August 7, 2007

The regular meeting of the Andover Township Land Use Board was called to order at 7:35 p.m. on Tuesday, August 7, 2007 by the Vice-Chairman Michael Crane.

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Present:	Members	Thomas Walsh, Class I
		Gerald Huelbig, Class II
		Gail Phoebus, Class III
		Diana Boyce
		Michael Crane
		Lois deVries
		Suzanne Howell
		Ron Raffino, Alt. 1
	Attorney	Thomas J. Germinario, Esq.
	Engineer	Joseph Golden, P.E.
	Planner	Russell Stern, P.P.
	Secretary	T. Linda Paolucci
Absent:		Stan Christodlous
		Michael Lensak

FLAG SALUTE - RULES - OPEN PUBLIC MEETINGS ACT

ALTERNATE SITTING – Raffino for absent member.

OPEN TO THE PUBLIC – The Chairman opened the meeting to the public for discussion of items not on the agenda. Mr. Bill Howell wished to discuss the clearing of the trees on the property being developed by Ballantine Woods and the missing of a guard rail and was concerned for public safety. Crane stated that he understood his concern, however this is not a Planning Board issue, and directed him to discuss it with either the Construction Official and/or the Town Council if he felt there was a problem. Howell was also advised by Walsh to discuss the situation with the Town Engineer and Administrator Steve Padula.

Carla Kostelnik had concerns about the COAH obligations and age restricted properties. Kostelnik wished to state her concern regarding the age restricted properties being proposed before the Board and whether or not the "age" requirement could be lifted at anytime in the future. Germinario said that her concern is an important one with regard to restrictions being lifted. Carla also questioned when the town is asking for easements that are not required by other agencies, she is concerned with what this does to the township's tax base and wanted the Board to consider the balance of the necessity of easement against tax base. DeVries discussed the necessity of certain easements such as for steep slopes. Crane went on to explain that from a tax assessor's point of view, it depends on the easement – a telephone poll in front of the house is a utility easement – does that effect the value of the house? The answer is "No". A land conservation easement across the back of his property having five acres in which two acres is the house and back yard, with an additional three acres that cannot be touched or used, the answer is "Yes". Kostelnik again stated that she felt that the town needs to consider the balance of the

necessity of the easements and what it does to the tax base. DeVries explained that most of the easements that are granted in this town are granted for some other purpose, such as the area exceeds the steep slopes of thirty-five percent or more, which essentially makes it un-buildable anyway and in the past primary easements have gone for wetlands areas. Germinario summed it up stating her concern as being "don't impose conservation easements just for the sake of imposing them because there is a price tag attached to them". Kostelnik agreed.

MASTER PLAN REVIEW – Germinario suggested that discussion regarding the review be held off until Chuck McGroarty, P.P. could be present to go over his report with the Board.

THORLABS – Block 128, Lot 4.04, 69 Stickles Pond Road, Zone I, preliminary and final site plan. A motion was made by Tom Walsh, seconded by Gail Phoebus, to adopt the resolution memorializing the approval of this application. In favor: Crane, Huelbig, Howell, Phoebus, deVries, Walsh, Boyce. Opposed: None. Motion carried.

BALLENTINE WOODS - Block 6, Lot 3.02, Block 7, Lots 10, 10.02 & 10.03, R-3.0 Zone; review of second aquifer test. A motion was made by Tom Walsh, seconded by Gail Phoebus, to adopt the resolution memorializing the approval of this application. In favor: Crane, Huelbig, Phoebus, deVries, Walsh. Opposed: None. Motion carried.

JOHN HABER – Block 111, Lot 19.05, Pierce Road. Amendment to major subdivision resolution. Anand Dash, Esq. of Dolan and Dolan, attorney for the applicant, stated that he was appearing on behalf of his client and brought an expert witness with him. Germinario told the Chairman that he spoke with attorney Dash over the telephone about the application and both came to the same conclusion that the Board can indicate tonight, if it so chooses, a favorable or unfavorable disposition toward lifting the subdivision restriction in the resolution that was approved by the Board on the original application, but there is a Court decision that is Soussa vs. Denville Township Planning Board; 238 NJ Super. 66 – 1990 Appellate Div. This decision indicates that the Planning Board cannot alter the decision since it was given for the benefit of the general public and that only an action by the Chancery Division would actually be able to lift the restriction. He continued that the Board's power tonight is limited to indicating its support or non-support for lifting that restriction, but ultimately if Mr. Dash and his client want to pursue that they would have to go to the Chancery Division to have that done.

