changing it was a totally different story. Mr. Wolf spoke again:

But my question, Mr. Kelso, is this. What you're suggesting now is that that property owner then and his ability to do with his land as he pleases overshadows the ability of 31 property owners to use their land as they have used it for 50 years, and the problem that I have...I understand your position, but I think that if the comprehensive rezoning process is going on, it affords the...if you're concerned about litigation over a taking, so to speak, because it affects the property behind, you're talking about changing that within a year anyway. Certainly I think that that argument would be kind of a hard sell, especially when you're not talking about and we're not talking about changing that zoning, but certainly anybody who buys property adjacent to residential uses is going to know that either, number one, there are things in place or, number two, things don't always stay exactly as they are, and the case that I referred to earlier actually specifically dealt with the fact that even though you can't necessarily get the most profitable use of the land, as long as there is a still a benefit that you can reap from developing the property, which obviously would still be able to happen, that it's not a de facto taking and it's a valid use of the zoning power.

My problem is this, it's very easy to say let's do the comprehensive rezoning process, and I'm offering a suggestion to bridge that gap and provide protection between now and that period of time, and the Board could certainly undertake to say we think that there's merit to this and we could delay the proceedings part way through and the Board could go through a Board-initiated rezoning of the other residentially used properties that are out there that were not part of this application and we could continue this and reopen both hearings at once and then have a comprehensive rezoning of that entire neighborhood. That would be, in my view, a completely reasonable way to do it and I'm sure that my clients would cooperate to allow that to happen, and then you would have all of them, but the Board can still do it without having...you can have a property owner object to how their property is being rezoned. It doesn't necessarily mean that they're going to win. The Board has the ability to legislate as it sees fit as long as there is a rational basis to support it, and there is plenty of case law that supports that.

My problem is this. If we rely on...and I believe Mr. Lucas offered his comments in good faith tonight that his client doesn't have any intention of coming in with another very intense land use that's going to result in a two year battle, but at the same time if he comes in with a permitted use today, or tomorrow, because, no offense to Mr. Lucas, Mr. Shepley could switch attorneys or come in by himself and bring in an application that he's not bound by what's said tonight, and my clients are left holding the bag. And again, the Township could be in a position to offer them at least some protection, and relying on the comprehensive rezoning process, things could come up that would delay that to the point where it would not have been able to take effect in time to protect them. Literally, somebody could come in with an application tomorrow, and unless this had not been filed, it would be subject just to the I-2 zone, and I know that it was a difficult decision to reach in the Conditional Use. For everybody involved, it was a difficult process, but I for one don't want to be back here for another one, and this was the most effective means to insure that at least something would be done as quickly as possible. And I haven't heard the comment echoed by the other board members and I don't mean to single you out with it, but you've been vocal about waiting for the comprehensive rezoning process, and I'm just concerned that if we ask these people to sit back and await that process without simply continuing their application, that if another application comes in, they will have no protections from that other application. They will have exactly what they had when Mr. Shepley came in 2007, which is industrial and the houses, and that's a pretty tough pill for them to swallow.

Mr. Kelso directed a question to Mr. Allshouse. Mr. Kelso asked what protection the Applicants have, as long as they keep this open for a reasonable amount of time. Mr. Allshouse stated that they have the Pending Ordinance Doctrine. He explained that the pending ordinance is that this has been advertised and the public is on notice that certain listed properties are potentially going to be rezoned. Mr. Wolf spoke again at this point:

Mr. Kelso, there may be one other solution to this and that would be...that's going to ask for Mr. Lucas's and Mr. Shepley's cooperation if we would be able to have a...if we would be able to reach an agreement that would say the property to the south wouldn't be developed, or an application wouldn't be submitted until the comprehensive rezoning process is completed, we'd be able to withdraw our application for rezoning. Because then we'd have an agreement that both sides could rely on.

