

**REGULAR MEETING**

Meeting called to order by Chairman Gilbert Foulon with a salute to the flag at 8:04 P.M.

**READING: Open Public Meeting Announcement**

This is the Regular Meeting of the Wanaque Planning Board and adequate notice has been given and it has been duly advertised by the placement of a notice in the Suburban Trends and the Herald News on January 26, 2011 and a notice thereof has been posted on the bulletin board in the Municipal Building in the Borough of Wanaque and a copy thereof has been on file with the Borough Clerk.

**ROLL CALL:** Chairman Gilbert Foulon, Vice Chairman Joseph Graceffo, Mayor Daniel Mahler, Councilman Dominick Cortellessa, Members Kevin Platt, Mark Reuter, John Shutte, Eugene Verba and David Slater

**PRESENT:** Attorney Steven Veltri and Engineer Michael Cristaldi

**MINUTES:** from the July 21, 2011 Meeting

**MOTION TO APPROVE:** made by Member Reuter, seconded by Vice Chairman Graceffo. Voting yes were Vice Chairman Graceffo, Mayor Mahler, Councilman Cortellessa, Members Platt, Reuter and Slater. Chairman Foulon and Members Shutte and Verba abstained.

**COMMUNICATIONS REPORT:** None

**APPLICATION STATUS REPORT (Engineer's Report):** A new minor subdivision application has been received. The review letter will be sent out shortly.

**NEW BUSINESS APPLICATION: Hot Dog Business**  
**1185 Ringwood Avenue, Haskell, NJ**

**Owner of Property are Cosimo & Theresa Santoro, 27 Dartmouth Road, Wayne**  
**Owners of Business are Robert Leibrock & Darlene Zecca, 23 Leo Place, Lodi, NJ**  
Robert Leibrock of 478 Essex Street, Hackensack and Darlene Zecca of 23 Leo Place, Lodi appeared before the Board. They want to open a hot dog business in the strip mall at 1185 Ringwood Avenue. All inspections have been completed and approved.

**MOTION TO APPROVE NEW BUSINESS: made by Vice Chairman Graceffo, seconded by Member Platt. Voting yes were Chairman Foulon, Vice Chairman Graceffo, Mayor Mahler, Councilman Cortellessa, Members Platt, Reuter, Shutte, Verba and Slater.**

**APPLICATION #PB2011-05 “Maria Ethel Sieber”, Block 304 Lot 14**

**Property Address: 26 Locust Street, Haskell**

**Application For Minor Subdivision (CD 5/19/2011)**

**Authorized Agent is Raymond P. Vivino, Esq. of Vivino & Vivino**

**Raymond Vivino, Esq., 401 Hamburg Turnpike, Wayne, NJ, Attorney for the Applicant**

**We have revised this application and changed the dwelling around to eliminate some variances and to do our best to minimize the proposed variances as part of the subdivision.**

**Attorney Veltri swore in both witnesses:**

**Bruce Rigg, 1000 Maple Avenue, Glen Rock, NJ – New Jersey Licensed Engineer**

**Michael Kauker, 356 Franklin Avenue, Wyckoff, NJ – New Jersey Licensed Planner**

**The Board is very familiar with these two individuals and their qualifications, and accepts their expert testimony.**

**Bruce Rigg’s Testimony**

**Mr. Rigg testified that the proposal is to subdivide property on Locust Street (Block 304, Lot 14) into two parcels. The parcel with the existing home (Lot 14.01) will have 77.41 feet of frontage and the vacant lot, proposed Lot 14.02, would have 66.34 feet of frontage. Both Lots are in the R-10 Zone requiring 10,000 square feet and are conforming. The Existing Lot 14.01 will have 12,840 square feet and the New Lot 14.02 will have 10,105 square feet. Both Lots will require lot width variances since 80 feet is required and Existing Lot 14.01 will have 77.29 feet at the setback line and New Lot 14.02 will have 66.59 feet.**

**The proposed lot line was set up so there would be no variances for the side yard for Existing Lot 14.01. The Existing Lot 14.01 has some existing non-conforming conditions, but we’re proposing the subdivision line with only one new variance, which is a 3.4 foot setback to the existing garage. There is an existing non-conforming condition in the distance between the garage and the dwelling where 10 feet is required, 6.5 is existing. The front yard setback, which is to be 30 feet, is existing at 17.9 feet. Our proposed setback is 15 feet to the dwelling and the covered porch, which is on the north side of the building. We are proposing on New Lot 14.02 a house that would be conforming. The house is shown on the plan as 30x50, which shows that you can build a dwelling without any variances, but we are not proposing any type of dwelling at this time. We meet the 15 foot side yard and the total of 35 feet side yards for both Lots. We have a 30.5 foot front yard where 30 is required. We have a 60 foot rear yard where 40 feet is required. The building height will be under the required maximum 35 feet, essentially proposing a non-variance construction for the new dwelling. The only variance for New Lot 14.02 would be the lot width, however, it would have the right square footage. I believe there is one other existing non-conforming condition for the garage. The required setback from the street is 70 feet and the existing garage is at 61.**

As part of the grading, we've shown on the plan the driveway grading out towards the street and the rear yard grading towards the back. There is a ditch along the rear property line. We have two seepage pits shown in the rear yard, which will collect the storm water from the roof of the dwelling. They are both shallow pits and, knowing the ground water conditions, we kept them at only 3 feet deep pits. We will confirm conditions in the field once construction is started to make sure this system will properly function.

