

CHILI PLANNING BOARD

April 12, 2005

A meeting of the Chili Planning Board was held on April 12, 2005 at the Chili Town Hall, 3333 Chili Avenue, Rochester, New York 14624 at 7:00 p.m. The meeting was called to order by Chairperson Jim Martin.

PRESENT: John Hellaby, Dario Marchioni, Karen Cox, John Nowicki, Ray Bleier, Dennis Schulmerich and Chairperson Jim Martin.

ALSO PRESENT: Keith O'Toole, Assistant Counsel for the Town; Dennis Scibetta, Assistant Building Inspector; Larry Nissen, Town Engineer; Bill Steimer, Conservation Board representative; Fred Trott, Traffic Safety Committee representative; Bill Arnold, Fire Department representative.

Chairperson Jim Martin declared this to be a legally constituted meeting of the Chili Planning Board. He explained the meeting's procedures and introduced the Board and front table. He announced the fire safety exits.

PUBLIC HEARINGS:

1. Application of Kevin Sands, owner; 4131 Union Street, North Chili, New York 14514 for preliminary site plan approval to allow a glass repair business in proposed detached garage at property located at 4298 Union Street in A.C. zone.

Don Carpenter and Kevin Sands were present to represent the application.

MR. CARPENTER: Good evening. My name is Don Carpenter. I'm with DDS Engineers. I'm here tonight on behalf of Mr. Kevin Sands for preliminary site plan approval for his -- I guess the reason that they were present for site plan approval is because this is not just a single-family house, but it also has a commercial element.

On February 22nd we received variances for the square footage of the garage, for the setback and for the use variance to allow the commercial use in a residential district.

It is a fairly straightforward site plan. The barn, the pole barn is going to be located up adjacent to the road. We're proposing to screen it with some existing -- the existing tree line and the house will be set further back in the property across the swale.

I have got some comments so far from Lu Engineers as well as the Monroe County DRC. None of the comments are very substantial. I would just like to touch on a couple of them very briefly.

Larry (Nissen) pointed out if the proposed disturbance is greater than an acre, it will require a SPDES permit, so we'll note the acreage of disturbance. I believe we're under an acre, so the SPDES permit I did not believe is required.

JOHN NOWICKI: What is under acre?

MR. CARPENTER: Area of disturbance, pole barn and the house.

JAMES MARTIN: Including septic system?

MR. CARPENTER: For residential it is 5 acres, but since this contains that element of a commercial use, I guess it is an acre of disturbance. Either way, I think we're under an acre.

JAMES MARTIN: One acre is what we're going to set the limit at, and I don't know, I asked Larry Smith if you have had a chance to measure any of this --

LARRY NISSEN: It is up to the applicant to tell us what the area of disturbance is going to be.

JAMES MARTIN: We'll record that as a condition and we absolutely have to have the total disturbance on that property, and if it is an acre or above, a SPDES permit is going to be required.

MR. CARPENTER: Absolutely.

The Monroe County Department of Transportation just wants their sort of normal highway reserves. Also wants to extend the culvert, so neither one of those are anything out of the ordinary and we'll comply.

We submitted an Ag Data Statement with the Zoning Board application. I can get the

Planning Board a copy of that, but it should be on file with the Town.

The only real comments that we received that have any great substance to them I guess is the DEC's comment that it is a Class C stream, and that a permit is going to be required to put the culvert through. So we have already contacted the Army Corps. The permit is in process and we'll provide all that documentation to the Town. You can disturb up to 300 feet of stream under a nationwide permit. Obviously we're well under 300 feet of stream. It is usually a 30-day process to go through the nationwide permit with the Corps.

The Health Department really had no significant concerns, and I don't believe that the Zoning Board had any significant concerns either.

JAMES MARTIN: In the County Comments they required an Agricultural Statement be submitted.

MR. CARPENTER: Yes.

JAMES MARTIN: I don't have a copy of that.

MR. CARPENTER: I can give you a copy of that. I might have it with me. We submitted it with the zoning application, I believe.

DENNIS SCIBETTA: It was done with their land use variance from the Zoning Board. We have a copy of it.

JAMES MARTIN: You do have a copy?

DENNIS SCIBETTA: Yes.

JAMES MARTIN: Thank you. All right. I will defer to Mr. Scibetta's input on this.

I will just ask one question and turn it over to the Board. As far as the freestanding garage goes, are there any toilet or bathroom facilities anticipated to be installed in that building?

MR. CARPENTER: No. Kevin Sands, property owner.

MR. KEVIN SANDS: There is not any bathroom facilities. There are no customers that are going to stay on site. Everything is off site of my business. And plus the house is close enough where I can wander up there if I had to.

JAMES MARTIN: Okay. Thank you.

RAY BLEIER: I have a few questions. Kevin (Sands), you are presently conducting business now at a place just further up the road?

MR. KEVIN SANDS: Yes, I am.

RAY BLEIER: How long have you been conducting Pleasant View Glass?

MR. KEVIN SANDS: About six years.

RAY BLEIER: You are the present owner of this parcel in question tonight?

MR. KEVIN SANDS: Yes, I am.

RAY BLEIER: Is any of this parcel being used for agricultural purposes now?

MR. KEVIN SANDS: No, it's not.

KAREN COX: Can you describe the nature of your business, whether it is going to be mostly customers coming to you business, or more of a mobile operation? What kind of traffic would be generated?

MR. KEVIN SANDS: It is more off-site business. It is a part-time hobby for me. I have a full-time job other than this. The building is mainly going to be for antique car storage and just for my hobby business of the glass business, which is mainly off site.

MR. CARPENTER: When customers call, he -- he operates like an on site -- he will go to -- if they have a broken windshield, he goes to their office and replaces the windshield off site. It is not done on site typically.

KAREN COX: When you say "hobby business," you will be devoting 20 or 30 hours a week to this? I'm sure it depends --

MR. KEVIN SANDS: An average. One week might be more than others.

KAREN COX: Well, I -- personally I kind of feel like we have been painted in a corner again by the fact that the zoning variances were obtained before we had a chance to see this proposal, so I'm just going to go on record and say that I'm not -- that I feel as though we're being painted into a corner with this. It is not -- perhaps not the applicant's fault, but it really puts us at kind of a compromise. That's all I have.

JOHN HELLABY: Kevin (Sands), could you expand on the business end of it just a little more? First of all, tell me, how are you coming up with your business base? Via advertising? Word of mouth? Is there signage on the property? Lighting? General hours of operation? Sort of give me the whole focus here.

MR. KEVIN SANDS: Um, there is probably going to be some lighting on the property due to -- just for safety purposes.

The business hours are whenever I'm around. There is no strictly 8 to 5. There is advertising. Mainly word of mouth. And generally most of my business is off site.

JOHN HELLABY: Signage on the property?

MR. KEVIN SANDS: There is no signage on the building. The only signage --

JOHN HELLABY: When you say hours of operation is sort of when you're around, will you be out there banging around at midnight I guess is the question, or --

MR. KEVIN SANDS: I hope not.

JOHN HELLABY: Some semblance of reasonable hours?

MR. KEVIN SANDS: I probably wouldn't be out there past 8 o'clock at night.

JOHN HELLABY: I notice there is a little bit of a discrepancy. I don't know, Dennis (Scibetta), if you can clear this up. I notice that the application says it is in a drainage district. Dan Kress' notes say it is not.

DENNIS SCIBETTA: It is not in a drainage district yet. The application has to be made.

JOHN HELLABY: Are you aware that that application has to be made?

MR. CARPENTER: Application has not been made. Do we need to be in the drainage district? We don't have any closed sewer systems. Doesn't matter?

JOHN HELLABY: It is a structure that is put in place to take care of drainage town wide, so as applications come in, they're signed up.

JAMES MARTIN: It has to be.

JOHN HELLABY: You have to make application through the Town Clerk's Office.

MR. CARPENTER: That's fine.

JOHN HELLABY: It is sort of confusing out in that area. Is this the piece of property that sits directly in front of the Monroe County water tank?

MR. KEVIN SANDS: Yes, it is.

JOHN HELLABY: That leads me to my next question. There are a couple of cars out there under canvas and a trailer.

MR. KEVIN SANDS: They're not mine. They're the previous owner's and they will be removed.

JOHN HELLABY: What is the time frame on getting them out of there?

MR. KEVIN SANDS: Soon.

JOHN HELLABY: That's the right answer.

JAMES MARTIN: Would they be considered junk cars at this time?

MR. KEVIN SANDS: They're antique cars. I don't know if I would consider them junk, but --

JOHN HELLABY: Was there some initial work or something that started out there? Because behind those cars there is a berm or something.

MR. KEVIN SANDS: That is a topsoil pile that has been there for years that has grown up now.

JOHN HELLABY: Did that come out with the Water Authority?

MR. KEVIN SANDS: The Water Authority did some work there when they put that driveway right-of-way in.

JAMES MARTIN: What will you do with those cars on the property?

MR. KEVIN SANDS: They will just be removed. They're supposed to be sold. Yes.

JOHN HELLABY: As far as the time frame of the construction, I mean if you get all your approvals, will you do a lot of this yourself? Will you sub it out? Will you have a contractor --

MR. KEVIN SANDS: The contractor being the building, and the house will be subbed out. I would like to be in it by fall.

JOHN NOWICKI: Just a couple of questions here. Outdoor storage, what is your intent on outdoor storage? Dumpsters, things like that?

MR. KEVIN SANDS: No outside storage. No dumpsters.

JOHN NOWICKI: No outside storage at all? Okay. That is for the record.

Parking, do you have a lot of cars being parked there?

MR. KEVIN SANDS: Maybe one here and there, and that's it. There will not be any cars parked out there.

JOHN NOWICKI: What would you say the percentage of the building is used for antique car storage?

MR. KEVIN SANDS: About three-quarters.

JOHN NOWICKI: 75 percent, okay.

Can you describe what the overall appearance of the building might look like?

MR. KEVIN SANDS: I have a picture if you want to take a look at it. Do you want it up on the board, or hand it to you?

JAMES MARTIN: Why don't we look at it first and you can put it up on the board.

JOHN NOWICKI: Mr. Carpenter, while we're looking at that, have you covered all of the

10 -- I believe it is 13 comments here from the County under the DRC?

MR. CARPENTER: I can.

JOHN NOWICKI: Have you reviewed those?

MR. CARPENTER: I have reviewed them, yeah.

JOHN NOWICKI: Do you have any problems with any of those 13?

MR. CARPENTER: No.

JOHN NOWICKI: It is a metal-clad building; is that correct?

MR. KEVIN SANDS: Yes, sir.

JOHN NOWICKI: These are the colors?

MR. KEVIN SANDS: Close.

JOHN NOWICKI: Driveways going in and out stone or asphalt?

MR. KEVIN SANDS: Stone.

RAY BLEIER: What is the total acreage on this parcel?

MR. KEVIN SANDS: 13.55.