Mr. Lucas spoke at this point:

I am authorized to speak on behalf of my clients Mr. Shepley and Mr. Van Buskirk. I'm not just here as an attorney. I'm representing them. That issue, I did not discuss that with them this afternoon so I can't just say yes or no because that scenario didn't come up. What Mr. Wolf is suggesting, if he suggests maybe a situation, if he says, okay, let's just continue the hearing from December to the first of April, by then, if the Board authorizes a consultant, picks one this Thursday, puts it in the budget and gets a consultant started by the first of the year, there's going to be public meetings by February or March, and my client intends to be here to participate in those. And I think that would be evidence of what we're trying to do. That's one solution that the Board doesn't have to have the hearing on...they could continue it on November 5th to April, and in that time period the Board can start the process and we can participate in it and we can come up with something.

Our clients don't want to see something rushed into that creates something that we don't know what the new Ordinance is going to call for Commercial/Industrial. We don't know what the new Ordinance calls for Neighborhood Commercial and we'd like to see something that is compatible and maybe the same zoning district for those properties and our property, and that's why we want to get that process going. But what's before you tonight, there's no way you can...I don't think you can recommend approval. It's spot zoning. They're talking about three properties to the east. There's three properties to the west that are still in the middle, that are owned by our clients that's not in there. There's islands. There's fingers. It's spot zoning, any definition of spot zoning, and it shouldn't be adopted. But we can push aside that issue. We don't have to go through a hearing in December, and let's see the process get started and let our clients participate in it. They want to find a use for their property and they realized the use that they proposed, it's going to be a battle with the Township and at this point they don't want to get into another long battle. That's not what they thought they would have at this time.

Mr. Wolf said that he didn't know if he heard a clear answer on that. Mr. Lucas stated that he couldn't give a yes or no answer since the issue had not been discussed with his clients. Mr. Kelso asked about continuing this matter to February or April. Mr. Wolf spoke again:

If there would be an agreement that would be binding on not only the current property owners but on any successors or assigns so that Mr. Shepley and Mr. Van Buskirk don't get offered a lot of money and then decide to sell it in two weeks and then have that agreement be for nothing. And to be clear, what we would be asking for is agreement that obviously wouldn't change the use of any of the different parcels that they own. That would include the residential dwellings and obviously what's the open area in the back. I think my clients would be agreeable. If there was an agreement that we would have that was in place, that was binding, that was enforceable, that we would be willing to continue it out to April. I believe so but I obviously need to check double check with my clients because I represent a lot of them.

There was some discussion about how two proceed. Mr. Allshouse explained that two options have been presented and that they both allow the Commission to continue this matter until the next meeting in December. Mr. Kelso pointed out that there will likely be no meeting in December unless it is needed. Mr. Allshouse suggested that it could be tabled and moved out to a January meeting if Mr. Wolf was willing to "accept the peril." Mr. Allshouse summarized that if this matter is tabled, there are two possibilities of things that have been suggested. These were described by Mr. Allshouse:

- Maybe there's an agreement that can be reached.
- Maybe Mr. Wolf can submit a letter requesting a general continuance until April or May from the December hearing.

Mr. Allshouse explained Mr. Wolf's "peril" that he had previously mentioned. Mr. Allshouse noted that there is currently no meeting with the Commission scheduled for December. Mr. Kelso pointed out that one could be held if it was needed. Mr. Allshouse explained that an answer would be needed to one of those to possibilities. He stated that if neither of those two things happens, the Commission would then be required to come in and have a meeting that they weren't intending to have so that they could get a recommendation to the Board of Supervisors on the Tuesday night before the Board has the hearing. Mr. Allshouse said that from past experience, this would not be a pleasant scenario for the Board of Supervisors since they would not yet have the minutes from the Planning Commission meeting. Mr. Allshouse explained to Mr. Kelso that it was sort of in his court whether he wanted to wait to see if one of those two options pans out and maybe have a meeting that the Commission wasn't planning on having, or do something. Mr. Hoover asked to make one more comment at this point. This is Mr. Hoover's statement:

