

In compliance with the Open Public Meetings Act of the State of New Jersey adequate notice of this meeting has been mailed to The Daily Record and posted at the municipal building.

ROLL CALL:

Members Present: Joe Fleischner, Brian Schaechter, Nelson Russell, Steve Bedell, Jim Staszak, David Koptyra, Howie Weiss

Members Excused: Dan Nelsen, Paul Ottavinia

Members Absent: Pat Walsh

Professionals Attending: Chuck McGroarty, Planning Consultant, Gene Buczynski, P.E., Edward Buzak, Esq., Catherine Natafalusy, Planning Administrator

Professionals Excused: Tiena Cofoni, Esq.

APPROVAL OF RESOLUTIONS

Highlands Regional Preservation Area Master Plan

Motion: Jim Staszak
 Second: Steve Bedell

Roll Call:

Brian Schaechter - yes
 Nelson Russell - yes
 Steve Bedell - yes
 Jim Staszak - yes
 David Koptyra - yes
 Howie Weiss - yes

Resolution #PB 12-18 – 700 Bartley Chester Road LLC – (Block 6800, Lot 10)

Motion: Joe Fleischner
 Second: Brian Schaechter

Roll Call:

Joe Fleischner - yes
 Brian Schaechter - yes
 Nelson Russell - yes
 Steve Bedell - yes
 David Koptyra - yes
 Howie Weiss - yes

Resolution #PB 12-13 – Idelphonse Tchaikpe – (Block 8430, Lot 67)

MR. WEISS: Our third resolution this evening is PB 12-13 for Mr. Tchaikpe. Gentlemen this one is a little bit different than normal and I want to take a few minutes to explain where we are just to bring everyone up to speed and then we'll do a couple of things differently. As you know and as we just saw gentlemen normally we address resolutions as they come up. What happens is our attorney, I don't have to tell you the process, memorializes a hearing the resolution becomes an official record of what happened we have an opportunity to compare our notes and we get the resolution in advance that resolution is reviewed by us, discussed here in public and voted upon. Again we have embodied our attorney to handle this on our behalf and again the resolution memorializes the facts and it summarizes the testimony that was given to us during the hearing. I assume that each one of you has reviewed the resolutions in advance, compared them to your notes and is in a position to approve it, not approve it and discuss it. Normally the conclusion of a hearing is the conclusion of testimony and therefore when it comes time for resolution we don't open them to the public that's been the normal course of action. In this case there's been some communication back and forth. If you recall Mr. Hahn is the attorney for the application that we're discussing felt that the resolution didn't properly represent the hearing and had issues. Mr. Hahn felt that he would draft a resolution and present it for us to review and based on our Counsel advice I did not allow Mr. Hahn's resolution to be present and I refuse to allow the Planning Board to review his resolution. And again Mr. Hahn doesn't agree with this and he didn't agree with the content of the resolution. Mr. Hahn further requested that we distribute a letter for his explanation I'm assuming I haven't seen the letter but my decision was that the hearing was over and the Board need not hear any further testimony on this application. So with this being said and in the spirit of what we do which is to make sure every applicant is given proper notification, given ample opportunity to state

his case I want to suggest to the Planning Board that I do turn it over to Mr. Hahn to give him ample opportunity to state his case, to explain to us what he did not like about the resolution and to explain to us what he feels is inaccurate in Mr. Buzak's resolution. And I do that Mr. Hahn with certain conditions. I would like you to stay focused, I happen to have a copy of your proposed resolution and I've compared it to Mr. Buzak's resolution. I see that there are some differences I want to allow you to explain to us why you feel that the resolution that Mr. Buzak presented us is inaccurate. I don't want personal attacks I know over the past couple of hearings there's been legal issues that have been above and beyond the scope of the Planning Board between you and Mr. Buzak and I don't want that. I need you to stay to the issues and if it gets . . . if we stray from those issues I'm going to close it to the public. If there's anything that we can't agree upon and if it gets out of order I'm going to close the opportunity. So with that being said Mr. Hahn I will ask you to come up please be efficient and please explain your position to the Planning Board I want to give you an opportunity. But before you do that I think Mr. Buzak has some other legal Counsel for us.

MR. BUZAK: I would just like the Board to understand what this kind of memorializing resolution is and what a resolution of the Planning Board is. In the end that resolution represents what your action is. So for example you will see resolutions and have seen resolutions in the past where a Board member or it has not been stated at the meeting a reason to do "X", "Y" or "Z" but when you get the resolution there will be a series of reasons that are set forth there. There will be conditions that you have not discussed at the meeting that will be in the resolution. The courts have determined that all of that is fine to have in a resolution provided that when the Board adopts the resolution they see that they recognize that and they adopt that position by adopting the resolution. And the reality is as you know is you're at these meetings twice a month that the Board takes action we try to summarize what the basis is, there's comments that are made by the Board but in the end you delegate that to us to come up with the resolution. It's your job to make sure that that resolution reflects what you intend to do, not necessarily what you intended to do at the meeting because there can be (inaudible). Not that if you deny an approval the resolution should grant the approval but in terms of conditions, in terms of statements, in terms of explanations all of those are items that you need to carefully review in a resolution and if you agree with those then you adopt a resolution. The fact that you may not have said that at the last meeting is irrelevant. This is not, it's not intended to be a transcript of what the Board said because as you know we say a number of things and discuss a number of issues. So I want that to be clear so that when Mr. Hahn makes his presentation and tells you whatever he's going to tell you about what you did I respect the fact that I will assume he is going to accurately represent what you did at the last meeting. My point here is that that does not mean to say that the resolution has to say that, it can say anything else so long as tonight you're comfortable with what is being said in the resolution. That becomes your official action and that is the document that serves for the basis for any appeal of any decision that's made by the Board.

MR. BEDELL: Mr. Chairman?

MR. WEISS: Go ahead.

MR. BEDELL: After a Counsel's remarks if we don't I guess come to an agreement we can . . . and we're still happy with the resolution that we have here we can still vote on that? Or can Counsel say you know what we're not happy we want to start all over. How does . . . you know I'm not familiar with that part of the law so . . .

MR. BUZAK: Well we've taken action, this resolution is intended to reflect that action and you will take that tonight.

MR. BEDELL: Okay, okay.

MR. BUZAK: And this memorializes that which you are doing and this becomes it. So if Counsel is upset with the resolution or doesn't reflect think it reflects what happened or what should happen and the Board thinks it should it does reflect it or it does set forth what you want to do then you adopt a resolution. And then it's up to the applicant to take whatever next steps he may be willing to take.

MR. BEDELL: I gotcha, all right thank you.

MR. WEISS: Okay any other questions? So with that I'd like to turn over to Mr. Hahn to give us an explanation as to where he objects and what he thought wasn't accurate with the resolution that Mr. Buzak prepared.

MR. HAHN: Thank you Mr. Weiss I appreciate it. Members of the Board as you know Kevin Hahn of Courter, Kobert and Cohen on behalf of the applicant. And I will try to be very brief but I would request the opportunity if I could Mr. Weiss and especially to the members of the Board eligible to vote I would like to be able to distribute my proposed alternative resolution so they can at least have it side by side and look at . . . that I have not I don't think changed all that much from what Mr. Buzak had proposed. I think if they have it next to them I think it would be fair that they can compare the two documents.

MR. WEISS: And Mr. Hahn we've addressed that already. Counsel advice is that we don't have to accept it, we don't . . .

MR. HAHN: I understand they don't have to accept it but I'm saying should they have a right to look at it.

MR. WEISS: And therefore I think it's your obligation to explain to the Planning Board what the difference is and what you object. I'm not going to allow you to present that to the Planning Board.

MR. HAHN: Okay with all due respect though the eligible members it's really up to them you don't really have any say in the resolution you weren't part of the majority. So I think it's up to those folks whether they want to see it or not. And that's why I'm asking the Board especially the eligible members to vote if they would like to look at it.

MR. WEISS: Mr. Hahn it's my responsibility to keep the order of the meeting.

MR. HAHN: I understand.

MR. WEISS: And therefore my decision is that that resolution that you prepared and with the support of Counsel's advice is not going to be distributed to the Planning Board. So I suggest that you will go forward I will give you ample opportunity to explain and state your case as to what's wrong with Mr. Buzak's resolution.

MR. HAHN: All right so on Monday I ordered a transcript from a transcription service we got a copy of the tape from the meeting. And essentially what's wrong, and its two major points significant points, what's wrong with the resolution is as you know when you heard the matter you heard the matter in your capacity as a Board of Adjustment. Under the statutes the MLUL the Municipal Land Use Law the Board of Adjustment is a creature of the statutes and may only exercise those powers expressly granted to the Board. One of those powers as you know is to hear appeals from decisions of Zoning Officers which was what our appeal was. We appealed the decision of the Zoning Officer and we were seeking a reversal of that decision. NJSA 40:55D-74 in fact gives the Board three options when someone files such an appeal. You can reverse, you can modify, or you can affirm. The Board clearly voted as the transcripts makes clear, the Board clearly voted to reverse the determination of the Zoning Officer. The term reverse and overturn is used several times in the discussion of motion and then when the Chairman recaps after the voting takes place, he recaps the fact that . . . so obviously the Board voted to overturn the Zoning Officers decision and he made that clear. So it was very clear the discussion all night was very clear that there was a simple question in front of you. Was the Zoning Officer correct in what he did or was he not correct in what he did. And there was a lot of discussion about the ramifications of what that might mean in relation to the Building Option Plan if you went one way or the other. And the Board voted and I thought you know went out there and really supported our arguments, the majority of the Board and were courageous in some regards to say we agree with Mr. Hahn the Zoning Officer should not have considered the Building Option Plan when he made his decision on the zoning application and you voted quite clearly to overturn and reverse his decision. The resolution presented to you by Mr. Buzak doesn't use the term reverse or overturn anywhere it's not stated. In fact he doesn't memorialize that decision at all and what he did in my opinion is he changed what the Board did from a reversal to somehow saying that under the unique circumstances of this case that the Zoning Officer even though he was correct in the way he read the Building Option Plan you know when it comes back to him he should have considered it provided however that the Homeowner's Association acts favorably to my clients patio otherwise as I understand it the whole thing is up in smoke. Now this was specifically discussed at the meeting whether or not the Homeowner's Association approval would be subsequently required and we candidly conceded and if you had an opportunity to see my proposed resolution I've left the language in there that we acknowledge yes we do have to make an application to the Homeowner's Association and yes we will do that after you adopt your resolution. But there was a specific discussion during the discussion on the motion as to whether or not what happens if the Homeowner's Association doesn't approve my client's patio. And it was very clearly stated by a Board member unfortunately who was identified, I had a private service who doesn't know

all of your voices prepare this, but it was clearly stated it's not. And Mr. Russell you asked a question, what happens if the Homeowner's Association doesn't approve and somebody said it's not our problem, Ms. Natafalusy then said it's not our problem and I said that's between us and the Homeowner's Association you'll be out of it and everyone agreed and then we went on to vote. So everyone agreed that the Board was not linking their decision to reverse the zoning, and by the way I don't think you can as a matter of law link your decision. There's no provision in the statute that allows you to have a conditional reversal, you voted to reverse his decision conditioned on nothing other than our understanding or your understanding that we acknowledge that we still had to go back to the Homeowner's Association. But I thought it was very clear when we left here if the Homeowner's Association turns my client down that's between us and them and the Board was staying out of it it's not your problem your staying out of it. Well if you read the resolution that Mr. Buzak proposed that resolution now says that the decision of the Board is specifically conditioned on the Homeowner's Association giving that approval and basically as I said before says that if they don't give the approval that this whole thing goes out the door. And legally there's no provision in the MLUL to give such a conditional approval. Now granted there are provisions that say you can condition your approval on other governmental agencies that have to approve something but not on a private Homeowner's Association. That is a private matter between the homeowner and the association and the rules and regulations of the Association that are enforced by the Board of that Association and have nothing to do with this Board with all due respect. So those are our concerns, those are our objections to the formal resolution and that's why we would ask rather than having to come back another night and rather than asking Mr. Buzak to amend or modify what he's prepared at considerable additional expense to my client that you consider what we prepared which is not that unlike what Mr. Buzak has prepared except it makes clear that the decision was to reverse with the acknowledge that the Homeowner's Association approval will be sought. That's what my resolution says thank you very much I appreciate your time.

