

REGULAR COUNCIL MEETING OF THE AGAWAM CITY COUNCIL

OCTOBER 6, 2008

Vice President Calabrese – Good evening. Welcome to the Agawam City Council meeting for Monday, October 6, 2008. Our president, Gina Letellier, is celebrating the birth of her new son, Matthew Terrence. So we're all very happy for Gina and her family all the best.

Item 1. Citizen's Speak Time

Vice President Calabrese – We're gonna begin with Citizen's Speak Time and the first person on the list for Citizen's Speak Time is Ed Borgatti. I will remind all those speaking at Citizen's Speak Time to please come to the microphone, state your name and address and you'll have five minutes. Thank you.

Ed Borgatti – Hi. My name is Ed Borgatti and I reside at 135 Franklin Street in Feeding Hills. I want to thank you for allow us to speak tonight. I just want to say I'm a life long resident of Agawam as many of you know and owner of E.B.'s Restaurant which has been in business for twenty-three years. I also operate three seasonal restaurant locations – one at the Big E and two at Six Flags N.E. I am also the past president of the Agawam Chamber of Commerce. I apologize for reading but I just want to make sure I make all my points. I am here tonight to show my support for Six Flags' efforts to create an amendment to maximum height zoning ordinance. As a business owner, I understand the cost of doing business. For Six Flags, costs are much greater and their season is shorter. It is essential to the Town and all of you as elected officials do what you can to support Six Flags and their future success in Agawam. I can personally tell you after working with them for over ten years, they are more than just a big corporation in a small town. Larry Litton and his team work hard and enjoy being part of the Agawam community. Like myself, they know what it takes to juggle the cost of doing business along with unforeseen problems of doing business while still giving back to the community. I challenge anyone out there to show me an Agawam school or civic organization that Six Flags has not donated to at some point whether it be with passes, a project or a cash donation. I'd also like to personally thank Larry for being a committed member of the Agawam Chamber of Commerce Board of Directors. He's one of the most active members and has been instrumental in increasing visibility of the Chamber. This shows Six Flags' commitment to the local business community as well. I know with the height zoning change, there are concerns for safety. I can tell you first hand after personally attending over fifty hours of training with my staff over the last ten years, there's nothing more important to Six Flags than safety. With this change tonight, you as our elected officials will still have the ability to get your questions answered regarding safety and planning of all future projects. Amending this ordinance so it applies to an amusement device only, only makes it more specific to Six Flags giving you even more control. I see this as a simple solution to the old phrase 'time is money'. Not having to apply for a special permit each time they want to improve the park with a new project saves upwards of three months – crucial for a seasonal business with operating expenses that are so large and then barely three months to get a project done. We can't risk losing such great friends of Agawam especially during these tough economic times. This is a great opportunity for all of you to send a signal to Agawam businesses that you do care and that you do have the ability to make it easier for businesses to do business in Agawam. At the same time, you would show the Agawam residents that protecting the tax dollars that Six Flags gives back to the community is one of your top priorities. I am proud of the Chamber's efforts in this matter and their continued influence in making Agawam a better place for all of us. I would like to thank the administration led by Mayor Dawson as well

as the Council for their much improved spirit of cooperation regarding our business community as of recently. A special thank you to Councilors Calabrese, Messick and Rossi on this specific issue, although many of you are not business owners I can only hope that you can grasp the concept that no matter how big or small your business, time is money, giving back to the community is important and business tax revenue is crucial to Agawam's future. Thank you for your time.

Vice President Calabrese – Thank you Mr. Borgatti. Our next speaker is Larry Litton.

Larry Litton – Good evening everyone. Larry Litton, 1623 Main Street, Six Flags. I would also like to thank the Board for supporting putting this open for public scrutiny and debate and hopefully ultimately passing it. Let me start by saying that Six Flags is not looking to circumvent any governing body, to ignore legitimate concerns of the Town and/or our abutting neighbors and we certainly aren't looking to shortcut safety. Our business is unique to Agawam and to the state for that matter. We have a very short window to plan in and then build and short window in which to make our money back and hopefully make a profit. Many have asked me in recent weeks why I believe this change is necessary. First let me say that Six Flags to my knowledge anyway has never been denied a height variance or a special permit based on height by the ZBA. That being said, does it really make sense to require us to ask for the same special permit over and over and over again? We are simply looking and only looking to expedite the process. We have done research and the average height of a thrill ride world wide over the last five years is 193 feet. We are asking to have our height raised to 200 feet in order to be able to continue the development of Six Flags New England. We have also listened to both town officials and residents and we have asked that the buffer zone be pushed back to 250 feet on Main Street and hopefully that's in all your packets. I did write out a letter and asked for that. Please understand that we need not just want that we need to stay competitive and maintain attendance by continuing to appeal to a broad market and by broad market I mean both teens and families. We have focused primarily on family the last three years but we can't be naïve to the fact that we need the teen business as well and teens like thrill rides. Historically we have built at our own risk which was pointed out ironically by ZBA board member, Gary Suffriti, at the public zoning sub-committee meeting on July 29th that several of you were in attendance for. He also stated that nothing was broke and said so again in an article in the Republican dated July 31st. This is a quote from the article written by David Bergengren who is in the audience and this is quoting Mr. Suffriti "it takes away from the checks and balance for what's going on in there, in that area of town" Suffriti said. "Nothing's broke here, why in the world are we trying to change something that's working?" I would say that if we were trying to build anything at our own risk, the system is indeed broken, particular on something that we had been allowed to do frequently in the past. I must also add that the company will no longer allow us to build at our own risk. We do not have the finances to commit to projects years in advance but that being said, we are not skipping a check and balance procedure. All buildings and structures have to be signed off on by Building Inspector Urbinatti in order to open. That will not change. We next go to Planning and then depending on where we place the new attraction or ride, it has to go through Conservation and then finally if Conservation becomes involved it still goes through Zoning. Even after all that we still have, before we can open, we need to get a CO from Mr. Urbinatti. I would argue that that seems to be a very healthy check and balance and certainly protects both the Town and the company. So I thank you for listening.

Vice President Calabrese – Thank you Mr. Litton.

Item 2. Roll Call

Vice President Calabrese – Would the clerk please call the roll?

ROLL CALL – 10 Present, 1 Absent.

Vice President Calabrese – With ten present and one absent, we have a quorum.

Item 3. Moment of Silence and the Pledge of Allegiance

Vice President Calabrese – Please rise.

Item 4. Minutes

(a) Regular Council Meeting – September 17, 2008

Vice President Calabrese – Moved by Councilor Simpson, seconded by Councilor Rheault. Any discussion? All those in favor of approving the minutes please signify by saying Ay? Thank you. You've approved the minutes.

Item 5. Declaration from Council President

Vice President Calabrese – There are no declarations from the President's chair.

Item 6. Presentation of Petitions, Memorials & Remonstrances

(a) Resolutions

- 1. TR-2008-20 - A Resolution Requesting the Mayor to Appropriate Funds for the Board of Appeals to Employ Outside Counsel for the Appeal of the Special Permit Granted to Six Flags New England. (Council) (Tabled 9/2/08) (Majority of those present and voting)**

Vice President Calabrese – What is the Council's pleasure?

Councilor Rheault- Point of information?

Vice President Calabrese – Yes?

Councilor Rheault – Has anything changed?

Vice President Calabrese – No change in status.

Councilor Rheault – I move to leave it on the table.

Vice President Calabrese – Moved to leave on the table by Councilor Rheault, seconds all around by Councilors Messick and Perry to leave it on the table. A yes vote will be to leave the item on the table. Clerk, please call the roll?

ROLL CALL – 7 Yes, 3 No (Councilors Simpson, Bitzas and Calabrese), 1 Absent (President Letellier)

Vice President Calabrese – With seven, three no and one absent, the item stays on the table.

Councilor Bitzas – Point of information?

Vice President Calabrese – Yes, Councilor Bitzas?

Councilor Bitzas – How long will we keep this on the table? Do we have any reason because we've tabled this and tabled this for so many times, I think it's embarrassing. I think we should act, vote yes or vote no or take it off and put it back again. I mean this has been on for months and months now –

Councilor Perry – Point of Order, Madam Chairman? There's no discussion on a tabling motion.

Vice President Calabrese – Thank you. We will move on.

Item 7. Report of Council Committee

None.

Item 8. Elections

None.

Item 9. Public Hearings

1. TOR-2008-2 - An Ordinance Amending Section 180-49 and Adding Section 180-49A to the Code of the Town of Agawam Governing Height of Buildings and Structures in Amusement Parks in the Business B Zone (Mayor) (1/3) Referred Jointly to the Zoning & Ordinance Committees) (2/3 Majority of the Full Council or 8 votes) (Public Hearing Set for October 6, 2008)

Vice President Calabrese – I now declare the public hearing open. We will have forty-five minutes for the public hearing as budgeted time. All those wishing to make a presentation in favor of the matter, please step forward to the microphone and state your name and address. And you will have five minutes.

Chuck Davis – Good evening ladies and gentlemen. My name is Chuck Davis. I am the Director of Maintenance at Six Flags New England. The reason I come up here and I don't typically do this but as the end user of this height ordinance, it sort of falls on the shoulders of the staff of Six Flags, N.E. to make this work after we're done. And I'll point out that part of the process is designed, designed to us is something that takes 144 days to accomplish this, that's the fastest we've ever been able to do it. 144 days of design this is from conceptualization of the project through the engineering phase of it. And that all needs to be done prior to it being submitted for a building permit. One of the problems we've ran into with this is the timing of getting all of this accomplished and trying to get it into the Zoning and then get on with the building process. It's a 36 week process from the time conceptualize it until we get to the Zoning process. 144 days of design and development and the best that we have ever done to my knowledge is 111 days worth of permitting. That is the BEST we've ever done. Construction costs routinely are affected by as much as 10% to 20% due to delays caused by winter conditions

and loss of productivity. A \$5 million project that's anywhere between a half a million and a million dollars on a five million dollar project which is not an expensive project. That's on the order of a Pandemonium or a smaller coaster. So as you can see, time IS money. It's real money and it's something that we've incurred year after year after year. If anyone has any questions they would like to ask me, please feel free. I've gone through this and I can tell you this, we have been in front of the ZBA seven of the last eleven seasons that we've been operating and every year it's dealt with as swiftly as it can be dealt with but it's time consuming. Ultimately we've been fortunate to get the zoning through but in every single case it's been over a hundred days. Thank you.

Vice President Calabrese – Thank you Mr. Davis. Anyone else wishing to speak in favor?

