

TOWNSHIP OF OCEAN  
PLANNING BOARD  
REGULAR MEETING  
April 3, 2008

Meeting began at 7:31 PM

Pledge of Allegiance

**STATEMENT:** Pursuant to the provisions of the New Jersey Open Public Meetings Act, sending copies of the notice of the meeting properly provided adequate notice of the meeting to the Times-Beacon and the Atlantic City Press. Notice was posted on the bulletin board in the Administration Building.

The meeting of the Ocean Township Planning Board was held on the above date and time; Chairman Anepete presided and called the meeting to order.

**ROLL CALL**

Members Present: Vincent Anepete Rita Sweeney James Eckert  
Ralph Avellino Dennis Tredy Robert Knowles  
Richard Reilly Craig James Daniel VanPelt  
Gordon VonSchmidt

Members Absent: Lee Eagles

Chairman Anepete asked for a motion to approve the minutes of the March 6, 2008 regular meeting. Dennis Tredy made a motion to approve. Ralph Avellino seconded the motion. All in favor: (aye) Tredy, Avellino, Reilly, Sweeney, James, Anepete

Chairman Anepete asked for a motion to approve the vouchers. Dennis Tredy made a motion to approve. Rita Sweeney seconded the motion. All in favor: (aye) Tredy, Sweeney, Avellino, Eckert, Knowles, Reilly, VonSchmidt, Anepete.

Abstain: VanPelt

Chairman Anepete noted that the correspondence was available at the office for review.

**BOARD COMMENTS**

**CVS Lighting – letter from Mr. McGuckin to Mr. Stanzione.** Mr. Tredy was glad the letter was sent. He asked when we can expect the lights to be installed? Mr. VanPelt answered that we are in the process of recapturing the bond. A permit c.o. had been issued prior. Chairman Anepete asked if they have responded to this letter. Mr. VanPelt added that the reality is that they just don't want to do it so now we have to go to their maintenance bond. Mr. VanPelt verified that they do have escrow money available. Mr. Avellino added also that CVS was supposed to take care of the landscaping problem.

There are dead trees that have been there for well over a year. They did some work, but not much. Secretary will contact Scott Taylor.

Mr. Avellino wanted to comment also that Stetson Auto has put his lights out front. That completes his site plan. Mr. VanPelt added just so the Board knows, they were actually going to install six (6) lights, don't ask me how, but they were actually going six lights, but we made a deal with them. We are buying three (3) and we are having an electrician put them in at the corner of Lighthouse and Route 9 on the Lighthouse building. The Lighthouse building was built before we required this kind of fixtures.

**Ordinance 2008-11 amending Chapter 18.46 of the Codified Ordinances of the Township of Ocean with respect to Assessor Buildings and Uses.** Mr. VanPelt commented that it's long overdue. It's been an outstanding issue probably for three or four years if not longer. It closes a loophole. The way the books are currently written, people have found a way around it in my mind violated the intent and spirit of what we are trying to achieve. Chairman Anepete said he read it in detail and he feels the loophole is now closed. Mr. Reilly mentioned that this will make it easier for the Zoning Board too to be able to manage some of these applications. Mr. Tredy added that this spells it out and it makes it easier for the Township Officials in their decision making process. I would recommend that our Planning Board recommend to the Township Committee to go through with this ordinance. Mr. McVicar said just as a housekeeping note, Section 3: Chapter 18.46 .010 to get it into that particular subsection. Secretary will advise the Township Clerk.

A motion was made to accept the ordinance by Mr. Tredy, and seconded by Mr. Avellino. All in favor (ayes) Tredy, Avellino, Eckert, Knowles, Sweeney, Anepete.

Abstain: Reilly, VanPelt, VonSchmidt

**Stafford Tree Ordinance tabled from March 6, 2008 meeting.** Mr. Tredy mentioned that the minutes of the March 6, 2008 meeting reflect a lot of comments were made by myself and Mr. Craig James in opposition to certain aspects. What I'd like to say now, after re-reading it, and having some conversations with our Board Engineer the problems that we perceived were actually not there. The problems that we had perceived last month were an individual lot that was already constructed would not be exempt and in fact, if you read through the ordinance it is exempt and I would like to ask Mr. McVicar if he could explain it in more depth and detail. Mr. McVicar said looking specifically at the section called the Tree Ordinance Article 194-4 Applicability specifically it applies to minor subdivision, major subdivisions or site plans. With that it is telling you what it applies to, and it goes through what you'd have to do if you were preparing any one of those three items. I see nothing that says any reference to single family homes except under Exemptions G – it says that individual homes are exempt. Lots located on 20,000 SF or less except for clearing side yard, rear yard buffers or deed-restricted areas, wetlands and their associated buffers. That is the only place where I see that this ordinance would apply to a single family home. The second part of this was reforestation. Reforestation I see this applies to residential lots 20,000 SF or less. This