MR. WEISS: Does anybody have any questions? Any comments? Mr. Buzak?

MR. BUZAK: No I have nothing to . . . I mean if the Board has any questions I'll be happy to answer them.

MR. WEISS: Nothing?

MR. BEDELL: I mean I recall the word reversal you know at the meeting last month you know is it out for a reason or should it not be there in the first place?

MR. BUZAK: It's out because I don't know and the Board doesn't know since the Zoning Officer did not appear and provide any testimony whether there's any other issues outstanding with regard to this zoning permit. The issue that was challenged before this Board was the relationship of the zoning permit to the Homeowner's Association documents and the Building Option Plan. I thought it was appropriate therefore for the Board to give the Zoning Officer the ability to reexamine his denial based upon the fact that he should not be considering the Building Option Plan. And if everything else was all right then I would assume he would issue his permit but I didn't think it was under these circumstances given the fact that the Zoning Officer has dealt with that Building Option Plan before in other matters as has this Board and in fact had an application from the Homeowner's Association to modify the Building Option Plan as most of you will remember that it was appropriate for the Zoning Officer to take that action but to disregard because of the unique circumstances there the Building Option Plan. The Board did not, as far as I understood, the Board did not eliminate the Building Option Plan. The Building Option Plan has been a controlling document in this development from its inception. And we can argue about how it was done, whether it should have been done, but the reality is this Board approved several years ago this development based upon that Building Option Plan. And there were a variety of reasons that were clearly articulated by the Homeowner's Association when they came in for their modification of the Building Option Plan. So that was the reason that the language is as it is. Secondly, with regard to the Homeowner's Association approval the applicant is being somewhat disingenuous here. They're saying it's fine let us go before the Homeowner's Association but we're not willing to affectively adhere to whatever they may say. So we want to have the zoning permit but we don't want to have to comply necessarily with the Homeowner's Association says. I mean obviously if the Homeowner's Association says yeah we approve this there's no issue, on the other hand if the Homeowner's Association says we're not going to approve this and this Board from the outset has relied upon the Building Option Plan and that's where the whole development takes place then it seems to me disingenuous to say well yeah we're going to apply but effectively, and they're not saying this but you know I think the implication is pretty clear that you know if they grant it well that's fine but if they deny it you have to issue the zoning permit anyway. And I don't think we should be adopting a resolution on a development that we did that depends upon the Building Option Plan and controls the unique development that was there and then say well people can ignore it. So that's the reason the resolution

is worded as it is. Now if the Board is uncomfortable with that at this juncture then you should not adopt a resolution, if the Board is of the view that you want to reverse outright the Zoning Officer's determination the Board has a right to do that. If the Board does not want to impose a condition that the developer or the applicant seek and obtain the approval of the Homeowner's Association you have a right to do that. So I'm not suggesting that what Mr. Hahn says is outside of your per view what I'm suggesting is that the resolution as prepared in my view as your Counsel accomplishes the objective that needs to be accomplished and adequate modifies the decision of the Zoning Officer to achieve the results that the applicant is seeking, that is to for the Zoning Officer to ignore that, but yet on the other hand does not disengage the Building Option Plan from this development.

MR. BEDELL: Thank you.

MR. HAHN: Well as I said it's an invalid condition. The condition of the Homeowner's Association approval is not permitted by the statute as I said in the opening. And there's case law, Supreme Court case law you're a creature of the statute you can only exercise those powers that are given to you. There is no power to have a conditional reversal you voted clearly to overturn and reverse the decision and I would point out knowing full well the ramifications of doing so. It was discussed it's in the transcript that everyone understood that by doing this you may be throwing out the Building Option Plan and the applicability of it to this entire community even though we didn't take that position I said I'm only representing Mr. Tchaikpe I don't really frankly really care what the applicability is and in fact I left in my proposed resolution the fact that this has no presidential effect and all of the language that Mr. Buzak had in his I left that in mine because we don't care about that. If that's the position the Board wants to take that's fine but everyone understood that there was a risk in voting to overturn the decision of the Zoning Officer that the ramifications could be that you are undercutting the effectiveness and applicability of the Building Option Plan. And we even went as far as to discuss, and Mr. Buczynski liked my idea that you should refer the matter to the governing body to adopt an ordinance to affectively adopt provisions of the Building Option Plan so it would be enforceable in the future as a Zoning Ordinance. I don't know if you guys recall that discussion, we specifically had that discussion and at the very end of the meeting the Chairman again says well now we have to put this on our list of things to do about sending this to the governing body. I mean that was all discussed so everyone knew after you made the vote that you were going to probably have to address it. The Chairman says I suppose we may want to put somewhere on our list of things to do to see how we could work this Building Option Plan going forward. I don't know how and I don't know where it will ever end but it's on the list. So it was clear everyone knew that this was a risk that was being taken by voting to say that the decision of the Zoning Officer should be reversed yet you did it anyway and you reversed. Yet you did it anyway and you reversed his decision I don't think there's any dispute about that and I won't belabor the point. Thank you for hearing me.

MR. WEISS: Okay so what we have now is we have a resolution that's in front of you from Mr. Buzak. You've heard Mr. Hahn's explanation as to why he feels it's not accurate as to how that hearing went, I suppose Mr. Buzak I guess we can ask if anybody agrees or should I just ask for a motion on the resolution as presented?

MR. BUZAK: Well let me do this. Mr. Hahn rather than taking the resolution that I've prepared and pointing out how it ought to be revised prepared his own. I certainly haven't looked at his resolution despite the fact that he did furnish me with a courtesy copy because we prepare the resolutions for the Board and the findings of facts and the things that are in there you've already looked at you have and I'm not going to start comparing one with the other. Whether its phraseology or whatever, so I will do what Mr. Hahn did not do and that is in Item number 1 of the resolution that's the section that takes the two actions to which Mr. Hahn has objection. First it talks about the fact that the Zoning Officer should . . . and let me just get the language precisely, . . .

MR. WEISS: Mr. Buzak just for the record you're on page five.

MR. BUZAK: Page five yes. It starts, and Number 1 about five lines down where the words FINDINGS OF FACT are in initial caps and it begins with the words Therefore that the application for zoning permit to allow for maintaining an existing patio consisting of 513 square feet should be reevaluated by the Zoning Officer. I suspect that Mr. Hahn would like that language to read and therefore that the decision of the Zoning Officer should be reversed. And I suppose we can leave in the language and the Zoning Officer should take appropriate action without regards to prohibition. The second thing which I suspect he seeks which would have been very easy for him to have simply put in a letter to me is to eliminate the last provision which is the condition that the applicant seek and obtain approval from the Homeowner's Association and substitute some kind of language to the effect that the applicant shall make an application to the Woodfield at Mt. Olive Homeowner's Association. Now

actually his contention is there should be nothing there because we cannot in his view condition anything on requiring an applicant to take some other action that's not related to the municipality. So I suspect I misspoke, his position would be to delete those . . . everything after the word property, in other words provided however all of that would be deleted. That would be the changes that if you agree with Mr. Hahn or not even if you agree with Mr. Hahn I guess the point is and I make this again so that it's clear, if that is what you want to do because you are taking . . . this resolution will be your action, this will be what reflects . . . this will be handed to the Zoning Officer, this will be distributed this is your action. Not the transcript, not the minutes none of that is your action this is your action. If you want to do that that's what we can modify in my resolution to do and then we don't have to worry about anything else that's in that resolution.

MR. HAHN: And in my proposal Mr. Buzak I did leave your paragraph that says the applicant's Counsel, above the NOW, THEREFORE that the applicant's Counsel agreed that the applicant needs to seek the approval of the HOA to complete any legitimatizing of this patio and further agreed that if the HOA declined to approve the same the applicant would have to deal with that issue directly with the HOA. So I did leave that language because I agree with you and I don't want to debate it and Mr. Weiss specifically asked me not to debate it, but I did try to reach out to your attorney just so the record is clear and I did try to have a dialogue with him about trying to correct the resolution and I was told by Mr. Buzak that he had no intention of debating the resolution with me at all, that I could write a letter if I wanted to and I could show up at the meeting and it would be up to the Board whether they want to hear me or not but he refused to discuss it with me. I tried to call him at least on three occasions he never returned my phone calls and I sent him numerous emails and I think Mr. Buzak in fairness would concede that I tried to do that. And I did say that I'd like to compromise before we go to the meeting so we didn't have to hash this out in public. I did try to do that.

MR. BUZAK: And all of that is true but the tone of Mr. Hahn's emails were insulting, unprofessional and I'm simply not going to deal with that. I am . . .

MR. HAHN: Not my first email.

MR. WEISS: Does that make it better Mr. Hahn that it wasn't the first one?

MR. HAHN: Yeah, yeah it does because the first email

MR. WEISS: It's doesn't Mr. Hahn I'd have to agree with our attorney that your letters were extremely unprofessional and I applaud Mr. Buzak for not getting into a contest with you. It had nothing to do with the issues.

MR. HAHN: Fine and you asked us not to denigrate into that, exactly I don't want to bring it up.

MR. WEISS: But you just did. Let's stay focused on the issue, we're getting close Mr. Hahn so don't bring up the fact that Mr. Buzak didn't answer you because your letters, you should be embarrassed by the letters that you wrote. So let's stay focused on the issue.

MR. HAHN: Not the first email that's all I'm saying.

MR. WEISS: Okay so you feel better that the first email wasn't insulting.

MR. HAHN: Yeah because that's the one that he responded to that he had no intention of discussing with me.

MR. WEISS: Mr. Hahn stay focused.

MR. HAHN: I am focused.

MR. WEISS: Okay.

MR. HAHN: And I'm sorry that you got upset or took issue with my emails or letter.

MR. WEISS: It wasn't a letter directed at me I just couldn't believe that an attorney would write a letter like that.

MR. HAHN: Well I have extra copies for the Board that are eligible to vote.

MR. WEISS: It's in your best interest to not share those Mr. Hahn.

MR. HAHN: I brought them with me I don't think they're unprofessional in any way.

MR. WEISS: Mr. Buzak I just want to add that I understand where you're going with the fact that it might be possible to amend some of the language by removing the Homeowner's Association. But if that's the case I look at our . . . on the bottom of page 5, number four I think Mr. Hahn then wanted to totally remove that paragraph and then I don't know if that's okay with you because he further kind of just refers, he doesn't want any referral to the Homeowner's Association. So it wasn't a matter of just your sentence as I review Mr. Hahn's request. So it's a little bit more than that and I did pick up that our original paragraph number four was replaced by Mr. Hahn to be totally removed.

MR. HAHN: Isn't it fair though Mr. Chairman that the members who can vote should be able to look at this too? You got to look at it, you got to compare it. I mean I understand you don't like me and you don't like what I put in my letters and you don't like this application but

MR. WEISS: Mr. Hahn that's not a very fair summary and I think like I said we need to stay focused to the issues.