Attorney Dash replied if he were to bring an action before the Chancery Division, the Land Use Board would be named as a defendant and as such the action would be adversarial in nature. He continued that in light of the Soussa decision it is distinguishable somewhat on its facts and proposes to the Board, and rather than making an adversarial action out of it, if the Board does agree to remove its condition, as the condition was placed in the Resolution and subsequently in the Deed, it could similarly be removed. His client can deed the property to himself and it can be indicated by the Resolution and be incorporated into the deed and have it removed thereby rather than by an adversarial action by nature. Germinario replied that the action to acquire title technically would be adversarial to anyone who has an interest in that land, including the general public, but the Board cannot authorize that because the Board cannot act on behalf of the interest of the general public, the way the decision is read. He went on to explain to

Dash that he will still have to bring the acquired title action. He continued that if the Board should decide that it has no problem with this, the Board simply will not take an adversarial roll, and he will have the Board as the party and he will have to name others in time of the acquired title, but the Board will not actively pursue an adversarial position.

Crane questioned Dash regarding the history background on the application and why the resolution of July 15, 1996 stated that there would be no further subdivision. Dash replied that this is precisely the reason why they are here before the Board and he does not know the reason it was put in. In light of no reason of why it was put in, it is an arbitrary decision. He continued that case law indicates for a Board to impose a condition in a resolution there needs to be a reasonably calculated reason to achieve a legitimate objective. Crane asked if this was part of the Sunnyvale Farm subdivision. Dash said that it was. Joe Golden, Town Engineer, explained that there was a previous application on this property that when it was subdivided into two lots, there was a previous application that looked for the property to be subdivided into three lots that either was withdrawn or denied. He suggested that the Board get a copy of the minutes to look into the determination on that which is highlighted on Mr. Piccolo's memo, who was the Board Engineer at the time as in *Item 2* "this alignment (*representing the boundary alignment)* merely coincides with the previous discussions held when the applicant originally proposed a three lot subdivision last year".

Discussion continued regarding the history of past applications. Dash responded that the previous owner of the property is not his client and that the client before had an approximate fifty acre lot that was subdivided into a twenty-five acre lot which his client now owns and at the time of the subdivision the applicant agreed for a subdivision restriction and that restriction was placed without any reason in either the minutes or the resolution, copies of which he supplied in his application for the Board. He continued that in the copies of the resolution and minutes evidence that there was no reason provided for the restrictions. Golden stated that he does not agree with Dash's statement as in the copy of the memorandum dated June 6, 1996 prepared by Ronald Piccolo that was made as an attachment to the Resolution that was memorialized on July 15, 1996 it identifies to the Board that it was the same applicant that broke into the two lots. Dash stated that he did not receive a copy of the memorandum and questioned how this bears upon the July memorialization. Germinario explained that what Mr. Golden is suggesting is that there had been a previous application to subdivide it into three lots instead of two and that the Board had denied that application and then they applied, and agreed to, not subdivide the second lot, so there would provide history and a rationale for why the restriction was placed. Dash agreed that that very well may be but submits to the Board that in the memorialization of July 15, 1996 no reason was provided therein. Germinario repeated that Golden had stated that the memo was attached to the resolution.

After additional comments were made between the professionals, attorney Dash responded that the fact that the Board has put restrictions in without reasons, or reasons that are not apparent, doesn't justify it and the Land Use Law provides that when conditions are placed on a subdivision there needs to be findings of fact in the resolution as to why that was placed. He continued that the most recent resolution that we have indicates no reason that the restriction was placed on the subdivision thereby it alienates the land and decreases the marketability. Germinario

stated that the memorandum of June 6, 1996 which was attached to the resolution of July 15, 1996 should be marked as Exhibit 1 and that it does provide a reason of rationale. He continued that the history memo of Block 111, Lot 19, dated July 12, 2007 drawn up by the Board Secretary, Mary Spector, be marked as *Exhibit B-2*. It reveals that there is a history that as these lots were divided off, restrictions were placed on the remaining lots and give some rationale for that. Golden questioned if the original resolution required, when building permits were drawn for the lots that exist currently, that there would be site easements put in place. He continued that he has not had a chance to research it but he has been on the site and there are substantial trees in the site triangle which would lead him to believe that the condition of the original resolution is yet to be satisfied.