does apply to single family homes. But basically it refers to a section about what you have to do for reforestation and what I discussed with Mr. Tredy was for example if he had a 15,000 SF lot and he wanted to clear the entire lot, at this rate of one tree for 1500 square feet you're talking about 10 trees that would have to be put back. It doesn't appear to be onerous on a lot developer to have to put some trees on a lot and do some reforestation. What I don't see is that it precludes someone from taking down a single tree. I wanted to discuss whether or not it was in fact the intent that somebody taking down a single tree under this ordinance would have to go through the process of having to get a permit to take down a single tree. I don't see it in my reading. Mr. Tredy had added that is why he had called Wayne. He had read it a couple of times and it doesn't say that and that is why the problems we were talking about last month don't actually exist. There was discussion last month that some homeowner who either likes or hates trees, and he wants to take down or plant, we felt that if it was a developed lot with a house already upon it that they shouldn't have to be under those pressures. If they want to take it down, let them take it down, if they want to leave it up, let them leave it up. But the other portions of the ordinance are very restrictive and I concur with those portions of it where it goes with subdivisions or redevelopment or land that has not been developed yet even if it is a single lot. Just taking the weight off the homeowner who is already on a developed lot and that is my position. Mr. Knowles spoke for the Environmental Commission. They are not in favor of adopting anyone else's tree ordinance. They would like to make that our town would have our own that would satisfy our needs but it would be a good barometer to refer to for areas that we might want to include and also they've asked that before it goes to Township Committee, they'd like to have the opportunity to review it. A meeting will be set up with Mr. AlPaugh and the Environmental Commission. Chairman Anepete stated that he feels no point in reinventing the wheel. If someone has a really good ordinance and has done their homework we could modify it to suit our needs and then it becomes ours. Mr. McVicar stated that if we were to adopt it or modify it, make sure that it fits in with the hierarchy we have in town now. Chairman Anepete suggested that we are at the point now where we should have it re-written and presented to the Town Committee in a form that is acceptable to the Planning Board, the Zoning Board, the Environmental Commission. Mr. VanPelt recommended that the Environmental Commission look at the ordinance with Mr. Alpaugh, put in their input, come back before the Planning Board and then present it to the Township Committee. I would like to make it clear that the Township Committee is going to pass a tree ordinance of some version because we are having a lot of issues of people taking down trees and no one is minding the store. That is a problem. Mr. Tredy stated that there are a few technical issues that he would like the Environmental Commission check into. I'm referring to the ordinance is referring to authority given to four different people – the Zoning Officer, the Conservation Officer, the Environmental Commission and the Landscape Architect. It appears that the Zoning Officer gets final approval. Is the Zoning Officer going to take some classes to get credentials? Mr. VanPelt answered that part of the requirements for our Community Forestry Management Plan is to have two individuals go to class to get the CEU's on certain aspects of trees and I suspect our Zoning Officer/Conservation Officer is going to go to school. Chairman Anepete said my feeling for the Board's position here is we seem to like everything that is going on with the developer's restrictions. My feeling is for the

existing homeowner having the right to remove a tree that irks him for one reason or another. That is the input I think that this board would be to people who would draft the final form of this ordinance. Mr. McVicar wanted to mention a couple things. First off, be aware that anyone coming in for a minor subdivision will have to do this tree removal plan. They'd have to go through all the steps here. More work on them. Just so everyone is aware that this will apply to minor subdivisions. Typically with a minor subdivision you're not dealing with anything except drawing lines on a piece of paper. You're not doing any development. I can see routinely applicants coming in asking for a waiver of that and the only concern I have there is that as long as we're covered that if that waiver were granted that they'd get caught at the next step which is the lot development. Mr. Tredy clarified before they do any clearing for any construction prior even after a lot is subdivided, they would have to comply with the other portions of the ordinance. Mr. McVicar said with a minor subdivision where they are creating lots of 20,000 SF or less, it applies with the tree restoration but not with the tree removal part of it. Somehow you'd have to close that gap. Keep the minor subdivision in and let them ask for the waiver at that time as long as there is an agreement that there be a requirement at the next step in regards to what happens to it. They come in and that section does apply. Mr. Tredy added that would take the burden off of the developer in the initial period, but it would fall back on him when he went to develop the lots. Mr. McVicar stated that you don't want them to try and loophole through this. I would suggest that before you go through the step of someone putting together a draft ordinance, that we come up with a consensus of what we want the tree ordinance to do, what we want it to be applicable to, what we don't want it to do. You say you have issues of someone wanting to take down a single tree; you don't want this ordinance to apply to them. You want someone who is drafting the ordinance to put that exception in there so the intent of the Board and of the Township gets handed over to the person who is drafting the ordinance. My point is that the individual who is going to draft your ordinance, using this one as a guide, be handed a list of key bullets that we are looking to address. That way your first draft of the ordinance should include those items and it's easier to go through it. Chairman Anepete made the suggestion that we could make our intentions be known through Ms. Laramee writing a letter. We will work with her to create it directly to the lawyer who is going to draft the proposed ordinance what our intentions are included in there. Mr. Tredy suggested that perhaps we have Mr. McVicar involved. Mr. Knowles added that the important thing is that we communicate with the Environmental Commission too so that they are made aware of some of the concerns that this Board has and or any others. It would be great to Wayne at the upcoming meeting with Les Alpaugh. When we have that meeting, if that is a possibility Mr. Mayor, maybe that could work. Mr. VanPelt asked Mr. McVicar if he could attend the meeting. Chairman Anepete commented that at that meeting, there should be a memo of the concerns of this Board, the Environmental Commission, etc. to the people who are actually going to draft the ordinance.

Mr. Tredy added to Board comments that a few meetings ago, we had Stan Slachetka come to a meeting and he gave a presentation about the proposed Ocean Commons where they are going to build some apartments. What I got out of that meeting was something that I'm embarrassed to say, but the fact was everything we tried to ask Stan about, he