Attorney Veltri questioned the size of the homes. Both homes are one-family homes. The new home is shown as 30X50 so it could be 3,000 square feet in total with a two-car garage underneath. Again, we are showing it only as a size dwelling they can build. I don't believe the owner has made any final plans, but the new home will be built without any variances.

Councilman Cortellessa asked about the well on the property. There is an existing well that actually straddles the property line. We are not proposing any changes to that other than it pre-exists in that location. Member Shutte commented that a lot of houses in the area do have wells between the houses. Mr. Rigg stated that some of the Deeds actually refer to the wells along the common property lines and show the property lines actually running through the wells.

Vice Chairman Graceffo is concerned about drainage and runoff from the driveway. Mr. Rigg advised that the driveway, itself, would not be picking up the storm water. There is an inlet right next to the property. There is a pipe that I believe is buried in the back and may run back to the ditch in the rear of the property. What we have done is designed the system so that it will collect sufficient water so there will be a zero increase in runoff for the site, even though we don't collect the driveway runoff. The net will be zero increase from what is there today.

#### Michael Kauker's Testimony

The most significant variance that is before the Board for consideration is the lot width deficiencies for both Lots. Essentially, I would like to propose a hardship C-1 Variance Proof as well as a C-2 in support of that deviation.

I believe that the proposed widths, 77.29 for Lot 14.01 and the 66.59 for Lot 14.02, are reasonably consistent with the lot widths in the neighborhood. The home established on Lot 14.01 has an orientation with the short side facing the street and elongated, which is somewhat consistent with the shape of most of the houses in the neighborhood, and the home that is proposed, has a similar shape. I think the mitigating factor in the request for a deviation is the fact that the lot has an unusually large, or significant, depth well beyond the minimum requirement so that the lot, where it may be narrow at the front as it relates to zoning regulations, is unusually deep. Lot 14.01 is 160.95 feet in depth, which is about 41 feet more than the minimum requirement of 120 feet. Lot 14.02 is 149.25 feet in depth, which is about 29 feet in excess. The positive result of that unusual depth situation essentially enables these Lots to be compliant with the minimum lot area so we are not creating under-sized lots relative to this subdivision. The unusual shape of the property is appropriate and in line with the C-1 proof, which creates a situation whereby there would be undue hardship or practical difficulty resulting from a denial of the application. There

is essentially an undeveloped piece of land, which is eminently developable, without environmental constraints, exists on an existing improved roadway and would provide an infill of new development into this neighborhood. I believe this would have a positive affect on the neighborhood.

Secondly, you could also look at this application for the variance from the point of view of a C-2 proof, whereby the benefits outweigh the detriments. The benefits would be to take a vacant land resource and put it into productive use, which is substantially consistent with the zoning and character of the neighborhood. I believe it would also allow implementation of the Master Plan in the R-10 Zoning Objectives that are in place for this particular zone. The request for the minor variances for existing conditions relate to Lot 14.01 and I respectfully observe that they are reasonable and approvable because the proposed subdivision does not exacerbate or negatively affect that particular situation so that the way in which the existing home functions will not be changed in any way.

Engineer Cristaldi stated that the applicants and experts covered all aspects regarding the minor variances regarding the size of the lots. Also, the seepage pits are acceptable.

**CHAIRMAN ENTERTAINED A MOTION TO OPEN THE PUBLIC HEARING PORTION OF THIS APPLICATION:** made by Member Reuter, seconded by Vice Chairman Graceffo. Voting yes were Chairman Foulon, Vice Chairman Graceffo, Mayor Mahler, Councilman Cortellessa, Members Platt, Reuter, Shutte, Verba and Slater.

No one present to come forward.

**CHAIRMAN ENTERTAINED A MOTION TO CLOSE THE PUBLIC HEARING PORTION OF THIS APPLICATION:** made by Member Reuter, seconded by Vice Chairman Graceffo. Voting yes were Chairman Foulon, Vice Chairman Graceffo, Mayor Mahler, Councilman Cortellessa, Members Platt, Reuter, Shutte, Verba and Slater.

**CHAIRMAN ENTERTAINED A MOTION FOR APPROVAL:** made by Member Shutte, seconded by Member Platt. Chairman Foulon, Vice Chairman Graceffo, Mayor Mahler, Councilman Cortellessa, Members Platt, Reuter, Shutte, Verba and Slater.  
Motion Carried

**NEW BUSINESS APPLICATION: Office**  
**1141 Ringwood Avenue, Haskell, NJ**

**Owner of Property is 1135-1141 Ringwood Avenue Property LLC**

**Owner of Business is Kevin Hall, 15 Pinecliff Lake Drive, West Milford, NJ 07480**

**Scott Walker, 3 DeGraw Road, Riverdale, New Jersey**

I am the landlord of the property and Kevin Hall, the owner of the business, has asked me to speak on his behalf as he was called out of town for a meeting.