Larry Litton – Larry Litton, again, I'll try not to be redundant but there was a few points that I wanted to make one of which Chuck just made rather eloquently that there's more to it than just presenting to the board, there's a lot of leg work that we have to get done or that we have to do before we can actually go to Mr. Urbinatti and the Planning Board and that's not factored into most of the time tables I've heard. It can certainly be argued that's our problem and we freely admit that's our problem and we're asking for your help to expedite the process. The other thing I'd like to say is that, I didn't bring them up with me, I apologize, I've been to a lot of public hearings on this. I've been to sub-committee meetings. Pretty much any time there's a meeting that I'm aware of I've been to and much has been made of things that really are irrelevant to what this is all about. We are not asking for exceptions to safety, we are not asking for exemptions from noise restrictions. I've got two rather large - can you hold them up please? (binders on safety) Without going through it, to say that there's no check and balance on safety, the white book is the DPS regulations that have to do with safety on amusement rides, the blue book has to do with building in general and there's specific sections which Chuck can quote to you, I cannot. I need a cheat sheet on paper but they have to with amusement buildings. We come before you simply asking for amusement rides which is actually heavily regulated as far as any arguments that may be made about noise. I don't know that there's any proof that noise has any impact on height. I believe some people will argue it will. I would argue it would not but the EPA, the Environmental Protection Agency, even though Agawam does not have a zone, or any noise ordinance, we do have to follow state regulations. We do have to put all of our planning in front of them and they tell us whether or not we're within compliance and the Planning Board also, being sensitive to the abutters, has the ability as they did when we did our Thomas Town project, to ask for noise or specific information as to the noise. In this instance it was that it would emit from the train and the whistle and they made that a condition of approval and we complied with that as well. So I think just based on what I've witnessed, people are trying to confuse the issue. The issue before you is simply the height. All other things are covered by other boards, by our Building Inspectors, by the Department of Public Safety and the Department of Environmental Protection and I would ask that you keep that in mind and try not to confuse those issues. I actually went in front of the Planning Board after they had given you guys a negative recommendation and addressed the issues that they were concerned with. Travis told me he was gonna come, I don't see him yet but he was gonna come and tell you that he was comfortable. I'm comfortable saying this that he was comfortable after I gave him explanations to things that he had concerns with, that there was not a problem and if they had the opportunity to vote again, they would vote differently. I hope he shows before the end of the hearing but if he does not, I am not uncomfortable at all as going on record saying that that is a conversation I had with him and two other members of the Planning Board. Please keep the issues – we've got to stay focused on what this is about and it's simply about height. Thank you.

Vice President Calabrese – Thank you Mr. Litton.

Councilor Perry – Madam President?

Vice President Calabrese – Yes?

Councilor Perry – Any discussion between the Council and the speaker? It's a public hearing and I believe the council has a right to ask questions of the speakers.

Vice President Calabrese – Absolutely. Councilor Perry would you like to ask something? Go ahead.

Councilor Perry – If I may, through the chair to Mr. Litton. Hi Larry. How are you?

Larry Litton – Good. Good, thank you.

Councilor Perry – Just in some of your remarks in regards to Travis, being chairman of the Planning Board, and you had conversations with him, I don't even think he was present at that meeting when the Planning Board - He was at the sub-committee? But he's saying that the Planning Board would change their recommendation to us and he wasn't even at the Planning Board meeting.

Councilor Messick – Actually I can explain that as well cuz I was at that meeting.

Councilor Perry – The question was, was Travis at the Planning Board meeting?

Councilor Messick – He was not at the original Planning Board meeting but they had a subsequent Planning Board meeting –

Councilor Perry – Madam Chairman, I'm having a conversation with the speaker.

Vice President Calabrese – I'm sorry. Councilor Messick, you can jump in in a minute.

Councilor Perry – And I was at the sub-committee meeting also. Now Travis was the only one besides Debbie Dachos that was at that sub-committee meeting last week. Travis was not at the actual Planning Board meeting that you and I both attended.

Larry Litton – That is correct.

Councilor Perry – And that Board made a recommendation, a negative recommendation, to this Council based on a number of issues which we'll get into later on. But I just –

Larry Litton – Can I respond to that, please?

Councilor Perry – My question was, was he at the meeting? You said no, you answered my question.

Larry Litton – It's not that simple. He was not at that meeting –

Councilor Perry – It certainly is. It certainly is. It was your statement at that the meeting, excuse me, your statement was the simple fact was that he would change the vote of that

committee. He was not even present at that meeting so he has no say in regarding how the committee voted.

Larry Litton – He was at the subsequent planning board committee when I answered the questions and concerns they had.

Councilor Perry – Exactly – to HIM. That’s his opinion.

Larry Litton – It’s not just his opinion, there were –

Councilor Perry – You can’t sit there and say –

Larry Litton – All right. I’m not gonna argue with you Dennis.

Councilor Perry – I’m just saying here. You’re giving a presentation to the council saying that the Planning Board would change their recommendation to us based on what Travis and your conversation was and Travis wasn’t even at that meeting

Larry Litton – I would add that Councilor Messick was at the subsequent sub-committee hearing and the subsequent Planning Board and I would think that she would verify what I’m saying.

Councilor Perry – But, no one from the Planning Board that attended that meeting that gave this Council the negative recommendation on this ordinance that’s before us, was at that sub-committee meeting were they?

Larry Litton – No. That’s not true either.

Councilor Perry – **Who was there?**

Larry Litton – I wish I could remember the names, but everyone but Travis was there.

Councilor Perry – No. What I’m saying was the Planning Board meeting that sent a recommendation to us, a negative recommendation to us, Travis was not at that meeting. Travis was at the sub-committee meeting –

Larry Litton – You win Dennis. I’m not gonna argue with you. I would also add that their negative recommendation was based on questions that they didn’t feel they had the answers to and I provided the answers at the subsequent meeting.

Councilor Perry – To Travis, not to those –

Larry Litton – No, to everyone but –

Councilor Perry – So basically the recommendation from the Planning Board stands.

Larry Litton – I would disagree sir, respectfully, but I would disagree.

Councilor Perry – No problem. When we look at what’s before us this evening, the main objective of presenting this or having this before the Council is the main reason is because of time.

Larry Litton – That is correct.

Councilor Perry – That is correct and as has been stated in this meeting, the Planning Board meeting and the sub-committee meetings, you've never been denied by the ZBA.

Larry Litton – That is also correct.

Councilor Perry – I guess, the previous speaker that spoke before us was talking a \$5million project. When do you start to plan these projects – after the season ends?

Larry Litton – Typically –

Councilor Perry – I mean I'm just trying to understand the process when you're investing \$5million, you don't make that decision at the end of the season, it's usually six months ahead of time, I would imagine, I would hope.

Larry Litton – Actually, you're wrong. We do, we conceptualize, we present them with ideas of things we would like to do. We are not in a position to make those decisions nor to spend the money on engineering and conceptualization until the end of the season. Typically it happens in September or towards the end of September where we actually go forward with the project.

Councilor Perry – Okay, that's fair. Thank you.

Larry Litton – You're welcome.

Councilor Perry – Now, what's before us tonight, there's a couple of different things. One is the definition of an amusement park; one is the definition of an amusement device. Now you mention the white book was based on the state regulations for amusement device, is there to the best of your knowledge, any state laws or regulations regulating an amusement park on the books?

Larry Litton – The whole thing is based on an amusement park.

Councilor Perry – Those are state laws?

Larry Litton – They're state regulations, yes.

Councilor Perry – They're state codes based on the DPA, there is no state law regulating an amusement park.

Larry Litton – If you would not mind during the question and answer period, I think Chuck can speak better at it than I, it's not my strength.

Chuck Davis – Dennis, it's actually the 520 CMR which carries the same weight as the Building Code regulations so they are regulations but just like the building –

Councilor Perry – But are they laws?

Chuck Davis – The 520 is a law, it's in Mass. General – I believe it says so on the first opening pages of it “by the authority granted to”, I don't have the book right here in front of me –

Councilor Perry – Regulating amusement devices or amusement parks?

Chuck Davis – It regulates amusement devices but it also refers to -

Councilor Perry – Thank you. Thank you. That’s the only answer I needed, not amusement parks because I’m going somewhere with this. Thank you. Amusement devices.

Chuck Davis – The operation of amusement devices and the regulations –

Councilor Perry – Right, the regulation of amusement devices. To the best of my knowledge, I have not found any laws regulating amusement parks. There is no definition of an amusement park in the state laws. There is for amusement devices and that’s what is part of the definition which you are accepting tonight, correct?

Chuck Davis – What are you asking again?

Councilor Perry – The definition of amusement devices comes from 520, correct?

Chuck Davis – Yes.

Councilor Perry – Does 520 have any definition for amusement parks?

Chuck Davis – Yes it does. “A location that has 35 or more amusement devices that may be operated.”

Councilor Perry – Okay, now is that recognized by the Massachusetts state laws? Cuz when you look up in the state law

Chuck Davis – It’s propagated into law I believe. So I believe that the answer is yes, Dennis.

Councilor Perry – Okay, thank you. That’s all I have for you at this moment.

Vice President Calabrese – Thank you, Councilor Messick, you had your light on?

Councilor Messick – In reference to what Larry was saying as far as various meetings, Dennis is correct, Travis Ward was NOT at the Planning Board during which the Planning Board issued the negative recommendation for the height. However, they did send us all a letter that had three questions and the questions had to do with a noise ordinance which was not actually a topic of discussion. It had to do with how we came up with the 150’ buffer zone which we subsequently addressed and I’ll explain how we did that and then the other question was do we have any sound regulations or a noise ordinance. The reason the Planning Board ended up discussing the noise is that there was a citizen who came –

Councilor Perry - Madam President? I don’t mean to interrupt and I’m sure Councilor would love to do this in our debate but my question is does she have any questions for the speaker?

Councilor Messick – Okay, I’m sorry. Questions for the speaker. I’m clarifying his statement, may I do that?

Vice President Calabrese – We’ll do that during discussion. Councilor Cavallo?

Councilor Messick – I'm sorry. I do have a question for Larry, I'm sorry. As far as the timing goes, in your experience once you have made the decision to do a certain ride, how long does it take to get from that decision with you guys to the point where you're giving the site plans to Inspector Urbinati?

Larry Litton – It typically is 60 to 75 days.

Councilor Messick – Sixty to seventy five days. And then the Planning Board, once Mr. Urbinati has given it to the Planning Board, how long does that take?

Larry Litton – He typically gets it out within a week. I think he has longer than that to do it but it's been an average of a week or less, five business days.

Councilor Messick – Okay, a week. Okay and then how long does the Planning Board generally take to come to their conclusions?

Larry Litton – The Planning Board typically, once we get in front of them, they have to post public hearing and notify abutters, I believe, but typically once we get on their docket, they usually approve it often with conditions, the day of the meeting.

Councilor Messick – The day of the meeting, and then the Conservation Commission, how long does it take to get from Conservation through that process?

Larry Litton – Conservation is typically and Chuck, feel free to help me out here, Conservation typically, it depends on how soon we can get them out and how soon they can meet. What we often run into with both Conservation and Zoning is because we're not getting this in front of Planning until November typically, we start running into delays for holidays, vacations, snow storms. I've been through this process two years with this park and we have never made it through both those boards without at least having one delay due to weather and often it's two.

Chuck Davis – To answer the question about Planning, Planning is typically 21 days.

Councilor Messick – Twenty one days.

Chuck Davis – It takes from the time we submit to the Town to get to that Planning Board, 21 days and it's generally done in one meeting. Conservation is normally under that same time frame.

Councilor Messick – Okay, and then, no that's it. Thank you.

Vice President Calabrese – Thank you. Councilor Cavallo, do you have a question?

Councilor Cavallo – Yea. Mr. Litton, I'm just looking at the ordinance. It has not been amended apparently because unless I'm reading incorrectly that it did originally say 150 feet from the street and your memo to us said that you will go 250 feet, correct?

Larry Litton – Yes. That is correct.

Councilor Cavallo – Okay, so my only question here through the chair or I asked the chair for this, if we are voting on this this evening, this is all part of the height regulations set back, it is not included in here, if his compromise in the letter he sent to us talked about the set back of being

250 feet so if we do vote on this tonight, somewhere along the line this has to be amended. Okay? I just brought that up as – and the other point that I wanted to make is I believe, and I attended that sub-committee, just a comment that it seemed as though that they Planning Board was under the gun to make that decision and therefore that's why they came up with those questions. It probably would have been in their best interests, would it not, if they so desired to table that hearing, wouldn't that have been better? And then maybe we would have gotten a more involved, detailed report?