sort of kept saying, “well you’ll hear about it when it comes back to the Planning Board after it goes back to the Redevelopment Committee” and when I hear stuff like that it you get the feeling that this is going to be a done deal and the Board members really they hold back their questions. We didn’t deal with any kind of impact that this kind of development could bring to the town, impact on police, fire, schools, traffic. What I’m getting at is after Stan gave his presentation, I feel we wimped out. There were things that should have been asked and should have been said and we didn’t do it. I think it would have been to the town’s benefit to have asked those questions and have made it a little bit of a tougher meeting than it was. We really white-washed whatever Stan said there and I’m embarrassed that I was part of it. If there was a way, I would like to have a re-do on that. There are so many problems with a project similar to that. After Stan was here, a couple of days later, I had the opportunity to drive through Toms River and I decided to go through the apartment complexes in the area. I went through five of them. Here are some of the things I found, they had dumpsters that were in enclosures that had gates on them and all the gates were broken and there was garbage hanging out of the dumpsters. In that same complex, it was very similar to the one shown in the design that Mr. Slachetka had brought up, the apartments on the ground floor had sliding glass doors that opened onto a patio. Apparently the management of the complex was very good, they didn’t let anyone have any sheds or anything like that, but what they did do, was everyone had their summer furniture wrapped in plastic and they had stacks of chairs and umbrella’s and picnic tables turned on their sides. What I found in the other complexes that didn’t have enclosures were they had containers strewn about the parking lot on some of them, on the grass on others; they had almost every one of them bicycles chained to fences, bicycles chained to their entranceways. There was mechanical work being done on cars. These buildings had great aesthetic look. There was nothing wrong with the buildings. It was how the management dealt with the people that were living in the buildings. Mr. Avellino concurred with Mr. Tredy. I was very upset as to the presentation because I was Chair that night. I also looked into it after we approved it and I think that if the information was brought to the Board at that time, I think that the decision would have been different than what it was. I found out that the property was much more consolidated than what it appeared to be. A lot of little things that should have been answered, before we made our decision. It’s hard enough to make a decision on a project that large but if you don’t have all the information, it’s hard. We’re taking the word of another organization, the Redevelopment Authority, which we wholeheartedly go along with for doing their homework, but it should be a team effort where they give us the information and we go through it and if we can find anything wrong then it goes back to them. That’s the way it’s supposed to be according to this. I think we heard this gentlemen and how wonderful it’s going to look, but there are a lot of little things that feature into it and I think Dennis brought it out very vividly that it could have been a very big white elephant in our township. Mr. Knowles added that it shouldn’t just be a concern for the apartment complex; it should be for our entire township some of the things that do take place on the homes. Chairman Anepete said that what we’ve seen is a completed plan before the Planning Board that pretty much a lot of people are thinking we’re rubber stamping rather than being involved in the creation of the plan. I’d like to see the Planning Board a lot more involved in the creation of the plan before it comes before the Board to say yea or nea. Mr. Tredy offered that one positive step that has been

taken so far is previously the Redevelopment Commission Engineer was also the Planning Board Engineer. Now that has been taken away since we have Mr. McVicar representing us, that has been eliminated. Mr. Avellino added that he was surprised that an impact study was not required. All the questions that the Board members had would have been answered with an impact study. Mr. VanPelt spoke. The Redevelopment Committee meeting was March 13. You can all go on line and read the minutes and read my comments and you can read the advisor's comments. Quite honestly, I've always looked at things objectively and that was an example of how Redevelopment does not. If you recall, I was not here that night, but I sat in the back of the room. We do require a community impact statement. We passed the ordinance in 2004. I would strongly suggest that this Board take a motion that the Redevelopment Agency require a community impact statement at their level, not when the horse is out in the field and I'll tell you why. There are four projects coming and they are all about units and a lot of units. I think you need that information to make a decision. I thought that Committeeman Reilly and I made the decision that we thought was in the best interest of the municipality as we always do but it was a flawed process. It's not how the process should be and don't get me wrong, we certainly appreciate that you guys have enough trust and confidence in us that we are going to do the right thing. At the end of the day, we did the right thing. But that is not the way the process is suppose to work. I'm not always going to be here, Dick isn't always going to be here, people are going to change, there needs to be a much tighter system put in place where this Board has more input on the shape of their community. I think you can start seeing that especially from the Redevelopment Agency. On another note, I've heard things that we should expand the Redevelopment Entity. First off, let me clarify for people so they understand the rules. We are not a Redevelopment Agency, we are a Redevelopment Entity. The Entity is the size of the Township Committee. In order to expand the Entity, we have to expand the Township Committee. That's not a decision I make, that is the decision the people of the Township of Ocean make. If you want a Redevelopment Agency which is what I've been hearing about, I want you to understand that you need state approval to do that, you have to, by law, hire an executive director. The Board has the power of condemnation, has the power to bond, it is totally autonomous from the municipality. It runs at it's own pace. No one has any oversight of it. It has its own professionals, its own staff, the whole nine yards. When we set up the entity, we took that into consideration and we didn't think an agency was appropriate for our municipality. But rest assured as projects come in, and there are two or three projects coming up, we're going to focus on making sure that this Board has all the information that they need to make an educated decision. Clearly when I sat in the back of the room, that was not the case at your last meeting. And to no fault of your own, the Redevelopment Entity let that project get that far down the track, but after doing our own research, producing 100 school children easy when we have 200 spots left in the school system. Don't get me wrong, there are school kids coming. You are not going to get around that because of our COAH requirements. There are school children coming. The Town Center the RFP is in draft and we're looking at 500 units minimum in the Town Center. People need to pay attention to what's coming and this Board needs to play an important role in all this. Quite frankly, if that's not going to be the way that things work then I would strongly suggest that we dissolve the Redevelopment Entity and let things go back to the way they were. But I do also see the