**Mr. Hall is a consultant. He works with professionals (Norvatis) and academics and institutional professionals (Penn State and Rutgers) to help maximize their potentials as professionals.**

**This will be an office of approximately 1500 square feet and there will probably be a maximum of four employees.**

**MOTION TO APPROVE NEW BUSINESS: made by Councilman Cortellessa, seconded by Member Platt. Voting yes were Chairman Foulon, Vice Chairman Graceffo, Mayor Mahler, Councilman Cortellessa, Members Platt, Reuter, Shutte, Verba and Slater.**

**CONVERSION OF DEVELOPMENT APPLICATION**

**Property Address: Fourth Avenue, Haskell / Block 432, Lots 36 & 38**

**Owner: M&T Bank or its Successors and/or Assigns**

**Authorized Agent is A. Michael Rubin, Esq.**

**Michael Rubin, Esq., 1330 Hamburg Turnpike, Wayne, NJ, Attorney for M&T Bank**

**This application is to change an original concept of a use.**

**With the economic downturn, etc., in 2009 the State and others decided there was an over building, over approval and over population of what is called “age restricted housing”, which is housing, under the Fair Housing Act, restricted to persons 55 years of age and over. The Legislature passed New Jersey Statute 45:22A.-46.3 which states that, if you have an age restricted project and it was not started yet, nothing was built, and no units were sold, you could go back to your Planning Board or Board of Adjustment and ask for a conversion of the age-restricted use to a non-age restricted use. The concept being that, people in the general public, were buying non-age restricted units and they weren’t buying age-restricted units.**

**We are seeking a conversion of an application that was heard before this Board in 2005 for preliminary and 2006 for final site plan approval. The name of the owner of the project was Wanaque Urban Renewal Associates, LLC and the project is called Valley View At Wanaque. This project is located on what was formerly known as the “Candle Factory Property”. This property is now in foreclosure and M&T Bank is the bank that is foreclosing.**

**M& T Bank may be the owner of the property because of foreclosure, but they are not builders and will not be building anything, but is the entity seeking the conversion. Someone else will possibly be planning and doing change to the site plan, but it will not be M&T Bank.**

**Because the statute says there are pre-conditions to going through this conversion process, we have a Professional Planner to go through these, but I also want the representative from M&T Bank to give the Board some background on this issue.**

**Attorney Veltri swore in Michael J. Whartenby**

**I am the Vice President of M&T Bank and have been with them for about five years and I handle approximately thirteen assets, which are various different properties from the Catskills to Virginia, which may be in financial difficulty. I have been working on this Wanaque project for about three years. I am taking this property through the foreclosure process, which is scheduled for Sheriff's Sale on November 1, 2011, and am asking this Board for a conversion from an age-restricted development to a non-age restricted development.**

**The Bank would like to seek this conversion because there presently is no demand for age-restricted housing. Chairman Foulon advised that there is presently an age-restricted community in town right now and it is selling very well. I don't believe this area is overbuilt and oversold with age-restricted development. Mr. Whartenby advises that New Jersey has a 20-year supply and in the community he lives in they are having problems selling. There is a real challenge to move this type of home. No developer has come to me showing interest to buy property on an age-restricted basis within the past six months. K. Hovnanian spoke to us a little bit, but they never came through with an offer. There have been some other talks with developers, but no one seems to be interested in the age-restricted community. If the age-restriction is removed, I believe we would have something to offer – a sellable commodity. This property is a prime candidate for conversion because of the economic distress that many communities are suffering from and there is no demand for age-restricted housing right now.**

**I am aware that the original approval for this property was for 114 units. However, M&T Application's is requesting conversion for a lesser amount of units, i.e., 98 units. We would also be increasing the affordable housing from around 11% to 20%, as statute requires. We are increasing our Mount Laurel units and decreasing the total amount of units.**

**M&T Bank is not a developer and doesn't even want to own the property. We just want a commodity to sell.**

**Attorney Veltri advises that the statute gives this Board an option of extending this period of time twenty-four (24) additional months. Does the Bank need an answer on this conversion tonight or would the Board extending this period be helpful? Mr. Whartenby stated that the bank was hoping for a decision this evening. Lacking a decision, I don't have anything to sell.**

**Attorney Veltri questioned that there is no site plan for the 98 units for this Board's review. Attorney Rubin advised that no paperwork has been given to the Board, except the concept of the conversion change. Even though the Board has previously approved this property for 114 units, we are not seeking that amount, but a lesser number. I think the statute was looking for a developer who was coming before a board and seeking a higher number of units, that is why all those provisions are in the statute regarding water and sewer capacity, adequate parking, etc. Our position is that we want to do less than what was approved.**

Attorney Veltri is concerned that, if the Board approves a number, there is no site plan that goes with that number, so we don't know how the parking is going to change, how the buildings may change, how many bedrooms. Attorney Rubin is suggesting to the Board, and the Planner will testify to this, and that in the event there are any changes whatsoever, the developer will have to come back to the Board. Attorney Veltri advises that, by definition, there are going to be changes because we have an approved plan of 114 units and the Bank is before this Board asking for 98 units. Attorney Rubin advises that the only change will be in the unit configuration and nothing else at this moment. That is an interior change, which is not even a Planning Board issue. If they wish to change parking, driveways, and other things, the new owner/developer has to come back before this Board. The only group that won't be coming back to this Board is the applicant, M&T Bank.