MR. HAHN: Okay. Well I think in fairness to the Board they're big boys they should have a right to look at it too and make their own decision.

MR. WEISS: The question to the Planning Board is that do we feel, does the Planning Board feel that Mr. Buzak's resolution that he drafted for us as we requested to him does not reflect the hearing. And if the Planning Board feels that Mr. Buzak's resolution does not reflect and memorialize the hearing, if it does not reflect it then we need to make a change in it and if it does reflect the facts of the hearing then we simply make a motion and vote on the resolution as you see fit. Mr. Hahn's made an excellent point I voted against this application I have no say in what happens I turn it to the Planning Board. I ask does anybody feel that the original resolution by Mr. Buzak does not represent the case?

MR. BEDELL: Well there's a couple of slight changes but you know what, I support it 100 percent so that's where I stand. When I say change I mean like minor, maybe the word reversal was taken out but I support Ed 100 percent so that's where I stand.

MR. WEISS: Does anybody else have any comments on that? Ed how would you suggest that proceed?

MR. HAHN: And I would be okay, by the way with the changes that Mr. Buzak suggested. I think if we can get those I would be fine with it.

MR. WEISS: I'm all in favor of working out a compromise Mr. Hahn I just wanted to make sure that Mr. Buzak was aware that there was other language that you wanted too. So again I'm not suggesting that we accept Mr. Hahn's resolution not at the least but if you're going to take language out from one (inaudible) you can take it out from somewhere else.

MR. BUZAK: I understand and I agree with you. I wouldn't suggest that someone make a motion to adopt a resolution that's before you and see how that goes. Now just remember two things, number one only those people who voted in favor of the action are able to vote so the people are listed at the end of the resolution. And secondly a majority of those need to vote in favor of taking it. So even if two, what is there five or six?

MR. WEISS: We're six.

MR. BUZAK: Six okay so if

MR. WEISS: There's one, two, three, four people that will vote on it.

MRS. NATAFALUSY: Right.

MR. BUZAK: Okay so of those if you have two who want to change and two who do not want to change then the resolution needs to get modified in some way in order to get us forward. If it's a

three to one vote in favor of docking this resolution despite the fact that one member is not comfortable with it the resolution will still pass.

MR. BEDELL: So I'll make a motion we accept resolution PB 12-13 Idelphonse Tchaikpe.

MR. HAHN: Now was that with slight modifications or with no modifications?

MR. WEISS: I believe it was with no modifications.

MR. BEDELL: As it reads.

MR. WEISS: As it reads by Mr. Buzak. Mr. Bedell as it reads as presented?

MR. BEDELL: Yes.

MR. WEISS: Okay. Second?

MR. SCHAECHTER: I'll second.

MR. WEISS: Any conversation? Catherine roll call?

MRS. NATAFALUSY: Brian Schaechter - yes
 Nelson Russell - no
 Steve Bedell - yes
 David Koptyra - yes

MRS. NATAFALUSY: Okay so we just adopted this resolution.

MR. WEISS: Correct.

MR. HAHN: Thank you for your time.

COMMITTEE REPORTS

MR. WEISS: The next item on our agenda this evening are committee reports. Brian do you have anything from the Mayor?

MR. SCHAECHTER: The Mayor is here so I'll turn it over to him.

MR. WEISS: Okay Mayor do you have anything you'd like to report to the Planning Board?

MAYOR GREENBAUM: Thank you, Robert Greenbaum Mayor of Mount Olive Township. Since I'm here this evening I will give a very brief Mayor's report. We've been very active in town in terms of pursuing different opportunities, economic opportunities. I expect and am hopeful that we will be seeing a major application coming out of the Flanders area very shortly. Still working on various potential matters in the Trade Zone, the North side of the Trade Zone which I'm hopeful will be coming to this Board in the very near future. I'm obviously not at liberty to discuss the specifics. There are also other properties in the township which are either looking to expand or looking to have new tenants. I can tell you that Silver Spring Farms has had various inquiries, different types of businesses that might want to locate to that building which make me very happy because obviously that building and property are in the unique position as they're not particularly located in the economic zones like Route 206 or Route 46. So we've been working very hard through the Economic Development Committee to pursue the various options to increase revenues and to make Mt. Olive a better place to live. If anyone wants to speak to me individually about what's going on on any particular property then please don't hesitate to get in touch with me I'm more than happy to speak one on one with anybody as to what I know and what I'm free to talk about.

MR. WEISS: Mayor do you have any update for us on the old A&P?

MAYOR GREENBAUM: Unfortunately that piece of litigation that property is tied up in litigation. The last I had heard was that Weiss Markets had every intent on coming into that property. I don't believe that that's changed at all. As you know that property is currently in receivership and the property owner . . . it's been up for Sheriff Sale on at least three or four if not more occasions and the property owner which is Armstrong Capital has continually blocked the Sheriff's Sale through whatever legal maneuvers

are available to them. The unfortunate thing for Mount Olive and for those commercial entities that are in that shopping center currently is that the anchor store being vacant creates an incredible economic hardship for the remaining stores which I know are holding on to the point where if that situation doesn't resolve soon we're going to see some other vacancies in that shopping center. There's very little that the township can do at this point to move it forward and you know I think Weiss would be a great addition to Mount Olive. We will get other supermarkets who might have had an interest and nobody expressed an interest in that particular shopping center. Unfortunately Flanders is considered a tweener in terms of its demographics, between Chester and between ITC which we've been told doesn't make it an incredibly attractive location although I think everyone that lives in that area would recognize that ultimately if there was a store that went in there it would draw from Chester and from Long Valley and from Budd Lake and points west, north, south and east. So I don't believe that it's not a viable piece of property I think it's just you know in these tough economic times when these major tenants have basically the pick of the litter as to here they want to open up new stores. They'd rather go some place where there's greater population and more surety in terms of success. So we'll continue to work at it and if I do have any additional information on that particular piece of property I'll make sure that Brian is aware of it and can report at the next Planning Board meeting.

MR. WEISS: Thank you Mayor. Any questions for the Mayor while he is here? Pat Walsh is not here so there will be no Council report. Environmental Commission, Nelson?

MR. RUSSELL: Nothing of significance.

MR. WEISS: Okay Ordinance Committee? Nothing. Certainly nothing from the Street Naming Committee. Open Space Pat is not here. Any other committee reports, any other issues, Ed any legal updates for us?

MR. BUZAK: Only that you know that there's been a challenge to the COAH regulations that have been outstanding for some time. The COAH regulations were declared invalid back in 2010. There's a matter pending before the Supreme Court and we finally got an oral argument date of November 7th, a couple of weeks from now, where hopefully shortly thereafter or some time thereafter anyway the Supreme Court will make a determination on the COAH regulations and give municipalities and the State some direction on where we should go. This has been in flux for several years now and it's been a problem for both the municipalities and developers throughout the State and hopefully this will get it back on track one way or the other and people can at least move forward with some certainty as opposed to the uncertainty to which they've been subject for the last several years. That's all Mr. Chairman.

MR. WEISS: Okay thank you Mr. Buzak. Gene anything for us?

MR. BUCZYNSKI: Nothing.

MR. WEISS: Catherine do you have anything from your end of it? I'm going to hold off offering you Chuck because I'm going to turn a discussion matter regarding Ordinance 35-2012 over to you if there's anything you want to discuss with us.

MR. MCGROARTY: Oh I'm sorry yeah just very briefly the ordinance 35-2012 is to modify, we talked about this a little bit last time, it modifies the sign regulations for several zone districts including two that were created within the past year or two. Really what it does is for the active recreation, professional business zone. The active recreation zone is the former swim club tennis club site, the professional business zone which is on the westbound side of Route 46 in the Budd Lake section. The professional business-2 zone which is several properties down by the Pump House a restaurant down on Route 46 again on the westbound side towards Hackettstown, and also the CR-3 zones the commercial/residential-3 zone which is on Bartley-Flanders Road so a small area down the street from Shop Rite where both commercial and residential are permitted. Catherine is reminding me that the CR-3 zone is likewise in Old Flanders by where?

MRS. NATAFALUSY: Main Street and Park Avenue.

MR. MCGROARTY: Thank you. And what this ordinance would do is freestanding signs in those zone districts could have a maximum of 40 square feet and a height limitation which is 8 feet in height. As opposed to the 90 square foot signs and 15 foot height that would be permitted in the commercial zones along the highway. I felt it was important just to make the distinction that some of these zones, signage is really . . . because of the proximity of residential areas it's really in most cases it's not appropriate to have big highway signs. That's really it.

MR. WEISS: And we had no standards on signs prior to this in those new zones correct?

MR. MCGROARTY: No specific ones for those zones they would have just fallen under the general commercial category.

MR. WEISS: And that was really the purpose of this ordinance it was to put standards on those new zones. So I guess . . . we don't need a formal vote to send that back to Council do we?

MR. BUZAK: No Catherine usually sends a letter if the Board has no objection to the ordinance, proposed ordinance she'll send a letter back to the Council.

MRS. NATAFALUSY: I'll send a memo back to the Township Clerk saying that the Board voted favorably to recommend adoption of same.

MR. FLEISCHNER: We usually vote, we've done in the past we've actually done a roll call.

MR. WEISS: Yeah so let's roll call, we're going to Catherine is going to have a roll call. A yes vote says you approve of the ordinance as it's drafted. Any conversation about that? Okay Catherine.

MRS. NATAFALUSY: Joe Fleischner - yes
Brian Schaechter - yes
Nelson Russell - yes
Steve Bedell - yes
Jim Staszak - yes
David Koptyra - yes
Howie Weiss - yes

MR. WEISS: Okay thank you.

DEVELOPMENT MATTERS

APPLICATION #PB 12-22 – GREG & CHRISTINE HELLER

MR. WEISS: Okay let's get into our developmental matters for this evening. The first one is PB 12-22 Greg & Christine Heller looking for a variance for lot coverage.

MRS. NATAFALUSY: I'm sorry Mr. Chairman that matter has been carried. They noticed adjoining property owners and they put a notice in the newspaper however the Daily Record made a mistake and put the wrong date in. So they can't be heard tonight.

MR. WEISS: I was glad of that because I have absolutely nothing in front of me on that application.

MRS. NATAFALUSY: Yes. So we're carrying that matter to November 8.

MR. BUZAK: And there will be no new notice given.

MRS. NATAFALUSY: In the newspaper but not to property owners.

MR. BUZAK: All right so we should announce that tonight.

MRS. NATAFALUSY: Right.

MR. BUZAK: If you can do that Mr. Chairman.

MR. BEDELL: What was that next meeting?

MRS. NATAFALUSY: November 8th.

MR. BEDELL: I won't be here on the 8th.

MRS. NATAFALUSY: Okay.

MR. WEISS: So there will be renote on this application.

MRS. NATAFALUSY: Just on the newspaper.

MR. WEISS: On the newspaper only.

MRS. NATAFALUSY: Right.

MR. BUZAK: So we should announce it anyway.

MR. WEISS: Okay so it will be heard on November 8th.

MRS. NATAFALUSY: Right.

MR. BUZAK: So if anyone is here for application PB 12-22 Greg & Christine Heller you will not receive any individual notice. The hearing has been carried to November 8, 2012 at 7:00 in this same building.

MRS. NATAFALUSY: Okay and the next one would be the same type of situation.

APPLICATION #PB 12-14 – JENNIFER & KEVIN POWERS

MR. WEISS: If anybody is here for PB 12-14 this application will be carried, will be noticed for December 13, 2012.