DENNIS SCHULMERICH: Can you discuss a little bit more what business is on site versus off site, because based on the way you have described the business, it sounds like mostly office and storage, and most of the work you do is not on site. Could you talk about that a little bit more?

MR. KEVIN SANDS: The business that will be on site will be, you know, if you call up and want a desktop or tabletop, it will be cut on site and removed from site either by customer picking up or me delivering. That is pretty much what it is at.

DENNIS SCHULMERICH: And auto glass, typically --

MR. KEVIN SANDS: There might be one or two here and there that will be brought in the building, done inside the building and then removed by a customer. So there won't be anything done outside.

DENNIS SCHULMERICH: Do you foresee a situation where you see the business growing to a point where you're coming in and looking for signage or looking for ways to advertise the business on site?

MR. KEVIN SANDS: Not at this time, I don't. Like I say, it is mainly for my antique cars, for me to be able to work on them.

DENNIS SCHULMERICH: This is, I think, referenced at the other end of the table, as well.

One of the things that concerns me here is we -- we talk about this as though it is a part-time business. It's a customary home occupation, when, in fact, a land use variance has been granted which is in perpetuity, which essentially means we spot rezoned this property.

JAMES MARTIN: Correct.

DENNIS SCHULMERICH: When I look at the expectations we have of preliminary site plans of other commercial businesses, this is grossly underwhelmed in terms of information in terms of what we get from other businesses. This is now a land use variance. It is now commercial property in perpetuity, and I believe we should have the same expectations in doing a preliminary site plan review of this property as we would any other commercial business that comes in here, because that is what we now have approved based on what the Zoning Board did. So I -- my initial response when I look at the details, I see the type of site plan I might see for a house, but I don't see anywhere near the definition I expect to see around lighting, commercial application for land use variance now in place for the commercial property. So I will reserve my vote for the voting time, but that is where I am with this.

DARIO MARCHIONI: I have a question. Is this off site -- this building going to remain as part of the home occupancy, as part of the house at all times? Is there a time in the future that you might subdivide this property to where this building and the house would be divided?

MR. KEVIN SANDS: I don't foresee that at this time.

DARIO MARCHIONI: Because customary home occupants -- this building relates with the use of the house. So if you should sell that house separately, then this building, that would cease.

MR. KEVIN SANDS: Uh-huh.

DARIO MARCHIONI: I just wanted to make it clear.

MR. KEVIN SANDS: I don't foresee splitting it up at any time in the future.

DENNIS SCHULMERICH: Is this a land use variance, or customary home occupation?

KEITH O'TOOLE: Use variance.

DENNIS SCHULMERICH: Use variance.

DARIO MARCHIONI: Was this under a permitted use for use variance?

MR. CARPENTER: Pardon me?

DARIO MARCHIONI: Was it under permitted use where it states customary home occupancy?

MR. CARPENTER: No. This is use variance for the -- I will read the Zoning Board application.

DENNIS SCHULMERICH: Fortunately, you have information that we don't. It would be good if you read it.

MR. KEVIN SANDS: It was a letter sent to me by the Zoning Board.

JAMES MARTIN: Would you read it for the record, please?

MR. CARPENTER: "Variance to allow total square footage of proposed attached and detached garages to be 4200 square feet where 900 square feet is allowed. Variance for detached garage to be 51.9 feet from the lot line where 100 feet is required."

"And land use variance to allow an auto glass repair business in portion of proposed detached garage at property located at 4298 Union Street."

DENNIS SCHULMERICH: So I need help from counsel or from Dennis (Scibetta). My interpretation of a land use variance to approve a business is that we now have a spot zoning variance in perpetuity for commercial use.

KEITH O'TOOLE: I wouldn't use the phrase "spot zoning" because the use variance rides on its own merits. What we have is a use variance for specific commercial use, auto glass installation, in a specific location, which is a portion of that garage or barn or whatever you want to call it.

DENNIS SCHULMERICH: The term of that is?

KEITH O'TOOLE: Forever.

DENNIS SCHULMERICH: Forever.

MR. CARPENTER: Isn't it also, with the conditions and discussions from the Zoning Board of Appeals presentation we made -- I mean not just anybody could walk in here and have a commercial operation?

KEITH O'TOOLE: It is auto glass.

DENNIS SCHULMERICH: Not specific to him. To the property forever. That property now can be used for an auto glass store forever.

MR. CARPENTER: In the scope that was described in the variance application. I mean I guess what I'm trying to say, you know, Kevin (Sand)'s intent here is to have a minor piece of the property be used for this very non-intrusive commercial application. It's not for him to create a zone within the Town where he could some day build a mini mall or something. It is not his intention to install commercial lighting or to have tractor-trailer deliveries or any of the elements that are typical of a commercial use. This is purely something in order to use his property as he has chosen to use it, according to the Town code. We have an element that is considered commercial. Now, I wouldn't call -- this isn't a large scale commercial use. I wouldn't call it full-time commercial use, and I -- I guess I -- I wouldn't call it a spot zoning, myself.

DENNIS SCHULMERICH: So spot zoning was probably inappropriate, but the fact of the matter is, if Mr. Sands was to sell this property, someone coming in could do everything you just mentioned, within the square footage of what has been identified.

MR. CARPENTER: Right. They could have periodic customer visitations and 25 percent of the 4200 square foot garage.

DENNIS SCHULMERICH: Right.

MR. CARPENTER: But, you know, I don't know if that is attractive to the -- to, you know, Joe's Car Repair.

DENNIS SCHULMERICH: I'm not debating what the Zoning Board did or did not do. Now we have a land use variance which authorizes commercial use. I believe we should have the same expectations of the building plan that we have of any other commercial entity. That is my point. It is as simple as that.

MR. CARPENTER: I know it is probably a little disappointing to have the cart before the horse. We were directed to go to the Zoning Board first before we could come to Planning Board.

DENNIS SCHULMERICH: Who directed you there first?

MR. CARPENTER: Kathy (Reed). I guess I would say that it is not -- it is not like Vanderstynne Ford can walk in here some day and open up a store. I mean it is far from it. I don't know, you could have a commercial building that size, 25 percent of 4200 square feet. I'm not sure that, you know, a construction trailer --

DENNIS SCHULMERICH: Sounds like you're arguing yourself out of wanting a commercial entity.

MR. CARPENTER: That is not it. It is classified as a commercial use, but this is really not a commercial endeavor. This is a man that wants to build a large pole barn so he could have cars stored. His dad had a glass business for years and years. He has repeat customers that, like it or

not, keep calling and he is trying to address both things in one structure.

KAREN COX: Who directed you to go to the Zoning Board first?

MR. CARPENTER: Kathy Reed. We weren't even aware we had to come to the Planning Board for this.

KAREN COX: Not Dan Kress?

MR. CARPENTER: Well, maybe it was Dan (Kress). I guess the Planning Office.

We made the application for the variances under the assumption we would then be able to get a building permit for the house since it is an approved building lot, and after we got the variances, we were told we actually should go to the Planning Board for a site plan approval.

JOHN HELLABY: One other point of interest, I guess, is why did we get a front setback on this pole barn. I do realize that property slopes quite a bit, but it seems that could have been pushed back to at least meet that 100-foot minimum.

MR. CARPENTER: It is for two reasons. Number one, we don't want to encroach on the stream, and, you know, it looks kind of close, but --

JOHN HELLABY: Where is that stream?

MR. CARPENTER: Right here (indicating). The top of the bank of the stream is actually right here (indicating). We wanted to keep the building so the rear is facing into the west -- or facing north, not to rotate it. So that it would be facing into the west. Because in the winter, it would blow inside.

JAMES MARTIN: Do you feel there are some very specific issues that you would like to see addressed from a site plan perspective, given that we have 25 percent of this building that has commercial that has not been covered in the site plan itself?

DENNIS SCHULMERICH: In all candor, I need a few minutes to think about it, because it is distressing to me that this type of issue goes before the Zoning Board before it comes here. I think it puts us in a difficult position to try to do the right thing for the Town when we come in here and land use variances are approved. We have to adhere to the law. We have to adhere to the integrity of the applicant and what their desires are, but I think we would be asking different questions if this had been done in a different order.

MR. CARPENTER: If it makes you feel better -- we went through this with the Zoning Board. There are a number of front setbacks, you know, discrepancies in the neighborhood. In fact, there are a couple of other uses that are commercial uses that are, you know, within the area.

I brought the aerial photograph that we presented to the Zoning Board -- not to digress or go over things that are not germane to the site plan issues, but I can tell that there are some concerns.

I think there is a landscaping business -- Kevin (Sands); am I right? Up here (indicating). There are several -- I have labeled all of the other setbacks that are -- that are not in conformance. There is a couple on the golf course. You know, there is a couple older houses and a couple newer structures along the road. So really this is not out of character with the neighborhood. In fact, the Zoning Board agreed with us, and that is why we're here and why it didn't die at the Zoning Board.

So again, I just really want to stress that this is not a, you know -- it is not high traffic use. It is not a very intense use. In fact, it is an extremely low intensive use. It is really nothing more than an occasional, you know, commercial use, and -- and a guy that wants to have an oversized garage to put his cars in.

KAREN COX: I just thought of this question. Where have you been doing this business prior to this?

MR. KEVIN SANDS: At my house now.

RAY BLEIER: Quarter of a mile away.

KAREN COX: Maybe that was the answer before. I apologize.

DARIO MARCHIONI: I just -- going back to that, if you had come before the Zoning Board just for the building itself, without building the house, how did the Zoning Board relate to it? Building a house there? So this is a -- so this is a building --

MR. CARPENTER: I think --

DARIO MARCHIONI: Does it relate with the house, or is this -- I mean how is the argument with the Zoning Board presented?

MR. CARPENTER: I think what you're asking, is there any way the Zoning Board could have considered this a home occupation? And they talked about that at length. The reason they couldn't is because technically a home occupation is something done within the home, and this couldn't be done within the home.

DENNIS SCHULMERICH: You need a separate building.

MR. CARPENTER: Right. They would prefer to review it and grant it as a home

occupation, because they felt, as you do, that it was a little more fitting to a residential neighborhood, but...

DENNIS SCHULMERICH: I would have felt a lot better about this if it wasn't a land use variance associated with it.

JOHN NOWICKI: My last question is just -- if this gets approved, on the lighting for the site, our code does call for dark sky lighting which you will have to investigate and make sure we get that dark sky lighting.

BILL STEIMER: I don't quite know where to start. I feel the same way, and the Conservation Board feels the same way that most of you feel. We at the Town level need to get our mechanism so it works in the right order, depending on the issue, somehow.

Officially the Conservation Board recommends that this request be denied, and certainly nothing against the Sands family. The challenge is more to the Town of Chili.

The reason for that statement is, number one, it conflicts with the initiatives of the Town of Chili Master Plan. Two, it conflicts with the Ag Conservation zoning in the area. Three, it conflicts with the objectives of the New York State Ag District law.