Larry Litton – Quite frankly I was very disappointed that they didn't table it. We were the first item on the agenda and they chose not to table it. The sign ordinance came up, it was the last thing and I think they thought through the calendar and realized they could table that but they'd already made the vote.

Councilor Cavallo – The reason why I say that I think that that's what led to some confusion on my part at that sub-committee regarding the sound and the other issues that were brought up, the set back, and I think that it's too bad that that wasn't tabled, maybe they were looking at time constraints, I'm not sure, but thank you, you've answered my question.

Vice President Calabrese – Yes, Councilor Rheault?

Councilor Rheault – Yes, I'm having a little bit of difficulty following the procedure that we're going through here. The issue in front of us is to allow the Six Flags to circumvent the height requirement in going to the ZBA but we're talking about and I think Mr. Davis alluded to every time, *every time*, if I heard him correctly, it goes over 100 days and I don't recall, I think the ZBA every single time you came in front of it, even held morning meetings to expedite your process, so the law also requires a 20 day appeal period, but all the rest of this time it's got nothing to do with the issue in front of us.

Larry Litton – May I respond?

Vice President Calabrese – Yes, please.

Larry Litton – You're absolutely correct, they have never turned us down or at least not to my knowledge certainly not in the short time I have been here. It does add days onto the process. In taking out the permits, they have approved it over and over and over again and it seems redundant to myself that we would have to continue to go in front of them when we have dozens of structures already over that height. I think Chris Johnson, our Town Solicitor, put it best when he said we have to get approval to put another tree in the forest. But it does slow us down considerably because we have to go through that process and it's a step in the process that could be eliminated and would expedite the process for us without compromising safety which is always our number one concern and I know it's the number one concern of this Council and the Boards that we go in front of.

Vice President Calabrese – Councilor Bitzas, did you have a question?

Councilor Bitzas – Yes, Larry, a couple questions. You are asking for 200 feet high is that correct?

Larry Litton – That's correct.

Councilor Bitzas – Do you have an already existing rides in the park now that have this height?

Larry Litton – We already have an existing ride in the park – the Superman Ride of Steel – is 203 feet – 208 feet.

Councilor Bitzas – 208 yes. So actually what you are asking us is just to apply for us to make a law to allow another ride to be built that's less than 208?

Larry Litton – Correct.

Councilor Bitzas – Correct. And that would help your business to expedite the process.

Larry Litton – It would absolutely help and when I say help it would help me get New York to support these decisions because they are not going to allow me to build at our own risk in the future and Gary Suffriti himself has admitted that we have had to do that every year in order to complete the project in time for opening. As Chuck not only does it delay it but it adds significant expense when we're doing this in the winter and not taking advantage of some of the milder months of the year. We end up with overtime, we have to deal with frozen dirt, heating dirt to tear it out, it adds a great deal of expense. I believe Chuck referenced anywhere from 15% to 20% and I will tell you \$5 million is actually a small project for the park.

Councilor Bitzas – And the height of the structure does not affect the sounds?

Larry Litton – I'm sure there's somebody else here that's gonna argue it does, I would argue it does not. The loudest sounds that were ever emitted from the park came from the race track. There is no abutter to our property that did not own their property when the race track was in place and the race track was actually at the lowest spot in the park so I-

Councilor Bitzas – So it's safe to say this 150, or 175 or 200, the level would not increase-

Larry Litton – I do not believe it would increase the ambient sound levels.

Councilor Bitzas – But the distance would make a little bit of difference, I believe, common sense would say that.

Larry Litton – I don't think that to be true either but again in a willingness to try and keep-

Councilor Bitzas – But moving to 200, going back to 200 feet, alleviate it?

Larry Litton – I would certainly think that that would alleviate some concerns over there.

Councilor Bitzas – Okay. I was not at the Planning Board – the first meeting – but I was a member of the Zoning and we had a meeting, I believe last week and I've written here the Planning Board's decision, the no vote, the negative recommendation, it seems to me and I made the point to Debbie there, it is not really a no recommendation because and I hope –

Vice President Calabrese – Excuse me, Councilor Bitzas, do you have a question?

Councilor Bitzas – Yes, this question here that the Planning Board, you asked before, you told us before, that you spoke with some of the members, did you tell the members that asked the question that the Planning Board failed to have accurate information to send a positive recommendation to the Council, my recommendation for the following information would be

necessary in order for the Planning Board to make it. Did you inform the Planning Board of these changes and of these three the Councilor Messick said before –those three questions that the Planning Board did not have the answers? Did you explain to them that you were going back to 250 and for the noise levels and about also the regulations, the sound regulations and the Board of Appeals, the permitting process, and the Town laws, did you explain to them and they say yes?

Larry Litton – They were gracious enough to allow me to speak in front of them and they told me and again, that can be verified by Councilor Messick, that they felt that I had satisfied all the questions that they had, but they were not in a position as Mr. Perry pointed out, to change what they had submitted to the Council. But yes, I believe I satisfied all of their questions and concerns.

Councilor Bitzas – Thank you Larry.

Vice President Calabrese – Any other questions? Thank you Mr. Litton. Any one else wishing to speak in favor? Thank you please come to the microphone and state your name.

Michael Grandfield – Larry almost stole my notes, 27 Derwin Drive, West Springfield, and I'm here tonight the newly formed West of the River Chamber of Commerce, a new organization comprised of the former West Springfield and Agawam Chambers of Commerce. I know many of you and I'm proud to say I was a townie for thirteen years til I moved to the wrong side of the tracks, over to West Springfield. My company, Hampden Bank, remains a corporate citizen to this day. The Chamber of Commerce greatly appreciates the council considering this zoning proposal tonight as approved. To help one of our town businesses remain competitive and profitable by streamlining the approval process on certain areas of expansion. We look forward to working with Mayor Dawson and the Council to continue to improve upon the Town's reputation as a good place to do business. We hope that through strong communication between the business community and yourselves that we can convince our local companies to continue to invest in town. As a commercial banker, I understand the amusement park industry to be a challenging one. In the mid-1080's when I first got into banking, my position was as a commercial credit analyst for Bank of New England. My job was to analyze risks and lending to local companies including the local and former Riverside Park. As part of my analysis I looked at amusement parks throughout the northeast. In the late seventies and early eighties there were many. We all remember and have fond memories of Riverside here in town and of course Mountain Park in Holyoke. As a teenager I can recall visiting Lincoln Park, Rocky Point and Crescent Park all in Rhode Island. In Boston, there was Paragon Park, Pleasure Island and Revere Beach among others. Unfortunately all of those parks have gone out of business with the exception of Riverside. The industry risks were and still are many and many are very obvious. A roller coaster and other rides require an initial outlay of billions of dollars. In the northeast given the short summer season, these businesses need to make sure they maximize their sales every day so that they will be successful. This is not nearly as critical in other parts of the country. I ask you to think about a car dealership that can only be open for ninety days a year but has to keep their inventory on hand for all twelve months. That's essentially what Six Flags faces every year. It's a challenging business model. A streamlined in-town approval process is very important. We all know that any construction project, even if you're building your own home, project delays are typical because many people with different areas of expertise become involved. During and upon completion of the permitting and zoning process, work is completed by architects, engineers and numerous contractors each with their own particular specialty and potential sources to light. I have financed many commercial construction projects over the past twenty years and can tell you that it is not uncommon for that to be converted; rather it IS uncommon for them to be completed on time. Something always seems to come up no matter how thorough your planning is. Given

the shortened season for Six Flags, if the investment of a new ride is delayed by even as little as a week or two, it could be the difference of hundreds of thousands of dollars in revenue. The good news for the town and for all of us is that if successful, Six Flags, like other companies that constantly invest in their businesses keep us coming through the gate. Mr. Litton has indicated that the company has a long term capital program plan for our park typical of all their parks providing it makes economic sense. Potential timing delays of getting these rides and attractions on line has to be considered by company management in deciding whether it makes sense to move forward. Making the Agawam piece of this puzzle both efficient and consistent is an important piece of the picture and may have a direct impact on the amount of dollars ultimately spent here in town. In dollars and cents, what does the investment mean to Agawam? It's not atypical for a new ride to cost \$5 million and I'm no tax expert but I'm told that the excise tax on one ride at that rate would be about \$125,000.00 the first year going down by depreciation in subsequent years. It's a lot of money to the town. The residents of Agawam benefit from this investment directly via increased taxes but also through local jobs and dollars that flow throughout the community. Sales tax is also paid to the State and hopefully some of that finds its way back to town. On behalf of the Chamber of Commerce, I ask that you support the reasonable streamlining of any process that would allow Six Flags or any other company for that matter to make additional capital investments in town. Again, I thank the Council for taking this up tonight. It is the Chamber's hope that a good working relationship with the town that will ultimately result in Six Flags remaining successful and a good corporate citizen for many years to come. And on behalf of the Chamber I really do mean that. We want to open the lines of communication and definitely improve the already good reputation the town has to do business. I thank you.

Vice President Calabrese – Thank you Mr. Grandfield. Any questions? Thank you very much. Any one else wishing to speak in favor? Yes. Please state your name.

Alan Blair – My name is Alan Blair. I'm President of the Economic Development Council of Western Massachusetts, Chicopee and I'm here to speak in favor of the amendment to the height ordinance. It would be my experience over many years working with many companies who were interested in building or expanding in this community and many other communities in western Massachusetts, one of the most compelling concerns that they had and still have is the length of time and complexity of the permitting process in the community in which they are going to build or expand. The predictability of the process and one that is rigorous with a very certain time table is usually an inducer of investment. Anything that is uncertain, especially in the front end of a process where there is no certainty about how long it will take to complete a process for a regulatory process has been a dampener of investment. The town is enormously fortunate to have a company like Six Flags that is capital intensive which means that every year it has to continually reinvest in its equipment and its rides in order to keep fresh and attractive. Not every business that locates in a community is like that. They put up a plant, they put the machines in and then it's labor intensive going forward. This is very unique and it's the only one you have like this in this community, it's the only one in western Massachusetts like this. And that means that these new investments that have to happen every year and drives their business plan also results in as you just heard in increased taxes for the town and increased job creation. Creating a more streamlined and predictable permitting process especially on the front end of the process as this amendment would deal with, while maintaining your regulatory controls which you will, it seems like a very smart municipal decision that would encourage continued investment by Six Flags. Six Flags is also in a business where decisions to invest have to be made quickly because they have to wait until the end of the season in order to know whether it was successful enough to reinvest in the season going forward. Even though plans may be on the shelf or at least concepts on the shelf for new ideas, they can't energize the process until they know they can spend the

money but it doesn't happen until this time of the year. So that the permitting process really defines when construction can begin and if construction is gonna begin always in the cold weather or push out the completion until very close to the opening of the new season, it creates uncertainty for the company about whether making that investment in this place makes sense in this year and they'll put money in other places. Six Flags competes with other similar facilities owned by their corporation around the country for this capital and we've already seen in the past year where capital that was earmarked for Six Flags New England ended up in another park in another state because of issues around being able to build. So streamlining the process here will more likely result in new investment by Six Flags corporate in this facility than not. The amendment as I understand it and as it's currently conceived with the additional of the extra one hundred feet on the buffer would increase the allowable height to 200 feet with the additional safeguards that these buffer zones around the perimeter of the property. It would enable Six Flags to move forward more quickly on new projects while maintaining an appropriate consideration for the abutters and a rigorous site plan approval that you already have in place here in the town and of course nothing in this ordinance would affect the additional review by state officials for compliance with all of the safety regulations. It seems like a smart thing to do to make it easier for them to get into the process while not giving up any of the self-regulatory control that this community has and will continue to have over the projects that they propose. So for these reasons, I respectfully urge your passage of the amendment tonight if you can. Thank you very much.