Dash wanted to know what this had to do with his client. Germinario explained that his client is subjected to the conditions of the resolution as a successor in the chain of title and he is equally bound by that resolution. He pointed out that he questions whether or not there is any longer any avenue to challenge the issue of restrictions since it is well out of time with 11 years from when this was memorialized. Dash answered that the minutes indicate that the past applicant agreed to that condition and that his agreeing to it is not a reason, it was a *quid quo pro* and he wasn't obligated to agree to that condition; however, he agreed to it in exchange for his being granted relief for the subdivision. He continued, and as far as being barred from raising the issue of subdivision restriction there is no bar as to when we can claim a claim against that in the statute. Germinario answered that there is a bar in terms of the time you have to challenge the Board on an application and the condition that was imposed 11 years ago and certainly the Court rules give an applicant 45 days to challenge and 11 years is quite more than 45 days. Dash stated that his client did not own the property at that point so his rights don't trigger that. Germinario stated "so your position Mr. Dash is that if you sell this property tomorrow, then the next owner will also have the right to continue to challenge and so on down the line"? He questioned whether or not Mr. Dash had any case law to support that. Dash replied that he does not. Germinario stated that he believes that there is good reason why there is no case law to support that. It would produce a state of chaos in land use law and that means that every time the property changed hands a previous Board resolution could be challenged by the new owner and there will be no settled decisions at all in Land Use Board. Dash pointed out that he does not agree with the 45 day period applying to his client as his client was not privy to the notification. However, Germinario stated that it applies to the owner/applicant and also to those in the chain of title and when property is purchased it should appear in the title search at the time of purchase, therefore, his client did receive notice.

Russell Stern, Town Planner had some question as to notice and the type of application being presented. Germinario answered that technically it would be an amendment to the Board's resolution of July 15, 1996 to lift the restriction on further subdivision on that lot, although an amendment in/and of itself would not affect the purpose of lifting the restriction as we previously mentioned that that would require action by the Chancery Division. However, the Board could indicate its approval of a deletion of that condition subject to subsequent approval by the Township Committee, because the Township Committee is the named grantee of that restriction. And then if the Township Committee agreed, subsequently the Chancery Division. We would have to attach all of those conditions to any agreement on the part of the Board that would lift

those restrictions. DeVries asked that Germinario clarify her understanding that there is no application before the Board for either a minor or major subdivision. Germinario said there is not. DeVries continued that she is not clear in the understanding of the request for removal of the restriction, and asked if the Board needs to know what is the purpose of the request. Germinario agreed and said that his conception of this is that the Board should inquire as to the rationale of the restriction in the first place and then if the Board finds that there is a rationale for the restriction, the Board would have to find that circumstances have changed since so that that rationale is no longer applicable. That would be the Board's fact finding in this matter.

Dash then called upon his expert witness, David Gommoll, Newton, NJ, who was sworn in and stated his qualifications as to his engineering and land surveyor's licenses. The Board accepted his qualifications. Dash questioned Gommoll if he walked the property and examined maps of the property and whether or not he noted any conditions which would substantiate the restrictions that were currently placed on the property. Gommell said that he did not. Dash questioned the wetlands on the property. Gommell stated that there is a very small strip of wetlands along the right rear corner facing the property from the street. Dash questioned other than the wetlands area, did he see any reason as to why the property cannot be subdivided in accordance with the municipal ordinance. Gommell answered that he could see no reason why it couldn't be subdivided and added that there is a small area of fairly steep slope in back of the house that is on the lot, but it is only a small area. He stated that the land is approximately 25 acres and the road frontage is approximately 300'. Crane asked about the power and light easement that runs right through the center of the property. Gommell stated that there is a power and light easement crossing one edge of the property, this power and light easement has never been utilized. Gommell continued that he had done business with Mr. Iozia and he believed Mr. Iozia himself had requested that the deed restrictions be imposed on the property to keep from any further subdivision so that he would not have competition from anyone else with a project that he was developing on Warbasse Junction Road consisting of approximately twenty-five homes at that same time.