And it is true spot zoning. That is all I have to say.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

DOROTHY BORGUS, 31 Stuart Road

MS. BORGUS: I was here, too, for the Zoning Board of Appeals meeting on February 22nd when this was brought forth, and if it makes you people feel any better, it was not a slam dunk that night on the vote in favor of allowing the land use variance, or the setbacks.

I think you got a twofold problem here. You have somebody in the Building Department that is giving out advice contrary to what is best for the Town. I guess the Supervisor is here, so she sees that and I am sure she will deal with that. This should be the last time this happens. I brought this up before the Planning Board for many years. This is the cart before the horse when you get people in here for Zoning Board variance, Zoning Board anything before they appear before the Planning Board. And I agree with Mrs. Cox and Mr. Schulmerich that you people are in a terrible position now because you have been painted into a corner. And I should also say that as a regular at the Zoning Board of Appeals, I have often voiced the opinion to the Board itself, so this will come as no shock to them, that I think they're weak. A couple, at least two of the people that sit up there, and I won't name names, are under the opinion that if you come before the Zoning Board of Appeals, that you're entitled to just about anything you want because it is your land, so go for it. Those kind of people shouldn't be sitting on the Zoning Board of Appeals any more than anybody with a cockeyed idea of planning should be sitting on the Planning Board, and the Planning Board certainly is superior to that Board.

Now, having said that, I do agree this is spot zoning. It is not consistent with the master plan. Future sale of this property could indeed be a problem. This building, if it were separated off, and there is plenty of room to do that, would be very attractive to many a small business that maybe is something we don't want to see on Union Street in South Chili. It is big. The building is big. And I could see where it could be a very attractive site for something we don't want there.

You know, he said -- you hear, "Well, we're not going to do this," and "We're not going to do that." You know what you have to add? Yet. Yet at the end of that. And the yet is what the Planning Board has to worry about.

The setbacks they talk about, other setbacks on that road, I would imagine many of them predate the zoning law. Certainly the present zoning law.

So it isn't really fair to compare what they want to do today with what happened before there were laws in place.

And I'm interested in knowing, is there a conditional use permit now for Mr. Sands' present location for his work?

JAMES MARTIN: Mr. Sands, do you have a conditional use permit?

MR. KEVIN SANDS: No, I don't because it is a home occupation business.

JAMES MARTIN: Do you have a home occupation variance?

MR. KEVIN SANDS: (Nodded affirmatively.)

JAMES MARTIN: He has a home occupation variance. When was that granted, Mr. Sands?

MR. KEVIN SANDS: Six years ago.

MS. BORGUS: I would just like to bring the issue of those junk cars to the attention of the Board.

RAY BLEIER: Why do you call them junk cars? Because they're completely covered. Did you go out there and uncover them?

MS. BORGUS: No, but it was a while they weren't covered.

RAY BLEIER: I mean you're making an assumption here. I don't think that is fair to the applicant. I think that that statement should be stricken from the record.

MS. BORGUS: Well, I stand by it. Do what you please.

JAMES MARTIN: I think the applicant has already indicated they're to be removed from the property post haste.

MS. BORGUS: On February 22nd at the Zoning Board of Appeals that was also brought up at that time and they were to be moved. It is now six weeks later, and they're still there and we have another promise. So I think you better get a deadline on that.

The other thing I question is, supposedly these cars were left there by the previous owner. According to the Zoning Board of Appeals Agenda Number 8 on February 22nd, the previous owner was Mr. and Mrs. Timothy Sands, who are this gentleman's parents. So I guess it is not a mystery who left the cars there. I urge the Planning Board to do whatever you can to deny this. I know you're in a bad spot, and as I say, I think the Supervisor is here, and I certainly hope this situation doesn't arise again and complicate your lives and the welfare of the Town, but I would hope you take that into account and do whatever you can to make sure we don't have any more spot zoning in this Town. Thank you.

MR. TIM SANDS: I'm the previous owner of this property. I was born and brought up in this town. My wife's homestead is there where this property is. That was her homestead, the Millers. I built a home there 47 years ago. I sold the home and moved to Georgia. Then we had to come back because I had family problems. Them junk cars are not junk cars. I lost my storage next door in the property that was there. I put them cars down there. They're covered up. They're all secured. They're antique '63 Falcon Sprints. That trailer that is sitting there is licensed. That trailer has got antique car parts in it from my building, which I moved. That stuff will be gone. There is no question about it. As soon as my son gets enough we can start building, all that stuff will be gone. So the problem with these junk cars, they're not junk cars. They're antique cars which we all have. My son has antique cars. I have antique cars. So get the problem settled about the cars, they will be gone. No questions about it. They're not junk cars. They're antique cars. Thank you.

JAMES MARTIN: If I understand you correctly, the cars will have to be stored there until this building is constructed?

MR. TIM SANDS: No. They will be gone before the building can start construction.

JAMES MARTIN: Thank you.

BEVERLY NEDER - 82 Attridge Road

MS. NEDER: Could you tell me what the zoning is on the surrounding property around there?

JAMES MARTIN: I don't know if I have that detail.

MS. NEDER: Is it residential, agricultural --

KEITH O'TOOLE: AC.

JAMES MARTIN: Do you have any idea what that is in the area?

DENNIS SCIBETTA: Agricultural zone.

JAMES MARTIN: Thank you.

KAREN COX: All AC.

MS. NEDER: I agree with the other speakers that have brought out it is not consistent with the master plan, and I think we -- you had a meeting here a few weeks ago, a workshop tossing around ideas about the master plan, and I think we should enforce what we already have and keep this residential. I know your hands are somewhat tied, but once you open the door to commercial in there, this gentleman may be there for 15 years and maybe he will be there for five years and he decides to sign off and it is already commercial, and you have lost control. This is your chance to keep control.

HEATH MILLER - 69 Bellmawr Drive

MR. MILLER: What is the height of the garage, the proposed garage?

JAMES MARTIN: Can you answer that, Mr. Carpenter?

MR. CARPENTER: 14 ½ feet.

MR. MILLER: Thank you.

I notice in the code under special requirements, this is Section 115-31, letter B mentions that

any project with only one access road shall have an alternate clear access way available for the use of emergency vehicles. Does this project have one access road?

JAMES MARTIN: According to the site plan, it has one access road.

MR. MILLER: Then I would ask, does it have an alternate clear access way? And if so, could that be shown?

MR. CARPENTER: Well, there is another access way in the Water Authority property that -- that -- right here (indicating) -- that emergency vehicles could easily, you know, for instance, park a fire truck here and -- for that matter, on Union Street, we can access the garage.

JAMES MARTIN: Mr. Arnold, do you see any problem with the site plan from an emergency access standpoint?

BILL ARNOLD: I would have to defer that to the Fire Marshal's office. It is not our district.

MR. CARPENTER: We would be happy to add another driveway cut with the approval of the D.O.T.

JAMES MARTIN: That is not an attractive proposition.

MR. CARPENTER: I don't believe the County will issue dual driveway cuts for one property. We would be happy to pursue it.

KAREN COX: I doubt it would get far.

MR. MILLER: I just have one other comment. Is there any projected total cost for this project?

KAREN COX: What does that have to do with the application?

MR. MILLER: I just ask that because again in the same section, letter D, it mentions that all projects shall contain on the site or -- excuse me, on the site or in the building, but not to include the inside of an apartment employee space, assembly or storage area artwork of a minimum expenditure of one-half to 1 percent of the total project cost, and artwork may be painting, sculpture, gardens, fountains, pools or other artwork approved by the Town.

MR. CARPENTER: Is that in the code?

JAMES MARTIN: There is a section in the code on that.

KAREN COX: That is not something --

MR. CARPENTER: I have some art I will donate.

JAMES MARTIN: I would say probably one of the antique cars would constitute enough art in the building. Not being facetious. That is something we have really not enforced in the past.

MR. MILLER: Thank you.

JAMES MARTIN: Move to close.

KAREN COX: Second.

Jim Martin made a motion to close the public hearing portion of this application, and Karen Cox seconded the motion. The Board unanimously approved the motion.

The Public Hearing portion of this application was closed at this time.

JAMES MARTIN: We need further discussion on the part of the Board. I think we have all voiced it, voiced our concern that the zoning has been granted. We're in a very difficult position, all right, to --

MR. CARPENTER: Can I?

DENNIS SCHULMERICH: Public hearing is closed.

JOHN HELLABY: I honestly say I understand your concern, but I don't see how you can finger this applicant for an administration glitch or blunder, so to speak on the Town's part. It is not fair to them.

JAMES MARTIN: No. It is not fair to the applicant. The applicant was granted the variance.

KAREN COX: The applicant did what he was directed to do by an employee of the Town of Chili. Whether that was the correct thing to do, it remains to be seen, but, you know, it isn't fair for the applicant.

DENNIS SCHULMERICH: It would have been, I think, helpful to both Boards if there had been a path to pursue that would have allowed this to be pursued as a customary home occupation with a conditional use permit, as opposed to a land use variance having been granted. Comment from the audience around trying to constrain and live to the master plan and stick to the current zoning. Once the Zoning Board approves a use permit, we now have commercial property sitting in the middle of an AC zone in perpetuity. There is absolutely nothing we can do about that.

JAMES MARTIN: I know --

DENNIS SCHULMERICH: I agree, the applicant shouldn't be penalized for that.

JOHN HELLABY: Well, the Sands family has run a business in this community for a good number of years. They have done an outstanding job to my knowledge. But there are other businesses up and down.

Jack Miller's, right over the hill, has two pole barns down there with heavy equipment running his excavating business. You have the golf course across the street. It is not like it is a dramatic change that there is none of this already in the area.

JAMES MARTIN: I know from conversations with the chair of the Zoning Board, I think she did a very valiant job of pointing out the difficulties that existed with the request, and I know she was outvoted that night, and so I guess here we are.

DENNIS SCHULMERICH: I wish we could motivate the Zoning Board to think more about using the informal review process with us, however. Because we don't -- if there is -- if there is a cost, engineering cost to be incurred by the applicant to do a preliminary and they're concerned about the zoning approvals first, you could come before us first and have the preliminary review at very little to no cost. We're just not seeing enough of that occur.

JOHN NOWICKI: Some procedural changes, the sooner, the better.

DARIO MARCHIONI: We need to button down exactly what he is going to do in the building, is it part of the residency, and put some conditions.

JAMES MARTIN: It is not a conditional home occupancy. It is a land use variance, Dario (Marchioni). It is done.

KAREN COX: He could do what he wants under the zoning that he has now. I mean there is nothing that we can require unless it is outside the zoning that he has now.