Vice President Calabrese – Thank you Mr. Blair. Do I have any questions for the speaker? Yes, Councilor Perry.

Councilor Perry – Yes, thank you very much. Through the chair to Mr. Blair, thank you for coming tonight and giving your comments. I appreciate that. Now you mentioned in regards to the permitting process and how you've been in western Mass for many years and you've been involved all the communities in our area and building and things of that nature. How would you compare Agawam's permitting process compared to surrounding communities?

Alan Blair – Average. Average but not the fastest and not the slowest. I'll give you some extremes. The fastest from the industrial building permitting point of view is Chicopee where in less than, in certain properties at Westover that WestMass owns, within thirty days of submitting final plans, the site review process is complete and a building permit would be pulled. Within thirty days.

Councilor Perry – Now is that entailing any special permitting in regards to any issues where it's gonna be built beyond the zoning codes?

Alan Blair – No, because if there's a variance required, there's always going to be a difference in time but in the case of Chicopee and most of the other communities including yours that has an industrial park, you have a zone, an industrial zone called different things in different places, that defines what the limits are and as long as the project has been within those limits then the process moves very rapidly in Chicopee. For very large projects, Westfield has very expedited process where they have meetings of all the boards at the same time in the same place to expedite the process for very complicated projects. The City of Springfield is now reviewing and revamping their zoning to go with site plan review which you have here which will eliminate a lot of the discretion that various boards can have on projects from project to project and create more certainty for the applicant. So Agawam and obviously I've been involved with you more with the industrial park here over many years. It's a beautiful park. You should be very proud of what's been accomplished there. I know you are. And you worked very cooperatively with WestMass

Area Development Corporation and all of the businesses in there in order to get it done. But this is a different project. This is a very unique use. Amusement parks, there isn't another one here, the only other one nearby is Lake Compounce and they do have a height limit that is greater than this one that eliminates some of the uncertainty to do projects there. Other states have realized that because of the uniqueness of this business motto that these fast cycling capital investments have to be made, that they've made changes to their zoning to eliminate those things that aren't really overly important but still maintaining control over those things that are important. The safety, the compliance with other building codes, those things you don't want to rush through, you can have a certain time to do it within and get it done, nobody's asking anybody to give those up. And these other communities don't but they do make it easier and more certain for them to know that if we start today, we're gonna be done in ninety days or 110 days and we can get in the ground. And this unfortunate cycle of having to build in the cold weather after the warm weather season is over creates a lot of pressure to do a big ticket project and get it done on time.

Vice President Calabrese – Any thing further?

Councilor Perry – No, not at this time. Thank you.

Alan Blair - I appreciate your listening.

Vice President Calabrese – Any one else have any questions? Thank you very much. Any one else wishing to speak in favor? Anyone wishing to come forward and register in name only in favor? Anyone wishing to speak against the proposal? Please come to the microphone and state your name.

Attorney Martinelli -...

Vice President Calabrese – Mr. Martinelli, could you please put your light on? Thank you.

Attorney Martinelli – Oh, I'm sorry. My name is Tom Martinelli. I live at 45 Birch Hill Road in Agawam and I'm speaking against this amendment for several different reasons. One of the reasons and I might add in recent litigation I was Barbara and Ed Czelacewicz' lawyer in Superior Court litigation that we just concluded. So I'm not here as a lawyer particularly tonight I'm speaking as a citizen of Agawam. In Agawam we have the 45 foot limit on the height to which buildings may be constructed or structures may be constructed without getting a special permit. Chicopee has a similar limit. Springfield has a similar limit – in Springfield I believe it's 60 feet. Westfield has a similar limit. West Springfield has a similar limit. Longmeadow and East Longmeadow all have limits from 35 to 60 feet in which structures may be erected without getting a special permit. Agawam of course has a 45 foot limit. Ladies and gentlemen there's a reason for this. There are several reasons for this and one is that independent land owners should not be allowed to construct what they want, where they want without some regulation for the public benefit. This, these amendments that you heard these gentlemen talking about, this amendment is for the benefit of Six Flags – period! It's not for the benefit of the people of Agawam. It's not for the benefit of the general public. The general public needs the kind of checks and balances that you now have. To hear them get up and say one after the other that we can't plan on what we're gonna do next year until the season's over after Labor Day of this year is slightly ridiculous. These people plan years ahead. They plan four and five years ahead. And people know this and people that have been involved with it and I know from the evidence in court that they do this. So you're not obligated to hurry through a process or have a process rushed up so that they can complete their construction before the park opens in the spring. No one is against Six Flags building whatever amusement devices they can build safely, but the

checks and balances that are required by having a special permit and having a Zoning Board of Appeals say now wait a minute what's the sound situation here? You gonna make a lot of noise from this thing? How are you gonna regulate that? What are the safety factors that perhaps aren't in the state building code but we know from living here and from the layout of the town that they might be effective here? These questions have to be answered and they are now answered by the fact that you have the Zoning Board of Appeals. The Planning Board gave a negative recommendation to this. And when I hear somebody get up and say that they talked to the chairman of the Planning Board who wasn't even there at the Planning Board meeting, afterwards and he said that he felt comfortable with what you are doing. Well, that's ridiculous. I mean if he wanted to get the Planning Board to reverse its direction, he should have asked for a second meeting of the Planning Board, a review meeting and presented his evidence before the Planning Board at that time. He didn't do that. I'm just asking you to, I'm opposed to this as a citizen because I don't think this is for the welfare of the people of Agawam. I don't think it's gonna benefit the people of Agawam and I think that it opens up an area for litigation which you now don't have and that is spot zoning – this is spot zoning. Spot zoning is illegal in Massachusetts and you're gonna get perhaps some litigation out of that if this amendment passes. You're talking about a height regulation as high as a ten or twelve story building. We don't have many of those in Agawam and those that we have were given by special permit after very careful consideration. The fact that it takes a month or two months or three months doesn't make the slightest bit of difference. This is for the safety and protection of the people of the town and it should not be allowed without special permitting. Thank you.

Vice President Calabrese – Thank you Mr. Martinelli. Any questions?

Mr. Martinelli – Any questions?

Vice President Calabrese – Yes, Councilor Messick.

Councilor Messick – Hi, Attorney Martinelli. All of the towns that you listed that have height requirements that are much shorter than two hundred feet; do any of those towns have an amusement park?

Mr. Martinelli – None of them have an amusement park.

Councilor Messick – Thank you.

Mr. Martinelli – None of them have an amusement park, if I may speak to that. This is the only amusement park within 50 miles and whether they have to do a little advanced planning or they don't have to do advance planning is strictly up to them. They make a lot of money in this park. No one has talked about what their gross income is. You're talking about a \$5million expense but they're not talking about the number of people that ride these rides and I happen to know how many ride these rides.

Councilor Messick – Thank you. Also, you said that there are questions that the Zoning Board of Appeals asks when they're asked to issue a height variance like what are the safety factors and what are the noise ordinances, in your legal opinion if they're asked for a height variance are they supposed to be asking questions about safety factors and noise ordinances?

Mr. Martinelli – I don't have a legal opinion on that. I'm just speaking as a citizen not as a lawyer.

Councilor Messick – Thank you.

Mr. Martinelli – I'll do some research on it and be glad to tell you at a later date.

Councilor Messick – That would be great thanks.

Vice President Calabrese – Thank you. Any other questions? Thank you Mr. Martinelli. Any one else wishing to speak against the ordinance? Thank you. Please come up and state your name.

Edward Czelacewicz – Edward Czelacewicz, 1720 Main Street in Agawam. Allowing Six Flags to build thrill seeking amusement devices as a matter of right up to 150 or 250 feet from Main Street will create a significant adverse noise impact for the residents who live on the other side of Main Street. Noise source is not the rides themselves, it's the loud screaming, shrieking and hooting from the riders that these tall amusement devices are designed to produce. For the well being of the residents of Main Street, please move this so-called buffer zone back to a sensible distance. In 2005, such a ride was built 200 feet from Main Street across the street from our homes. The screaming and shrieking was so loud and continuous, it became unbearable and we did not want to even be at our own property. This ride also exceeds the present 45 foot height limitation. Six Flags represented to the town's permitting process that it was 39 feet in height thus avoiding the Board of Appeals. We've contacted many town officials about the problem and they said the site plan was approved and there was nothing they could do. Six Flags' officials said they would remedy the problem and to bear with them until they found a solution. The former General Manager Mark Kane had a solution by installing a larger shield attachment to the slide. That was not done. Instead we had to take Six Flags to court. I hired a sound engineer to produce a noise report for the trial. He found the excessive loud screaming violated Massachusetts DEP Policy 310-CMR 710 on the average of 1 ½ times permitted on the decibel limit and the same loud screaming violated the pure tone threshold on an average of 1 ¼ times per minute. Add those together and that's an average of 2 ¾ violations per minute that intrude upon my residence while the ride is running. Would anyone like to live there during the summer? After the trial, a Superior Court Judge ruled that this excessive noise does in fact violate DEP policy and found Six Flags negligent and awarded damages. The judge made his decision on August 13, 2008. Several neighbors also testified to this problem at the trial. The judge wrote Six Flags owes a duty of reasonable care to its neighbors to prevent activities and conditions on their land from injuring persons with property outside their land. The judge also determined that DEP is the enforcing agency of the policy and not the court. At this time, thus not ruling any mitigation or abatement of this Typhoon Water Coaster and allowing it to continue to operate. Six Flags does not intend to solve this problem voluntarily. I now intend to take the court's decision and the sound engineer's noise reports to the DEP at the state and federal level for enforcement of the noise policy that is designed to protect the citizens of the Commonwealth and the citizens of this town. I also intend to notify MEBA of misleading noise reports that were submitted to them by Six Flags' representatives in the year 2000 when Six Flags intended to change the former Riverside Park to a major theme park. MEBA regulations may require another noise study to be done. I have no choice in this matter since the problems still exist and the Council may vote tonight to allow these types of amusement device structures to be constructed as a matter of right up to 150 or 250 feet from Main Street. Six Flags does not have the right to project excessive noise to its neighbors. Please consider moving the so-called buffer zone back for the well-being of the residents on Main Street. Put yourselves in our shoes and not have eyes only for Six Flags. Now you've heard of an unhealthy situation from a resident and his neighbors who are now living in the shadow of Six Flags. It is my hope that this shines a new light so the Council will give more consideration to the families that live on the other side of Main Street

from Six Flags. In my opinion, a vote yes tonight would be an irresponsible act. Town officials or Six Flags do not have sound testing data showing compliance with DEP policy for amusement rides to be constructed so close to the residents on Main Street. I have sound testing data that shows perpetual violations of DEP policy for the Typhoon Ride when it's operating as well as the court's decision to confirm that. My hope is Six Flags and nearby residents can exist in the same area without any major impact issues. Thank you for listening.

Vice President Calabrese – Thank you. At this point we need to allow for more time to conduct this public hearing. We've gone through our initial 45 minutes. Do I have a motion to extend the time? Moved by Councilor Perry, seconded by Councilors Messick and Bitzas. All in favor, please signify by saying Ay. Okay we are going to extend time for the public hearing so that everyone has a chance to speak. The next person who wishes to speak against the proposition, please come to the microphone and state your name.