MRS. NATAFALUSY: What happened was the applicant noticed the newspaper correctly but went door to door and placed a notice in somebody's mailbox, didn't date anything so they are going to renote property owners but the newspaper is okay on this matter.

MR. WEISS: Okay so as long as they're aware of what they have to do. If there's anyone here from the public, again that will be heard here in this room on December 13, 2012.

MR. BUZAK: And that's Jennifer & Kevin Powers, 12 Red Maple Lane.

MRS. NATAFALUSY: And the one issue with that is this application expires at the end of the month so I asked the applicant and he sent me an email earlier today to extend the variance hearing through December 15, 2012.

MR. WEISS: That shouldn't be a problem.

MRS. NATAFALUSY: It's been on a while they were supposed to be heard like two months ago and they didn't notice.

MR. WEISS: I remember this.

MRS. NATAFALUSY: Right they had problems with notice a couple of times.

MR. WEISS: Okay.

EXTENSION REQUEST

APPLICATION #PB 99-31 – ARD MOUNT OLIVE ASSOCIATES, L.P.

MR. WEISS: Well we have then an extension request which is PB 99-31 ARD Mount Olive Associates, L.P. preliminary approval for Phase II at Morris Chase, Block 4400, Lot 79 and they're looking for a three year extension request. Gentlemen good evening nice to see you again.

MR. HOFF: Good evening nice to be back. Mr. Chairman, members of the Board Richard Hoff of the law firm Bisgaier Hoff here on behalf of ARD Mount Olive Associates. I have here with me tonight Mr. Greg Law on behalf of the applicant. And before we get started I would like to hand out a couple of exhibits which always help with this particular project.

MR. BUZAK: Do you have enough copies for everyone?

MR. WEISS: Mr. Hoff you said this is what you're handing out we're going to call A-1?

MR. HOFF: A-1 comes first it's the one with more colors; A-2 is the one with less colors.

MR. WEISS: And they're location maps.

MR. HOFF: Correct. And we have extras here if members in the audience want to take a look and follow along as well.

MR. WEISS: So Catherine we're going to call A-1 the more colored location map and A-2 less colors.

MR. BUZAK: And what just is going down is A-1 the one that you first have the more colorful one and here comes A-2.

MR. HOFF: All right as I know this Board is certainly aware there is a long history associated with Morris Chase. We are here on behalf of Phase II. We're not going to go into all of the history relative to all of the approvals but suffice it to say the project was first approved in 1989. Following the original approval there was certain minor changes as a result of a settlement with DEP changed the project size to its current 413 lots. That settlement resulted in the project being cut into two phases. Phase I as this Board knows is what's currently under construction by Toll Brothers it consists of 276 total lots. We are Phase II which is the balance the 137 lots, 74 of which . . . well I'll get to that in a minute. We had approvals extended on preliminary through a period of 2009. As that approval for preliminary for Phase II came to a conclusion we applied for an extension. During that approval extension process we discovered that during the Toll Brothers subdivision process portions of what was Phase II were actually recorded and now represent final approved lots in Phase II as well as remaining preliminary lots in Phase II. So as the Board may recall Mr. Buzak had the unenviable task of doing certain resolutions to memorialize the fact that Phase II now consists of some lots that are final and existing platted lots, they are noted on A-1 as the we'll call them the dark blue lots. There were 74 blue lots that are subject to final approval, 8 of those lots were conveyed to Toll Brothers, they're referred to in the resolution I believe had been referred to as Toll as buffer lots they are depicted in the red color on A-1 and Toll Brothers owns them subject to the same restrictions that apply to Phase II as the Board is aware. There are cross hatchings over the plats there are certain conditions that need to be met before any building permits could possibly be pulled for anything relative to these final lots. But they remain final. So Toll Brothers owns the red ones so our application tonight for extension of those final approved lots, the dark blue ones has 66 total lots. There are also lots in Phase II that are subject to preliminary they weren't recorded during the Toll Brothers process they are still just subject to the original 1989 and then modified in 2000 preliminary approval. They are depicted in the green on A-1 and we're showing you A-2 because A-2 breaks up those preliminary lots on the assumption that if someday they were developed you would see that they would yield 63 total lots and the layout of those 63 lots are depicted in A-2.

MR. FLEISCHNER: Can I ask a question please?

MR. HOFF: Sure.

MR. FLEISCHNER: Are those the lots that would only exist if the wetlands were dried up?

MR. HOFF: No the wetlands are not area specific or phase specific. There are wetlands restrictions that apply to the final lots as well. You'll note if you go down to Morris County and on the final plats some of the dark blue lots are actually cross hatched and there's a note on those plats that indicates that they're subject to wetlands approvals, cannot be developed without subsequent approvals from DEP relative to wetlands.

MR. FLEISCHNER: My understanding also was that those lots would never be developed if . . . those lots would be developed if the building in Phase I dried up those lots and therefore, that's what the language was at the time.

MR. HOFF: I don't have the direct language in front of me I do know that those lots, either the dark blue or the green still need an LOI. The DEP still needs to approve that they are no longer wet. That goes all the way back to the Settlement Agreement with DEP back in 2000. We're cognizant of the fact that there are additional approvals for the blue and the green that would need to be acquired before we can walk in and seek a building permit.

MR. FLEISCHNER: But my concern is if right now that so called lot is wet you can't build on it so in essence it is not a lot. So when you show it on here that's great but how do we know that lot will ever dry up?

MR. HOFF: We don't but we do know it is a lot.

MR. BEDELL: It may not be a buildable lot.

MR. HOFF: Correct it is a lot and we get tax bills for it it's an existing lot. You're correct I can't walk in and say to the Building Inspector I'd like a building permit because of all of the restrictions relative to the project but . . .

MR. FLEISCHNER: I mean you could it doesn't mean you'd get it but you could.

MR. HOFF: It is allot, anyway we could apply we wouldn't get it but it is allot and all of those blue ones and the red are lots. So that's why when you see the . . . I didn't, usually when I do an application I list the lot and blocks that I'm seeking the application for I'm not doing that tonight because there's 130 of them so I spared you that. But I wanted to make clear in our letter request two different extensions and the reason being is that we now in Phase II lots that are subject to preliminary approval, lots that are subject to final approval.

MR. MCGROARTY: Mr. Hoff?

MR. HOFF: Yes.

MR. MCGROARTY: What was the color for the 66 lots Phase II on A-1?

MR. HOFF: Dark blue, well blue.

MR. MCGROARTY: Dark blue?

MR. HOFF: The aqua blue are . . . what are they Phase I construction lots?

MR. LAW: Yeah.

MR. WEISS: Mr. Law you can certainly testify we need to swear you in first.

(GREGORY LAW SWORN IN FOR THE RECORD)

MR. BUZAK: Please be seated sir and just for the record state your name and address spelling your last name again for the record.

MR. LAW: Okay Gregory Law, I go by Greg, last name (L-A-W) address is Maitland, FL.

MR. BUZAK: That's fine.

MR. LAW: Anyway what is somewhat confusing on this matter has been I know over the last few years is there's a construction Phase I and a construction Phase II and that's kind of what is missed out. There's a sequence of construction and in settling with the DEP the sequence of construction was to do construction Phase I first, construction Phase II which would add a number of lots impacted by wetlands as a result of clarifying the final platting of final plat Phase I. We'll call that in Roman Numerals versus construction phase a number of those lots were final platted but still a part of construction Phase II. Meaning they're not to be constructed until after Phase I is constructed. So if you add 100 lots and 10 are designated to be the last lots to be constructed those are the last lots to be constructed you've got to go through 90 to get to the last 10. I mean it's kind of practical you don't get to the last 10 until you go to the first bunch of them. So that's kind of where we're at in terms of . . . I'm kind of jumping ahead he's about to get into the timing aspect.

MR. HOFF: Yeah I just wanted to give the background on this obviously it's a little bit confusing. The basis for the extension tonight is three years. Mr. Law has done some investigation relative to Toll pace of sales and that's really where we get the three year from. As Mr. Law just indicated construction on Phase II follows Phase I so we are in the pipe line for when Toll is coming to

the end there is shared infrastructure, there's shared things with this job. Phase I needs to be done, Mr. Law have you had an opportunity to look at the current pace of Phase I?

MR. LAW: Yes I did and in so doing I did a couple of things. One I did review the minutes of the meetings and Toll has of course been back before you I think at least once I imagine in January I think sometime in March as well which they offered where they were at that point in time. We've also investigated what has been recorded in terms of deeds on property there as well as to date before coming here tonight. I visited the site talked to one of the sales associates there to get some idea. It looks like things had picked up somewhat so that based on their closings to date one would expect that they would do a total between townhouses and single family of 30 homes and townhomes combined this year which is what they did last year. So it didn't change however they say that they've got more sales in the pipeline and that would suggest meaning in the summer things going a little bit better of course they're now building those homes and they're projecting that at the end of the year, especially in the single family but both apparently are doing better in that regard. So you know we might expect to set a 30 maybe 40 or something like that this year. But out of 276 they have somewhere between both the 105 single family and the 171 townhomes. At the current pace of sales we've got somewhere around four to six years. Obviously all of us hope that it's not that long; nobody thought of course a few years ago it would be this slow either. So anyway that's where we're at.

MR. HOFF: And in terms of timing for Phase II what are you there for in terms of when you look to start preceding with the final approvals relative to the pace of the Phase I?

MR. LAW: Somewhere 18 months before they look like they're getting near the end of what they're doing we can get back into it and deal with the real world at that point in time. As we all know regulations change, things change, site conditions change and so forth and that will allow us to get back before DEP and so forth and still have . . . be in a position to precede a pace, I mean nobody is trying to dog this or drag this out.

MR. HOFF: And in terms of being able to proceed as the Board may recall there's still litigation relative to Phase II and the Highlands. That's not yet resolved we have hearing dates scheduled, there have been settlement discussions the contents of which I can't go into but we continue to prosecute that case and obviously the Highlands issue is a threshold one. So it's not as if we are sitting on our laurels on this job, we continue to move it our movement unfortunately has dealt more in the courtroom but it's dependent not only on the courtroom but out in the field and Toll's pace as well. So we're here tonight with our best estimate that in three years we'll do one of two things. We'll be moving forward with an application for final and preliminary and talking about actual construction on Phase I final lots but again it's just a guess. You know the State of New Jersey just extended the Permit Extension Act further in recognition of the fact that the housing market is still not nearly as robust as you know development that we'd like.

MR. WEISS: I don't want to interrupt Mr. Hoff but it sounded like, I was hanging onto the rest of your second half of your sentence, in three years you'll be moving forward and coming in here for

MR. HOFF: We'll be moving forward or we'll be coming back and telling you why we can't move forward.

MR. WEISS: Okay I had missed that "or".

MR. HOFF: Sorry about that.

MR. WEISS: That's fine. Mr. Law I lost track of the numbers, as of right now you have a total of 276 homes to sell in Phase I.

MR. LAW: Okay to be clear I don't have any homes of those 276.

MR. WEISS: I'm sorry about that.

MR. LAW: We actually do own lots in Phase I so this can get a little confusing. The homes for sale now are 105 single family lots or homes and 171 townhomes for a total of 276 and that's what Toll is now offering in constructing.

MR. WEISS: Do you know how many are sold as of right now?

MR. LAW: I don't have the exact precise numbers but it's my understanding . . . I'll just tell you in terms of closings today, that is actually completed sales. So that's not the same thing as stuck in the pipeline but it's probably more relevant to where we are right now I think as opposed to where they are at the end of the year or something like that. They have to date a total of 65 closed as of the 15th of this month Monday, of which 14 are single family homes and 51 are townhomes.