DENNIS SCHULMERICH: I do think it is fair, and I think as a group, we'll decide how far to take this. I mean this is not -- this is not one of the businesses we're seeing in the middle of Chili Center that has significant environmental impact. But you can, you know -- if you look at the extremes, one can say we accept this exactly the way it is, a preliminary site plan. We can also say because a land use variance has been granted and we now have commercial property, it is not unreasonable for us to ask for some more formality around the landscaping, around the lighting, around the building construction and materials and appearance, around timing of the property cleanup. It is not unreasonable for us to ask that, and I don't think it creates undue hardship for the applicant to go off and think about those things and come back if they have the mind set that this is not a part-time business. This is not a customary home occupation. This has now been approved for commercial use. That is the way we as a Board have to look at it. So I would be an advocate of not putting conditions on this preliminary site plan. I would be an advocate of rejecting this preliminary site plan with the advice to come back with the information that we need. Which is more definition up around the building construction. More definition around the landscaping. More definition around the lighting.

JAMES MARTIN: So you would be advocating we table this tonight and bring them back?

JOHN NOWICKI: I think we want to discuss that.

RAY BLEIER: Wait a minute.

JOHN NOWICKI: We have an applicant here who has been in Town -- I have to agree with Al Hellaby. We have known the Sands family for over 50 years. As long as they're on that property, I'm comfortable that they will uphold and do what they said they will do, because they're good, honest people. It is down the road that you might have to worry about the changes down there a little bit.

But in this particular case we have on record, right now, what he is stating he is going to do, as far as the building, the style, the shape, the landscaping, the trees, the lighting, the whole thing has already been identified in the minutes.

If we want other conditions on this, we can do that ourselves. My concern here is, as Dennis (Schulmerich) has brought out and other Board members have brought out, is the procedure that occurred to -- that got them to the Zoning Board first. That is my big concern. That -- years ago, just so you know, in -- and Keith O'Toole, are you over there?

KEITH O'TOOLE: Yes, I am.

JOHN NOWICKI: Years ago when I used to chair the Zoning Board -- I'm not sure if it was under Town Law or we had it in our code back then, because this thing is out of shape here a little bit, we used to do a site plan approval process at the Zoning Board level. Is that still a part of the deal, or what?

KEITH O'TOOLE: No.

JOHN NOWICKI: Can they do that? We used to do that years ago. They should recognize

this, or the Building Department should recognize that this application should have come to the Planning Board first and then we should have shifted back to the Zoning Board for the variances. I think we're too late. We have to act on this application.

DENNIS SCHULMERICH: So by your definition then, you feel that you see in this application what you would expect to see for a preliminary site plan in terms of the definition of what they want to do?

JOHN NOWICKI: I'm comfortable with what they presented for preliminary site plan. If we have other things we want to put on as a condition for final to grant final -- but I don't know what they could be.

JAMES MARTIN: Well, I have five that are written down so far.

JOHN NOWICKI: As far as additional comments?

JAMES MARTIN: Things that I feel are conditions that should be brought to bear on this particular application.

JOHN NOWICKI: We have got the drainage district.

JAMES MARTIN: SPDES. Town Engineer approval.

JOHN NOWICKI: Those are all standard.

JAMES MARTIN: Automobiles to be removed within a certain period of time.

JOHN NOWICKI: I don't have a problem with that.

JAMES MARTIN: I mean really the Conservation Board comment, I mean there has been no landscaping plan that I know of submitted or approved.

JOHN NOWICKI: They could go for a condition -- condition of final is to go to the Conservation Board to get the landscaping plan approval.

DENNIS SCHULMERICH: I would like a better -- maybe it is just me, but I would like a better understanding of what -- there was a -- lighting will be. There was qualitative statement there will be lighting. So as a condition between preliminary-- I'm fine without tabling as long as we have conditions between preliminary and final. More definition around the lighting.

JAMES MARTIN: I will make an announcement, anybody who has a cell phone on, please turn it off. It is very disturbing.

KAREN COX: Thank you.

JAMES MARTIN: You want a condition around lighting shall meet Town Code?

JOHN NOWICKI: Dark sky lighting.

JAMES MARTIN: Dark sky lighting as per Town Code. I will read to you what I have gotten so far. I will just finish this one.

Jim Martin read the list of proposed conditions.

JAMES MARTIN: Is there anybody who wants to suggest a period of time that those cars be removed from the property?

JOHN HELLABY: 30 days.

JAMES MARTIN: I hear 30 days. Any others?

Okay. Within 30 days.

Jim Martin further reviewed the proposed conditions with the Board.

JOHN HELLABY: A clarification on the cars. What about the trailer? I know they stated it is licensed. Do we have any authority over that?

JAMES MARTIN: If it is a licensed vehicle --

JOHN NOWICKI: It has a right to be on the property.

JOHN HELLABY: He has a right to be there?

DENNIS SCIBETTA: If it is a properly licensed trailer, it probably can stay.

JOHN HELLABY: Just clarifying that.

JAMES MARTIN: Okay. Those are the six that I picked up.

DARIO MARCHIONI: Now it is a commercial building, how about the road cut? How about site --

JAMES MARTIN: That would be part of the Town Engineer's approval.

LARRY NISSEN: Curb cut?

JAMES MARTIN: I'm talking about the fact that there is a commercial business on the property now, and, you know, the access, the driveway and all that, what code requirements would the Town --

LARRY NISSEN: It is a County roadway, correct?

KAREN COX: But do we know if they have reviewed it as a commercial entity?

LARRY NISSEN: It doesn't seem to me like it merits a commercial curb cut, based on the applicant's intention. That is my opinion.

DARIO MARCHIONI: Are we going to go all of the way, or halfway?

BILL STEIMER: The County has already decided what the curb cut should be. It would be Item 6 on the County Review.

JAMES MARTIN: I thought there was something in here.

You're aware that the Item 6, the proposed driveway cut has to be lengthened?

MR. CARPENTER: Yes. I mentioned that in my diatribe.

JAMES MARTIN: That would then conform with the County D.O.T. if they meet that requirement.

KAREN COX: I don't know how they reviewed this, if they reviewed it as a residential property or commercial, but as far as the driveway culvert goes, yes, that conforms to the County's requirements.

DARIO MARCHIONI: Since we didn't get any Drainage Committee report, is this stream through this property a designated stream that drains all of the legs upstream? How important is this stream here? Should we get an easement on this?

JAMES MARTIN: I will defer to Mr. Nissen on that. Any comments? The stream that traverses the property, is there going to be any need for an easement on that for any --

DARIO MARCHIONI: How important is that stream? How many acres does it drain?

LARRY NISSEN: There is a 12-inch culvert coming across from the west side of Union Street. It can't be fairly large. It is a 12-inch culvert under Union Street. So that is it.

Although it is apparently a regulated tributary. I don't see why the Town would want an easement. We could defer to Joe Carr on that one. I think we should probably do that.

JAMES MARTIN: We'll defer that to the Highway Superintendent as to whether or not an easement is required.

Short form EAF was submitted with this. I reviewed it. It seemed in order.

Jim Martin made a motion to declare the Board lead agency as far as SEQR, and based on evidence and information presented at this meeting, determined the application to be an unlisted action with no significant environmental impact, and the Board all voted yes on the motion.

JOHN NOWICKI: I suggest we waive final.

JAMES MARTIN: I will request that you make a motion to waive final on that, John (Nowicki).

JOHN NOWICKI: I make a motion to waive final.

RAY BLEIER: Second it.

JAMES MARTIN: On the motion, we waive final on this particular application?

The vote on the motion to waive final was 4 no to 3 yes (Ray Bleier, John Hellaby, John Nowicki). The motion was denied.

Jim Martin reviewed the proposed conditions of approval.

RAY BLEIER: Before we vote, I want to mention three things why I'm influenced in the way I'm going to vote. I have observed where the applicant is conducting business. He is conducting that business in very close proximity to neighbors, immediately right next to his present dwelling, and it is a very neat operation there. He is keeping up his property well and I have no reservation whatsoever they will continue to do so in the new location.

Another thing you all have to keep in mind, this is a part-time business. All this business about commercialism and everything else, you know, just take that with a grain of salt because it is only part-time, as stated by the applicant.

On the issue of the agricultural situation, there, I respect Bill Steimer and the Conservation Board for their concern, however, one of the first things I asked was, is this property being used presently for agricultural purposes and it is not, you know, which kind of weighs into why I want to vote the way I'm going to on this here.

There is actually plenty of land available here. The applicant is not going to disturb very much of the 13.5 acres. You know, so if for some reason somebody would show a desire to use that, maybe the applicant would be willing to have that used for agricultural purposes.

So with that in mind, I can see no reason why I shouldn't vote for the application, so

therefore I vote yes.

DECISION: Unanimously approved by a vote of 7 yes with the following conditions:

1. Petition the Town Board, through the Town Clerk's office for inclusion into the Town of Chili Consolidated Drainage District.
 2. A SPDES permit will be required if more than one acre of property is disturbed by your project. Please provide verification if the project does not exceed the one acre threshold.
 3. Pending Town Engineer approval.
 4. Unlicensed automobiles currently stored on the property will be removed within 30 days from April 12, 2005.
 5. A landscape plan shall be submitted to the Conservation Board for approval.
 6. All exterior building lighting shall conform to dark sky requirement.
 7. Applicant shall comply with all Monroe County DRC requirements.
 8. Applicant to confer with Town of Chili Public Works Commissioner (Joseph Carr) to determine if any easements for drainage purposes are required on the property.
2. Application of Earthborn Builders, Inc., owner; 31 N. Union Street, Spencerport, New York 14559 for final subdivision approval of 24 lots to be known as Union Station Section 6 at property located at 3740 Union Street in PRD zone.

John Kim and Daniel Schum were present to represent the application.

MR. KIM: John Kim with LaDieu Associates. We're representing Earthborn Builders. We're here seeking final plat approval of Union Station Subdivision, Section 6 consisting of 24 lots, approximately 10.62 acres. This section complies with preliminary plat. For the record, the section located on 3740 Union Street, just south of Chili, on the east of Union Street. Current zoning for this property is Planned Residential Development.

The proposed section that we're seeking approval has a connect up to a stub street, and by completing the loop, which is beneficial to the Town as far as providing the emergency vehicles, there would be easier access for school buses and the Town maintenance vehicles.

On this plan, the house numbers are shown, which are approved by the Town Assessor's Office, and as offered and agreed between the preliminary stages, the developer will plant one tree per building lot as a Town-required element.

Now, after this section there is the one section remaining, which is right here (indicating). This is the remaining section. We're seeking approval, this Section 6 here (indicating).

We have received comments from Town staff, Town Engineer, and there are five items which touch on these items. Item Number 1 was the pond lot. I'm not sure if the Town is going to take dedication for this Town pond here. If Town will not take a dedication, we'll divide up the lot and add it to adjoining lots.

JAMES MARTIN: We'll clarify that right now. The Town has no interest in having that pond conveyed to them for ownership.

MR. KIM: This is the case, we'll divide this pond and add it to the adjoining lots and provide drainage easement to the Town.

Item Number 3 is the future storm sewer runs right behind these two lots, which will drain Section 7 and into the pond. Town Engineer requested that those storm sewers to be installed with this section to prevent future disturbance at this time. We revised the plan and comply with that.