good side of Redevelopment because I happened to walk Shoprite the other morning with the owners and without Redevelopment that doesn't happen, that project does not happen. It's now up to 400 jobs instead of 220 jobs. It's a thirteen million dollar building and I know what's coming around it. I know some of the stores that are going to be coming in and we had a designer in the other day. Redevelopment does work, it's just that it got set up in such a way that when I hear the words rubber stamp, white-wash, any elected official should be concerned, those are red flag words and that is not the reputation that this Board or this municipality wants. So that's why Committeeman Reilly and I did what we did. That project is not dead by any means, it certainly is an opportunity to go through the process again as well as some other people. I would strongly encourage, and I will have Diane make sure she notifies you guys that you start attending Redevelopment meetings. Mr. Tredy added that we were told we couldn't. Mr. VanPelt said I want to talk about that because I think the interpretation of the law is incorrect. I'll research it again just to make sure. Quite frankly if that is not the case, the next piece of legislation I'll introduce at the state level is that. Because that is not right either. Committeeman Reilly stated we all learned through this application a real lesson. The lesson was as the Mayor said, as we sit here, all of us did really not do our job. We at the Redevelopment did not do our job as thoroughly as we should have. Quite frankly if we had, it never would have gotten here to the level it was. I sat here that night and did not speak probably as much as I should have. But it got through to here and we did not do our job. And fortunately, at the 11<sup>th</sup> hour, two people did do their job. It was very painful and quite frankly it was very uncomfortable all the way around. I think we all learned the importance of every one of us doing our job at whatever level we're at whether it's Redevelopment, Planning Board, wherever. And I should say fortunately we learned from this because it didn't happen. And we're not going to be sitting here two or three years from now wringing our hands saying, "Good God how did this ever happen or how did we ever allow that to happen". So from my perspective in part I'm kind of glad it did happen. I say that not because of who was affected or how it was affected, but I think we all learned a lesson because as the Mayor pointed out, there are several major projects coming up. There are at the semi-infancy stage but they are very significant, they have major impact on the community as far as housing is concerned, as far as the school is concerned. Quite frankly, as far as the composition of Waretown is concerned and I think because of what happened, we are all going to be a lot smarter as a result of that. We're going to look at these a lot more closely and carefully and challenge each other. We should challenge each other at every step so that at the end, we can all step back and say "we did a good job" and the residents of Waretown are going to step back and say "that's a real positive to the community". Chairman Anepete added that speaking of good jobs; a fantastic job has been done by the Redevelopment Committee and the Town Committee. They've worked effortlessly and they produced some major projects in this town. We've been win, win, win so far, I guess one little glitch in the program doesn't set us back that far. It's been analyzed and corrected and we're moving forward. I applaud the committee and development entity for all the work they've done in the past and probably are going to continue to do. Ralph Avellino said he spoke about before that the Planning Board doesn't get enough information. We have to have enough information to make an educated decision. We want Waretown to be number one.

Chairman Anepete suggested that a liaison to the Redevelopment Entity be appointed from each board. To have the right to speak and influence and not vote on final actions by the Entity. Mr. VanPelt commented that we can research that a little more.

Ralph Avellino made a motion that an impact statement be required at the Redevelopment Entity level. Dennis Tredy seconded the motion. All in favor: (aye) Avellino, Tredy, Eckert, Knowles, Sweeney, VonSchmidt, Anepete.

Reilly and VanPelt abstained.

### **OLD BUSINESS**

Gan's Trees Service

Docket #17-01-PB

Block 195, Lot 17

Time Extension Request – carried from March 6, 2008 meeting.

Let the record reflect that Dan VanPelt stepped down.

Walter Gan, 550A Wells Mills Road.

Mr. Gan was sworn in by Jerome Landers, who was filling in for Steve Yost.

Howard Butensky, attorney for Mr. Gan, addressed the board. This is somewhat of an unusual request. It's on its face a very standard request where a minor site plan approval has expired and we're asking pursuant to the statute for a one-year extension. I'm sure you're all very familiar with the property. It's at the corner of Route 9 and Main. Mr. Gan has been there for approximately 20 years or so and has operated his business and he made an application for a minor site plan approval to basically upgrade his facilities to meet standards and eliminate the mixed-use that was on site. I wasn't involved in that application, but I had occasion to read the resolution and it was obvious in reading the resolution the Board gave considerable amount of time and effort in coming up with conditions that were attached to the resolution and at the time everyone was very comfortable with it. Mr. Gan was looking forward to proceeding and at that point things turned. Unfortunately he suffered with an illness and ultimate demise of his wife which factored into his business and then also thereafter, suffered a injury where he ruptured an Achilles and I think you know if you follow college sports or professional sports what that can do to a person. It can shorten or ruin a career and this is a labor intensive business that he does and he's one of the primary laborers. In August 2005, everything was looking up and he was looking forward to doing the improvements, his business he hoped would continue to grow and he would continue to be the respected businessman in town that he always was or considered himself to be. Because of these two setbacks, instead of the business growing, it's now in the decline. He's physically unable to do the effort that he was prior to and we're here this evening asking for a one-year extension retroactive to the expiration date of the original resolution which was August 2007. But in doing that, we're presently in kind of a wind down situation. Certain of his equipment

is already on the block for sale and he's not in a position because his phasing out of the business to do the improvements that were called for in the resolution for approval. We don't want to create a conflict or a violation and that is why we are being terribly candid, painfully candid in spelling this out for the Board's consideration and whether or not they would extend the courtesy of the extension. Full disclosure is being made that he really can't do these conditions. He's again, in the phase out element of winding down his business. If he could choreograph things, whatever that might be worth, his youngest child graduates high school in spring of 09, at that point he will be done for sure. If he cannot get extensions to permit the continuance of the business as it now exists, he will certainly have to phase it out sooner because he's just not in the position to comply with the strict terms and conditions of the resolution of approval. Mr. Gan if you want to add anything to what I've said, feel free.

Mr. Gan: I'm 60 years old, I'll be 60 in September. I have a daughter, she's a junior in high school, and for me to put all the money from my savings into the business property for the upgrades and whatnot, it's pretty much going to take from her education and college. Is it a hardship? I don't know if it's a hardship or not, but I don't think I can continue with the business. I was going to retire when I was 62. If I have to retire a little bit earlier, I will. It's only my son and I working the business right now. I don't have a crew. I only have two trucks and I've put most of my equipment up for sale. We only work four days a week right now and it's phasing out quick. That's what I basically have to say. I'd just like to see if I can get another year in and make ends meet.

Mr. Butensky: Not the most pleasant application Mr. Chairman.

Mr. Tredy: Mr. Butensky, I know over the years this board has granted extensions from time to time. This extension if it were granted would only be good until August of 08.