Vice Chairman Graceffo: We are listening to testimony on the premises that we just strictly want to change from age-restricted development to something open to anyone and with a number. This, to me, is unfair to the community, trying to determine just what that number should be and how it should be configured and what the units would be like. We just have no idea, but yet we are being looked at to make a determination of a number of units. It would be one thing if you were asking for a change of the concept from age-restricted to an open, and then a whole new application has to be resubmitted to the community based upon what the present zoning and requirements are, then we might have an opportunity to discuss it and move it forward. But to openly say here, we are going to give you a new requirement, and then just give a number for that new requirement, I think is backwards and I find it hard to consider a positive approach to solving the problem that way because I am not giving a consent to a number of units, when I don't know what those units will ever be, as much as I want this piece of property developed. We also lose some advantages gained by having an age-restricted development.

Attorney Rubin stated that the only application that the Bank can make than is for the 114 non-age restricted units because they have a vested right to that.

**Attorney Veltri swore in John McDonough , NJ Licensed Professional Planner**

I am licensed Professional Planner, a member of the American Institute of Certified Planners and also hold a license in Landscape Architecture in New Jersey. I have testified before hundreds of boards throughout the State and in the court system.

Per Attorney Rubin, Mr. McDonough's testimony will involve the statute, 45:22A-46.5 and 46.6, and the pre-conditions to convert a development.

Mr. McDonough stated:

1. We meet the criteria regarding the preliminary or final approval had to be given prior to the threshold date of 7/2/09. This Board approved the development by Resolution dated 5/18/06.
2. The other criteria states the developer of the age-restricted development is not holding any deposits for units and has not conveyed any units. Since there have been no units built, this criteria is met.

**3. The application filed by the applicant states it will comply with the requirement that 20% of the units in the development will be provided as affordable housing. If we are looking at 98 units, the COAH component would be 20 (78 market; 20 affordable).**

The statute, as part of the seven criteria, does not take into play demand or needs. The statute has been set up so that the question as to need has already been addressed and the Legislature has determined that, statewide, there is a need, not only in terms of the over supply of age-restricted housing, but also a need to provide for workforce housing. The statute says: "...under currently eroding economic conditions, the cost of both renting and homeownership remains unaffordable to a large percentage of New Jersey residents, including those who make vital contributions to their communities, such as teachers, nurses, police officers, firefighters and the general workforce population;". It also goes on to say that, "According to the 2000 U.S. Census, 55 percent of these families are one and two person households...". The statute also talks about the lack of land, over supply of age-restricted housing approvals and also the goal of the statute is "...to increase the production and supply of workforce housing through the conversion of these over-supplied age-restricted market to meet the needs of New Jersey's residents..." The following are the criteria:

**First: Project needs to be in conformance with the RSIS Parking Requirements. We are dealing with a site that has 273 spaces that are shown on the plan approved in 2006. My position is that, what you approved then is what stands now. There is no alteration of that approval unless and until somebody else comes back. We live with this with since the goal here is to change this to a full market development. We can talk about a reduction in the units, which would mean that one or more of these buildings would get reduced down to get to those 98 units. Again, we are looking at a final site plan that has already been approved by the Board and there is no change here proposed whatsoever.**

**Attorney Veltri questioned if the size of all parking spaces were in accordance with RSIS? Mr. McDonough said, "Yes". 273 spaces are provided and, taking a bedroom breakdown based on 98 units would produce a requirement of 184 spaces. Parking is not an issue.**

**Second: The project won't increase impervious coverage by more than 1% in that there are no changes needed from a storm water management standpoint. This is another item we can check-off again, assuming that a developer or redeveloper holds on to what we have right here. That is certainly a criteria that is binding upon them.**

**Chairman Foulon states you are supposing things. You are supposing the developer is not going to increase the ground water supply; your supposing he is going to meet the parking requirements. There is no application and nothing for the Board to look at.**

**Attorney Rubin agrees with these statements and, if and when, a developer owns the site and thinks that changes are needed, that person has to come before this Board. This Board has a definite "string" on this project; you are not letting it go.**

**Mr. McDonough stated there are foundations in place right now and earthwork has been done. There has been construction on the property. Any alteration of that, comes with costs, which will weigh into the equation as well. From a planning standpoint, I still believe**

on the grounds that “what you see, is what you get” until somebody comes down the road. I base my analysis of the criteria against what is on the ground and what is proposed to be on the ground.

There were ten buildings that were approved. Presently, those foundations are in place. I can't affirmatively say all ten, but it appears to the eye that they are. In terms of improvements, there has been earthwork done, there are piles of construction debris, and there is a chain link fence around the property. From the planning standpoint, this was a site that was suppose to be redeveloped to fix a blight, and now the site is a blight again.

Again, in terms of the increase in impervious surface, from a planning standpoint, I am living with what we have on there now and what has been approved. To make this conversion, there is no need to add additional impervious surface to the project. From planning, that criteria is checked-off.