Item number 4 is -- regarding the storm sewer along south property line, which will drain into the proposed pond.

There is a concern over disturbance of trees at that area, that I believe some of the neighbors

have called the Town to save the trees. Since then we have located all of the trees, existing trees on the south property line, and -- we'll revise the plan to minimize the impact to those trees, especially on this lot here (indicating).

However, in fairness to this development, potential homeowner, to minimize usable backyard, they may have -- may come down -- a few trees may have to come down. I'll clear that with Joe Carr and the Town Engineer before, I guess, approval.

JAMES MARTIN: All right. I think we'll need more clarification on this tree issue. You say you will minimize and have to cut down a few. This is vague terminology to me. I certainly don't want to go through another tree issue.

MR. KIM: I agree.

Right now, this section here (indicating) -- I had brought a little sketch here showing exactly what is there. I show it to the Board. This is actually physically located tree line here (indicating), whereas, adjacent property has cut trees down to provide for storm sewers drainage swale here (indicating).

Right now my proposed catch basin at that lot is 35 feet away from the property line, and to provide a decent, usable backyard for this homeowner, potential homeowner --

KAREN COX: That is more of a relative term. You're making an assumption that future homeowner will want more yard than trees. I mean to me that is a little presumptuous.

MR. SCHUM: I am sorry I have to interrupt here for a moment. My name is Daniel Schum. I represent Earthborn Builders. And you're exactly right. We don't know what the homeowner might want to do or might not want to do with their land once they buy it. If they want to maintain all of the trees in the backyard, or if they want to put a pool in the backyard. Or if they want to put a shed in their backyard.

But that land is not -- is up to the homeowner and how they develop it.

KAREN COX: According to what I am understanding from the engineer, maybe I'm understanding it incorrectly, but something he just said made me think that -- because he talked about cutting trees down for usable backyard.

MR. SCHUM: It is not up to the developer to cut the trees down, but if you're the buyer of the property and you like the rear of your property cleared so you can use it, I think that the engineer is saying that the homeowner has a choice of how they use their land. And so we can't commit to a future homeowner that they will or will not want to have a fully wooded backyard, or a partially wooded backyard.

So to ask -- I mean to answer the Chairman's comments, that is exactly what we can tell you, is we don't know. We will not remove any more trees than is absolutely necessary to install the storm water drainage required by the Town in the backyards of those properties.

What the homeowner does with that property once they purchase it, we cannot control.

KAREN COX: Understood.

MR. SCHUM: I think that is a commitment we can make. We have not now removed any more trees from that land than is absolutely necessary to accommodate the rear yard storm water drainage required by the Town Engineer to keep the water from running to the south, and we will not remove any more trees in anticipation of usable backyard, or anything else.

JAMES MARTIN: I think I heard you saying you're not going in and clear cutting or scraping?

MR. SCHUM: No. Absolutely not. If it is required in order to maintain the rear yard swales, approved by the Town Engineer, we'll -- and -- I think we have already cleared it to that point, have we not?

MR. KIM: We cleared very little portion. In order to install the storm sewer for the backyard -- as I stated, we're about 35 feet away from the property line, and --

MR. SCHUM: So we --

MR. KIM: Basically I don't want to put the storm sewer right behind people's backyard. The middle of their yard or 10, 20 feet away from the potential home --

JOHN NOWICKI: With easements over them?

MR. KIM: That's correct.

MR. SCHUM: That's correct. I just wanted to make clear that we're not trying to commit to do something we're not going to do, and we'll absolutely commit to do whatever we can do to maintain what is there.

JAMES MARTIN: So do you feel --

MR. SCHUM: If you need any more clarification, we'll try to do it, but --

KAREN COX: You can't control what a future buyer is going to do with their property. It was just something -- it was the way I was misunderstanding the statement, so, I agree --

MR. SCHUM: Fine. I didn't want there to be any misunderstanding whatsoever.

JAMES MARTIN: Joe Carr requested you push it as far north as you can. Do you feel you can meet that, as best you can?

MR. KIM: With an easement over those storm sewers, and by putting the house pad there, the storm sewer that he -- if we were to save all of the trees that is there, it would be 20 feet off the building, and -- over easement, they will have essentially no usable backyard or let's say if you want to put a deck on or a pool, as he stated, or shed for that matter -- so we'll do what we can to save trees, but -- we'll do the best we can.

JOHN HELLABY: Another nice part is I was told by the applicant is they're 4 to 5 foot deep, so the overall side slope shouldn't be too overwhelming.

DARIO MARCHIONI: Can you tell me how the other sections are proceeding since we do have Section 96-13 A limiting development to no more than two sections of the -- or phase at one time. Can you --

MR. KIM: Section 5 presently has all of the underground as installed. Road base is completed for that section. The sanitary sewer has been passed and tested. We have water main that has been tested and samples have been taken today. We'll know the results in a couple of days.

I believe that Ryan Homes has pulled the building permit and are in the process of -- I believe they may have dug and basements already may have been up. They're seeking frame permit, I believe.

JAMES MARTIN: What is their remaining lot inventory through Section 4? Are there any lots still not sold?

MR. SCHUM: One left.

JAMES MARTIN: One lot?

MR. KIM: Section 4.

DARIO MARCHIONI: So you will be complying -- you wouldn't be doing two sections at once?

MR. KIM: Right.

DARIO MARCHIONI: I have comments from the Conservation Board regarding no -- no street trees are shown on the plans. Can you go over that?

MR. KIM: Normally we have them for -- our firm has not placed street trees shown on the plan. However, there is a note under Town of Chili which states that developer will provide one tree per building lot, the size of 2 to 2 ½ inch caliper and height and so on as stated on the plan and that is how we have been handling that for the subdivision.

DARIO MARCHIONI: The other question is will you continue the same type of homes being built in Section 4?

MR. KIM: I believe so.

DARIO MARCHIONI: Same quality of homes? Who is going to be building these homes?

MR. KIM: Ryan Homes.

DARIO MARCHIONI: Ryan Homes?

MR. KIM: Yes. That I would defer to --

MR. SCHUM: They have not had any change in their marketing plan from the last sections.

DARIO MARCHIONI: On average, what is the average home selling at?

MR. SCHUM: I don't want to quote a number, Dario (Marchioni). I think you can read it in the Sunday paper what they're quoting as the market range of their homes in the subdivision.

My client tells me 180 to two and a quarter, if that is what the Sunday paper says.

DARIO MARCHIONI: Are they selling comparable to the other subdivision, Faber next-door?

MR. SCHUM: I won't even compare them, but you can, if you choose.

KAREN COX: Mr. Chairman, I received an e-mail from a neighbor today, or received an e-mail today from a neighbor whose property apparently borders the south southern property line. Can we discuss these questions?

JAMES MARTIN: It would have been nice to have it in advance of the meeting so we could prepare ourselves. I mean is it pertinent to the discussion at this point?

JOHN NOWICKI: Why don't you let the Chairman take a look at it first. He could make a determination --

KAREN COX: That's fine.

JOHN NOWICKI: -- whether or not we allow it in.

RAY BLEIER: Is it from a Park Place resident?

KAREN COX: Yes, it is.

Those are the Homearama homes, aren't they?

RAY BLEIER: To the south.

KAREN COX: It is your choice, Jim (Martin).

JAMES MARTIN: I think with a quick reading here, the site plan basically addresses some of these concerns. Obviously they have to dig a pond, and that -- I guess I don't see anything in here that would probably mitigate, you know, where we head with this particular application. People who live next to developing subdivisions will be subject to these types of things. So --

KAREN COX: Okay.

JAMES MARTIN: I guess my determination is that it probably is not pertinent at this point.

KAREN COX: Okay. That is fine.

DENNIS SCIBETTA: They do only have one lot available in Section 4, so if that is a concern.

JAMES MARTIN: I think, you know -- getting down to that level of inventory, you know, for all intents and purposes, they really only have two sections currently under significant development at this time. Okay?

DENNIS SCIBETTA: That's correct.

LARRY NISSEN: I would like to direct the Board to our Comment Number 1 in our letter regarding conveyance of the pond. We don't recommend that the Town accept conveyance of the parcel that contains the pond.

JAMES MARTIN: I have already addressed that. We're not accepting that.

LARRY NISSEN: I'm sorry. I might have been outside.

BILL STEIMER: In regards to that, the Town is not accepting that, how -- on your fourth page of the prints here, there is a detailed diagram of plantings and that --

MR. KIM: Yes.

BILL STEIMER: -- that supposedly will be made around the pond. Will those still take place?

MR. KIM: Yes. Funds for that -- a portion of the landscaping has been provided from a previous section, so it will take place as this section develops per Town -- or our portion may occur sooner. The funds are there to address those landscaping concerns. The landscaping plan has been approved by the Town and funds are in place to install those -- the landscaping.

JAMES MARTIN: Mr. Schum, clarification on that. Was the funding for this landscaping part of the settlement for Section 5 when that was agreed to as in the letter of credit?

MR. SCHUM: Actually, we -- the developer wanted to make sure that these were appropriately landscaped so that the homeowners who may acquire a portion of this pond would have something to work with in the future to maintain it, to be an attractive benefit to the community and the neighborhood. Yes. It was part of it, as well as the off-site work.

JAMES MARTIN: Going back to the pond for just a second, I'm assuming that Joe Carr is probably going to want some sort of an access easement.

LARRY NISSEN: Yes, easement for maintenance purposes.

JAMES MARTIN: That is not shown on your --

MR. SCHUM: We weren't sure. We presumed the Town would want an easement as opposed to dedication. We provide an easement.

KEITH O'TOOLE: Essentially a drainage easement.

BILL STEIMER: I would just like to bring up a point that it is a well-done plan here as long as we recognize that if you're going to end up on private property, adjoining that -- as opposed to Town property adjacent to Town park land. Certainly it will be an asset for those adjoining homeowners.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

TRACY POPE - 20 Rio Grande Drive

MR. POPE: Couple questions. Right now at the end of Rio Grande there is a temporary cul-de-sac that is paved and it is important for the school bus to turn around, pick up our kids. Will we have reassurance the school bus will be able to go up there? Obviously in the summer as they connect Rio Grande, we don't have a concern, but when school is in session, they won't go up there if it is not paved.

MR. KIM: We'll do the best we can, depending on the schedule, to provide access for temporary cul-de-sac. We'll leave it as large as we can until we can get the stone base in to have school bus to turn around or any emergency vehicles.

KAREN COX: That is pretty vague.

MR. KIM: Yes, we will do -- provide a temporary turnaround or leave it as long as we can until the binder or stone is available for turnaround. Does that answer your question?

KAREN COX: Your time frame of building this road is this summer?

MR. KIM: Seeking approval -- yes, by the time summer, midsummer, it should be in there for underground improvements, yes. So I don't think it is going to go over -- over school year. September, road base should be in.