MR. WEISS: When did they start closing do you have the date of the first closing? I'm just trying to think of them . . .

MR. LAW: I actually don't have . . . it was in 2009 at some point. Actually my list here actually says it was 2010. Nine were done in 2010 total for the site townhomes that's not counting for example building the model that they have.

MR. WEISS: I understand so I'm just trying to think of a . . . I understand the economy is hopefully turning in the right direction but in two years it closed on 65 homes with more in the pipeline.

MR. LAW: Yes at this point in time.

MR. HOFF: And Mr. Chairman just for also for the record I sent in a correspondence dated October 17, 2012, in prep for this hearing I happened to be going through the zoning of the township and there's a provision in the zoning that it's Section 400-100.01E. I sent a letter to Catherine and Mr. Buzak has it and it only pertains to the Phase I final lots. The way I read the ordinance is we may not need the extension on those lots simply because they have been recorded, they're existing lots we've requested it just out of an abundance of caution but we would request, and I did speak with Mr. Buzak about it it may be Mr. Semrau that needs to weigh in on this, it may be Mr. Buzak I don't know, but we would request some clarification relative to the need to proceed with additional extensions relative to the finals. Clearly at preliminary we're going to need to extend but because the finals are platted and existing I question whether or not that this section of the ordinance would apply and therefore we would be governed by the regulations in place at the time of approval and . . .

MR. WEISS: I would venture to say that my opinion is not what you're looking for on this legal issue and I would then say Ed are you prepared to answer?

MR. BUZAK: No I'm not.

MR. HOFF: No I'm not expecting an answer from Mr. Buzak tonight I just wanted to note for the record that I submitted that and at some point would like some direction as to whether in fact further extensions would be necessary on those lots.

MR. WEISS: Fair enough.

MR. HOFF: But for tonight we are just seeking an extension for the additional three years we've told you all we know and really we're just, we continue to wait and hopefully things pick up and we're in a position to be in the construction business as opposed to the waiting business.

MR. WEISS: Okay anything else from Mr. Law?

MR. LAW: No thank you.

MR. WEISS: Does anybody have any questions for Mr. Law? Let me open it to the public if there's anybody from the public who has any questions for Mr. Law based on the testimony that he delivered your more than willing to speak. Good evening.

MR. WARE: Good evening my name is William Ware I am an attorney for St. Jude's Church. This probably doesn't have to much to do with what was just put in front of the Board.

MR. WEISS: You might have to speak up a little bit.

MR. WARE: Absolutely.

MR. BUZAK: Can you just state your name and spell it for the record because we couldn't hear up here.

MR. WARE: The name is William Ware (W-A-R-E) and I represent St. Jude's Church. So I'm not really going to address what was just put on the record that doesn't really pertain to the issue that I'm going to address on behalf of my client. They're really rather simple, there is a lot very specifically this is lot on the tax map Lot 42, Block 4400 and that particular block location does not belong to the applicant so there is a title issue. And this title issue, if you look at the map and probably it's not too hard to find it's a little bit on the periphery but . . .

MR. HOFF: Do you want me to give him the designations?

MR. WARE: Well to the extent that you have the map in front of you that was . . .

MR. HOFF: It's Block 4414, Lots 1, 2 & 3 it's the . . . all the way to the left hand side is those three blue lots is what we're talking about.

MR. WEISS: The map gives us the benefit of street names so it's on the corner of Elias and Heaton.

MR. HOFF: Yes.

MR. WEISS: Okay.

MR. WARE: So those three lots are in dispute they were given in a transaction from a woman a Ms. Foley back in 1975 she bequeathed that to the Church and the Church has been in possession. In fact the Church has been paying taxes on that property for that entire time period. So I had a conversation with Counsel tonight and I think we actually both agree that this is a title issue I don't think they dispute necessarily that the property in question belongs to St. Jude. I say that only because I have an email from Mr. Law that was to Counsel before. . . . who is my predecessor who is now handling this matter because of a conflict of interest. And I in that email he pretty much concedes that there is a possessory right to St. Jude. At least that's my interpretation of that particular email. So I don't think this is a matter that needs to be litigated this evening I think that they're going to have to go back to their title insurer and they're going to have to probably bring an action against them. Whatever their prerogative is. But I just wanted to make sure it's on the record that St. Jude does dispute the ownership claim on that particular block and lot and those three properties do in fact belong to St. Jude and that essentially is the claim here.

MR. WEISS: I would imagine Mr. Ware this is hardly the last time this will come up but certainly noted for the record and it's not a minor issue so I'm sure this won't slip through the cracks.

MR. WARE: Right and just you know to flush out the record there has been correspondence between . . . the Counsel before me was Mr. Sposaro from Chester and he had sent correspondence to a Counsel for Mr. Law, Mr. Waznewski so there's been correspondence going back and forth that was in 2011 and now most recently there have been an email reply from Mr. Law. So I know that they're familiar with the issue and I suspect that we'll address it in the future.

MR. WEISS: Duly noted. Mr. Hoff it looks like you had . . .

MR. HOFF: Yeah Mr. Chairman I just want for the record, I'm aware as of a couple of days ago that this issue came up I wasn't copied on those emails it doesn't matter but we don't necessarily . . . we don't acknowledge that we don't own the property. But as Mr. Ware indicated it's a title issue whoever owns the property, owns the property and the title companies will be involved and I don't think Mr. Ware is necessarily taking any position on this application. So that will shake out but it's certainly not something that we believe is for the Board's consideration.

MR. WARE: I don't dispute that I do think that we're very confident in the title so we're going to be proven correct here so it will be all hashed out with the title company.

MR WEISS: I'm sure it will thank you. Anybody else from the public? Sir.

MR. MCGILL: Robert McGill 7 Madison Avenue. Based on sales pace so far 2012 how long would it take you to sell all of your properties?

MR. LAW: You're one of the existing homes on Madison?

MR. MCGILL: Right.

MR. LAW: All right just to be clear are you asking about the homes that are for sale now or are you asking about the homes we're talking about?

MR. MCGILL: No I'm saying based on the pace of sales of Toll Brothers for 2012 so far this year how long will it take you to sell yours?

MR. LAW: We're looking perhaps five or more years out from now and it's like all real estate sales it very much depends on the market. If it happened to be a good market at that point in time the number of homes we have could be sold if we are in (inaudible) all of them which is not known at this point in time. It could take as little as two years, it might take three years if it's a bad market you do the same kind of math here your doing 30 homes a year it could take you know four or five years. I mean it could take a long time it's

MR. MCGILL: What's your relationship to Toll Brothers?

MR. LAW: They were a purchaser of the first phase from us we were no affiliate or anything of that nature with them.

MR. MCGILL: And your houses weren't they the same type of houses? Or are you going to build them yourself or were you going to subcontract to Toll Brothers?

MR. LAW: Honestly we would make that decision sometime in the future. We certainly are capable I've built along with my brother you know many thousands of apartment units as well as condos and homes and so forth. On the other hand I moved to Florida I would think we would be looking for local custom builders to sell the lots to, or if Toll Brothers wanted to buys them we certainly would sell it to them. On the other hand I have read their public offering statement which they indicated at least as the entity of that . . . developer entity that they have of that offering statement it says specifically that they would not develop those.

MR. MCGILL: Okay and they'll be a same like high end home.

MR. LAW: Oh yeah, yes, yes.

MR MCGILL: Okay.

MR. WEISS: Mr. Law thanks for answering those questions I know that wasn't what you testified on but I appreciate that.

MR. LAW: That's no problem I'm glad to help.

MR. WEISS: Please.

MS. ROCK: Good evening ladies and gentlemen I'm a resident of the Morris Chase community my last name is Rock (R-O-C-K).

MR. BUZAK: First name?

MS. ROCK: Noha. So in lines of questioning the establishment I feel that I have more comments than I do have questions if that's allowed.

MR. WEISS: Being that there's no one else from the audience to ask questions I would say that I will open it up for comments so yes you can make some comments if you like.

MS. ROCK: I'm not exactly sure if it leans on the Toll Brothers side for not informing the homeowners of this situation. I myself got the notification from these gentlemen this morning at 8:30 that this is taking place. I purchased a home in a community with the understanding that only 276 were going to get built. Being told as Toll Brothers has written that the other areas are not for development because they are restricted for litigation of wetlands. I am a homeowner that will have wetlands right across from me that has potential of getting built according to this diagram. That puts a (inaudible) for I believe all of Mt. Olive because I can see as of right now that the school is not capable of accommodating this development at this level, the neighboring school I should say. So there are questions in the community and I think that the new homeowners that have recently closed, the 30 odd of this year should have more time to look at this to figure out how this is going to affect their situation

and their decision in purchasing a Toll home. Again there are Homeowner's Associations that do say that the standard of living have to meet certain expectations, the house, the appearance, the landscaping and so on. So a person that lives in New Jersey who wants to better themselves in the community it would be more advisable to purchase or sell to Toll because at least they keep that standard and that HOA the same.

MR. WEISS: Ms. Rock where is your home on the map?

MS. ROCK: It is actually very odd because Lot 5 is written twice, but it is right on the corner of Field Way that little circle down Elias Lot 5.

MR. BUZAK: Lot 5 did you say?

MS. ROCK: Lot 5 on Field Way.

MR. BUZAK: Block 4415.

MR. HOFF: Block 4415, Lot 5.

MS. ROCK: Correct.

MR. WEISS: Okay just so that you know what's presented to us tonight is not new it's not like these gentlemen came like . . . I just want to make you aware that they didn't come and say oh by the way we're going to build this now.

MS. ROCK: Right.

MR. WEISS: Okay so as long as you know that.

MS. ROCK: Right Toll did not inform the purchasers and that's why I'm saying that has nothing to do with these gentlemen it's more on the side of Toll.

MR. WEISS: Mr. Hoff you have a document?

MR. HOFF: Yeah listen I'm not here to represent Toll but I do have a copy of their public offering statement and I can pass it around it details in full and in fact the first sentence talks about that this is Phase I out of a possible 413 single-family homes and townhouses. And within it are the filed maps showing the Phase II lots. Now listen I'm cognizant of the fact that I've gotten one of these before and didn't read it page for page . . .

MR. WEISS: It's an intimidating document we all agree that at the final time of closing there's a thousand documents and that I'm sure was shrunken so the font was . . .

MR. HOFF: Don't disagree with you but it is the public offering statement.

MR. WEISS: I agree you're 100 percent correct Mr. Hoff and I know that's the problem and you know I purchased a home in a Homeowner's Association and I wanted no part of reading that document until my attorney forced me to do so.

MR. FLEISCHNER: Mr. Chairman if I may?

MR. WEISS: Joe?

MR. FLEISCHNER: And unfortunately or fortunately it depends on what side of the coin you're on, the Township did not want this development. The Toll Brothers and the past history and I know there's a gentleman out there who can tell you all of the history went to court and the Judge ruled that Mt. Olive must allow this to be built. So believe me what you just raised many people within this town and within the government of Mt. Olive raised that same issue. But the court said no you have to allow them to build and the court said you must give them extensions. But the court only said you must give them an extension but you don't have to give them two years, three years we can give a one year extension. And in the past with Toll Brothers when they have come in here on numerous occasions we gave them one year extensions. I believe the last time they came we voted to give them a two year extension.

MR. MCGROARTY: Yeah but Mr. Fleischner the Planning Board originally did approve the entire project.