Also, the water and sewer capacities systems are adequate for the converted development. This is an engineering issue. From my point of view, the site has adequate capacity to handle that demand. We are talking about a change in the make-up of the occupants, but not the occupants *per se*, so the sewer and water demands are not going to be substantially altered by this application.

The next checklist item is that the recreational amenities are changed or altered based upon the changing demographic from age-restricted to non-age restricted. This site has more than double your open space requirements so I would offer to the Board that there is certainly ample space to provide for recreation in any capacity, either active or passive, to meet the needs of a non-age restricted development as opposed to the needs of an over 55 set. This checklist item is also being met.

Next is the requirement that the project can be granted without substantial detriment to the public good. As previously stated, “what you see, is what you get”. Visually, no change as part of the alteration of the site from which was approved. Functionally, we are not looking for any change as well; we are going from residential to residential. Fiscally, I see no net negative fiscal impact on the property in question. Using the Rutgers' study that was done in 2006, based upon the make-up of the 98 unit count (78 market/20 affordable), we are looking at a school-age population generation of 12 students @ \$14,000 per student (@\$150,000). The ratable that you would get from almost 100 units would generate a ratable that is much more than the amount that would be associated with this project. There would be fiscal surplus associated with this project.

Finally, the project will not cause any substantial impairment of your zoning or planning ordinance. The purpose of the law is consistent with the intent of your own Master Plan that this will promote the public good. The social good that is inherent of this project includes economic stimulus, workforce housing and affordability.

The entire purpose of the Bill is focused on confronting the lack of land, lack of affordable housing and the eroding economy. In addition to this very specific statutory law, we have

very specific case law as well and I reviewed that as part of my analysis. *Heritage at Town Lake v. Borough of Sayerville* contains the following comment, which I believe to be helpful information, "...based upon the fact that there is no physical changes proposed, buffers remain the same, access to and from the property remains the same, traffic impact is essentially the same." The judge also indicated that the conversion statute recognizes that the conversion is deemed to be a permitted use and, therefore, there is no impact on the zone plan and the only recognizable change is the elimination of the bocce courts, which is generally not provided in non-residential developments. This was a development of almost 200 units. There was another case involving Old Bridge.

Again, looking at this from the statutory standpoint, I think the application passes that very narrow and specific statutory test. Each one of the items can be checked-off. It is not really a question of whether we do or don't like the application, it is whether it conforms with those requirements and, the answer from a planning standpoint, is yes.

Mayor Mahler questioned the comment about the water and sewer being sufficiently the same as the demand of 114 units. He remembers attending the meeting and that the testimony was that sewer rights of 86 units were transferred from another property to this one. I believe part of the testimony from an engineer was that the 86 regular units could be converted to 114 senior units. If you transferred 86 to 114, how do you transfer it back to 98? Mr. McDonough stated that he is not an engineer and does not have the calculations to show what the demand would be, but that requirement has to be met. If you are looking for engineering calculations to support that claim, that can be a condition of. Attorney Veltri stated that, the statute says if it isn't met, then the number of units goes down. How can we commit to 98 units, if we don't have that calculation? Mr. McDonough again stated it can be a condition of approval that the calculation be provided.

Engineer Cristaldi believes it is not just a calculation. This development took 86 units of reserved capacity from another development. You cannot say the 86 really is a capacity for 98. It is from 86 market units to 114 senior units. It is one or the other; that is the capacity of the sewer. Attorney Rubin advised that a developer would have to come before the Board and prove that they have sewer capacity/ability for the 98 units, assuming 98 units are passed as part of this application.

Councilman Cortellessa questioned if this was before the sewer authority significantly increased their capacity and its ability to process waste? They just went through a major change in the environment. This is something that needs to be addressed. In terms of a discussion now, we have to put into perspective what was there, and what the capacity is now. The additional capacity has changed dramatically since the approval was given. Mayor Mahler advised that this was reserved capacity.

Vice Chairman Graceffo commented that the additional capacity is for other properties and developments.

Chairman Foulon confirmed that there were only 86 units reserved for this development. Attorney Rubin advised it would be up to the developer to prove its case. They would have to go to the sewer authority and sell their project for the amount of units that they feel are appropriate.

**Member Reuter questioned why M&T has standing at this point. Attorney Veltri advised that there is a definition of developer in the statute, which, in part says, “an other person having an enforceable proprietary interest in such land.” I think that this is why M&T is before the Board. They have a right to be before this Board.**

**Member Reuter questioned if M&T becomes the official owner of the property on November 1<sup>st</sup>? Attorney Rubin advised possibly.**

**Member Reuter was also concerned that there was no developer present tonight.**

**Attorney Veltri questioned Attorney Rubin if a condition in an approval stating that the Board would approve 98 subject to you showing that you have capacity for water and sewage knowing that the figure that we think would apply is 86. Attorney Rubin agreed. It has to be a condition. Anyone would have to get a sewer permit from the DEP and they won't sign off unless you have the capacity and I believe the Borough's Engineer would have to sign off also. If you don't have sufficient water and sewer capacity, nothing gets done.**