JAMES MARTIN: When will you be removing temporary cul-de-sac? Before school is over this year?

MR. KIM: I can't really say.

JOHN NOWICKI: You know we need a condition for him to go back out there and get specific information from the developer, whoever is building this road, when it will be done, so we have it on the record as a condition of approval. A time frame when this will be done and when the cul-de-sac will be in place.

JAMES MARTIN: There are two issues. Obviously we need to maintain school bus access to Rio Grande. So I will put that in as a condition that school bus access must be maintained.

MR. POPE: Thank you.

JAMES MARTIN: The next thing is a timeline on the road construction.

MR. POPE: I have one other question. It is in regards to the light area. I don't know if that is Section 7 or 8. That is not under discussion tonight?

MR. KIM: No.

JAMES MARTIN: No. It is not. Only Section 6.

MR. POPE: That's it. Thank you.

MR. KIM: Just like to make a -- just like to make a comment. That temporary turnaround that is there, Town has -- when it was approved, Section 3, it wasn't part of the requirements at that time, and at the request of the Town, developer has placed full sized cul-de-sac at cost of -- at developer's cost. I would just like to request -- it is his opinion couple weeks of inconvenience for that cul-de-sac -- the road to be put in, um -- we'll ask lenience on that. So --

MR. SCHUM: If I can.

JAMES MARTIN: I don't think we'll tell you how to do it. You know school bus access has to be maintained.

MR. SCHUM: I just want to understand the gentleman's comment so we can answer it better. Show me what you're concerned about.

MR. POPE: Right now with Section 3 (indicating) -- I live right here. Right now it dead ends here (indicating) and there is a cul-de-sac.

MR. SCHUM: When Section 3 was approved, there was no cul-de-sac required by this Board. My client put it in right here (indicating) at the request of Joe Carr and the Town so that the bus could turn around.

So now ask the rest of your question.

MR. POPE: Our concern is the school year, ending in June, starting in September, you have to take out this temporary cul-de-sac.

MR. SCHUM: At some point in time we'll rip this out and connect it.

MR. POPE: We want to make sure that --

MR. SCHUM: That will probably take about two weeks at maximum when we start to rip it out. We're going to put in the -- box it all in, and we're going to get to this point in time, and when we box that in, we're going to have to rip out this, and then probably -- this is now mid April. So six weeks from now is not going to -- it is not going to happen by the end of June. Commitment to Larry (Nissen). This is mid April. Mid May, June, it is not going to happen before the school year is out.

JAMES MARTIN: Understood.

MR. SCHUM: Sometime in the summertime, probably, or maybe the first couple of weeks in September we might get to a position where we have to rip it out.

MR. POPE: We just want to make sure we time it so it occurs when school is not in session.

MR. SCHUM: We'll try to accommodate everybody we can, but if we're in the first two weeks in September when we're ripping this out, I guess, you know -- I mean -- I can ask the Board, we're doing the best we can to accommodate not having this ripped out during the school year. But if we box this road out, or we get bad weather in the summer and it comes to the third week in September and we have to rip this out, we can't guarantee we'll have a cul-de-sac there forever. Maybe the kids will have to walk all of the way over to here to get the bus.

MR. POPE: That's a long walk for my daughter, who is hearing impaired.

JOHN NOWICKI: You have to maintain the cul-de-sac.

MR. SCHUM: I will defer to the Town Engineer. At some point in time you have to rip it out to do a road.

JOHN NOWICKI: Do it before school starts.

DENNIS SCIBETTA: Jim (Martin), that condition was made, that was asked for by Joe Carr. I'm familiar with this. The turnaround was asked, and Mr. Howarth actually agreed to pave it at his expense. It was asked that he put it in in stone where the school buses -- there could be adequate school and snowplow turnaround there. I would refer that to Joe Carr and his issue specifically, but Mr. Howarth did put that cul-de-sac in at his expense, and -- and he did place that in there. I just wanted that noted. Mr. Schum didn't bring that out, but it was at Joe Carr's request that Mr. Howarth did put that in.

MR. SCHUM: We'll make every best effort we can to have -- to have that not happen during the school year, while school is in session.

JAMES MARTIN: That is admirable.

MR. POPE: I would just ask the Board to really consider that -- especially, selfish, my daughter is hearing impaired and the thought of her walking -- even though it seems like a short distance.

MR. SCHUM: She could probably walk with a parent down there. That would be appropriate if you have a hearing impaired daughter, to walk with your daughter to the corner.

JAMES MARTIN: Worse case scenario -- let's not get contentious.

MR. SCHUM: I'm sorry. We have tried to accommodate.

JAMES MARTIN: I understand. I understand. But I guess at this point, you know --

MR. SCHUM: Impose --

JAMES MARTIN: And assuming worse case scenario, you don't get in there until September, and that cul-de-sac is taken out, would there be the capability, and again, I'm not -- I'm not an engineer from the standpoint of what you can do, but if you tear that cul-de-sac out, could you put in at least a temporary road bed of some sort so the school buses could go across?

MR. SCHUM: That is the whole purpose. That is what I was trying to indicate. We're not tearing it out without putting something in its place. It takes a moment of time, whether that is two or three days or a week, to rip out the pavement and the cul-de-sac we put in and put in a stone base, box it out, have the Town Engineer inspect it and approve it and extend it. If that week happens to be the first week in September, as opposed to the last week in August, we're going to do it as quickly as we can. We don't want to have people dead-ending at either end of that either. That is the whole purpose of this extension, is it connects those two loops that have been disconnected for -- since Section 3. So -- you can impose whatever condition you wish in your discretion, but I -- but mechanically we do need a few days at some point in time to connect the two and rip out the cul-de-sac. We'll try to accommodate everybody's needs.

JAMES MARTIN: From a phasing standpoint, this part of the project could be accelerated perhaps so you could have it completed and you wouldn't have to worry about it any more.

KAREN COX: Some of it is weather-permitting.

JAMES MARTIN: I understand that. I said worse case scenario.

MR. SCHUM: We just finished boxing out and stoning Section 5, so now, you know, that is in, and it is going to be weathering through the summer, and shortly we want to proceed. We're being asked to proceed.

MR. KIM: We could start at Section 5 and then start boxing and stoning it towards the Section 3 and leave it, leave the cul-de-sac until --

MR. SCHUM: The very end.

MR. KIM: And take it out at that time.

JAMES MARTIN: Work out a solution. You understand the concern.

MR. SCHUM: Absolutely. Legitimate question, and I'm just trying to understand it, and within the engineering concerns, if we can work to the east and then to the north and then rip it out at the very end so the timing is minimal and the impact is minimal, that would be great.

JOHN NOWICKI: Sandy (Hewlett), did you catch that? I would ask the Chairman if you could direct a copy of this particular set of minutes to Joe Carr so that we have a watchdog on this one. Thank you.

JAMES MARTIN: I will agree to that.

JOHN NOWICKI: Thank you.

Jim Martin made a motion to close the public hearing portion of this application, and John Nowicki seconded the motion. The Board unanimously approved the motion.

The Public Hearing portion of this application was closed at this time.

Jim Martin reviewed the proposed conditions with the Board.

RAY BLEIER: Is one of the conditions the incorporation of the ponds into the two lots as defined by --

JAMES MARTIN: I will list the proposed conveyance of pond will not occur.

Jim Martin made a motion to declare the Board lead agency as far as SEQR, and based on evidence and information presented at this meeting, determined the application to be an unlisted action with no significant environmental impact, and the Board all voted yes on the motion.

DECISION: Unanimously approved by a vote of 7 yes with the following conditions:

1. Pending Town Engineer approval.
 2. Appropriate easements for maintenance of the detention pond will be provided to the Town of Chili.
 3. School bus access to Rio Grande Drive will be maintained during construction.
 4. A proposed timeline for road construction will be provided to the Town of Chili.
 5. The Town of Chili will not accept the proposed conveyance of the detention pond to the Town.
3. Application of Robert Gonyo, owner; 895 Chili Scottsville Road, Scottsville, New York 14546 for preliminary site plan approval to erect a 42' x 60' storage building at property located at 895 Chili Scottsville Road in A.C. zone.

Robert Avery and Robert Gonyo were present to represent the application

MR. ROBERT AVERY: Good evening. Robert Avery from Avery Engineering, here with Robert Gonyo, the applicant and property owner.

As you recall, our last appearance here back on February 8th, we had a very good working session, I thought. Maybe somewhat lengthy, but we got a few things figured out. We're kind of on a timeline now according to condition Number 3 of that approval that we have until June 1st to clean up the premises and correct code violations.

As you will recall, at the last meeting, the applicant and owner, along with the members of the Board here, came up with the -- well, the applicant stated that he was going to come before you for an approval for this 42 by 60 foot building, 22,520 square feet which we're locating 45 feet north of the existing main building, to refer to your map. We're showing it as the proposed 42 by 60 foot storage building, and the other improvement that was shown around that is 50 foot of gravel extended onto the east side of it, and 20 foot of gravel on the north and the west side. And, of course, this will alleviate the problems with the storage that we have already discussed with the trailer, and the open shed addition which must be removed, as you will recall from the last meeting.

We have also taken some of the comments that we had received regarding landscaping at the last appearance before you. One of them coming from the Conservation Board about extending the existing row of pine trees on the south side of the driveway, and we have shown, per their request, an extension to that line of pine trees for buffering purposes and we are proposing six Austrian pines to extend that row.

Also, since the last appearance, the applicant has decided to do a little work out in the frontage of the property to include a 4-foot-high berm which was entering between the driveway and the northerly property line with an additional planting located on the sides of that berm, eight white spruce.

As well as rectifying the open ditch situation along Chili Scottsville Road, Mr. Gonyo has

talked to the Highway Superintendent and the State D.O.T., and we have sent our proposal to basically pipe that ditch from the southern invert, south invert of the driveway to the north residential property all of the way to the culvert that goes under Mr. Gonyo's driveway, with a slight extension of 20 feet on the south end of it, as well. And that will kind of have a nice appearance there without that huge ditch in front of the property, within the right-of-way, and we're going through the D.O.T. approvals with that right now.

We did receive a few comments relative to this application. Starting with Lu Engineers, with regard to the application to erect a storage building, they have no additional comments from an engineering standpoint. But this should not be construed as being the final engineering review. They are requesting that it be -- approval be contingent upon their approval.

And, of course, we did receive the DRC comments, as well. Most of these are canned comments.

Item 1, yes, there is a wood land located to the rear of the property. I think we have this comment every time we come in for this application, but it is not in the area of the proposed storage building. It is towards the rear, and it won't be disturbed.

There are New York State and national wetlands located -- Federal wetlands located near the northwest corner of the parcel. That is way to the rear of the parcel, nowhere in the area of the proposed construction. Located up in here, in the inset, we show the State and Federal wetlands wholly contained in the State wetland. There is a DRC comment regarding the stream corridor. The one they're referring to runs through the wetlands area many, many hundreds of feet away from the proposed storage building.