MR. FLEISCHNER: Right and then it sat, it sat for years and the town said wait, wait you know what was done maybe was in error because the town obviously spent money to defend and to go into court and have it overturned. So where you stand it's unfortunate the situation but this gentleman I mean he's Phase II and it's clear and that's what we're discussing so I know where you are and I know your concern and it is a concern because it will affect the entire . . . it does affect the entire township when this is completely built out. But you know we're kind of bound by the court.

MS. ROCK: So if I may I did hear that this was all in place back in 1989?

MR. LAW: Yes.

MS. ROCK: And I beg to ask the question what happens after the extension are we here again yet at an another three years for another extension? If the lot does not get . . . when does it stop? When will we know how many homes are going to be within this community?

MR. HOFF: I can tell you that the maximum number of homes that are in this community are 413.

MS. ROCK: That's if everything gets allowed.

MR. HOFF: That's if every one of these colors are built out.

MS. ROCK: From what I knew of 276 that's . . . yes please.

MR. WEISS: I think your question was when do these extensions stop? Was that where you were going? The law is very vague on certain applications, and tell me if I'm wrong, there is a time limit that an application of this nature there is no time limit. Am I correct?

MR. BUZAK: Well let me phrase it this way if I might.

MR. WEISS: Please.

MR. BUZAK: For the blue lots that are on A-1 the dark blue lots for which the developer has obtained final approval, those lots exist so the lot will forever be there. The question becomes whether or not those lots can take advantage of the zoning that was then in effect when they were subdivided or whether those lots become non-conforming lots. So the lots are there it's an issue of whether or not they are conforming or nonconforming and the ramifications of that. When you have final approval the final approval does not expire if you have perfected that final approval and it's my understanding that ARD the applicant here tonight has perfected that subdivision. Is that correct Mr. Hoff?

MR. HOFF: That's correct.

MR. BUZAK: So those lots exist and it's a question of whether they would be subject to the new zoning and there is new zoning in effect on that property as I understand it is that correct Mr. McGroarty or Ms. Natafalusy?

MS. NATAFALUSY: Yes it's the R-1 zone.

MR. BUZAK: Okay so these are now 1 acre lots and these lots are smaller I would assume.

MS. NATAFALUSY: Yes.

MR. BUZAK: Okay. And then there's questions as to okay if the zoning currently is one acre zoning and these lots are less than one acre zoning and they're owned by the same owner which they are, whether those lots merge or don't merge and that's some of the items that Mr. Hoff has raised in the letter that I haven't had an opportunity to address. But even if they merge they would only merge to the extent of becoming conforming lots so they would merge to the extent of becoming 1 acre lots. So for example if those two lots across the street from you Lots 44 and 45 are lots for arguments sake say they are half an acre each it's possible, and I don't make any determination on this nor am I representing this, but it's possible that perhaps those lots if the Board does not extend the protections of the old zoning those lots would merge and become one lot. So that rather than having 44 and 45

you'd have one of those that would be the combined lot. But the lot that combined lot would still be in existence. So these lots in one configuration or another will be there that's already been approved by the Board many years ago and perfected. So the lots will exist.

MS. ROCK: Right so we're here today to see if they can build on these lots?

MR. BUZAK: No we're here today to determine whether that, and this is good for the Board to hear as well because I asked the Chairman if I could comment before the Board started commenting and I was going to comment on this so your question is well timed I guess. But what the Board is being asked with regard to these dark blue lots as shown on A-1 is whether the zoning under which they were approved which was . . . what was the zoning for single family lots at that time?

MS. NATAFALUSY: I think it was R-3.

MR. BUCZYNSKI: R-3.

MS. NATAFALUSY: Yeah 15,000 square foot.

MR. BUZAK: They were approved as 15,000 square foot lots whether that zoning will still be applicable to these lots that's really what . . . and there's other issues because it's not only the size of the lot but its other ordinances that would apply. But the primary concern I would think from the developer's point of view is whether or not they will continue to be protected and be able to have these lots as conforming 15,000 square foot lots as opposed to being nonconforming lots. That's really where they're going so that's the issue before the Board. Not whether it could be built or not built because as Mr. Fleischner has indicated whether these can be built or not built is a different issue.

MS. ROCK: Okay thank you.

MR. BUZAK: Mr. Hoff do you have any comment on what I've said? I don't want to misrepresent where we are here.

MR. HOFF: No I concur.

MR. WEISS: Is there anybody else from the public that would like to question or comment on anything that's been spoken about this evening? And seeing none I'll turn it back over to you Mr. Hoff.

MR. HOFF: You know we've been through this drill a number of times I do appreciate the Board's time. Really we're seeking an extension as Mr. Buzak indicated to protect the zoning. Obviously we're getting closer to the end of the project your now seeing the project come to fruition to the Toll site and we're just looking for the opportunity to build it out and to be able to do that we're going to need unfortunately additional time. We wish we didn't need it, we wish we were building that's not the reality given the economics associated with the housing market in general and just the issues that we've dealt with with respect to this project we respectfully request that the Board extend the approvals relative to Phase II preliminary and final for an additional three years. And I thank the Board for its time.

MR. WEISS: Thank you Mr. Hoff. Anything else, Ed any other . . .

MR. BUZAK: Yeah I think the Board should consider the request separately. That is the request for extension of the protections for final approval for those lots that are shown on A-1 in the darker blue. Those lots exist they are scattered throughout a development that is already being developed and one of the things the Board needs to consider is whether given the fact that these lots already exist and were subject to approvals similar to the ones that are in white that you see here, whether they should continue to have the protection of the zoning ordinance at the 15,000 square foot lot size. If the Board concurs with that then they should grant the extension the time period is certainly up to you the applicant has sought three years you can extend it for three years or for a period less than three years. Certainly given the market as they've testified I would suspect, but this is the Board's decision, that anything less than three years will only have them coming back here seeking further approvals and we'll make it somewhat ambiguous in terms of you know their future. If they know they have three years they have a window that they can perhaps take some actions and have some confidence, not confidence have assurance that they'll be able to build this. If you give them an approval for a year for example they still don't know where they're going to be a year from now and you know I think that may inhibit or impede the ability for them to move forward with that development. So in terms of timing while it's up to you as to whether you want to grant the three years I certainly would

if your thinking about extending it I think under all of the circumstances that is not an unreasonable period. The primary question becomes whether you are comfortable with maintaining the zoning in that area or whether the Board would like to have those lots consolidated or potentially consolidated anyway to have larger lots scattered within the you know 15,000 square foot development that's taking place that you see there. And you know that I will not comment on that's certainly up to the Board.

MR. WEISS: Ed I have a question for you. If the Planning Board wants to bring these lots up to current standards and conform them to the standards of today and therefore a no vote, what happens at that point? If the Planning Board is to come here tonight and reject the request is there a process that follows?

MR. BUZAK: Well I will also defer to Mr. Hoff on this. I think there is no process that follows. What happens is that the lots by virtue of that I think would become nonconforming lots because if someone applied for a building permit for example, and let's take Lots 44 & 45 since we were discussing those two which are across the street from Ms. Rock's property, if someone came in . . . if the Board did not grant an extension of the protections and an application was made for a building permit on Lot 44 for example I would think that at that point the building permit would be denied or the zoning permit would be denied on the basis that it's a nonconforming lot. That would be an initial determination. Then the question would have to be examined as to whether there's provisions in the ordinance that Mr. Hoff has cited or some other provision in the ordinance which would grandfather in some way these lots so that they would be conforming despite the fact that the Board had not extended the protections and therefore they'd be entitled to a building permit if they in fact . . . if there were no other provision in the ordinance that would "grandfather" these lots then they would be nonconforming and the applicant or the owner would have to determine what do you want to do. They can probably do two things, number one they can seek a variance from the Board to be allowed to build, and again let's use Lot 44 as an example, to build on Lot 44 as an undersized lot and make their proofs before the Board. Secondly they could consolidate those lots and make 44 and 45 one lot and assuming that would then meet the minimum zoning requirements seek an approval for that. Those are all generated by actions of the applicant, the other action Mr. Chairman that could take place is again assuming there's no ordinance that these lots would be grandfathered despite the failure of the Board to extend the protections. I have seen and I don't know whether this is done in Mt. Olive as a routine basis or what but I have seen Tax Assessor's when they find that they have lots that are in common ownership but that are undersized they will merge those lots and by virtue of their action change the lot into one and assess it as one lot. And that will then create sort of unilaterally the combined lot that would be closer to or equal to the minimum lot size. That whole process is one that sort of evolves and I can't with any certainty tell you how that actually will work in this case if that's what happens. And I'd like to just give Mr. Hoff the opportunity to comment on that because his client is more directly affected than my comments.

MR. HOFF: I don't disagree that once that happens it sort of falls into a vey murky area of what may happen. I can tell you though that as we have in the past we're committed to building this job and at a certain point we would just ask the Board to consider that . . . I understand that there's been resistance to this job for many, many years and I understand that. But at a certain point not extending and forcing this to be two very distinct communities as Mr. Buzak indicated you have a scenario let's say you deny and we take that sitting down we don't appeal that to Court and we just say alright we'll go on our way. I can tell you that would be unlikely but let's assume that would happen, you'd have Toll Brothers homes all beautiful and done in the same manner and then you would have these odd lots where homes get built on, don't match the community, don't match the original design, and we just don't think that's an appropriate result not just for us we know that the concern for us is at a low but for the existing residents in that community it doesn't make a whole lot of sense. So that's one of the reasons we are seeking the extension just as the appeal to the Board's just common sense of the fact that this is how it's laid out it's now started it should finish. Not just for the benefit of the fact that it was approved that way but for the benefit of the people that are in there now.

MR. WEISS: But Mr. Hoff there is no guarantee right now that Phase II will be built in accordance to the way Phase I is. We haven't identified a builder, we haven't gone on record saying that it's definitely going to be built by Toll or not be built by Toll. And I respect that and I would never ask you who but the reality is that there's no guarantee on the table today that it's going to be built even if nothing gets done that it would build exactly as we see it now.

MR. HOFF: But with an extension you would guarantee that it's built in accordance with this grid. I mean that . . . the shutters and the roof lines may be different but you can assure yourself that you'll have a 15,000 square foot lot next to a 15,000 square foot lot as opposed to a 15,000 square foot lot next to a 2 acre lot. So that you would be assured of.

MR. BUZAK: A 1 acre lot.

MR. HOFF: 1 acre lot.

MR. WEISS: I'm not sure that's a good or a bad thing. Mt. Olive is a unique place I don't know if having 400 homes all postage stamped big, small or indifferent is a good thing. That's an opinion. I understand.

MR. BUZAK: Mr. Chairman let me also jump in here because we focused on, or I focused on the final I said you know let's take this in two steps and maybe it's appropriate for me to talk about the preliminary which is the second vote that I would ask the Board to take and that the applicant is seeking also the extension of protections on that. That preliminary, the large lots unsubdivided so to speak are shown in green on A-1 and are shown the eventual subdivision following the zoning that was in effect at the time the approval was granted is shown on A-2. Remember those lots however are the lots that have environmental constraints and may not ever be built on. So that's the difference between the blue lots on A-2 which represent the green on A-1 and the blue lots on A-1. The blue lots on A-1 are "buildable" lots they have access to water, they have access to sewer, they exist out there and it's a matter of you know the applicant could come in tomorrow if they were not nonconforming. I'm sorry if the Board granted the extension the applicant could come in tomorrow and obtain a building permit on these. They could have come in you know in the summer and gotten a building permit to build those. That's different from the green properties and those potential lots that are shown from that green property on A-2, that's a different situation. So the Board certainly has the ability to act differently on those requests. The Board can grant an extension as to the blue lots effectively the finally subdivided lots in Phase II which are 66 lots that are shown in blue on A-1. And, and I don't suggest this I just throw it out, and also without being inconsistent not grant extensions of the protections for the green lots and say look that's the green lots those only got preliminary approval the property has been rezoned we're not prepared to give you protections for that because those are environmentally constrained lots and we're concerned about that you had a long time to try to get it resolved. I know part of the resolution as Mr. Hoff has pointed out or I think Mr. Fleischner actually pointed out, that part of the resolution of the environmental constraint was anticipated to be the actual development of the rest of the project and that as a result of improvements that were made, drainage improvements and others that were made when the other part of the development would take place that these lots would eventually dry out or the wetlands would be resolved and would be nonexistent and therefore those could be built. I think that was sort of the grand scheme of the approvals that were granted by this Board several years ago. And that obviously hasn't had the chance to occur because development hasn't taken place below. But I guess my point without belaboring it is that I think the extension of final approval has to be viewed in a different light than the extension of the preliminary approval. That doesn't mean to say the result has to be different but I think the factors that you consider are different given the nature of final approval and preliminary approval.