Mr. Butensky: Correct, you're only permitted to go one year at a time and this specific request is for an extension one year retroactive to August of 07. Again, in your consideration of the extension I wanted to make it clear that I didn't want to mislead anybody that if the extension is granted that he is going to be doing the resolution compliance to adhere to the terms and conditions of the approval. That is why I spelled this all out on the record. Then depending on what occurs tonight, it may be that he's before you again asking for one final extension. But I can only go one year at a time. You're absolutely correct.

Mr. Tredy: Mr. Butensky, on the occasion's when an applicant was granted an extension, they had to provide with us some documentation as to why the extension should be granted and there are certain rules that apply. Usually we require the fact that the applicant was attempting to comply but he was held up by some government entity, a county planning board, or a state DOT, or something outside of his own power to control. So far, you didn't say anything like that.

Mr. Butensky: I did not. You are absolutely correct. There are two separate criteria under which a board may consider an extension. One is where it was prevented from

obtaining or being able to obtain all the compliance because of other agencies holding it up, litigation, and the like. And there it really is not an extension, but a talling. The second is basically in the discretion of the board where an applicant without having to establish anything can ask a board to grant a one-year extension. The board, of course, has the discretion whether or not to do it but it doesn't require a showing that CAFRA or the county planning board or the DOT or anyone else has held up the ability of the applicant to move forward.

Mr. Tredy: What I was giving to you was the past practices of the board. That's how we've been dealing with this for many years. Also, to your credit I guess, you're telling us up front what's going to happen, that you're going to come back and that's kind of like telling us we just don't want to comply and we're not going to do it. In a nice way, but you're just saying you're not going to comply and your client it took years and years just to get him to the point where he came before our board. I'm not sure what the mechanics of it was but I know he had to be dragged kicking and screaming, not the way you had indicated that he wanted to comply etc, etc,. From being involved in this for quite a long period of time, it would be difficult for me to vote in favor of an extension on this type of application.

Mr. Butensky: Well I certainly I would not discuss the history of it with you because I don't have standing to do that and whatever I said was I believe accurate to the extent that the application was to bring the property into conformity which is all I thought I said. So whatever happened in the past is the past but again it's a discretionary consideration by the board. The provision under which I'm proceeding does not require a proof of being held up by another agency. I indicated the reasons why he didn't proceed with the completion of the improvements or the resolution compliance. They are tragic from a land use perspective you have to, it's not built in but again, within the sound discretion of the board. I spelled out a possible scenario and certainly you go one year at a time. If I could have made an application for two years I would have which is why I pointed out why it's for one year. But if we come back in a year should we be successful this evening, the board will look at it again and then do what's appropriate.

Mr. Tredy: Mr. Butensky, I have feelings for Mr. Gan's problems that had developed. But I also drive up and down Route 9 daily and I know that his business was in full operation up until about a month or so ago. Considering that the business was working, why wasn't there any attempt to conform with the resolution?

Mr. Butensky: You say that the business is working; you say that the business is there, he's also said that not doing what he did because of limitations, the volume isn't there, it's on the decline. No one knows that better than him. You can drive up and down and make observations, but those observations don't tell the entire story unless you do nothing but drive up and down and I'm sure you don't do that.

Mr. Tredy: Twice or three times a day. What I'm trying to point out Mr. Butensky is that there appeared to be full operation of the business up until a very very short time ago

where the piles of logs started to disappear. So I don't exactly agree with the way you're presenting your clients application as far as his business and only from my observations.

Mr. Butensky: He didn't bring his books and records to share with you but he can only offer testimony under oath.

Mr. Gan: Basically the logs, we've basically tried to clean up the yard. We tried to get rid of everything. We have a small pile of logs right now. I got a truck out in front there for sale, I got a trailer out there for sale. I got another truck out there for sale. If I have to, I'll put the property up for sale. I'd rather not do it just as yet, but if I have to I have to. Firewood is not my business. Firewood is like an extra thing to keep the guys on over the winter. If I didn't have to deal with a stitch of wood, I'd be more than happy to. There is no money in firewood. The money is in tree work. The firewood is a by product. We do firewood over the winter, that is why you saw the logs all disappear. It's two of us right now, my son and myself. It's been that way since the beginning of December, not four men like I usually had. We work four days a week – Monday through Thursday. The weekend we don't work and Friday. You won't see the logs going into the property the way they did. It's only two of us.

Mr. Tredy: I understand but you haven't changed anything as far as what I had said about your operation. You just made testimony that you were working up until December this past year. So during that entire time, you didn't try and get into compliance.

Mr. Gan: I was on crutches for 12 weeks and in December it was my son and one other man during the time after September that worked. And after that I hired maybe seven guys and none of them panned out so it was basically my son and myself after December, after I got back on my feet to an extent. And I don't have any intensions of hiring anyone else. The reality is it will be just my son and myself with two trucks. I've been there for 20 years, you say kicking and screaming to get me in here, I don't agree. I don't agree. When you told me to come in, I came in. The person that I hired to do my engineering and stuff was a fiasco. To get him to do anything, he prolonged things to an extent to where it shouldn't have been.

Mr. Butensky: I'll take a little piece of that one. I'm not going to mention any names, but I know the person he talked about and I've got scars all over my body where he's wrecked applications I've been involved in.

Mr. Tredy: I won't disagree with Mr. Gan on that because I don't know but I'll give him an opportunity, your client to disagree with the fact that many many times he didn't show up when we had meetings. I'm not holding that against him but it sort of shows a pattern as his attitude towards the resolution of compliance.

Mr. Butensky: Again, there were compelling circumstances. I don't know how many times he didn't show, and you said you're not holding that against him, so I won't get into that.