**Discussions ensued about the present undeveloped condition of the property and the fact no one can guarantee what will be built there, whether it will be better than the previously approved development, since there are no plans before the Board tonight. The Board is looking out for the neighbors and community.**

**Councilman Cortellessa questioned if there can be some restrictions or conditions on an approval that allows the Board to have some control going forward, because we do want to develop the property and it makes sense to develop it. I don't believe there is going to be a school district issue with the number of units and especially if they are one bedroom, den oriented units, or two bedrooms.**

**Member Shutte agreed with some of the comments Councilman Cortellessa made, but his concern is that there may not be many developers out there willing to build one-bedroom units.**

**Member Slater asked if these were going to be condos or rentals? The Board does not know since there is no developer or plans/proposals.**

**Vice Chairman Graceffo stated his concerns about the risks. The Board right now is working blindly. If there was a proposal on the table saying to the effect that we are just asking for it to be changed to an open age and it has to come back to the Board, I would be in favor. But to give conditions that they are going to get a certain number of units now, with a similar site plan, and with the understanding that maybe someone will come back here with a new development, new idea or new design, is a risk and I am not willing to take this risk as a Board Member to give an approval for something I know nothing about. The risk being, “I don't know what I am getting”. Other than knowing the bank is going to sell it to guys that are going to come in and develop it and may put up the same exact type of buildings, and maybe knock walls out in between to make smaller or larger units. I have no idea what they are going to do and they don't have to come to us. If they go with the**

same site plan, they don't have to come back to us and we'll have no control over it. I can't see us giving away our right as a Board just to say, okay bank you can sell your property because now you have the okay for a development. The condition is we'll give it to you for all ages and then come back and submit a proposal and we'll approve it at that time, based upon what is presented to the Board.

Attorney Veltri wanted to discuss the risks. There is a risk that we have approximately ten foundations in the ground, a site plan that was approved and tonight the Bank is asking us for a conversion on age restriction with a possible lower number of units. If we approve this, someone buys the property, revises the site plan to the number of units only, gives it to the Board's Engineer, per the statute, and the Board's Engineer approves it because sewer and water is fine, you are going to get exactly what you said: ten buildings with 98 units with so many allocated and that is it. You would be done and that is what you are approving tonight. I don't want you to think that that can't happen. That can happen.

Attorney Rubin commented that this could all be put into any Resolution of this Board's approval that everything has to come back to the Board, but some things are going to be vested.

This is the problem Attorney Veltri has because what is going to happen is, if we don't like what we see, the next owner is going to say no change. The statute says "x": you voted on the conversion, you voted on the number of units, you had the prior site plan and knew what the development was going to look like with regard to buildings, parking and we are sticking to it. The new developer likes what is there. They are going to put the same number of parking spaces, the same number of buildings and the only thing they are going to do is take 114 units, and do whatever they have to in the interior to get 98 units and they are going to say Wanaque give us our permits. I am trying to make this point so all Board Members understand what they are voting on. Because if this happens, and then half of the Board says I thought we were going to see a new site plan, I am going to say, no, we clearly told you that night it is a conversion with a reduced number of units and, if they want to put up the buildings and everything adds up with regard to water, sewer and parking, that is what you have.

Councilman Cortellessa discussed the fact that the Bank has been talking to a potential developer and, in order to move this development along, why can't they present a proposal as to what they are interested in doing with the property. They have to have some idea as to what they want to build and we can all have a more meaningful discussion that way.

**Recess:** Attorney Rubin requested a ten minute recess to confer with the individuals who attended this meeting on behalf of this Application.

Chairman Foulon continued the meeting on items that do not affect this application.

**RESOLUTION:** None

**VOUCHERS:** submitted by Richard Alaimo Engineering Associates for: Attendance at Meetings For The Period Ending 7/6/2011 in the amount of \$190; for Elwood Application in the amount of \$930; for Sieber Application in the amount of \$930; and for T-Mobile Cell Tower in the amount of \$1,085.

**MOTION TO APPROVE VOUCHERS:** made by Member Slater, seconded by Member Reuter. Voting yes were Chairman Foulon, Vice Chairman Graceffo, Mayor Mahler, Councilman Cortellessa, Members Platt, Reuter, Shutte, Verba and Slater.

**PUBLIC DISCUSSION:** Detmar Nieshalla of Oakland, New Jersey and owner of the property (white building) next to this property. I share approximately 800 feet of the property line with the Old Candle Factory. I have worked at my property for 30 years. I know the project a few years ago was approved for one and two bedroom units. What happens if they come in and put in four bedroom units and now you have more people than what would have been there before? This is my concern and I wanted to voice it. Chairman said , “It is our concern too”.

**CONTINUATION OF TESTIMONY**  
**CONVERSION OF DEVELOPMENT APPLICATION**

**Michael J. Whartenby, Vice President of M&T Bank**

I can see there is a challenge here getting comfortable with what we are proposing tonight. It is important for us to walk out knowing that we don't have age restricted housing. It is also important to us to have some number that we are working with, realizing somebody always has to come back to you for approvals. I believe you are thinking 86 units. Job originally approved for 114 . There was a time when they were talking about 86 units plus selling an additional 10 sewer taps, making it 96.