Item 3, we had submitted in the past an Ag Data Statement. I would be glad to send that over in the morning. I pulled one out of the folder here, and -- so far as farming in the vicinity, I think that Mr. Krenzer does work a hay field across the street, to my knowledge.

MR. GONYO: Adjacent to it.

MR. ROBERT AVERY: He did have a field over across the street when I filled this form out a year ago. So I can submit that tomorrow.

That covers the stream. We have a few other comments that if the map is to be recorded with the County Clerk, which it is not, because it is a subdivision map, monumentation must be checked by the County D.O.T. Once again, comment about the fresh water wetlands under New York State jurisdiction at the northwest corner of the parcel. Also, noting that appropriate sediment and erosion control measures should be installed prior to construction and we'll place those on the drawing in its final format in regards to item 4.

Mr. Gonyo is here with us, and I would like him to talk a little bit if he could about the proposed storage building itself, which, if you refer to your submittal, is to be a Morton-type building, and maybe he could speak a little bit on the particulars of it. I do know that it is anticipated that it be on a concrete slab, serviced only by electricity, no water. There will be no restrooms in it. It will be a storage facility. Once again, getting back to us getting this site cleaned up and in accordance with the wishes of the Town and the applicant. But we did submit the Morton drawings. Did you receive them?

JAMES MARTIN: Yes. We have copies. Can you post those on the board for the public?

MR. ROBERT AVERY: Yes.

JAMES MARTIN: All elevations.

MR. ROBERT AVERY: I think I have all of them, yes.

As far as the building color, I believe most of the buildings that are currently on the site are a shade of blue. And I believe it is the intention of the applicant to match that color.

MR. GONYO: No.

MR. ROBERT AVERY: You have made a decision to change that?

MR. GONYO: I think it is an upgrade. Forest green. Morton has trim packages. Forest green roof. I've redesigned to wainscoting roughly 42 inches with all of the trim pieces forest green. I think it would be attractive.

MR. ROBERT AVERY: As far as lighting is concerned, I believe we're going to have one or two overhead fixtures over the overheads on the south side of the building only?

MR. GONYO: Yes.

MR. ROBERT AVERY: That will be over the overhead doors, if you look at the south elevation, over the two overhead doors. No lighting on the back, to my knowledge, is proposed.

MR. GONYO: Other the other end, the east end.

MR. ROBERT AVERY: The east end, towards the residential property.

JAMES MARTIN: With the exception of the two -- Mr. Scibetta, with the exception of the two buildings that were discussed at the previous hearing on this that are to be removed, the trailer

and the lean-to, are there any other existing structures that do not have a permit for this particular property?

DENNIS SCIBETTA: Last I heard there was some question about decks and things on the house that had to be cleared up.

MR. GONYO: That got cleared up.

DENNIS SCIBETTA: I have no knowledge of that.

MR. GONYO: As far as I know, they got cleared up.

DENNIS SCIBETTA: With our office?

MR. GONYO: Yes. Can double check, but I thought it was all taken care of.

JAMES MARTIN: Would you please confirm that, you know, that has been cleared up?

JOHN NOWICKI: Make it a condition.

DARIO MARCHIONI: That is on the house.

MR. ROBERT AVERY: I may add that that property is no longer owned by Mr. Gonyo. It is occupied by his wife.

MR. GONYO: It is divided up. She told me she took care of that.

DARIO MARCHIONI: It is not before us.

JAMES MARTIN: I understand.

DENNIS SCIBETTA: Did you get the note that this is now -- I believe it has been reclassified as -- address has been changed to 903 Chili Scottsville Road as of April 5th of '05?

MR. ROBERT AVERY: It must have just changed.

DENNIS SCIBETTA: I have this note -- I have that note on the -- that was on the agenda, so it probably didn't make it on to the --

JAMES MARTIN: No. So 895 is now 903?

DENNIS SCIBETTA: 903.

JOHN NOWICKI: What about 903?

MR. GONYO: What is the next one?

DENNIS SCIBETTA: I just have note address change by Assessor's Office on 4/5 of '05.

JAMES MARTIN: Keith (O'Toole), do we need to amend this application --

KEITH O'TOOLE: No.

JAMES MARTIN: -- to cite the right address?

Okay.

RAY BLEIER: I think this building is going to replace those previous situations where we had the shed and the trailer. What is the time frame for the trailer removal?

MR. GONYO: Last time we talked we said 10/1.

RAY BLEIER: Was the date set then?

MR. GONYO: 6/1 and 10/1. I could add, with the approval, I'm talking to the people who are building it, the financing is approved so we should have the building underway by June. I plan to be ahead of schedule so we get everything cleaned up.

MR. ROBERT AVERY: As we indicated at the last meeting, our intention was to get right back in front of the Board so he could take advantage of the construction season and this time of year to clean up the yard.

RAY BLEIER: This is great. I'm all set.

KAREN COX: I don't have anything, but want to thank you for taking our comments and addressing them.

JAMES MARTIN: I will comment on your request for piping the ditch along the road. It is also my understanding that the Commissioner of Public Works and the Highway Superintendent is not in favor of doing that.

MR. ROBERT AVERY: I personally did not have the conversation with the Town.

MR. GONYO: He told me there might be some opposition. My thought was the Conservation Board asked me to clean up the front and maintain it. By putting a culvert in there or inlet, I should be able to mow it easier and keep it better. I thought there might be give and take there. Since I was already required to do some clean up, I would like to take it further to make it look nice.

JAMES MARTIN: I understand your intent, but you better check with Mr. Carr. Comments when we had our planning -- our preliminary meeting on the agenda, he was pretty adamant he did not want to see that piped.

KAREN COX: Did he say why?

JAMES MARTIN: I think for maintenance.

KAREN COX: Capacity standpoint?

LARRY NISSEN: As I recall, you had to apply for a New York State D.O.T. permit?

MR. ROBERT AVERY: This is State controlled.

LARRY NISSEN: The State won't give a permit until the Town maintains the pipe. The Town doesn't want to maintain the pipe.

JAMES MARTIN: Thank you for clarifying that.

MR. GONYO: That will not happen.

MR. ROBERT AVERY: We still intend to have the landscape berm up outside of the right-of-way. I guess we'll have to live with the ugly ditch.

JOHN NOWICKI: Signage on any -- no signs?

MR. GONYO: No, there shouldn't be any signs.

DENNIS SCHULMERICH: Question from the side table to get grounded based on everything we discussed earlier, this is the property -- this is an AC zone, business -- land use variance been granted on this.

MR. ROBERT AVERY: Conditional use permit to my knowledge. He is on a cycle right now of three years, I believe.

DENNIS SCHULMERICH: So just for purposes of this Board, not for the applicant, we have to have this continuity in terms of how we handle this property. In one case we had an out building that was not deemed to be conditional use enabled and we ultimately ended up with a land use variance, which I'm quite frankly not in favor of unless it is the last resort, and here we have another business in the Town with an outbuilding that has been granted a conditional use permit. We have to have consistency how we're handling this. Not your concern, our concern.

I do have a comment. The way you folks handled yourself last time and what you have come back and done, thank you very much. We really appreciate it.

MR. ROBERT AVERY: You're welcome.

DARIO MARCHIONI: I just have a situation here -- presently you're under conditional use in an Ag District. I would suggest you go back to the Zoning Board -- you have actually changed the conditions -- with the additional building. So I think you need their approval.

MR. ROBERT AVERY: I guess I would leave that up to the attorney to make a ruling on that.

KEITH O'TOOLE: That is really for code enforcement to interpret. If, in fact, the -- if the business varies from the conditions that -- of the original permit, then yes, you would have to go back.

DARIO MARCHIONI: That will be the recommendation from the Planning Board.

Also, the other thing, too. There are some wood fences there. Will they be upgraded?

MR. ROBERT AVERY: The wood fence on the north side? By the row of -- near the Rose of Sharons?

MR. GONYO: They will be removed and upgraded.

DARIO MARCHIONI: Along with the next-door property owner.

MR. ROBERT AVERY: We'll be glad to make note of that on the plan.

DARIO MARCHIONI: No further questions.

DENNIS SCIBETTA: Just to -- let's make sure that the work that was done without the permits is taken care of, and also if this is approved, that this does need a building permit and it will require the proper set of prints and everything brought into our office. Let's get off on the right foot on that.

BILL STEIMER: Conservation Board recommends that the fence that you brought up, Dario (Marchioni), that there be eight to ten plantings of Austrian Pine at the west end of that fence just as a buffer between the business and the residence that is to the north of where the new building will be.

MR. ROBERT AVERY: Are you referring to maybe an arced planting? In this direction, to the northwest?

BILL STEIMER: Actually, I can't see it from here, but it would be actually to the north of the new building. Even though the building has a deep setback, it is going to be an object to that -- to the residence to the north.

MR. GONYO: There's a hedge row right now about 6 foot high? Do you realize that there are three pines to screen them already?

BILL STEIMER: And a fence.

MR. GONYO: I'm just making sure you're aware what is there. You want six more you think?

BILL STEIMER: The new building will be beyond all that.

MR. GONYO: Okay.

BILL STEIMER: To the west. So we're just looking at --

MR. ROBERT AVERY: Extension of that same line. Okay.

JAMES MARTIN: Is that reasonable?

MR. GONYO: Why stop now?

DENNIS SCIBETTA: Jim (Martin), if I could add one thing. This came back with an Ag Statement done in 2003. We don't know why Monroe County asked for that, but both of those were of oddity that they asked for the Ag Data Statements that were already done. So we do have a copy of that.

MR. ROBERT AVERY: We'll submit another one.

JAMES MARTIN: Please do that. We'll make it official.

I will add one thing. The last time we heard this, basically one of the conditions was cleanup of the property by the 1st of June. I would certainly feel that this particular -- this certificate of occupancy of the new building would require inspection. Be sure that condition is met so there are no more code violations on the property. If we can do that.

KEITH O'TOOLE: Sure.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

DOROTHY BORGUS, 31 Stuart Road

MS. BORGUS: There was a comment made, I believe, that this gentleman has a conditional use permit for -- on a three-year cycle. I believe if you check that, according to my notes at least from February 8th, when he was in, it is a five-year cycle.

And he should be all set until January 23rd of 2006.

Which brings me to another question, and if I understood Mr. Schulmerich's question, I also am wondering how this varies from application one in terms of land use variance versus conditional use permit in an AC zone.

KEITH O'TOOLE: I don't believe Mr. Gonyo is installing automotive glass; is that correct?

MR. ROBERT AVERY: That's correct.

KEITH O'TOOLE: Thank you.

MS. BORGUS: It is commercial, though; am I right?

KEITH O'TOOLE: So is farming. Every zone has its permitted uses. Automotive glass is not permitted in the AC zone whereas certain agricultural pursuits are.

MS. BORGUS: This gentleman's business is?

JOHN NOWICKI: Landscaping.