Mr. VonSchmidt: I don't have the history that Mr. Tredy has. I haven't been here that long, he brings up very valid points of past practice that I can't disagree with, I would agree with. I am familiar through the short years that I have been here that there have been times where he has been noticed and hasn't been here but I also believe that as a board we have considered hardship cases in the past and I feel like hearing the knowledge of what this man has gone through, it tends to make me feel like I want to grant this at least for a one year extension. But I think it's important that we note to Mr. Gan, should we choose to do this as a board, the facts that Mr. Tredy brings up. It's not normal practice to grant under a hardship. That it has to be an extreme compelling case which I think has been cited. And should they show back up in August, there needs to be some other compelling evidence that there is another state agency possibly holding them up or other compelling facts other than the same hardship. That's the position that I'm sitting in right now. I just want to share that with the board.

Mr. Tredy: I can appreciate what you're saying but Mr. Gan, or his attorney; I'm not sure which one said it said that they basically have no intension of complying with the resolution.

Mr. VonSchmidt: I think you put it very eloquently when you said that they are being very nice about what they are saying, none the less, it's what they are saying, I would offer a little argument for the applicant in the sense that I do drive by there regular myself and although very little, I think there has been some clean up and some progress in the right direction. Maybe not in the sense that they are trying to satisfy the application, but I don't know that any of here can appreciate the compelling facts that have been presented to us either. And that, again, is why I think I'm sitting in the position of saying August is very close, it's around the corner. It's going to be here before we know it and I don't think it's going to hurt the board to grant this extension till August. But at the same time, Mr. Gan, needs to know that he comes back to us in August like they possibly indicated they may, he may need more compelling facts along the line of past practice rather than just a hardship case.

Chairman Anepete: I have a question. Of all the requirements to get your property into compliance in the resolution originally approved, have your accomplished any of those? Gordon is telling me he's seen some things.

Mr. Gan: Not that I know of.

Mr. Butensky: Just general property maintenance.

Mr. Gan: I tried cleaning everything up.

Chairman Anepete: One of them which was to remove that building which is dilapidated and an eye sore, probably a hazard.

Mr. Gan: The house? It's really not dilapidated. I had people in there until the township told me not to rent it anymore because I was operating my business there. They said I couldn't have two uses, so I stopped renting it. But I had renters in there right up until it was vacant.

Mr. McVicar: The issue with this application is not that you're seeing things happening on the site, the issue is to perfect the site plan. The site plan has been approved, there were changes that had to be made to the plan itself, there were outside agency approvals that had to be obtained. These are the things that had to be accomplished. Suggestion that the board made here was in August that for any anticipation of another extension that proof be presented that you are actively pursuing the approvals that are needed from the outside agencies. Actively pursuing revisions to the approved site plan to get that to a point where it can eventually be signed by the board.

Chairman Anepete: I think his attorney already said he has no intention of doing that up front for the record.

Mr. McVicar: I think you can be up front in saying that you get the extension until August but if you don't go for outside agency approvals then there will be no further extension.

Chairman Anepete: Consensus of the board, I'm seeing a lot of nods.

Mr. Tredy: I don't agree.

Mr. Avellino: Cleaning up the site is not part of the site plan.

Mr. McVicar: That comes after the site plan.

Mr. Avellino: We're putting the cart before the horse. Cleaning up is the tail end of the site plan, complying with the DOT, entrance to it etc, etc, it's the apron, the whole ball of wax, the house, that has I don't think I've seen any of that take place. Maybe it has but

Mr. Gan: The DOT I've had approvals with the DOT. I put the application in and I believe I have that at home.

Mr. Avellino: This goes back to 2001 am I correct?

Mr. Butensky: The resolution was adopted in August of 05.

Chairman Anepete: I think the board has enough information to take action on this application for extension.

Chairman Anepete opened to the public if anyone would like to comment on this specific and nothing else?

Dan Collamar of 24 Bay Parkway approached and commented. I might suggest that if the board does go ahead and grant an extension and Mr. Gan chooses to come in a year from now to try to go for another extension, perhaps there be some progressive deal made. In other words, you would grant the extension if can accomplish A, B and C but forgo D, E and F till next year or something along that line to make it more affordable.

Mr. Avellino: Mr. Collamar we've been looking for that for quite a few years, anything would have been something. When I say anything, I mean anything.

Dan Collamar: I can't deny that I haven't been here I haven't seen the application, just from what I'm observing tonight that that might be a schedule that the board considered.

Chairman Anepete: Would Mr. Gan concede to attempt to accomplish any of the requirements of the site plan at least move forward to getting something accomplished between now and August that you're going to come back with another application? It would go a long way.

Mr. Tredy: Mr. Chairman, he already said "no". He's going to recant his testimony and give us new testimony?

Mr. Butensky: Recant?

Mr. Tredy: Isn't that a proper word? Renegotiate.

Mr. Butensky: I don't know if recant is the term, but please (speaking to Mr. Gan) if you disagree with anything I said, say so. I'd love to answer yes or no, but I can't I'm a lawyer. The issue that came up because we had discussed this in preparing for the meeting is that he's there for the short term; the only question is how short is the term. If he were to invest in certain of the improvements, they are specific to his operation, to what he plans to do and there are investments that he may not get back when he does put the property on the market for sale. So there is reluctance because he's not going to be operating his business there to put too much into the property. It's a dilemma. There are certain items that, if you disagree with what I've said.

Chairman Anepete: I think we've got all the input. I'd like to have a motion and a second to take some action on this. And then we can speak on the motion. I'd like each board member to speak on that motion and final position.

Mr. Knowles made a motion to approve the extension through August 2008. Mr. Eckert seconded the motion.

Chairman Anepete: I'd like each member to take a moment to speak on this motion, just your position before we argue to which way you want this to go for or against the motion.

Mr. VonSchmidt: My thoughts are I agree with Mr. Knowles motion. I think I started that conversation here. I think we are a compassionate board and I think the facts that we

heard are pretty compelling. I hope that Mr. Gan and his attorney leave here knowing that if he comes back in August, which is five months and maybe three days if he comes back with zero action taken and zero past practice to lean on, it's probably going to be no from me and everyone here that says yes tonight. And I hope they understand that. This is the best we can do. This is as compassionate as we can get.