Chairman Foulon explained that the 86 number was reserved sewer hook-ups. This number grew to 114 when the age restriction came on. Because of the age restricted community, it doesn't require as many sewer hook-ups.

Mr. Whartenby advised that 86 is not a good number because 20% have to be COAH units. I am wondering if we can split the difference (one-half of  $98-86=12$ ) and make the total number of units 92 ( $86+6=92$ ). We are still at a lower unit amount than the 114.

Chairman Foulon explained that is not really the point. The point is you want us to approve something a new developer may not agree to. Attorney Rubin advised that if this was part of a Resolution of approval on a conversion, it would be no more than 92. The statute allows you to put a number of units in the Resolution. Mr. Whartenby advised the application could be changed to request 92. Any developer that would come before the Board could not ask for more units than what was put in the Resolution of Approval.

Member Slater questioned, “are we not foolish to reduce the number in the same footprint, knowing that the size of the unit is going to expand”. I think we are better to hold it at 114

at 1200 square feet versus 92 at 1600 square feet, realizing that the additional square footage is going to be another bedroom.

Attorney Veltri advised the incentive for the Board is they are lowering the number of units tonight in exchange for the age restriction coming off. 92 would be the maximum number and it could be reduced further based upon water and sewer.

Vice Chairman Graceffo asked Attorney Veltri if he has any recommendations for the Board. Attorney Veltri doesn't really have a recommendation. I think we all understand what we are trying to accomplish and what we're doing and the risks. The one question I have for Attorney Rubin is there is a provision in the statute (.10) about filing a revised site plan. Let's assume the Board agrees to convert at a reduced number, I know you are not here as a developer, but there is a provision in the statute that says upon the change, a revised site plan needs to be filed with our Engineer. Given where we are, and who you are, how is that going to be accomplished and when? Mr. Whartenby answered when a buyer comes forward, they would know that 92 units is the maximum they can shoot for and they have to develop a site plan that would reflect that. Attorney Veltri commented that this would have to happen quickly, we would not let it continue on for months and months. Attorney Rubin advised that, with this economy, I don't know how to put time limits on anything. Mr. Whartenby believes that one thing is for certain and that is, if we drop the age restriction and we have a number of units that they can shoot for, I at least have something that is saleable that will move along faster instead of the site looking the way it does.

Attorney Veltri knows a lot of this is about marketability, and I think that is the way the Board needs to consider to it. We don't have a developer in the true sense of the word, we have a Bank, who is trying to market the property. We know what we have approved, we know what the site plan is. The incentive the Bank is trying to give us is a lower number of units and the same parking for the conversion. Is it good for Wanaque? That is basically where we are at and that is what I would ask you to consider.

Mayor Maher asked about the bedrooms. Attorney Veltri believes the bedrooms cannot be increased over what has been approved originally and Attorney Rubin agrees. That may be a calculation the Engineer may have to use once the final plan comes in to see if we have adequate water and sewer. Attorney Rubin, as advised by his Planner, stated the COAH units can be increased. Attorney Veltri concurred that there is an exception to the affordable units. Engineer Cristaldi stated it is going to be hard to increase the number of bedrooms because the foot print pretty much uses up most of the space. Engineer Cristaldi believes they will either come in with the same plan and you are going to be limited in what you can do to get the larger units. You are going to have the same plan, with less units, and they are not going to be much bigger than what is there. You are not giving up that many units. Unless the applicant changes the site plan, the present configuration is fixed. They are either going to have to go up higher to make more space in the units because you really don't have the space to spread it out any more. Attorney Rubin advised they may not be able to do that because of zoning.

**Mr. McDonough advised that you have to have 20% of the 20% COAH units as three bedrooms. The regulation would require that four of the units would have to be three bedrooms, even if the rest of the development does not have three bedrooms.**

**Attorney Rubin advised that the final site plan approval dated June 15, 2006 was for; “70 condominium units contained within 2 – 35 unit buildings and 44 townhouses contained in 8 buildings. A club house, which includes a multi-purpose area, lounge area and meeting room, will be included on site. There will be 58 one-bedroom housing units; 52 one-bedroom housing units with a den; and 4 one-bedroom housing units with a den and library on site. A total of 273 parking spaces were provided on site.”**

**Even though the original site plan approval was for condos and townhouses, the law is very clear today that the type of use, whether it is rental or condo, is not a Planning Board matter any more. That is outside of your jurisdiction.**

**Further discussions were held about the number of bedrooms in the units and removal of the square footage because of the lesser amount of units.**

**Per the statute, there can be no increase in the number of bedrooms in the development. Engineer Cristaldi stated you have 114 one-bedroom units and you can’t change the number of bedrooms. So you get rid of 22 units, you now can have 22 units with two-bedrooms and all the rest one-bedroom and you still have a lot of space left to spread among the other units. But, you’re really not accomplishing anything in making them market value. It seems kind of strange that you are looking solely at the number of units and ignoring the bedrooms, even though a den and/or library can be used as a bedroom, illegally.**

**Mr. Whartenby advised that the initial approach of the Bank was to drop the age restriction. We reduced the number of units to work with the Board. The reduced number of units was “to play ball”. Eventually, the new developer will come before the Board for what they want to do.**