MR. HOFF: Can I respond to that?

MR. WEISS: Sure.

MR. HOFF: First with respect to the environmental wetlands constraints as being applicable only to the green and not the blue, that's not accurate. The wetlands applies, let's not get lost in the fact that blue and green are still Phase II. They are Phase II they happen to be now one is final, one is preliminary by virtue of the recording but they're all Phase II they're all impacted by the fact that we need to clear up the wetlands to be able to develop any of them.

MR. BUZAK: Okay then I misspoke I apologize to Mr. Hoff that's against your interest but I appreciate your candor with the Board in noting that.

MR. HOFF: It's noted on the final plans down at the . . . you know we're not avoiding that issue. And secondly I wanted to just reiterate that when it is blue and green it is Phase II we had this argument before and we've been before Judge Bozonelis who addressed this issue about Phase II follows Phase I. As Mr. Buzak indicated it shared infrastructure, there are certain build-out criteria with respect to Phase I that will have a potential impact on Phase II. So we don't know Phase II there are yield issues, yield questions that may arise you just don't know and the Judge was clear that listen you can't divorce Phase I and Phase II its one project. And you can't deny us the ability to build it out simply because our Phase I is taking too long or taking more time than it should have. So with respect it is separate only in technicality because these happen to be recorded but from our perspective there all Phase II we've got to wait, we've got to wait because Phase I needs to be done. So I do respect Mr. Buzak's position that hey listen they are two separate applications because they're subject to two

different standards in the MLUL, I get that, but in terms of how you view them we don't necessarily take the view that they're different as they relate to entitlements of ARD. So again that's just our position but I wanted to make it clear.

MR. WEISS: Thank you Mr. Hoff. Joe?

MR. FLEISCHNER: Having gone down this road many times with you folks my feeling is whether its three years, four years, etc. you're still going to be back here. Because we've said the same thing I think every time you come back here. My feeling is yes you get the extension, my personal feeling two years Toll Brothers gets two years, you guys get two years we'll see you in two years and we'll see what things look like in two years. Chances are two years from now you're going to be saying well maybe we need another three years. Yeah it would be nice to say the economy is going to improve and we're going to build all of these houses God Bless Everybody it's going to impact the community. Again I think the lot sizes I agree with what you say you don't want a 15,000 square foot sitting next to a 5 acre lot I think that would look horrible it wouldn't be fair to the neighbors that are all there. I think the way it's laid out it's laid out and you know what we have is what we have. So again my personal feeling is if Toll Brothers gets two years you guys should get two years.

MR. WEISS: And Joe I know this is going to come as quite a surprise but I'm going to disagree with you.

MR. FLEISCHNER: Well no we disagree all the time Howie.

MR. WEISS: I know and I'm going to tell you why. I'm going to tell you why because I think that's the position of the Planning Board for a lot of years is that we've just said okay fine I'll see you in a couple of years.

MR. FLEISCHNER: We should never have approved this to begin with but we did.

MR. WEISS: I was well too young to sit on the Planning Board when that happened.

MR. FLEISCHNER: And the last time we also argued well how could all of these lots, nobody even knew what lots were approved.

MR. WEISS: Joe I understand and I do understand and I think you if you look at the issue of lot sizes being different right now we're developing 15,000 square foot lots that are being built next to townhomes. So that's no more absurd than a 15,000 square foot lot next to a 40,000 square foot lot which is an acre. And so I'm not so sure, I'm not so sold on that end of it this is a very unique development. It's already inconsistent and inconsistency isn't a bad thing. It's already drawn up to be inconsistent so I don't know if I agree with you there. You know we heard Mr. Hoff talk about the fact that they're committed to building this job, well maybe the Planning Board should be committed to protecting the new standards as they exist today. I don't see why that's not an option for it. No one is suggesting that we stop Phase II and certainly we know that the court won't allow that for us to stop it.

MR. FLEISCHNER: And I think what . . . and it would be great because I think Mr. Buzak could certainly in this environment could use the extra legal fees, our township attorney could use the extra legal fees, but you will be back I think in court . . .

MR. HOFF: I could to.

MR. FLEISCHNER: You could to we will be back in court and the Judge is going to rule the way the Judge has ruled every single time and the end result is we're going to be doing it the same way. Been down that road, been here done that. I'm trying to save the town money because we can't afford it.

MR. WEISS: I think allowing us to build . . . continue to allow a development of this size which is quite substantial to be built so out of character of today's standards give us, I think gives us enough to hang onto. That it's now it's now, it doesn't conform with existing . . .

MR. FLEISCHNER: But did the Judge say in 1989 this was approved this way and when the town challenged it ten years later, twelve years later, fifteen years later what did the Judge say? The Judge said build it the way it was approved you don't have a choice and that's exactly what's happened. So are we going to go down that road? I just don't want to spend the money anymore we don't have the money this is not a blank check. That's where I'm coming from because that's what's going to happen.

MR. WEISS: Well I think we all know that we don't sit up here and make decisions based on what's going to happen if, and I just want us to maybe think outside the box here at least in my opinion. Joe I hear you I don't disagree with you but I don't completely agree.

MR. FLEISCHNER: I accept what you're saying.

MR. WEISS: I think that allowing this to be built is a detriment to the community as it's proposed and asking the Planning Board to protect the standards in place is not too much to ask. Anybody else have any kind of comment?

MR. STASZAK: My only comment is we're coming to our end; at least I am coming to my end with extensions. It's got to be built out sooner or later or it's got to revert back to what we have now.

MR. BUZAK: I do want to effectively confirm what Mr. Hoff said about the litigation. The Board back in 2005 or actually it was before that it was 2003 the Board denied an extension of the protection period for Phase II. That was appealed by the applicant the Judge at the time Judge Bozonelis reversed a denial and granted an extension of one year which was to commence at the time that the order was entered. The Board appealed Judge Bozonelis' determination and the Appellate Division sustained Judge Bozonelis' determination. That was then appealed to the Supreme Court by filing a Petition of Certification in 2006 and that Petition for Certification was denied. So Mr. Hoff accurately set forth that when the Board did deny the request for the extension of the protection period for Phase II back in 2003 the Board's determination was overturned and the court required that it be extended for a period of one year and that commenced actually I believe on the date that the Petition for Certification was denied or somewhere around there. So there's a one year extension from there and then the applicant came in and sought further extensions for that and that's where we are today.

MR. WEISS: Any other comments? Okay seeing none what I'd like to do then is let's entertain a motion on how we proceed with this matter. There's an extension request for this application PB 99-31.

MR. STASZAK: Do it for final and then preliminary?

MR. BUZAK: Yeah I think we should split it Mr. Chairman if . . . I would recommend earlier that we deal with each one separately. The first one would be the extension of the final, extension of protections for final approval for the 66 lots that are shown in blue on A-1.

MR. LAW: That would bring it to . . .

MR. BUZAK: September 6 I think was the date that this expires, so it will be September 6, 2015.

MR. WEISS: How do we address those three lots that are in dispute? Do we just throw them in for now?

MR. BUZAK: Yeah I think that they got the approval the title issues will be one that the applicant is going to work out.

MR. WEISS: Okay so we have the first motion will be to address the final approval for those 66 lots. Steve?

MR. BEDELL: Does this motion have to be for three years or can it be for another?

MR. BUZAK: It can be for any period of time.

MR. BEDELL: Okay well then I'll make a motion for PB 99-31 ARD Mt. Olive I say two years. Well for the final approval the 66 lots I say two years.

MR. FLEISCHNER: And I'll second it.

MR. WEISS: Any conversation? Catherine roll call.

MRS. NATAFALUSY: Joe Fleischner - yes
 Brian Schaechter - no
 Nelson Russell - no

Steve Bedell - yes
 Jim Staszak - yes
 David Koptyra - yes
 Howie Weiss - no

MR. WEISS: Okay so then we'll move on then for extension request for PB 99-31 for the preliminary approval. I'll entertain a motion.

MRS. NATAFALUSY: Preliminary for the . . .

MR. HOFF: The 63.

MR. BUZAK: 63 lots of preliminary. Again the request is for three years.

MR. WEISS: Okay so the motion will be to approve or not 63 lots for preliminary approval for three year time limit to be noted in a motion.

MR. FLEISCHNER: I'll move a motion the 63 preliminary lots be approved for two years.

MR. BEDELL: I'll second that.

MR. WEISS: Conversation? Seeing none roll call.

MRS. NATAFALUSY: Joe Fleischner - yes
 Brian Schaechter - no
 Nelson Russell - no
 Steve Bedell - yes
 Jim Staszak - yes
 David Koptyra - no
 Howie Weiss -

MR. WEISS: Okay I just think . . . listen I said it before I'm not going to repeat myself. We work just as hard to maintain our standards. I would personally like to see this development be brought up to today's standards and that being said I'm going to vote no.

MRS. NATAFALUSY: That's four to three so they don't get a two year extension on preliminary.

MR. WEISS: No extension for the 63 lots in preliminary approval.

MR. BEDELL: So what does that mean?

MR. BUZAK: Well there's two things, the Board can consider taking another vote on the preliminary in terms of time period if that were an issue one way or the other. Those who voted no if they voted no because they didn't want to grant any extension or if they would grant a lesser extension or a greater extension. There's some inkling I would suggest that perhaps that those people who voted no express that just so that you know in the event that there is an extension time period that would be acceptable to the majority of the Board we deal with that tonight. Because it would be a waste of effort and money if the applicant is going to appeal it and we don't know whether that's going to happen or not but if the applicant appeals it then the Board would be saying well you know we would have granted one year and that would have been that.

MR. WEISS: So for those that voted no would an increase or decrease timeframe change the vote?

MR. RUSSELL: Yes.

MR. WEISS: It would on Nelson I guess then it's only appropriate to entertain a motion for preliminary approval for the 63 lots for . . .

MR. RUSSELL: Three years.

MR. WEISS: Three years, that is the motion made is there a second? I suppose the motion dies?

MR. BUZAK: Yes, yes if it doesn't get a second.

MR. FLEISCHNER: All right I'll move a motion to extend it for one year, or eighteen months I'm sorry eighteen months. Strictly based on time I do not want to see the town paying extra money.

MR. WEISS: Motion has been made for preliminary approval for the 63 lots for a time period of eighteen months. Is there a second? All right seeing no second that motion dies as well. Obviously timeframe didn't affect the Board so it wasn't a matter of time.

MR. HOFF: I'm still a little confused as to the vote. We have four no's as to two years but I guess it doesn't matter Mr. Nelson wanted three.