Mrs. Sweeney: I agree with Gordon and I think that we are so close to August that I would grant him the extension and that would give Mr. Gan enough time to decide exactly what he's going to do.

Chairman Anepete reserved the right to speak last.

Mr. Avellino: He already told us that he's not going to do anything between now and August. It doesn't do him any good to do anything because he may not get the money back. Correct? So we know right now that nothing is going to be done. You come in August; he's going to waste his money for an extension. That is my feeling.

Mr. Tredy: I think I stated my position. We're just doing it for no reason, if we agree to the extension we're not basing it on anything concrete that has anything to with improving the zoning of the township, or any reason that we are here for and therefore, I think it should be denied.

Committeeman Reilly: I think that based upon what the applicant said, that Mr. Gan's is in what I call a wind-down of his business, and I would expect being a prudent businessman, that it would not benefit him to spend any money improving a property that he intends on selling whereby the improvements may add value to the sale price. Therefore, I think we'll be here in August talking about the same thing with no change. I think its better that we face reality now.

Mr. Knowles: I'm going to agree with the motion, since I made it. I feel it's the right decision and I think the general consensus is there is no do over in August unless circumstances change.

Mr. Eckert: I am in concurrence with everything that has been said. I haven't been burdened like some of our senior members have with all the past history of the situation, the unwillingness, as I've heard, of Mr. Gan to cooperate in the past. However, he's now talking about the future and he's talking about and asking for a four or five month extension and at that time, as far as I am concerned, it's a whole new case. We'll deal with it in August and see what he has to say in August. Obviously he plans to wind down the business and that is very clear. You have been very forthright in what he's had to say and I'm in agreement and will be voting yes on the motion.

Mr. James: I agree what was just said about four months. We should give him four months and then in August we'll go from there.

Chairman Anepete: Chair's position is I can understand Mr. Gan's reluctance to do any of the work that costs him money that he can't get back when he sells the business of the property. I think there are some things that could have been accomplished for aesthetic purposes to make the town look a little better that were just ignored. Everything doesn't cost money. It's just labor and putting some people into making your property look better and the town more presentable. You're on Route 9 and Main Street and for that reason I think you've had every chance to do something and I haven't seen you do anything there that shows me that you have any concern for what the rest of the town would like to see there. In that case, I would speak against the motion.

Roll call: (ayes) Knowles, Eckert, Sweeney, VonSchmidt, James  
(no) Avellino, Reilly, Tredy, Anepete

Chairman asked for a tally. Five to four. Motion passed five to four.

Mr. Butensky: Thank you very much.

## **NEW BUSINESS**

The Chairman asked if there was any new business before the Board. Seeing none he opened the meeting to public comment.

## **PUBLIC COMMENT**

Chairman Anepete opened the meeting up to public comment.

Dan Collamer, 24 Bay Parkway stated he would like to comment a bit and ask a few questions regarding the Ordinance 2008 and the amendments being made to that ordinance. To begin with, I don't quite understand what is trying to be accomplished in making these amendments. I remember when this ordinance was first passed it was relevant to a particular building on Main Street that was being built quite a bit larger than the town would have liked to have seen it built which is what this evolved from. At that time, it was about the size, shape and dimensions of the building. Not necessarily other situations as to how many lot coverages and that. It seems to me that the way that this ordinance is being amended it's sort of treating someone with a large property a little bit unfairly. The smaller properties are really governed by their lot coverage and their set-backs as far as the number of accessory buildings that could be put on them. It's sort of a given that in most situations in the common house lot that you probably couldn't even put a building on that lot in addition to the primary structure that's 50% of the primary structure. Yet when you start dealing with larger properties such as my own, you do have that opportunity where you may in some situations have more than one accessory building.

Mr. Tredy: I am going to interrupt. Our attorney should be aware that Mr. Collamer is on the agenda for this month's Zoning Board and I don't know if it would be proper. I don't know, maybe I should leave the building or something because I'm on the Zoning Board.

Dan Collamer: I'm not pleading my own case here.

Mr. Tredy: Didn't you just mention your property?

Dan Collamer: I did, but I'm not pleading my own case, I'm speaking generally.

Chairman Anepete: He did say "such as lot" as an example.

Mr. Landers: Your comments would have an impact on your property.

Dan Collamer: Yeah, as well as any other property in town and speaking for the public and my application is not on the table at this time and it's not even being heard by this board. I don't see how I should be barred from making public comment.

Mr. Landers: We're not barring you from making public comment. Mr. Tredy's concern was whether he should be hearing it.

Dan Collamer: Well, that's his option, he's certainly free to step down if he chooses.

Mr. Tredy: That's why I brought the comment to our attorney, I want him to make that decision for me.

Mr. Landers: The application you have before the Zoning Board is it associated with this article?

Dan Collamer: If this article is in reference to the ordinance that pertains to me, yes.

Mr. Landers: Okay then Mr. Tredy then you would be subject to the challenge of the confines if you would be making a decision.

Mr. Tredy: What I will do for the record is I will step down and leave the building so that there can be no question as to whether I was listening on any of the comments being made here. Would that satisfy so that I can hear this when it comes before the Zoning Board?

Mr. Landers: It will keep you from being compromised.

Mr. Tredy: Okay that is good. Mr. Chairman, I'm leaving the building.

Chairman Anepete called for a five minute recess.

Chairman Anepete called the meeting back in session. He asked Mr. Collamer to keep his comments to about five more minutes.