James Marmo – James Marmo, 130 Main Street, Agawam, MA. Six Flags wants to do away with the Board of Appeals in building a ride over 200 feet. They need more time. If they came to the Board of Appeals with the proper paper work and prints, there would be a lot less time taken. The newspaper last week put in in the paper that they would not upgrade the Superman. Well they know about this now, it's the end of the season. They should know about any other ride. If they came to the Board of Appeals now there wouldn't be any extra time taken. If you allow Six Flags to do away with the Board of Appeals, who's next? They have rides 200 feet now. There's also cell towers 260 feet out there. When anybody wants to put up a cell tower, you gonna do away with the Board of Appeals? A lot of Councilors feel that Six Flags is gonna move out if they don't get what they want. This Six Flags does more profit than any other Six Flags. They're not going anywhere. The Board of Appeals doesn't hold up Six Flags just like we don't hold up any body. If they come in with the proper paperwork, we'll expedite their time. And like I said, if you do away with the Board of Appeals and Six Flags who's next? Why do we have the Board of Appeals for? For the safety of Agawam. Thank you.

Vice President Calabrese – Thank you. Does anyone have any questions for Mr. Marmo? Seeing none, thank you Mr. Marmo. Is there anyone else wishing to speak against the ordinance, please come to the microphone. At this point I'm going to break protocol and we did have a citizen wishing to make a presentation to the City Council during the public hearing; however she could not be here but provided us with a written letter. Oh, she is here? Okay, she just can't speak. I'm gonna have our council secretary go ahead and read here statement. She is in the room. Please Barbara go ahead and give her name.

Council Clerk – Her name is Helen Krupzak, 1730 Main Street. "I'm not objecting to Six Flags building tall rides further into the park. But I do object from them building toward Main Street in front of my house. The Typhoon ride is close enough as the noise is loud. I cannot sit on my porch or have my windows open while the ride is running. I also can't enjoy my yard because of the noise being so loud."

Vice President Calabrese – Thank you. Anyone wishing to object to the ordinance in name only? Seeing no one, I declare the public hearing closed. We will now open the matter up for discussion and we'll begin with Sub-Committee reports. Councilor Messick do you have a report that you'd like to give?

Councilor Messick – Yes. We've been discussing these zoning amendments that we're going to be talking about tonight and this one in particular for quite some time. The Planning Board held a public hearing. It is correct that Travis Ward was not in attendance. Michael Morassi was

chairing that meeting and Mr. Czelazewicz who just read about his experiences with noise was attending the meeting and that is where the questions that the Planning Board had about noise arose from – statements from Mr. Czelazewicz. The Planning Board also had the question about the 150 foot buffer and how that number was arrived at and they didn't feel that they had sufficient information at that time to make a decision. They issued a negative recommendation but then during discussion afterwards they said that they would be writing this letter which we all have that asks the three questions. We then had a joint zoning and ordinance sub-committee meeting where I brought information that answered all of these questions. We presented that to the people who were in attendance – Travis Ward, who is the Planning Board chair was in attendance at that meeting. A good number of you were at that meeting as well so you know what we discussed. The subsequent night, Thursday night, Planning Board had another meeting. Mr. Litton was there and I was there and Travis Ward was chairing that meeting. We again discussed the same information that we had discussed at the joint zoning and ordinance sub-committee meeting. So the entire Planning Board was apprised of the answers that we all got so they are aware of all the information that we have, to the answers to the questions that they had. The reason that they decided that they would not have another – they would have to have another public hearing in order to take another vote – they decided not to do that because we were having our meeting here on Monday. And they felt that they did not want to delay this public hearing. I cannot speak to the Planning Board members' opinions about the height variance but they did seem to be satisfied and they were satisfied with the answers that they got. Some of the information that I have obtained as far as the amount of time that it takes to go through ZBA which is also the information that was given to the Zoning & Ordinance Sub-Committee - the ZBA adds time not be intentional delay but by statute. There are certain time frames – public hearing and then there's an additional appeals period in addition to the time that they have a meeting and they have to postpone it or whatever. What I found out was, I went through sixteen case files from the ZBA and I just took the average number of days that it took for them to get approval. This isn't just for Six Flags, this is just whatever happened to be in that drawer, those sixteen files, talking about additions to non-conforming residents, amendments to parking plans, additions in a flood plain, these are reasons that people have to go before the ZBA. The average number of days that it takes to get through the ZBA is 71 days. That's for very ordinary, every day things that happen in the town. That does not include the amount of time the Building Inspector has the plans because the Building Inspector gets it first and that does also NOT include the statutory 20 day appeal period which occurs after the Zoning Board of Appeals has it. So the worst case scenario we are adding 100 days. And what was said prior to I forget who said it but the Board of Appeals has not issued a negative recommendation – a denial – for a height variance. They have actually set their own precedence by continually approving height variances for these rides and the fact of the matter is they've ...agreed that this height variance should apply because we already have a 200 foot high ride in the park – 208 feet. I think there's a feeling that Mr. Marmo had just said that he felt that we were trying to do away with the ZBA. I just want to remind everybody that there are other reasons than height that Six Flags would come before the ZBA. This just happens to be the reason that they come most often. As far as the meetings and who were there, I think we have very thoroughly apprised the Boards who make these decisions of the facts of the matter and I think that you all have them and so I'm hoping that what we can do is pass this tonight and I'll be making a motion when it's appropriate to amend it to the 250 foot buffer cuz I think everybody will feel better and I think that would make the abutters feel better about the height variance.

Councilor Bitzas – I second the amendment to 250 feet.

Councilor Messick – I think you're out of order. I'm not sure.

Vice President Calabrese – Actually if you're making the motion, you can go ahead and make that motion now.

Councilor Perry – This is during a report? Point of Order – this is just a report. We haven't even moved the question yet.

Councilor Messick – Okay, so that I believe is my report.

Vice President Calabrese – Thank you.

Councilor Messick – The conclusion from the committees was that both the zoning review committee and the ordinance committee voted in favor of –

Councilor Rheault – That's incorrect. There was no vote taken.

Councilor Messick – I'm sorry. The original, in the original meeting where we took a vote, we voted in favor of the height, we voted to make a positive recommendation to the Council. The prior meeting but we did not take a vote at the subsequent meeting because it was for information only. We were presenting the information and there was no reason to take a subsequent vote. Thank you.

Vice President Calabrese – Thank you. Any one else? Yes, Councilor Bitzas?

Councilor Bitzas – Yes, I do agree with Councilor Messick. We did take a vote at the previous meeting, all six of us, myself, Councilor Cavallo, Councilor Rheault, Councilor Rossi, myself and Councilor Messick.

Councilor Cavallo – Point of information, I was not at that meeting.

Councilor Bitzas – to approve the 150 feet set back and now it's a lot better because of concerns about it would be a little bit better, the farther, 100 feet farther. I'm glad Mr. Litton agreed to it so he sent us that so it's a better vote to tonight because it went from 150 feet to 250 feet. Also it's easy to expedite the process and the Board of Appeals – we don't take any power away from the Board of Appeals. If they were going to build 201 feet, they have to go there. If they have other problems, they go to the Planning Board; they go to the Building Inspector so it's not like power play here. And we have this special body, we can't make the laws, those heights are okayed, so we can increase that one, only for the amusement park, not for the other structures. The other structures have to go to the Board of Appeals. It's hard, my heart goes to the neighbors, the neighbors are my friends. I live close by. I hear all the noise right now, it may make it a little bit different for the others – maybe. But it is a business that gives this town many, many millions of dollars. We heard that the business people in the community, they came here and spoke tonight in favor, Chamber of Commerce, the WestMass Economic Development, they make good cases, you should be pro-businesses. I know we try to hard to push farther down for the noise, it's already noisy now, I live by myself close, but the 200 feet high is not to the noise. Tonight we're not here to control the noise, we're here to have the height at 200 feet which is already the Board of Appeals has approved the 208. The noise is another ordinance, another story but we're not going to connect those two. But I sympathize with the neighbors and it's hard for us to vote in this issue but we have to put our town first. Thank you.

Vice President Calabrese – Thank you, Councilor Cavallo?

Councilor Cavallo – Yea, you know the whole thing boils down and it's very unfortunate that we're at this particular stage in this process because it seems though the Planning Board had an awful lot on its plate the night they met. As a matter of fact, if you recall, one of the ordinances and requests we didn't even get an answer. It's like we're putting a square peg in a round whole. It's not fitting and really, I stand by what I said before, I think they should have tabled it at that particular point. I know it would have put the process back a couple weeks, okay, but that's why I was uncomfortable at that meeting. I know I'm repeating myself but and we're here at a point now where some people are disgruntled over it and should we act tonight because they do need to get going on this project. I think it's a good project. I don't have a big problem with 200 feet but I wish that things could have been done a little bit more smoothly and the process wasn't rushed like it has been, okay? Two weeks, what would two weeks meant of a delay? To have a public hearing the end of October, we have a public hearing the end of October? That's my feeling but I'm just uncomfortable with that but I can understand Six Flags' plight as well. Thank you.

Vice President Calabrese – Thank you. Councilor Perry?

Councilor Perry – Yes, Madam President, through the chair to Councilor Messick, in your report you stated that you went back to the Planning Board and talked with them, you and Mr. Litton from Six Flags, and explained the answers that were brought in your sub-committee meeting, was that an agenda item for the Planning Board? It was? They already closed that out. In a future, I guess my question is you stated in the meeting that after your sub-committee meeting you went back to the Planning Board and talked with them? Was that a posted meeting? Was that an agenda item that you could talk with them on? You see, public meetings, there's laws behind that. You can't just go; you can call them and give them the information if you want. But to say to this full council that you met with them at a public meeting and discussed this without it being posted is illegal. Is that what you stated?

Councilor Messick – The sign ordinance was on the agenda -

Councilor Perry – That has nothing to do with this ordinance.

Councilor Messick - And 'other items that may legally come before the Planning Board'. They did not change their opinion.

Councilor Perry – “brought up by the Planning Board” not by people present at the Planning Board meeting. What I'm saying is and Jill, I'm not trying to give you a hard time, all I'm saying is you can't go to a meeting like that and discuss issues that have already been closed out in public meetings. There's a reason that these meetings are posted. There's a reason that there's agenda items listed on these meetings to give the full public their purview to come in and discuss is the point I was trying to make. I didn't realize this until you mentioned it, that's why I'm asking it, if that was the case then –

Councilor Messick – I apologize for my misstep. The information that we gave answered the questions. It did not change the vote of the Planning Board. We still do have a negative recommendation in front of us and so I and yes, I fully admit that we do but I just felt that it was information that they should have, not that I was trying to change their minds at all which I did not. I did not suggest that they should, they were the ones that ones to discuss it and decided to not have a further hearing.

Councilor Perry – Well, I am here to point things out. It's just that when we're discussing something of this nature it is very important the steps that we take and from your report I gather

that this information was given to them and you were explaining to this Council that they are now for this when legally that meeting never took place, is all I'm saying, so that assumption I was getting from your report was that you discussed it with the Planning Board members and now oh now we understand but we don't have time to have a meeting. That's the assumption that I got from that and you can't do that. You can say you discussed it with them and your personal opinion is that I feel that they believe it and those types of things is all I'm stating.

Councilor Messick – All right, again, through the Chair back to Dennis, Travis was at our sub-committee meeting. He had not been at the previous Planning Board meeting and so part of the reason I went to the Planning Board meeting was to be available to answer any questions that they had when Travis was chairing. Thank you.

Vice President Calabrese – Councilor Young?

Councilor Young – I was appalled to hear one of the facts that I appreciated from Councilor Messick was the average turn around time of our Zoning Board of Appeals. 71 days seems pretty unacceptable to me as a citizen and tax payer as well. Could anyone on one of the committees – Zoning or one of the ones that is considering the matter – let the public and this council know how many days TOR-2008-2 has been under consideration or in process here? Out of curiosity? It seems like many days and weeks, not months, the one we're looking at currently. Yes. Ninety days at least? Or are we beating our average?