Russell Stern, P.P. questioned whether or not as part of the subdivision the Township required any subdivision roadway improvements or in lieu of contributions such as paving, grading, drainage, etc. Gommell stated that he was not involved with the subdivision so he has no idea personally but sees in the resolution that there was a blanket drainage easement granted but no road widening and no improvements, apparently the road had been paved prior to the subdivision. Germinario questioned that as a major subdivision the Planning Board could have required road improvements along Pierce Road. Gommell stated very definitely, it was only a major subdivision due to the fact that it had been a minor subdivision the year before on the same property. Germinario continued that one cannot rule out the fact that the rationale for the restriction could have been in exchange for not requiring the road improvements. Gommell agreed. Crane asked Dash why his applicant wants to remove the deed restrictions. Dash answered because at this point the deed restriction makes the property unmarketable, but at this stage his client has no intention of subdivision. DeVries asked if the applicant understood at the time of his purchasing the property that it was subject to a deed restriction. Dash answered "yes, again, but this is well after the 45 day period". Germinario stated that in looking at the deed the property was conveyed to Mr. Haber in October of 1996, which is eleven years ago and the

restriction is mentioned in the deed, therefore, the applicant has adequate notice of the deed restriction. Dash said he did not deny that fact.

Crane stated that the original conveyor of the property was Sunnyvale Farms Associates and asked Dash if he researched why the developer, Sunnyvale Farms, did not develop this particular piece of property. Dash answered that his research begins with the resolution on which the deed restriction was placed and that was July 15, 1996. He stated that anything prior to that is conjecture as the reason was not stated in the resolution other than the fact that the applicant agreed to the "no further subdivision" restriction. He went on to state there needs to be a reason under the land use law as to why that condition was placed in the resolution and without a reason the decision is arbitrary, capricious and unreasonable. Germinario said that there is a reference in the memorandum that is attached to the resolution of a previous denial of a three lot subdivision and provides some prima fascia indication that there was some rationale for not allowing further subdivision of this lot. Germinario said that the Board can decide this tonight or can give the applicant the opportunity to submit further background on the chain of title and they can schedule the applicant for a hearing for the second meeting in September. He instructed the applicant's attorney to look up the chain of title and our Board secretary will look in our records for resolutions dealing with the property and will exchange the information in advance of the hearing. Golden asked if the applicant should provide evidence of the easement for the two lots which was a condition of the previous resolution and Germinario answered "yes". Dash agreed to do that. Stern stated that a more current map should be submitted depicting topography, the current land uses, location of buildings, slopes and other information in order for the Board to get a better understanding of the lot. Crane said he would like to see the original map of Sunnyvale Associates when they requested the subdivision. Germinario requested that the applicant provide the information if possible and that the Town Engineer and Town Planner be provided with additional information from the applicant upon their request.

The application was opened up to the public. Andrew Strait of Pierce Road was sworn in. He wanted to clarify some facts for the Board. He stated that at the June 1996 meeting the reason why four or five of the pieces of property had deed restrictions on them was because Mr. Iozia had gotten his cluster housing on Hicks Avenue and it was agreed by the Board at that meeting that these blocks of land would stay as open land as much as possible and they were deed restricted for that reason. Strait had a copy of the notice that he received of the hearing of the subdivision for June 17, 1996 which is when the subdivision was decided which was marked as *Exhibit D-3*. Germinario reviewed the notice and stated that the notice said that it would be to permit three resulting lots. Strait said it meant the property above the property on Pierce Road and the property below it. Germinario asked Strait if he was present at the June 17, 1996 meeting and Strait answered "yes". Strait continued that he made a note on the bottom of the notice that the Board said that it cannot be further subdivided. Germinario asked if the Board discussed the reason for that. Strait answered that the reason was the cluster housing on Hicks Avenue. Germinario asked if that was discussed at that hearing. Strait said that he was positive that it was, that is why he put the note on the bottom of the paper. Strait had concerns with setting precedence if the restriction is taken off of this piece of property and should the other two properties come in, there will be quite a development on Pierce Road. Strait said that he was concerned that their wells are very shallow. He wanted to know whether or not there would be

testing on their wells if development were to take place like on Ballantine Road if this were to get passed. Crane said it was a good point but that may be for future discussion and not at this time.