**Mayor Maher commented to Attorney Rubin that he did not realize until tonight that we could defer this for 24 months, allowing you to get a prospective buyer and come back before the Board. Why is it important to do this now versus coming back to the Board when you have a buyer? Attorney Rubin believes the site is a very hard sell, especially because of the location and shape of the site.**

**Chairman Foulon and Vice Chairman Graceffo believe the Board should wait the 24 months and let it ride out. Bring us a contract purchaser and we will work with them. Attorney Rubin believes that a Resolution with the conditions that a developer would have to come back for site plan, no more than 92 units subject to sewer and water, would protect the Borough. Mayor Mahler would like to include no three-bedroom units, except for COAH.**

**Mayor Mahler also explained that this original development was a “pilot program” so we would have a huge financial benefit with a senior housing community. We would get almost four times the revenue to the Borough, than if it were a regular housing community.**

**With the pilot program, the Borough would get 95% of the taxes on the building, and the land tax would be split the normal way.**

**More discussions were held about the reduction of units, square footage, and building size. Engineer Cristaldi recommended removing 22 one-bedroom units by removing the floor of the building so you don't have to worry about distributing the space or square footage. The plan would have to be revised to show the 92 units that you are going to have and they will be the size of the units that were shown to us before. There will now be 36 one-bedroom housing units; 52 one-bedroom housing units with a den; and 4 one-bedroom housing units with a den and library.**

**Mr. McDonough referred to section 46.8 of the statute, which pertains to site plan, "a site plan may be reasonably revised to accommodate additional parking, different recreation improvements and other amenities, infrastructure enhancements, a needed reduction in the number of units, height requirements, revision to dwelling footprints that do not modify square footage of the development or the individual dwellings, or a needed change to construct the affordable units..." I believe this language covers all the Board's concerns. Attorney Veltri advised that we want to get right to the 114 units that Mike read into the record before and agree on exactly what the 92 are going to look like, in terms of mix. Mr. McDonough mentioned the prior approval had a 60/40 mix. You had 60% one bedrooms, 40% two bedrooms.**

**Attorney Veltri advised that they were all one bedroom, but some had a den and some had a den and library.**

**Attorney Rubin suggested that, if we could, have Attorney Veltri and Engineer Cristaldi prepare a Resolution, using the Board's comments, and send it to him and the Bank for review and to present it to those in charge at the Bank who would make any decisions. Himself and Mr. Whartenby have no authority to approve changes to the application.**

**Attorney Veltri confirmed that we carry this application, and wants to confirm that the Board wants us to take this approach, whether it is a Resolution, meeting or a different avenue. If we are talking about 92 units, we really need to know what is being eliminated, and Engineer Cristaldi suggested that square footage is going to be eliminated from the initial plan. There were three types of units that were originally approved and we need guidance as to what you would want to see eliminated from the site. Engineer Cristaldi said there are a lot of different ways to look at this and maybe we should meet before any decisions are made.**

**Chairman Foulon has no problem authorizing the Professionals to pursue it further until the next meeting.**

**Vice Chairman Graceffo would like to recommend to the Board that we allow our Professionals to put together something, such as a sample Resolution, that can be reviewed by the Board at the next meeting.**

Attorney Veltri stated that he and Engineer Cristaldi will have to meet and I invite Attorney Rubin to the meeting so that we can do this in concert. If the Bank has a viable developer after the November 1<sup>st</sup> hearing, they can attend also.

Application carried until the December 15, 2011 meeting. Attorney Rubin, on behalf of the Applicant, has consented to an extension, since we are beyond the sixty days to make a decision.

**CHAIRMAN ENTERTAINED A MOTION TO OPEN THE PUBLIC HEARING PORTION OF THIS APPLICATION:** made by Councilman Cortellessa, seconded by Member Slater. Voting yes were Chairman Foulon, Vice Chairman Graceffo, Mayor Mahler, Councilman Cortellessa, Members Platt, Reuter, Shutte, Verba and Slater.

Chairman Foulon advised that Applicant that, while they were at recess, we did have our normal public discussion and somebody did come up to address us on this matter.

Detmar Nieshalla of Oakland, New Jersey and owner of the property (white building) next to this property. I share approximately 800 feet adjacent to the Old Candle Factory, which is this property that you want to build on. My concern is that the site is a very condensed property. I am concerned that even though you talk about reduction of units, the units may be increased to three or four bedrooms and this would increase traffic and make more problems for this little area than what we anticipated.

**CHAIRMAN ENTERTAINED A MOTION TO CLOSE THE PUBLIC HEARING PORTION OF THIS APPLICATION:** made by Member Verba, seconded by Member Slater. Voting yes were Chairman Foulon, Vice Chairman Graceffo, Mayor Mahler, Councilman Cortellessa, Members Platt, Reuter, Shutte, Verba and Slater.

Chairman Foulon confirmed that this Application will be held over until December 15<sup>th</sup>, with no further notices. We have authorized the Attorney and Engineer to meet.

**MOTION TO ADJOURN AT 10:45 P.M.:** made by Member Slater, seconded by Member Reuter. Carried by a voice vote.

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Jennifer A. Fiorito  
Planning Board Secretary