Councilor Rheault – Well, if I may interrupt for a second. Through the chair to Councilor Young, I think she stated the average was 71 days but she did not refer specifically to the time the height requirement goes in front of the ZBA and it's passed. I think that you'd find it's probably within 24 hours from the time the meeting's called and then the process of the law takes place with 20 days of appeal fits in but I know of no situation where the work they did not work on this immediately.

Councilor Messick – Through the chair, I have one height variance here in my sixteen files, it took 115 days to go through the ZBA not counting the time Inspector Urbinati had it and not counting the 20 days for a height variance. Thank you.

Councilor Rheault – Do you know which one that was?

Councilor Messick – I purposely did not put that down. I just did it by case number and what it was for. Thanks.

Vice President Calabrese – Councilor Cavallo?

Councilor Cavallo – Yea, the other thing was that was a joint meeting that we had so Jill went on her own, Mr. Rheault did not attend that meeting and he is chairman of the Ordinance Committee so I just wanted to go on record that you did not attend the Planning Board meeting.

Vice President Calabrese – Councilor Rossi?

Councilor Rossi – Thank you. I was at that sub-committee meeting and quite frankly I am a little disappointed that they had another meeting without the rest of the committee and I think that that should be taken up at a later date but for now let me just say that the Planning Board people were there – Debbie Dachos was there and Travis Ward was there and although they sent a letter of negative recommendation and I don't really know what that means but I asked them to qualify

that and what they said was that they couldn't send a positive recommendation because there were some questions that one of the members had concerning the amount of noise that was being emitted and therefore without those questions being answered they would not or could not send a positive recommendation. So rather than send no recommendation they sent a negative recommendation and I couldn't guess as to the reasons why they sent a negative recommendation and not any recommendation whatsoever based on what they had decided at their hearing. But for our purposes over here and we're talking about time lines and everything else and I do acknowledge that there is a considerable amount of time that takes place when you have to go before the Board of Appeals for any reason. But I'm gonna speak specifically to Six Flags over here and my concern wasn't so much the height, I was concerned about the setbacks a little bit but I was more concerned about the area specific to Six Flags. I didn't want other areas because I do know that there are other places in town that call themselves amusement parks but clearly by definition they're not at least my definition that I've been able to read. So I ask that we amend our definition of what an amusement park and amusement devices are under our own statutes under 80 Section 2 and we've done that which eliminates other areas in town from seeking this kind of a height variance. Now again as I said if this Board says to Six Flags that we are gonna say no to this ordinance, we are saying no simply because we can. I don't see any compelling reason to deny it. I know we've talked about height. I know we've talked about safety. But safety isn't a concern because that's a concern that the ZBA, or site plan approvals or others taken up during their process, so safety is not gonna be an issue here for height in itself. I don't know why we're talking about noise because height in itself has very little if nothing to do with a loud noise being emitted. And I think everybody here that has testified or anybody up here spoke about the situation, it's not coming from how high the ride is. I think we know that an organ grinder makes more noise than the Empire State Building for example so how can we say height alone causes noise? I think it's caused by the people who ride those rides and I think amusement parks have a very unique situation here. When you get those screams and thrills or screeches or whatever you call them, those people are up there having fun. And I think that's what amusement parks are all about and to say that we have to eliminate that, I don't know how we can do that and still call themselves an amusement parks where people want to come and enjoy themselves. But again, that's really not what we're here for, that's not what this body is all about. There's DEP regulations that go into sounds and sound levels as we just heard from one of the people here who has a problem with that and I guess that they went through some kind of litigation and maybe still is but for our purposes here, we're here, we're here to discuss strictly what the height is and as it's said before I think we're not taking anything away. I know Mr. Marmo from the Board of Appeals was here and he was upset about that. There isn't anyone who's more of a stickler on zoning and I think everyone on this board knows my track record about zoning. I'm very, very adamant about zoning and reserving zoning in its purest intent for maintaining safety, security, confusion and all those other things that go along with zoning. So I'm very cogniscent of zoning and zoning laws. But we're not taking anything away from the Board of Appeals here and I think if you go back and look, the Board of Appeals have already made judgments at the Six Flags on the heights. They've allowed amounts in excess of 200 feet already. So in their judgments, the Board of Appeals has already said that the safety issues have been satisfied and it's not a detriment to the neighborhood and all those other things that go along with their decision making process. So that judgment has already been determined. So how do we say no now to those people in that area that every single time that you want something you have to come back to us. I see no reason to do that other than I guess because we can do that. And I think that's over-regulation. I don't think that we're taking anything away. I think the oversight boards are still in place so I don't really get it. I can't see anybody here. I can't find an argument. I guess at least in my point of view, I can't find any compelling reason to say no to this argument and there are and I'd like to hear it and again I hate to be redundant but this is about height people, it's not about anything else and it's not about restricting the Board of Appeals because the Board of

Appeals as we all know are going to be taking up those other issues concerning safety and other procedures that goes along with amusement places. So I guess in closing I have to say that in our judgment here today we have to look at do we want to allow Six Flags to have something that they currently enjoy by right or do we want to make them come back and jump through the hoops simply because we can?

Vice President Calabrese – Thank you. We will if you don't mind Councilor Cavallo, we'll take a five minutes recess and deference to Councilor Rheault needing to step away for just a couple minutes. Thank you. We'll take five minutes. Thank you that concludes our recess. Councilor Cavallo?

Councilor Cavallo – Yes at this time I would like to make an amendment to the TOR-2008-2 in Section 180-49A –

Vice President Calabrese – Hang on just a second. I'm sorry, Councilor Perry?

Councilor Cavallo – Yea. I'm making a motion to amend.

Councilor Perry – Are we done on the discussion end of things? 'Cuz there's a lot more that I have to say on this.

Vice President Calabrese – Would you defer?

Councilor Cavallo – Yes. I yield to you Dennis.

Vice President Calabrese – Thank you. Councilor Perry?

Councilor Perry – And beg my indulgence please. I know we've beat this many times and again I just want to say this is nothing against Six Flags. I understand what they're doing, they have a business to run and they're trying to expedite that process as much as possible. I just don't happen to agree with what we're doing here because it is my humble opinion that we are taking power away from the Zoning Board of Appeals. But this amendment and ordinance that's before us does a lot more than that. I know in the original sub-committee meeting that there was a vote taken on, one of the stipulations was to notify the abutters which is Section B in here – to notify that was one of the stipulations was that that we notify the abutters and what this is stating is that 'we shall inform such abutters and owners of land of the date and time and location of the Planning Board's public meeting as required under 183C' - for the applicant's site plan for the proposed amusement device'. We're notifying the abutters of the public meeting. Think of those words – public meeting – it's not a public hearing. The abutters aren't gonna have any say at the site plan review in regards to what's gonna be put up close to them. They'll be notified but there is no public hearing. What this amendment is stating to you is we'll send you a notice, you can come but you can't speak. This amendment is taking the voice out of the abutters. There's one reason for not passing this this evening. Two – I humbly believe we are taking power away from the Zoning Board of Appeals because they hold when a special permit comes forth a public hearing where the public, the abutters, are notified and they can come and say they disagree or agree with the site plan that's being presented and the variance in that law. You have to understand, this Council has to understand, the Zoning Board of Appeals works for us. We create the laws as a body. That's our job; we're the legislative body of this government. We create the laws. The Zoning Board of Appeals interprets those laws. We get them every week in our packet – the decision of the Board of Appeals – because there's always room for variance. We set the laws on how we want our town to be, the codes, the districts, what we want built in certain areas,

there's always gonna be an exception to the rule and that's up to the ZBA to decide. We decide what the laws are, they interpret those laws. By passing this this evening, you're taking that power away from the ZBA, you're taking that power away from this Board. We passed that law forty-five feet high building anywhere. The ZBA works for the people, the businesses, in our community because if they want a variance in what the laws that we have set, they have an option to go to to get that changed IF it conforms and fits in and not be detrimental to the neighborhoods or the safety or the health and welfare of that neighborhood. That's the decision that they make. Not us. We're taking that power away from them. We're taking the voice from the people away from them – that about Six Flags because they're notified but they can't speak. That's what we're doing. The other thing that we're doing and you have to keep this in mind and I did not want to do what I did to the representatives of Six Flags this evening, I was hoping our Solicitor was here and speak and I was hoping that David... was here – site plan reviews. My colleague to the left of me understands, she's on the Conservation Commission, she understands the conservation reviews. They're all based on – I can't, we can't go and make an amendment for the 100 foot buffer to build near a wet zone, wet lands, why, because the state laws says you can't. Okay? You show me a state law regulating amusement parks. There is none. I looked. I was hoping Chris was here to answer that tonight. He's got a definition here that we're gonna incorporate if we pass this on amusement devices. The thing is it comes from 520 which he states in his memo July 31st to us 'add the definition of amusement device 182B, the definition comes from the Code of Massachusetts Regulation Title 520 Department of Public Safety Chapter V Amusement Devices'. That's where he's got it but then in here, in the ordinance, it doesn't mention that at all, it mentions the American Society to Testing Materials Int...but I agree there is a definition out there on the state level. There is no definition for amusement parks at the state level, there may be one in 520 but there isn't one in state law. There are no state laws regulating that so what we're doing in passing this is you tell me a site plan review is based on our zoning laws, a site plan review and our zoning laws are based on state laws. If none exist, you tell me how the Planning Board is ever gonna deny any site plan or permit. They can't. They've got nothing to fight it on in court. By passing this we've taken any check and balance away from Six Flags to put anything they want in that park in my humble opinion. But again, if we pass this, it's more than just the height regulation; you're also taking the voice from the people and the abutters. Thank you.

Vice President Calabrese – Thank you. Councilor Rheault?

Councilor Rheault – Yes, to echo some of Dennis' comments, I would really publicly like to state to Mr. Martinelli that I think he said it all in a couple of paragraphs and I totally agree with what you said and no disrespect to Six Flags but I have no allegiance to Six Flags. My allegiance is to the tax payers who elected us and who support our boards and especially to a board that we elect. That's the important key here in my opinion. We elect this board and to take any rights away from them I think is shortcoming and if it takes a little bit of extra time, there are a lot of situations and time where builders build and develop and extend over a deadline as far as time and it costs them a lot of money as well. So as I said I'm gonna support our board and that's my opinion.

Vice President Calabrese – Councilor Simpson?

Councilor Simpson – Thank you. I'll be very brief cuz I think we've talked about this quite a bit but I want to say that we also do have to remember that Six Flags is a very different situation than anything else that we have in town. Dennis alluded to the fact that we have the 45 foot requirement that we have on our book. We've had that probably for a very long time. I don't know when that was initially put into our Code but I am assuming even back in the Riverside

days that when they first erected some of those coasters there they had to go to the Board and get special permits for what they were doing there. I would not be for this if we were just saying anywhere in town we can build for that height, this is one specific entity, one specific area that it's going to be allowed in. So we're not gonna be having sky scrapers all over the community. Also, we have to think of the fact that we are or we try to portray ourselves as business friendly. We have some new regulations done when Steve & Barry's came in about how, the taxes for them, in order to help a business come in and that probably saved them from closing down here in town because of that. We also have to think of Councilor Rheault had mentioned that he has no allegiance to Six Flags, I don't think any of us do here. Our allegiance is as he said to the tax payers but we have to think about what Six Flags does to the community. The gentleman said they won't shut down. Hopefully they won't but nobody can predict what's gonna happen two years, three years, the market's down below 10,000. Who knows what's gonna happen? None of us can say with certainty that it won't shut down or it will stay open. Nobody can predict that if you can than you'd be great at forecasting things. But I think we have to think of the tax payers and if something did happen to Six Flags, what would happen to our tax rate and also what would happen to that huge parcel of property. I can see that growing over and becoming very desolate. So and also we have to take into consideration that we live up here in the north, it's not like an amusement park down in the south where they have twelve months of preferably good weather, they have rainy seasons and what not but they don't have the winters that shut them down. Six Flags runs through I believe the end of October. I think in Florida they run twelve months of the year. They can afford to shut right down during their twelve months and work on them, not just Six Flags but any of type of amusement park that's in areas where they have bad winters and they shut down. They have a very short season. They can't afford to shut right down and work on things during their main season like some of the other parks in the south or out west they probably do. So we have to take into consideration that taking 70, I believe Councilor Messick said around 70 -71 days, and we brought up a point tonight how long this has just been in front of us to get this passed. So I don't think we're doing a discredit to our citizens. I think in actuality we're helping, we're promoting, we're being business-friendly. It will look good to other businesses coming in that we are willing to work, we are willing and we have to remember we're only talking about the height. They already have a coaster 208, I'm assuming there's not gonna be too many new rides that are gonna go that much higher. I would assume there's safety factors all over the country on how high rides can be and what they can push the limit to. So I'm gonna be voting in favor of this and I think it will benefit everyone. Thank you.