Discussion was closed to the public. Germinario stated that with agreement of the applicant this application will be carried to next regularly scheduled meeting date which will be September 18, 2007 with no further notice.

OUTLAW OUTFITTERS/Joseph G. Colonna – Block 157, Lot 8.02, C & B Variances & Site Plan. Extension of time for complying with resolution requirements. Michael Garofalo, Esq. of Laddey, Clark & Ryan, and Sparta, N.J. stated that he represents the applicant, Outlaw Outfitters, Joseph Colonna is the owner of the equine and farm supply store on Route 206. Germinario advised Garofalo that because this is a combined Land Use Board and this is a Board of Adjustment resolution that is requested to be amended the Class I and Class II members will not participate in this application but will remain up on the dais. Garofalo said that he had no problem with that.

Garofalo stated that this approval was granted on November 9, 2005, less than two years ago for preliminary and final site plan approval. He stated that preliminary and final site plan approval is good for three years. This approval lives till November 29, 2007. In the Board's resolution one of the conditions was that the site improvements, specifically the parking area, fencing, and some other things that were part of the site plan approval, should be completed by June 2007, and that hasn't happened he stated. He continued that the reason why he is going through all this trouble to explain is because if the applicant was asking for an extension of the whole approval itself he would have to come before the Board and the client would have to testify that by virtue of some delay in getting a third-party approval he was prevented from fulfilling the conditions of approval of completing the site plan. But that is not the test here. When an applicant comes before the Board and says he would like additional time to complete a condition, the township's ordinance, specifically §74-9(e) states "The Board may grant an extension from the time limitation as may be reasonable and within the general intent of this chapter". Therefore, he submitted to the Board that the test is one of reasonableness and it has nothing to do with the statutory life of the site plan itself.

Garofalo stated that he probably should have questioned when the original approval was memorialized why he didn't make the site improvements concurrent with the whole approval and why he did not have it end at the same time, but he hadn't questioned it. He continued there has been no change to the zoning on this site, this particular site is there by way of a use variance relief and in 2005 the then Zoning Board said of the other activity that goes on site, the horse trailers that are sold, the outdoor storage of horse supplies and equine supplies that are sold, those are accessory uses and they are also there as of right and those stay regardless of what the Board acts on the site plan approval. Garofalo stated that what is at stake is the fact that his client got a variance for ten parking spaces, when the ordinance required twenty-eight. He continued that it was the Zoning Board's opinion that this particular site didn't need twenty-eight parking spaces as the nature of my client's business that he doesn't have that many cars there at one time and the Board thought the less impervious coverage and the less site work, leaving the site in its natural state, was the better cause of action. He went on to say that the site improvements have not been

completed as of June 2007, and they do need an extension from that condition and after hearing from Mr. Colonna he believes it will be reasonable, and will be asking for an extension of one year. He stated that the site plan arguably expires in November of 2007, but this would then go on beyond that and will request for an extension of the approval through November 2008 and that all conditions run concurrently.

Germinario stated that the applicant's period of immunity for the preliminary approval ends as of November 29th of this year and asked if there had been any change to the zoning that would affect the validity of this application. Garofalo said "no, there hasn't been" but then the change to the zoning wouldn't effect this particular site, the main building is there by way of a use variance approval that the applicant then gets to keep forever, the other accessory uses are both "accessory" to a horse supply business and therefore they are there as of right also. Arguably the only thing that is at stake here is the parking area and if this approval was to expire there would be no parking spaces and that would be the only real practical effectiveness. Germinario asked Garofalo to explain why there would be no parking spaces. Garofalo explained that if the approval expires and they have not fulfilled the conditions of approval then the only thing that hadn't happened is that his client would lose that variance and would have to re-visit that issue with the Board. Stern pointed out that the Board did find that the pavement of the driveways and parking areas would improve the site appearance, maintenance of access, and are positive elements of that approval. Crane asked if there was any reason why the parking lot was not improved. Garofalo asked that his client answer that question.