MR. BUZAK: Right made the motion for three

MR. HOFF: Could we change the motion? No less than two?

MR. BUZAK: Well we had a motion for three . . .

MRS. NATAFALUSY: Well we had eighteen months.

MR. HOFF: No I'm saying no less than two but you know I mean that's semantics but it just seems like an incredible waste of time. Because we're appealing we have no choice I mean we've been at this job for 25 years.

MR. LAW: I'd like to say one thing. You know we come to these meetings and we get this thing that you guys are taking so long. Look at the history of this thing. This is not our fault this is taking so long. I am just telling you Toll Brothers already proceeded with thing as you know in 2003 the bubble was just growing like crazy whatever the town felt hey let's slow this thing down or whatever it might have been I'm sure there's good reasons at the time. However, the result was of course that that completely punted this thing into this economic mess that we're in right now. Then we go back to the 1990's there was the RTC thing, does everybody around here remember that? There was nobody building anything during the early 1990's okay and the DEP steps in and re-regulates how the wetlands will be defined. Which having gotten the Fish and Wildlife and all the engineers out there to delineate the wetlands which are the real wetlands under the Federal Law, not skunk cabbage on slopes up to 10 percent okay? This is not Autobahn stuff this is the reality of the situation out there and those people out here don't know what's going on out there and why all of this is going on and why it takes so long. It took a long time to settle it; it took them in 2000 to settle the wetlands thing with the DEP. Okay? Everybody (inaudible) as fast as we can doing this, doing that spending money all over the place, get stuff done the town gets \$350,000 for Toll Brothers before they even closed on this property to reduce the size of the oversize water tank out there so you can do the which I (inaudible) very nice (inaudible) improvements over there. The town benefited by that and it came from this project okay? It's been surrounded by R-3 zoning all the way around it, I was involved with the Country Oaks thing across the street It's a beautiful community I drove around there today as well, there's nothing wrong with these places. And for that person that was up here earlier ranting and raving I'm sorry but what you're being told is your home wouldn't be there. Okay these are beautiful homes, what's wrong with that? And in the terms of the overall scheme of things well I was in the 1980's along with the Builders Association and so forth there was the State Plan it was all about trying to consolidate not sprawl okay? This is the opposite of sprawl and somebody is talking about merging two different facilities between townhouses and single-family, that was in compliance with the township's zoning okay? That's what they wanted for this are.

MR. WEISS: I'm not denying that

MR. LAW: But they were together and there's not a single person that is buying there that doesn't know exactly where they are in relationship to the townhomes if they don't like townhomes this is just fine they can be in the upper part of the development. On the other hand they are close to one of the community features and so forth. What we're proposing and we tried to do . . . I started this thing in 1985 came before the Board in 1986 was sent back with a plan that had been developed by the previous property owner where the Board said look we don't like that plan. We came back in 1987 with a whole new plan went through the whole process we got approved in May of 1989. Well we all remember October I think I was just reading today I think it was today in 1987 the stock market plummeted 23 percent the most it's ever done including this last go around. Okay things kind of went bad and from there it went to the RTC, the Resolution Trust Court the same (inaudible) closed up I don't know if you know what this town looked like back in the early 1990's there were half built buildings all over the

place with building wrap fluttering in the breeze. It didn't look good it was great for Toll, Toll had a lot of money they came out and bought a lot of this stuff and approved it. We could not build at that point they were a new development they were buying 30 cents on the dollar. Okay? You can't compete with that it's somebody else's money in other words they put all of that infrastructure in, we understood that. So we can't start before the DEP implements their new revised wetland thing though I can tell you I was thinking about this today, it was about 20 years ago that I was out there personally with our site contractor putting in that box culvert there because we were grandfathered with our Federal Permits or wetlands to put that box culvert in out there. You want to know how long this has been going on and how much money has been spent. This is just really honestly, I know you guys haven't been involved in this the whole time and there's a whole different cast over the years, some of your professionals of course have been. I'm sorry I see hands coming up.

MR. BEDELL: One of the extensions has been granted so what's the process? Does it now go to court?

MRS. NATAFALUSY: No Steve the final extension was

MR. MCGROARTY: No I had four no's on that.

MR. BUZAK: Four yes, three no's.

MR. LAW: You decided that we're going to have to go back . . .

MR. BEDELL: But the preliminary for the second one it was voted no so the process now is will we go in front of the courts?

MR. BUZAK: Well that's something that's up to the applicant.

MR. LAW: Well the answer is yes.

MR. BEDELL: Okay well I think we know they're going to but so

MR. BUZAK: Assuming we go before the court.

MR. BEDELL: Okay. What does that cost in time and if it's going to be a lot then why don't we . . . listen I would prefer two that's going to save us all a boatload of time and money I'd be happy to give them a three year extension just to save the hassle and the expense. Again I prefer the two but the fact is is even if we give them two they're going to come back in two because they're not going to sell the rest. I mean its common sense so I'd be happy to go back and change mine to three to save less aggravation.

MR. WEISS: I can't believe your saying that. We just went through this and if you're going to change your decision because of the financial effect Steve shame on you. That's ridiculous you have every right to say that but

MR. BEDELL: How is that ridiculous?

MR. WEISS: It is ridiculous Steve you've made a decision based on the facts of the case and now you want to change your mind? Listen I'm not telling you to do it or not but

MR. BEDELL: Well it sounds like you are.

MR. WEISS: I'm not I'm just giving you my opinion.

MR. BEDELL: Okay I mean Nelson made a motion for a three year you didn't . . . twenty minutes ago you said do you think (inaudible) of three years Nelson made the motion you didn't second it.

MR. WEISS: I didn't say up the standards for three years. I would like to see it built under today's standards which means I would vote no regardless of the time period. That's why I didn't second Nelson's motion. Joe did you have anything to add to that?

MR. FLEISCHNER: I just would call for a revote.

MR. BUZAK: In order to you can do this two ways. Technically in order to reconsider the vote on the three year request if that's what is being made, there's no second so there's really no ability to reconsider that. I think that if the Chair is willing to entertain a motion they could certainly consider entertain a motion for three years again. We can't reconsider something we didn't even consider. So that would be . . . someone would have to make that motion and recognize that . . . go through the process.

MR. WEISS: Any other comments?

MRS. NATAFALUSY: Nelson is trying to make

MR. RUSSELL: I'd like to make a motion that we give an approval for three years.

MR. WEISS: For preliminary for the 63 lots in preliminary? Is there a second?

MR. BEDELL: I'll second.

MR. WEISS: It's been seconded and motioned. Nelson made the motion and Steve made the second. Is there any conversation about that? All right Catherine roll call.

MRS. NATAFALUSY: Joe Fleischner - yes
Brian Schaechter - no
Nelson Russell - yes
Steve Bedell - yes
Jim Staszak - no
David Koptyra - no
Howie Weiss - no

MRS. NATAFALUSY: Okay the same four to three.

MR. WEISS: Okay we've heard it, we voted on it. Before I adjourn the meeting Joe wanted to bring up new business.

MR. FLEISCHNER: I asked that we go into closed session.

MR. WEISS: Joe before we do I believe we have to state a reason for the record to go into closed session.

MR. FLEISCHNER: Because what I wish to discuss is the discussion that was held about Mr. Tchaikpe and what took place at his meeting at the next meeting of which I was present. And the minutes of that meeting and I'd like to go over what was said at that meeting and I'd like to discuss it in closed session. Because I was not at the meeting where Mr. Tchaikpe applied to get his approval.

MR. WEISS: Right that was the September 13 meeting.

MR. FLEISCHNER: Right but I was at the next meeting and there was a discussion about that at the meeting and I would like to discuss this under closed session. If you prefer I'll do it in open session.

MR. BUZAK: I'm not sure Mr. Chairman that there's a basis to discuss minutes of the meeting or what occurred at a meeting in closed session. I think that if the meeting took place I don't know of an exception under the Open Public Meetings Act that would allow the Board to discuss that in closed session. Certainly a proper topic of conversation I just don't think it qualifies as a closed session.

MR. WEISS: I don't know what the rules are Joe but I think if we've discussed it openly in public before then perhaps you can state what was you know you have a concern what we spoke about after while Mr. Tchaikpe wasn't here.

MR. FLEISCHNER: Correct.

MR. WEISS: Okay.

MR. FLEISCHNER: So do you want me to do it open session? I'd be happy to do it I mean

MR. BUZAK: Yes I don't see any basis to do it in closed session.

MR. FLEISCHNER: Sitting in that meeting and I listened to what you gentlemen discussed at the meeting before and it was said I believe by four individuals, and we'll have to bring the . . . listen to the transcript, but four individuals clearly stated that it was a reversal of what the zoning officer said. It was quite clear and if that's what was said by four members and it was agreed to and I remember Mr. Chairman you spoke against it and you voted against it and you were quite adamant and certainly your position. And I wasn't there but it was quite clear among the other members that were here that yes we are reversing the decision of the zoning officer. And then when I hear tonight that the resolution in all due respect Mr. Buzak that's I mean, to me it's two things, number one it's great hypocrisy that you would say it in an open meeting yes it was a reversal and everybody was happy with it and then all of a sudden it's not in the resolution, that concerns me. Because I think . . . well in fairness I don't think your being honest. You did say it was a reversal and then to sit here tonight and say you're not reversing it is wrong and it's just from the standpoint of right and wrong. You can't say it and then say you didn't say it when you did say it and it's in the minutes it's clear.

MR. WEISS: Joe aren't we splitting hairs at the word that's being used?

MR. FLEISCHNER: No because I think it does make a difference, I think it does make a difference. And again it's another case you know is it right, is it wrong the homeowners it's a private you know who knows I mean this thing is so convoluted at this point it's crazy. But don't say it because it's said on the record and I just don't want to leave us open again for more litigation against the town. I mean this is ridiculous you know and the amount of money . . . same thing with the applicant that was here tonight you know what's going to happen we're going to spend the money you know it, I know it, everybody knows it and I think the Mayor knows it, Councilman Mania knows it it's going to go to the Judge and . . .

MR. MANIA: I'm not so sure. You can't take a position that we're not going to fight anything because . . . so we might as well just lay down and die.

MR. WEISS: Wait gentlemen hold on one second, Catherine did you . . . oh I understand, John you know better.

MR. MANIA: Sorry.

MR. FLEISCHNER: That's my opinion and I just you know I'm embarrassed by it I think you have to . . . what you say you're going to do you do and changing your mind for whatever reason and I'm not going to say what I'd like to say but I just think it's wrong. That's what I have to say.

MR. WEISS: Jim?

MR. STASZAK: I have a little different recollection of what went on that evening. We weren't here to reverse the zoning officer's determination of the denial of the permit. We were here to reverse the zoning officer denial of him using the Building Option Plan, period. That's what I voted on and that was my understanding of it. I agree with Mr. Buzak's position tonight that his resolution was a memorialization of that. It also allowed the zoning officer to rethink his denial and remove the Building Option Plan from his rational. And I think that's what we voted on because the only thing I remember being discussed that evening was the Building Option Plan nothing more, nothing less.

MR. WEISS: I agree.

MR. STASZAK: So I think the resolution that was presented to us tonight was accurate and correct.

MR. WEISS: Any other comments? Any other business? Anything else anybody wants to talk about? Does anybody want to make a motion to adjourn?

MR. STASZAK: I do.

MR. WEISS: Jim thank you would anybody like to second that?

MR. KOPTYRA: I'll second.

MR. WEISS: All in favor?

EVERYONE: Aye.

(MEETING ADJOURNED AT 9:30 P.M.)

Transcribed by:
Lauren Perkins, Secretary
Planning Department