Vice President Calabrese – Councilor Rossi?

Councilor Rossi – Yes, just briefly again. I just want to try and clear up my position a little bit here. Again what we're really talking about is just that height requirement and a very certain area within the confines of the property of Six Flags. They were talking about the permits, now I know that Dennis is talking about taking away powers from the board here. We're not really taking the power away from the board, all we're saying is there's a certain area within the property limits of Six Flags that they have, that they can go and erect a structure that's 200 feet. Anything outside that area, they're still gonna have to go to the Board of Appeals. That doesn't mean that there's no gonna be any oversight concerning safety or any other regulations that Six Flags does not have to adhere to in building those structures. Now, I don't know if this Board has ever, and I've talked to a Board of Appeals member, way back a long time, talked to people that have been on the Board for a very, very long time and no one's ever remembered anyone ever denying a height requirement at Six Flags. That being said, I don't see any reason in the future if there were a safety issue of course that would be addressed but height alone and you want to talk about law suits. I mean I can remember going back talking about cell towers. This body here created an overlay district on cell towers and we made a judgment that we wouldn't have cell

towers except in certain areas of our town. Well we found out through the courts that that wasn't the case didn't we? Some people came in here and sued us and they wound up having to put a cell tower outside our area. Now if we go and deny Six Flags, just say hypothetically, that there was a denial for height alone, for no other reason, what justification would we have in a court of law to deny that? If it were simply based on height alone? So again, I don't think we're taking away from the tax payers, I think we're enhancing it. I mean in Six Flags goes and puts a ride in like the man said here before, the tax base goes up a little more. That certainly helps that town out a little bit but I don't see any way that we're hurting our town by...height alone. We're not talking about anything else surrounding Six Flags like noise and other things because that oversight is still in place but I don't see how we are taking any discretion away from our boards as I said earlier, their judgments have already been made concerning height and I don't see how it can be a detriment to the people that we represent.

Vice President Calabrese – Thank you. Any further discussion? Councilor Cavallo?

Councilor Cavallo – I think I can amend 180-49A for TOR-2008-2, I would like to amend the part that states the business structure building which constitutes part of an amusement park in which is situated more than and it should be changed to 250 Feet and not 150 feet from the street line... et al, rather.

Vice President Calabrese – Thank you. We have an amendment by Councilor Cavallo, seconded by Councilor Bitzas. Any discussion on the amendment? Seeing none, will the Clerk please call the roll? This is on the amendment and I will read that section and pertinent part as amended “2. The following Section 180-49A entitled Height Regulations in Amusement Parks is hereby added”. This is the amended language. Section 180-49A Height Regulations – Amusement Parks – A. an amusement device which constitutes part of an amusement park and which is situated more than 150 feet from the street line and any side lot line shall not be erected or altered to a height in excess of 200 feet except as expressly provided herein. An amusement device which constitutes part of an amusement park and which is situated within 250 feet from the street line or any side lot line shall not be erected or altered to a height in excess of 45 feet except as specifically provided herein. Notwithstanding or foregoing an amusement device which constitutes part of an amusement park may escape the height limitations contained herein only after issuance of a special permit by the Board of Appeals.’ Have I read that to your liking?

Councilor Cavallo – That is correct.

Vice President Calabrese – Thank you. Will the clerk please call the roll? A yes vote is to approve the amendment.

ROLL CALL – 9 Yes, 1 No (Councilor Perry), 1 Absent (Councilor Letellier)

Vice President Calabrese – With nine yes, one no, one absent, you've approved the amendment. Councilor Cavallo?

Councilor Cavallo – Yes. At this time I would like to move for approval, TOR-2008-2, an ordinance amending Section 180-49 and Adding Section 180-49A to the Code of the Town of Agawam Governing Height of Building and Structures in Amusement Parks in the Business B zone.

Vice President Calabrese – Thank you. Moved by Councilor Cavallo, seconded by Councilor Mineo.

Councilor Rheault – Point of order. I think you should add the words ‘as amended’.

Councilor Cavallo – Okay, as amended.

Vice President Calabrese – Thank you. As amended. Any discussion before we go ahead and take a roll? Clerk, please call the roll? We need eight yes to pass the issue.

ROLL CALL – 8 Yes, 2 No (Councilors Perry and Rheault), 1 Absent (Councilor Letellier)

Vice President Calabrese – With eight yes, two no and one absent, you’ve approved the first reading. Moving on.

2. TOR-2008-3 - An Ordinance Amending Sections 180-15 and 180-16 and Adding Section 180-15A to the Code of the Town of Agawam Governing Enforcement and Penalties For Violating the Zoning Ordinances of the Town of Agawam (Mayor) (Referred Jointly to the Zoning & Ordinance Committees) (1/3) (2/3 Majority of the Full Council or 8 votes) (Public Hearing Set for October 6, 2008)

Vice President Calabrese – I declare the public hearing now open. Does anyone wish to address the Council in favor of this item? Seeing none, does anyone wish to register in name only in favor of this item? Seeing no one, does anyone wish to speak against this item? Seeing nothing, does anyone wish to register in name only against this item? Thank you. And now we’ll close the public hearing. Open the matter up for discussion. Councilor Cavallo?

Councilor Cavallo – I do approve this ordinance. Okay, we had a meeting, a joint meeting, and we did discuss this and I think it’s a, we really don’t want to beat a dead horse any more. It seems much in line with what should happen.

Vice President Calabrese – Thank you. Councilor Messick?

Councilor Messick - (inaudible)...We’re amending the enforcement and penalties for violating the zoning ordinances of the Town of Agawam. Up until now, we have had only an option for criminal options to prosecute violations of zoning ordinances and essentially this adds several options for us so that people who are violating zoning ordinances can be ticketed and this is something that I feel is a very positive step because we have all sorts of zoning violations going on around town and this will give us more flexibility as far as enforcing our zoning laws. Thank you.

Vice President Calabrese – Thank you. I’m sorry. Councilor Rheault?

Councilor Rheault – Yea, for the public’s information I think there was a change in the amount wasn’t there? I don’t have that in front of me.

Councilor Messick – I can answer to that.

Vice President Calabrese – Oh, thank you.

Councilor Messick – In the original we did have one revision of this, in the original ordinance the fine would be, was written at \$500 but state code says the limit can only be \$300 so we just revised that number to be in line with the state ordinance, the state law. Thank you.

Councilor Rheault – Okay, thank you.

Vice President Calabrese – Thank you. Any further discussion? Does anyone wish to make a motion? Moved by Councilors Messick, Rheault and Cavallo, seconded by Councilor Mineo. Will the clerk please call the roll?

ROLL CALL – 10 Yes, 1 Absent (Councilor Letellier)

Vice President Calabrese – With ten yes and one absent, you've approved the first reading. Moving on.

3. TOR-2008-4 - An Ordinance Amending Article XIII of the Code of the Town of Agawam Governing Signs (Mayor) (1/3) (Referred jointly to the Zoning & Ordinance Committees) (2/3 Majority of the Full Council or 8 votes) (Public Hearing Set for October 6, 2008)

Vice President Calabrese – The public hearing is now open. Does anyone wish to address the Council in favor of this item? Seeing no one, does anyone wish to come forward in name only in favor of this item? Seeing no one, does anyone wish to speak against this item? Seeing no one, does anyone wish to register in name only against this item? Seeing no one, I declare the public hearing closed. What is the Council's pleasure? It's open to discussion.

Councilor Rheault – Is there a committee report?

Vice President Calabrese – I do have the notes. If you all bear with me for a minute I'll get my notes. Actually I'm gonna be daring and go by my memory. I believe that this item was tabled by the Planning Board.

Councilor Cavallo – They did not come with a decision at all.

Vice President Calabrese – No they did not. So what is the Council's pleasure?

Councilor Messick – Actually in the Planning Board's subsequent after they tabled it once and then at the subsequent meeting they approved.

Councilor Cavallo - We don't have any information regarding that though?

Vice President Calabrese – I think Barbara might have it there?

Councilor Rheault - Did we have something in our packet?

Clerk - Yes, it's at your place tonight. At your place.

Councilor Messick– If I may, yes, at our place this evening, there was a letter dated October 3rd and I'll just read this letter into record. 'Dear Councilors, At its duly meeting held on October 2nd, the Agawam Planning Board voted 3 in favor and 0 opposed to send a positive recommendation to the Town Council regarding TOR-2008-4 an ordinance amending Article XIII of the Code of the Town of Agawam governing signs including the amendments proposed by the City Solicitor at the October 1st sub-committee meeting.' Thank you.

Councilor Rheault – Move the ordinance.

Vice President Calabrese – So moved by Councilor Rheault, seconded by Councilor Perry. Any discussion before we take the vote on it?

Councilor Cavallo – I just want to say something. I mentioned this to a couple Councilors before the meeting and Councilor Mineo just mentioned it to me. You know a lot of times we come to the meeting and we have this stuff right on our desk and I know the same thing used to happen at School Committee meetings and I made a recommendation that that should be sent to the members before we had the meeting so they can comment on it. When you get this placed in front of you right at the beginning of the meeting, I don't think that's appropriate especially what we've been going through tonight, everything being rush, rush, rush, rush. So hopefully in the future maybe these people with these documents and so forth can have them here or put them in our packet or mail them a couple days ahead of time so we can at least digest the information before we make any decisions.

Vice President Calabrese – Good point, I agree with you. Thank you.

Councilor Rheault – Yea, if you can recall, at the committee meeting there's a point that you probably forgot, we changed one word from 32 square feet to 12 on 180-84 about six lines down. So I don't know if – go to the six line under A 180-84 should read 'not exceed 12 square feet' but I thought Chris also said he was gonna make another change.

Councilor Messick – If I may through the chair, there was one amendment or change to 12 square feet, there was another in 180-75 under area, letter D, to clarify when computing the area of the sign, we're gonna remove the verbiage that says both signs of these shaped sign can only include one...and Chris had sent a memo stating that.

Councilor Cavallo – Yea, we have a memo that we got tonight again. Another example, okay? And it does say here change allowed size of temporary sign in 180-84 from 32 square feet to 12 square feet so we have to ask to be amended anyway.

Vice President Calabrese – What is the Council's pleasure with regard to this item?

Councilor Cavallo – I would like to amend TOR-2008-4 the section 180-84A to read from 32 square feet to 12 square feet and you can then read the whole thing.

Vice President Calabrese – Are you seconding that Councilor Rheault?