Joe Colonna of 50 Mulford Road, Andover, NJ was sworn in. He stated that part of the delay was that really did not get the final okay to go ahead until June or July even though he received the resolution in November. He said that his engineer, Andy Hepolit, and Joe Golden were going back and forth and did not have a final on anything until late summer. He had lined up for early spring to start doing the work but the excavator he hired to do the septic and most of the improvements was back logged with work. They got started to do the work and he was told to stop pretty much at the same time that they were just getting started. Crane asked who told him to stop. Colonna answered that Jim Cutler, the township's building inspector, first came out to do a silt fence inspection and later shortly after that he sent a letter to stop work because he passed the date. He came in and spoke to Mary Spector and Cutler and was told that he had to go to this meeting and to continue on so as not to lose the excavator at this point. He continued that the septic work also is something that falls under the County and he chose to keep going with the County approved septic plans that were all passed, but he came in and asked about that first. Stern stated that the deadlines that were set are an oddity because a preliminary site plan is granted a three year period and wondered how the Board arrived at the June 2007 date. Colonna answered that was asked of him at the time of the preliminary site meeting when he thought he could have the work done and he gave the Board the June date believing that it would be enough time, that was the date that became the deadline.

Crane asked if there were any questions or comments from the Board. DeVries stated that there were several other conditions that don't require construction that still have not been met having to do with the trailers that are used for the storage of feed and was wondering why something as simple as that has not been done yet. Colonna explained the deadline was given and

when that was done the fencing would be up and the merchandise that is in the trailers would then be behind the fencing. It would be on a blacktop surface rather than on a dirt surface and it would be hidden from the public's eye by being behind the fence. DeVries said that her understanding is that the feed is to go inside the building. Colonna answered that it is not feed, it is shavings, gates and other items in the trailers; the feed is in the warehouse.

Crane opened the hearing up to the public. Joe Olivo of Andover Township was sworn in. Olivo stated that he attended the August and October meetings of 2005. He continued that he lives on the adjoining lot behind Outlaw Outfitters on one side and he is not at the meeting as an objector of the whole application but wished to reiterate his concerns over certain portions of the application. Olivo stated that with regard to the trailers on the property, he could not hear Mr. Colonna's comment as to the trailers being behind the fence and it was his understanding that they were supposed to be removed by June 2007. Colonna answered that it wasn't that the trailers would be behind the fence, it would be that the merchandise that is in the trailers would be protected and screened behind the fence and when the job is completed the trailers will be gone. Olivo continued that he was out of the country for the November resolution so he was not able to follow up on anything. He questioned the storage of the shavings and wanted to know why the material couldn't be put in the garage along with the other materials. Colonna answered that the shavings are not going there, they are to be stored outside where he is allowed to store it outside behind the building in a screened area.

Crane asked about the shavings being stored in the trailers now and the fact that the trailer will be eliminated and a fence put up. Colonna answered that there will be an eight foot fence to secure as well as screen from the public and then all the merchandise in the trailer, which is basically wood shavings, will be stored outside, but it first has to be completed before that can be done. Crane questioned that in order to do that he would have to pave the parking. Colonna answered "yes". Olivo commented that he would rather see the shavings on the ground than having to look at the trailers every day. Germinario stated that the Board felt that that was not a good idea. Crane commented that this is where Colonna is heading, to have the trailers removed, to get to that point to have that done and it will not be an issue anymore. Howell questioned Colonna how the shavings are being stored and whether or not they are in plastic. Colonna answered that they are being stored in paper at the present time but that they will be in plastic once the fence is completed.