Dan Collamer: Basically my take on this is that limiting the large lots to the same criteria as a smaller lot is not necessarily fair to the people who have larger lots. I think what would be a lot fairer would be to try to do it in some ratio related way. And, just for hypothetical situation say you have one acre, you may be able to have two accessory buildings and your lot coverage may be the standard lot coverage is 30%, maybe if you do it with accessory buildings you would be reduced to 15% or 20% or something along that line and that is just hypothetical speaking just to sort get the point across and as you go up in acres, maybe you're allowed to have more and less lot coverage because as I said before, people who are on the typical 100 x 100 or quarter acre lot is very likely to put an accessory building 50% the size of their primary building on it is going to bring them to a variance situation by lot coverage or by setback, not necessarily but more likely than not. And frankly, I mean typically, when a municipality alters an ordinance or creates an ordinance or whatever it may be, there is something there that is for the betterment of the town or to correct a real problem or something like that. I understand when this ordinance was first passed the problem was trying to be corrected. It was trying to limit for lack of better terms unsightly buildings in the Main Street area. I really don't see what making this change in this way is doing to make a positive impact on the town. And maybe you folks on the board would like to share with me, you've looked the thing over I'm sure and studied what's been put before you and give me an idea of just how this is going to make a better situation or solve a problem that exists.

Chairman Anepete: We're here to allow you to make your comments, not actually to respond to questions. This is a public comment portion of the meeting and you've given us something to think about and I agree with some of the logic of your argument. However, we're not going to respond at this point. You just put it on the record and it's listed here.

Dan Collamer: It's common to have some dialog from the board. I've been before committees and boards more than a few times and it's common to have some dialog between the Chairman and the members or the Engineer or the Attorney or somebody. I'm not quite sure what kind of procedure this is you're talking about.

Chairman Anepete: What I'm talking about is the fact that questions have been raised. Some of it makes sense to me and I'll consider it when reviewing the ordinance. But we're not going to have a dialog about the questions you're raising. You're not going to question the board here. This is an opportunity to air your position and make your comment.

Dan Collamer: Is there a particular reason why I can ask a question and it's not answered?

Chairman Anepete: It's just not the way this part of the session functions. It's allowing you to make a comment on any issue that's before the board and that might be in the boards jurisdiction.

Dan Collamer: Mr. Avellino had no problem addressing me when I commented on Mr. Gan's application.

Chairman Anepete: Okay well, I'm the Chairman here and this is the way I run this board.

Mr. Avellino: I'm sure the ordinance was brought up because of the fact that there has to be a reason why we brought up. They didn't pull it out of the file and say "maybe we ought to look at this and change it". There had to be a reason for it.

Dan Collamer: Well, I think there obviously is a reason and know without going into detail. I'm not going to go into that, but yeah there is obviously a reason and the reason is probably sitting in this room.

Mr. Avellino: I honestly don't know the reason, maybe there is more than one reason, I don't know.

Dan Collamer: You are a board representing this town and to have, I mean you should be able to respond to me somehow as to how this ordinance is going to make better for the town.

Chairman Anepete: Thank you for your comment sir.

Dan Collamer: Okay thank you.

Chairman Anepete asked if there was any more public comment.

Committeeman Reilly: Mr. Chairman this is the session that is identified as public comments, it's not public discussion or debate and I think you were absolutely correct that this is an opportunity for public comment.

Chairman Anepete: This allows anyone to make a comment about anything that doesn't necessarily mean there is a question or answer session.

Mr. Josh Gasorowski and friend approached.

My name is Josh Gasorowski and (garbled) and we are here to ask if you would as a committee let us be allowed to bring scooters into the skate park.

Chairman Anepete: We don't grant permission to do things like that. If you would like to make an argument on what you're talking about what it is that would benefit the town, any comments you'd like to make. We're not going to be able to grant you permission to do it, but you can get on the record whatever the comments are.

Mrs. Sweeney: Can I ask them a question?

Chairman Anepete: Can we direct questions to the commenter's? I think generally we can, we don't want you to have asked us questions that we have to respond to, but the board can ask you a question to clarify your position I guess.

Mrs. Sweeney: Why are you coming here and why do you want that situation?

Mr. Gasorowski: Because we there are a lot of people in this town that like to skateboard and they go there to skateboard and there are only a couple of kids in Waretown that scooter like me and him and my friend back there. We try to go places to scooter but then we get yelled at and kicked out and we want to go to the Waretown skate park to hang out with friends and be able to scooter and we have no where else to go.

Mr. Knowles: I'm not familiar with the proper format. This board can't give approval for that, where would they go to get this approval? I think this is what they are looking for is a direction where they could go to ask someone and get an answer.

Chairman Anepete: Would that be the recreation committee for openers and then the Town Committee?

Mrs. Sweeney: Right, I would suggest that they go to the Recreation Commission and they state their case and then the Recreation Commission will take it to the town.

Mr. Gasorowski: Is that Jean Broadbent? Because she had told me to come here to ask you.

Mr. Knowles: Okay then the next thing would probably be the Town Committee.

Andrea Ford approached. I am Josh's mother. He was directed here by Jean Broadbent. She instructed him to come here tonight to approach the committee with their question. Pretty much what it is is they are looking for permission to be granted to use their scooters in the skate park which as a parent to me is a wonderful thing. They go there, they are good boys, they keep out of trouble, but I know whenever they have gone in there with the scooters, they are told they are not allowed. I really don't see what the difference is whether it's a scooter or a skateboard.

Mr. Knowles: The best thing would be the township committee. This particular board doesn't make policy.

Committeeman Reilly: The next Township Committee meeting is next Thursday night.

Chairman Anepete: Mr. Reilly is a member of that committee so he'll be there and will be familiar with you when you show up.

Mrs. Sweeney: I think, Mr. Chairman, there is an ordinance right now that says that certain things are allowed at the skate park. The ordinance would have to be changed and that would be by the Township Committee.

Chairman Anepete commented that he was very happy to see the young gentlemen here speaking up and making comments before this board. He encouraged them to keep on doing that in the future and become part of this town's conscious and speak up with you have something to say.

Chairman Anepete asked for any other public comment.

Hearing none, Chairman Anepete entertained the meeting to adjourn. Mrs. Sweeney seconded. All in favor (aye).

Meeting ended at 9:25 PM

Respectfully submitted by:

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Beth Laramée