Councilor Rossi – Point of information?

Vice President Calabrese – Yes, Councilor Rossi?

Councilor Rossi – Why don't we send this back to committee?

Vice President Calabrese – I was gonna ask if we could actually have a tabling motion, that's where I was trying to go with this.

Councilor Rossi – I would like to see that myself. I don't like this 60 days permitting thing, \$25 fee, I don't like that either, so maybe it would be best to send this back to committee. Let's hash

these things out, there's no rush on this thing. We've been talking about this thing for four or five years.

Vice President Calabrese – May I have a motion to table please?

Councilor Cavallo – Can I withdraw my thing? I withdraw the amendment to TOR-2008-4.

Councilor Mineo – And I'll withdraw my second.

Vice President Calabrese – Duly noted. I now have a motion to table by Councilor Messick, seconded by Councilor Bitzas. Clerk, please call the roll to table?

ROLL CALL - 9 Yes, 1 No (Councilor Simpson), 1 Absent (Councilor Letellier)

Vice President Calabrese – With nine yes, one no and one absent, you've tabled the matter.

Item 10. Old Business

- 1. TO-2008-39 - Transfer - \$5,137.68 from Reserve Fund (16605-57300) to Council – Temporary Salaries (11111-51020) (Mayor) (Referred to the Finance Subcommittee) (Majority of those present and voting)**

Vice President Calabrese – Do we have a report? Councilor Young?

Councilor Young – Yes we do. We actually met on the following three matters, I guess I'll give the, do you want a report on just this item?

Vice President Calabrese – You can give it on all three items.

Councilor Young – Okay. So the Finance Committee met this evening. Present were the Finance Committee – myself, Councilors Calabrese, Mineo, Perry and Rossi, also in attendance were the Council Auditor, Cheryl St. John, the Mayor, Mayor Dawson, Treasurer Laurel Placzek, our new Assessor, Kevin Baldini as well as the Mayor's Administrative Assistant. In terms of Item TO-2008-39, which was the transfer of \$5,137.68 on behalf of the Council Administrative Assistant, that was unanimously approved to recommend to the full council to pass that. We also discussed in much more detail on Items TO-2008-41 and TO-2008-42. -41 was the matter of the new Assessor who was hired at a salary \$2063.00 higher than was budgeted. After a short or about ten minute discussion with him as well as the Mayor and everyone there, in going through his experience, he basically did a mini job interview I would say and thanks to Kevin for putting up with us. The motion was made by Councilor Calabrese to recommend full approval, seconded by Councilor Rossi and the committee voted 5-0 to recommend that the Council approve that transfer. Again, I will make mention the added bonus is that is current salary, his salary plus the increase is well below the former Assessor's, so we are, it is a total gain for us if you look at it that way. Also on the next matter, TO-2008-42 for the Mayor's Administrative Assistant, she basically was given a two step increase which along with that was a raise however, after reviewing and thanks to our Auditor, Cheryl St. John, we would recommend to the Council, we recommend the increase however their math was wrong in that and we need to amend that and when the matter comes up for a vote I will officially recommend that we amend that down to \$887.00 for the raise for the year which was a good catch by our Auditor. Again, the Committee voted 4-0 to recommend full council approval. Thank you.

Vice President Calabrese – Thank you. Any discussion on the matter? On the matter of TO-2008-39, will the clerk please call the roll?

ROLL CALL – 10 Yes, 0 No, 1 Absent (Councilor Letellier)

Vice President Calabrese – With a vote of ten yes, zero no and one absent, you have approved the transfer.

- 2. TO-2008-41 - Transfer - \$2,063.00 – from Reserve Fund (16605-57300) to Assessor – Regular Salaries (11371-51010) (Mayor) (Referred to the Finance Sub-Committee) (Majority of those present and voting)**

Vice President Calabrese – We have a report of a positive recommendation coming out of the Finance Sub-Committee, any further discussion on this matter? Question's been moved. Clerk, please call the roll.

ROLL CALL – 10 Yes, 0 No, 1 Absent (Councilor Letellier)

Vice President Calabrese – With a vote of ten yes, one absent, you've approved the transfer.

- 3. TO-2008-42 - Transfer - \$1,807.26 – from Reserve Fund (16605-57300) – Regular Salaries (11371-51010) (Mayor) (Referred to the Finance Sub-Committee) (Majority of those present and voting)**

Vice President Calabrese – Councilor Young?

Councilor Young – Yes, I'd like to formally amend this transfer to \$887.00 instead of the stated amount.

Vice President Calabrese – Thank you and motion for amendment's been made and seconded by Councilor Perry. Will the clerk please call the roll? This is just on the amendment.

ROLL CALL – 10 Yes, 0 No, 1 Absent (Councilor Letellier)

Vice President Calabrese – Ten yes, one absent, you've approved the amendment. We will now have the vote on TO-2008-42 as amended. Again the transfer amount shall now reflect \$887.00. Clerk, please call the roll.

ROLL CALL – 10 Yes, 0 No, 1 Absent (Councilor Letellier)

Vice President Calabrese – Ten yes, one absent, you have approved the transfer.

Item 11. New Business

- 1. TR-2008-51 - A Resolution in Support of the Proposed Reconstruction and Widening of the Morgan/Sullivan Bridge, Agawam, MA. (Mayor) (Majority of those present and voting)**

Councilor Bitzas – Point of information?

Vice President Calabrese – Yes, Councilor Bitzas?

Councilor Bitzas – At the meeting, we had many councilors and I see the resolution here but there's no sponsor names there, so I think the full Council should put their names as sponsors for this. Thank you. If you will, I want to sponsor it myself personally.

Councilor Cavallo – Point of information. It was there at the meeting, with Councilor Rheault, Rossi, myself and George mentioned it, so it wasn't really the Mayor's it was our recommendation that we should send it. Put all of the Council.

Vice President Calabrese – Thank you. Barbara, we'll talk about that, about having the full council as the petitioner.

2. **TO-2008-40 - Order Granting or Renewing a LICENSE for Automatic Amusement Device(s) – Fun Farms, LLC d/b/a The Sand Trap, 1399 Suffield Street, Agawam, MA. (Clerk) (Majority of those present and voting)**

Vice President Calabrese – Next agenda. And I'll make a referral to the Licensing Committee for that.

3. **TO-2008-43 - (ZC-2008-4) Suggesting a Public Hearing Date of November 5, 2008 for Zone Change for the Property known as 475 Pine Street, Feeding Hills, Ma., and the Grace Baptist Church Petitioning the Town of Agawam to Change the Current Zone from Agricultural to Residential B to Allow for the Occupation and Utilization of the Property by a Masonic Lodge for the Purposes consistent with their Organizational Activities and By-laws. (Council) (Majority of those present and voting for TO) (2/3 Majority vote of Full Council – 8 votes for a Zone Change)**

Vice President Calabrese – Next agenda. By the way, I'd like to make a referral to the Zoning Committee for that.

4. **TO-2008-44 - CLASS II LICENSE for renewal – Agawam Auto Mall, Inc., 825 Springfield Street, Feeding Hills, MA (Clerk) (Majority of those present and voting)**

Vice President Calabrese – Next agenda. I'll refer that to the License Committee. And all of the remaining agenda items will be referred to the Licensing Committee and for the record those are...

5. **TO-2008-45 - CLASS II LICENSE for renewal – Falcor Auto Sales, Inc., 373 Springfield Street, Feeding Hills, MA (Clerk) (Majority of those present and voting)**

Vice President Calabrese – Next agenda. I'll refer that to the License Committee.

6. **TO-2008-46 - CLASS II LICENSE for renewal – Joseph J. Polys d/b/a Joe's Truck Repair, 97 Ramah Circle South, Agawam, MA (Clerk) (Majority of those present and voting)**

Vice President Calabrese – Next agenda. I'll refer that to the License Committee.

7. **TO-2008-47 - CLASS II LICENSE for renewal – Langonet, Inc, 61 Ramah Circle South, Agawam, MA (Clerk) (Majority of those present and voting)**

Vice President Calabrese – Next agenda. I'll refer that to the License Committee.

8. **TO-2008-48 - CLASS II LICENSE for renewal – Parrotta's Auto Service, Inc., 357 Main Street, Agawam, MA (Clerk) (Majority of those present and voting)**

Vice President Calabrese – Next agenda. I'll refer that to the License Committee.

9. **TO-2008-49 - CLASS II LICENSE for renewal – E. Wayne Smith Used Car Sales, 1016 Springfield Street, Feeding Hills, MA (Clerk) (Majority of those present and voting)**

Vice President Calabrese – Next agenda. I'll refer that to the License Committee.

10. **TO-2008-50 - CLASS II LICENSE for renewal – Frank V. Palange d/b/a V & F Auto, 7 Harding Street, Agawam, MA (Clerk) (Majority of those present and voting)**

Vice President Calabrese – Next agenda. I'll refer that to the License Committee.

Item 12. Any other matter that may legally come before the City Council.

Vice President Calabrese – I will start with Councilor Perry.

Councilor Perry – I will support putting my name on that bridge resolution, that's fine. And I think you've heard enough from me tonight so.

Vice President Calabrese – We can never hear enough from you Councilor Perry. Thank you. Councilor Messick?

Councilor Messick – Hi. I fully support the bridge resolution as well and I'm wondering if the Mayor is gonna send something separate. If we could find that out, we were thinking at one point that we would send something jointly, so I was just wondering. And other than that, I have nothing.

Vice President Calabrese – Thank you. Councilor Bitzas?

Councilor Bitzas – Yes, of course, it's a good idea for the full council to support that by putting our names there and I think the Mayor, she can do it separately because two different bodies. Thank you.

Vice President Calabrese – Thank you. Councilor Young?

Councilor Young – I also would be happy to lend my name to the Morgan Bridge Resolution and also I guess congratulations to Council President Letellier on her latest present! Best wishes to her and her family. Thank you.

Vice President Calabrese – Yes. Councilor Simpson?

Councilor Simpson – Thank you and you can add my name to the bridge resolution and also to Gina, congratulations and as the mother of two boys, good luck! And that's it, thank you.

Vice President Calabrese – Councilor Mineo?

Councilor Mineo – You can add my name to it and congratulations Gina.

Vice President Calabrese – Thank you. Councilor Cavallo?

Councilor Cavallo – Yes, you can add my name to it. And Gina, I hope you get a lot of sleep at night.

Vice President Calabrese – Councilor Rossi?

Councilor Rossi – Yes, thank you. You can add my name to that also on that. Gina, this is the good news. And if you would Barbara, would you please arrange some time prior to the next council meeting, we need to have a Licensing Meeting to discuss those items? Jill, is that okay with you?

Councilor Simpson – I'm going to be in Florida.

Councilor Rossi – Okay, if you want to give my your recommendations prior. Okay, thank you. Okay, Barbara? Thank you.

Vice President Calabrese – Thank you. Councilor Rheault?

Councilor Rheault – Yes, you can add my name to the bridge resolution as well as I don't know if we need a full meeting on the sign ordinance, prior to the council meeting might be enough cuz this has already been discussed. So Barbara would you kindly about 6:45 prior to the next Council meeting schedule a sign ordinance meeting and we'll hopefully have all the new wording added in. And to Gina, congratulations. Surprised at the size of the baby! However, my three sons were all over ten so I know what you're dealing with!

Vice President Calabrese – Thank you. And I too would like to add my name to the Resolution with regard to the bridge and congratulations to Gina. You've once again placed my in the hot seat and I'm more than happy to be here. At his point, I'd like to entertain a motion to adjourn? So moved, all in favor? Ay? Thank you. Have a good night.

Adjournment.