I would just like to say in response to Mr. Lucas's comment about having a chance to participate. The Comp Plan process took a year. Every meeting was open to the public. It was publically advertised. I don't recall anybody from Mr. Shepley's camp showing up for that to have input on the future land use. We were here. We compromised hard with the board to come to a mutual decision and, you know, I think the time has been spent to show what the future land use is. I think it's just a matter of...if we're at a timing point here, when's the right time to do it. I can understand the debate but, I mean, we spent a lot of time coming up with these zones and I think the future land use is to show that this is Neighborhood Commercial for the houses and a light industrial zone for the other properties. I understand that there's meat and potatoes has to be put into the Ordinance as far as what it's going to allow and what it's not going to allow but, I mean, I think...we've worked hard, I know you guys did anyway. We helped to participate to show this is going to be the future land use at this section of the Township, so I don't think that there was any lack of due process as far as anybody having input into what this should be. If anybody is asking for help at the eleventh hour, it's them by saying, well, we should be allowed to participate in this process.

Mr. Kelso said he thinks they want to participate in the process and put something back there that doesn't impact him (Mr. Hoover) so much. Mr. Hoover replied with, "You know, fool me once, shame on you. Fool me twice, shame on me." He stated that they have seen three "incompatible land uses" and without a "well written commitment from them signed, sealed, and delivered, open promises aren't going to cut it at this point."

Mr. Kelso asked when the Board of Supervisors meeting will be in December. Mr. Allshouse indicated that this would be the 3rd. It was noted that the Commission would have to meet on the 1st, if the meeting was going to be held. Mr. Wolaver spoke at this point:

Well, Mr. Hoover, just to try to understand what you've commented on, I appreciated all the efforts that you have given in terms of supporting the Comprehensive Plan development, but it just seems to me a little different now that you want to get away from that process, saying that you're unwilling to support the Comprehensive Plan revision process through the pending ordinance time period, and yet you made some very good comments about your support of the Comprehensive Plan. So that kind of is two sides to me. I'm not sure what you're supporting. With regards to the...any new application, that seems to be the fear of Mr. Wolf, the concern of all of you.

Mr. Wolaver referred to Mr. Allshouse's addressing of this earlier. He asked Mr. Allshouse if that isn't pretty much a "moot point" if it has to be acted on within the context of the pending ordinance and the outcome of that. Mr. Wolaver clarified that "it" would be a new application for use of the southern property. Mr. Allshouse responded that it does get acted upon in context of the pending ordinance. Mr. Wolaver asked if the fear is founded regarding a new application if that has to come within the context of a new ordinance anyways. Mr. Allshouse stated that the fear is founded, but that there is no pending ordinance for zoning at this point. He explained that the only ordinance pending is their request for a rezone, and that as soon as the Board puts away their request for a rezone, there is nothing pending. He further explained that what Mr. Wolf is trying to

fill is a gap between his request for a rezone and the Board taking action to advertise its pending Zoning Ordinance. He added that this is the gap he is trying to bridge, and that Mr. Wolf does have a founded concern. Mr. Allshouse noted to Mr. Wolaver that what should convince him of this is Mr. Lucas's comments acknowledging them and suggesting taking a general continuance to April. Mr. Allshouse stated:

I mean there's three of us here that agree that it's... whether it's a great concern or not, it's at least an altruistic concern. In other words, we don't know how great a concern or how little a concern it is, but it's technically right.

Mr. Wolf spoke at this point:

You know what, I could actually make this a little easier. If we had an agreement that Third Pine Floor would not attempt to suggest that it was an unreasonable period of time between now and the April meeting that we could continue it because then it would...in terms of the Pending Ordinance Doctrine because that I think would satisfy the worry of whether or not it's a reasonable time period within which the Board has to act, and yet, as long as we don't have a challenge to that, we know any application is going to be subject to what we're asking for.