DeVries commented that she is troubled by the fact that the work hasn't been done in all this length of time and asked Germinario if they can vote to give approval for a shorter length of time than what is requested by the applicant. Germinario stated that it is up to the Board whether or not they wish to grant the requested extension or to shorten it. Crane questioned Colonna on the work that still needs to be done and if the septic has already been done. Colonna stated the septic is done and is waiting on the electrical inspection before it is closed up. He continued that the next step would be the grading and leveling of the parking lot. Germinario went over the possibilities of various problems of delays and advised the Board to take them in consideration of their decision. Golden was asked for his opinion on how long the necessary improvements may take. Golden answered that it should be able to be done before the winter, as there are still three full good months and it is no more than a month's worth of work. Garofalo stated that he doesn't

disagree with the Board; however, he wished to reiterate that if a shortened period of time comes and goes, the Board lost the opportunity to improve the site. He continued that there is no downside to grant the extension for a year because change in the zoning would not affect the property, it is strictly a site plan issue; the only thing that would be affected would be the appearance of the site, which is all the zoning board was interested in.

Golden asked the initial reason why the applicant came before the Board. Germinario answered the applicant needed site plan for the improvements and there would be issues in terms of the change of use and there were interpretations of the ordinance of the variance relief that was granted. He continued that he agrees with Garofalo that letting this expire would have the consequence of having the improvements not being completed. Crane suggested that the there be concentration on the work that still needs to be done now, like the grading, paving of the parking lot and the fence, so the trailers can be eliminated that are storing just the chips. Colonna answered that this doesn't easily happen as there has to be steps for it to happen. He needs to have areas to move things around in order to work in places, and leveling of the areas need to be done before the completion of some of the improvements. With no more comments to be made, Chairman Crane requested that a motion be made. DeVries moved for an extension of six months. Crane seconded the motion. In favor: Howell, DeVries, Huelbig, Crane, Raffino. Opposed: Boyce. Abstained: Phoebus, Walsh. Motion carried.

VOUCHERS - See Schedule A. A motion was made by DeVries, seconded by Howell, to approve the vouchers submitted. All in favor. Motion carried.

NEW BUSINESS – DeVries asked Golden about the status of conditions being met of the Acquavella application for site plan waiver that was adopted on January 21, 2003. Golden stated that this matter is an issue for the building inspector.

Golden discussed the meeting that was held regarding Ballantine Woods with himself, Mr. Deacon, Crane, and Phoebus on site on Ballantine Road at the request of Golden and Deacon regarding the road on the property being developed. Golden explained that in accordance with the resolution the township engineer had to take a look at saving the existing trees to the greatest extent possible. When he went to look at the road and saw that the centerline on the road that was proposed on the plan split the right-of-way, what this means is that the developer would have to cut on one side and fill in the other side and that would create a situation to have to take out 70 trees on one side and trees on the other side where the homes were to be put. In looking at the site and the viability of maintaining the right side of the existing edge of traveled way it was concluded that it would be best to put the 20' road into the embankment towards the homes in an effort to not take any trees out on the one side of the road. It was then decided it would be best to move the road 2' or 3' in the interest of saving approximately 200 trees. There was also discussion regarding the cul-de-sac for the bus turn-around. Golden stated that the standard cul-de-sac has a 40' radius, which is 80' wide and Deacon is proposing a 45' radius which is 90' wide which will allow for the buses to turn around. Golden continued that the resolution states that minor changes can be made at the discretion of the municipal engineer without going back to the board and this is considered a minor change.

The professionals were excused from the meeting as there was no further new business to discuss.

Gail Phoebus wished to discuss old business/new business regarding the application review and the process in which it should be handled. She stated that she thinks that the applications can be reviewed by the board secretary and the township engineer for completeness in light of the new checklists which will alter the need for a review committee. There was discussion amongst the members regarding the necessity of the review committee and whether to change the procedure and a decision was made to abolish the review committee. Phoebus made a motion to change the procedure. Huelbig seconded the motion. In favor: Howell, Phoebus, Walsh, Huelbig, Boyce, Raffino and Crane. Opposed: DeVries.

MATERIAL RECEIVED, GENERAL INFORMATION - See Schedule A.

RESOLUTIONS – Resolutions adopted during this meeting are made a part of these minutes by referral to the specific file.

ADJOURNMENT - Time 10:37 p.m. A motion was made by Huelbig and seconded by Phoebus, to adjourn. All in favor. Carried unanimously.

Respectfully submitted,

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Michael Crane, Vice-Chairman

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T. Linda Paolucci,
Assistant Secretary