Mr. Lucas stated that four or five months would be "clearly reasonable with what we're talking about with a new zoning ordinance." Mr. Allshouse asked Mr. Lucas to confirm that he believes that April is a reasonable date. Mr. Lucas stated, "Yes." Mr. Wolf said that his only concern would be that if Third Pine Floor sells the property, then somebody else may take a very different position. Mr. Allshouse responded to Mr. Wolf, "They may, but that's why you're the lawyer and you need to figure out what's reasonable and what's not and make your decisions." Mr. Wolf spoke further:

We'll see whether or not we can come to an agreement with Third Pine Floor, but in the meanwhile I suppose that the Board could have opportunity to discuss the merits otherwise, other than the procedural issues, the merits of changing it to Neighborhood Commercial, I think, could still be at least hashed out a little bit tonight and you could talk about your recommendation, if one was going to be made because it's obviously, it's the Board's decision that is going to ultimately make the difference.

Mr. Kelso stated that the Commission has to make a decision on what has been presented "which has holes in," as he observed. He stated, "I mean, there's no way I can see that we can make a recommendation for approval if we know in the long term that's probably going to happen." Mr. Kelso said that if the Commission had to vote on it, he probably wouldn't vote to approve that plan. He added that he didn't know how anybody else feels about it. Mr. Allshouse noted that if it goes out to April, the Commission may not have to vote, because the Application would be withdrawn since by that time the Township would have advertised its public hearings on its zoning ordinance. Mr. Allshouse stated, "Here's the short clarification. If it's tabled, you may never have to give a recommendation." Mr. Mitchell pointed out that the petition that's pending before the Commission, in any event, does not really address any of the zoning for the property that is currently owned by Third Pine Floor. He added that it is strictly the residential portions to proposed Neighborhood Commercial, but doesn't address anything of the property to the south. Mr. Lucas added that it also doesn't address any of Third Pine Floor's properties that abut on Neville Road, in addition to the three properties to the east that aren't included, and the alleys.

Mr. Kelso stated to Mr. Wolf that it is his choice if he wants the Commission to vote on the Application tonight. Mr. Hoover asked if a brief recess could be taken to discuss this. It was noted that many people in the neighborhood are involved in this.

A recess was taken at 8:30 p.m. Mr. Wolf and the Applicants went into the next room for discussion. The meeting resumed at 8:40 p.m.

Mr. Wolf stated that he had discussed this matter with his clients. He said that they had discussed doing two different things, one of which was the possibility of continuing it to March and seeing where things are in February so that it would be known, and be able to reenlist it at that point, as opposed to going to April.

Mr. Wolf asked Mr. Kelso if he could shed some light on something so that he (Mr. Wolf) could feel "a little more confident." Mr. Wolf asked Mr. Kelso if it was likely that a bid is going to be accepted from one of those individuals this week. Mr. Kelso said that he would probably know Thursday night. Mr. Wolf asked if it was likely that one of those bids was going to be accepted and that they would "hit the ground running" on January 1st, or soon thereafter. Mr. Kelso answered, "I'm hoping so." Mr. Wolf stated that the idea would be that if it was March, they would hopefully be able to get in a Planning Commission meeting before a March date or an April date. Mr. Wolf added that with April being six months away, his concern is that if Third Pine Floor was to sell, he wouldn't want somebody else to say that they did not agree to that.

Mr. Wolf then stated that he and his clients did not have a problem with the Planning Commission tabling this tonight. He added that he intends to submit a letter to the Board of Supervisors that would extend the time period to their March action meeting. Mr. Wolf said he was assuming that this would be acceptable to the Commission members to address their concerns over the comprehensive rezoning process.

Chairman Kelso asked for a motion.

Pat McDowell moved to table this matter. Clifford Wolaver seconded. All votes were in favor, and the motion carried.

Adjournment

Chairman Kelso asked for any further business. None was offered.

With no further business before the Commission at this time, Ronald Anderson made a motion to adjourn. This was seconded by Pat McDowell, and the meeting adjourned at 8:44 p.m.

Respectfully Submitted,

Pat McDowell
Secretary
North Middleton Township
Planning Commission

Michael S. Medvid
Recording Secretary