JAMES MARTIN: Landscaping business.

MS. BORGUS: Which is assumed to be connected somehow to agriculture?

DENNIS SCIBETTA: It is a permitted use under conditional uses.

MS. BORGUS: Thank you.

DENNIS SCHULMERICH: Thank you for that explanation. Now I understand it.

MR. ROBERT AVERY: Mr. Chairman, may I amend the application so that we might receive a waiver of final with those conditions that will be cited so that he may construct the building and continue with his timeline with property cleanup so we don't have to come back in front of the Board in May? It will be rather difficult to build the building like in a month, so we can -- you know --

JAMES MARTIN: Can I get to that in a second?

MR. ROBERT AVERY: Yes.

JAMES MARTIN: I understand what you're asking. Right now I want to move to close the public hearing.

KAREN COX: Second.

Jim Martin made a motion to close the public hearing portion of this application, and Karen Cox seconded the motion. The Board unanimously approved the motion.

The Public Hearing portion of this application was closed at this time.

JAMES MARTIN: I will move on to the request that was just put before us. I will make a motion that we waive final given that we set the specific conditions on this. Do I have a second?

JOHN NOWICKI: Second.

The Board was unanimously in favor of the motion to waive final.

JAMES MARTIN: We will waive final.

DARIO MARCHIONI: I strongly believe he has to go back to the ZBA for a revision of his conditional use since he is adding another huge building on this property. It is different than the original conditional use permit.

JAMES MARTIN: The Zoning Board gave him a conditional use. Mr. O'Toole, how do you read that request?

KEITH O'TOOLE: I'm sorry?

JAMES MARTIN: He has to go back to the ZBA because of the change in nature, I believe, of the site plan is what we're discussing.

KEITH O'TOOLE: You can make that a recommendation to the Code Enforcement Officer, but that is their call.

JAMES MARTIN: Word a condition for me here.

DARIO MARCHIONI: He is under conditional use permit under the ZBA, which was granted to him under certain conditions. Now there is a change in that conditional use. There is another huge building next to the original building which has the five-year extension to it, so the ZBA should be notified and he should have a part in this --

JOHN NOWICKI: He is going to be coming up for review of conditional use --

DARIO MARCHIONI: Five years from now.

MR. GONYO: January 6th.

DENNIS SCHULMERICH: A proposed condition could be the Code Enforcement Officer review the current conditional use permit and determine the site plan changes that are aligned with the current conditional use permit.

The Board reviewed the proposed conditions.

MR. ROBERT AVERY: I will review if he has to go back. A lot of the items are being done to rectify the situations and clean up the site.

DARIO MARCHIONI: He is working under their conditional use, so the Zoning Board, they're the lead agent as far as this operation, so they should review this. That is my opinion.

Jim Martin made a motion to declare the Board lead agency as far as SEQR, and based on evidence and information presented at this meeting, determined the application to be an unlisted action with no significant environmental impact, and the Board all voted yes on the motion.

DECISION: Unanimously approved by a vote of 7 yes with the following conditions:

1. Pending Town Engineer approval.
2. No outstanding building permit issues continue to exist on this property. This is to be verified by the Town of Chili Building Inspector.
3. A Certificate of Occupancy for the new storage building will not be issued until all previous conditions imposed by this Board have been met and verified by the Town of Chili Building Inspector.
4. The Town of Chili Code Enforcement Officer shall verify conformance of the modified site plan to the conditional use permit granted by the Zoning Board of Appeals for this property.

Note: Final site plan approval has been waived by the Planning Board.

There was a recess in the proceedings.

4. Application of Excel Development, P.O. Box 220, Spencerport, New York 14559, property owner: T. Hebrock; for subdivision approval with site plan of Lot #2 of the Hebrock Subdivision into two lots at property located at 153 Chestnut Ridge Road in R-1-12 zone.

Robert Avery, Justin Myers and Mrs. Hebrock were present to represent the application.

JAMES MARTIN: Before you start off, I would like to apologize to Mr. Myers for a rather

bad incident the last time this application was heard before the Planning Board. I should have taken action that night. I failed to do so, but my expectation is we will not have a repeat of any name-calling or any incidents similar to that at this hearing tonight.

MR. ROBERT AVERY: Thank you, Mr. Chairman. Bob Avery with Avery Engineering. I'm here with Justin Myers from our engineering staff, and Mrs. Hebrock is also here in the audience.

Excel Development, Mike Pellano was unable to be present in this evening. We have re-worked our plan from the previous appearance before you, which at that time included three proposed homes. The plan has been now re-worked for two proposed single-family homes on this parcel of land which is two and a half acres.

There were some concerns when we were in here the first time of trying to pack in as many homes as possible, and therefore, the -- the project or the proposal not being in character with the neighborhood. We think now that we have re-worked the plan, that that should not be an issue.

Going back a little on this, when we first had our initial meeting with the developer, we did a rough plot of the two and a half acres, and, of course, this is in the R-1-12 zone, and our initial design -- it is a moot point now, but just to mention it -- indicated that we could actually put a dedicated road into this parcel and have quite a number more than three lots, five actually, and still be to code.

But in any case, we're down to a two-lot configuration, and we did a little study also of the 59 residential properties that are located within 500 feet of this site, getting back to this character issue of whether the lots are too small or we're packing them in.

Our proposed Lot R-2-A, which is the larger of the two lots -- I guess you could say would be the southern lot here, is actually one and a half acres as we have proposed it. That is three and a half times larger than the average lot size within that study group. This is the second lot, which would be the one that is behind the Hebrock household, is .9 acres. Of course, that is also 40,000 -- 41,000 square feet. That is way over the required lot size for the R-1-12 zone. So in coming back with our plan now, we have two larger lots, rather than three lots that we're still -- at that time were still larger than what the minimum is in the zone. We have two lots now that are larger.

We meet all of the setback requirements. We will not have to appear in front of your friends at the Zoning Board because we will not need to request any variances from them because by Town Code we have over 40-foot frontage for the two lots. We have 43, if we split it in the middle so that we'll conform with all of the setback requirements and area requirements within the zone.

There was another issue that came up with the three lots that would have required switching an existing house number on the Hebrock house, in order to make way for three additional lots between that house and the neighboring existing property to the west. Well, lo and behold, with the two lots we have street numbers 153 and 155 available and open without changing anybody's street address. I checked with the Assessor on that today.

When we were in here the last time, there was an issue regarding the driveway, the shared driveway. We are still maintaining our design with a shared driveway for the simple reason that we want to maintain as many trees on the site as possible. We want to limit it to one access. Save some trees.

There was a question in regard to a shared driveway, and we have proposed a driveway to run in the middle of the flag lots to conserve the vegetation. It also allows for the utilities to service the houses to be placed on the outside also farther from the property line. This will also address the concerns to the neighbor adjoining over here to the west, because we're going to be quite a ways away from him with any proposed improvements.

We are showing a shared driveway access within a 30-foot ingress and egress easement, which will be put on record between the two owners of these lots eventually after the houses get built. It will recover the repairs, maintenance, improvement expense, the snow removal related to the joint driveway, and each party is going to be solely responsible for the portion of the driveway that serves that party's parcel as they branch off from the main drive coming in.

I have also put together a proposed ingress and egress easement covering snow removal, maintenance and all of the like that I would give to the Chairman and to the attorney, which, of course, is subject to review, as well as the developer's attorney.

There was also a question, I think, on it, we had with the denial there about the abstract of title. We'll provide an abstract of title on this property once the sale from Hebrock and the developer occurs, which, of course, you would expect would be subject to the approval of the site plan.

With those few items being addressed, I think I will turn things over to Justin (Myers) from our office to speak a little bit on the issues of the sanitary access, which we are still maintaining as

a pump system. Once again, getting back to not having to place 9 foot of fill on this parcel for a gravity lateral line. He will talk on that, and also a little bit on the drainage, and if there is time, if the Chairman would like us to address the comments from the County and the Town, we would be glad to do that also. Thank you.

MR. MYERS: There were two concerns regarding the engineering at the last meeting, one being as Bob (Avery) stated, using gravity flow to connect to the existing sanitary sewer, and like he said, this would require a substantial amount of fill, which is not only expensive to the developer, it also destroys the trees which was brought up by the public at the last meeting. So we're trying to maintain the vegetation as a buffer between what we're proposing to do and the neighboring properties, especially to the west.

With that, as he had stated, too, we're still making use of ejector pumps for the sanitary sewers.

We are speaking with Monroe County Pure Waters at this point just to see if, you know -- their thoughts on our design. The sewer systems themselves will have 110-gallon capacity, which should alleviate some of the concern that was brought up about certain instances with power loss. Along with that, the developer is going to provide an adaptor, if you will, for the use of generators. So at the discretion of the owners, whoever decides to buy the homes or build the homes there, they will have the option of using a generator if, in fact, the electricity goes out. And we understand that it is unique, but at the same time there are a variety of septic systems that make use of pumps. There are a variety of other homes that make use of pumps to force sewage to the existing sanitary sewer, so we're fairly confident with that design.

Other than that, there --

JOHN NOWICKI: Can I ask a question on it? On these systems, do they have a backflow preventer that you know of?

MR. MYERS: The pumps themselves are set up so that, you know, only a certain amount of water can raise, and then they go out, and I guess in a sense, the pumps themselves would have something similar to a backflow preventer in them. They have a float that allows for water to leave, and then after it reaches that point, it will shut the pump off and won't let water back into them, which is fairly similar to a backflow preventer.

JOHN NOWICKI: Thank you.

JAMES MARTIN: For the 110 gallon, what is the normal volume in a tank?

MR. MYERS: 28 gallons, I believe.

JAMES MARTIN: So that leaves 70-some or 82 gallons of capacity or something like that?

MR. MYERS: Yes. Which, you know, I mean how often do the lights stay out when the lights do go out, and in that sense --

KAREN COX: Well, you would not be -- if the power was out, you wouldn't be using the appliances such as dishwashers and washers that would load up the tank. You would be flushing the toilet, and that's about it.

MR. MYERS: A gallon per flush.

JAMES MARTIN: And maybe a shower.

MR. MYERS: Other than that, there was concern with the neighboring parcels, or properties, especially to Laredo Drive as far as drainage, and that, we have reduced the site by one lot. The existing house now on Lot R-2-A is approximately 105 feet north of the line, bordering Laredo Drive, and originally when they came in with three lots, it was already stated that the runoff, after construction, is basically negligible. So with reducing down to two lots, that becomes even more negligible, which shouldn't contribute to any sort of existing drainage problems. The grading that is proposed on the two lots is directed toward the existing swale where we have proposed the property line between R-2-A and R-2-B. There is also a proposed sediment pond for construction purposes to help with the sediment before it leaves our site, or, you know, enters any neighboring property.

Again, as Bob (Avery) said, we have done all of this with keeping in mind that the neighbors are definitely fond of the vegetation and the trees that are there. Everything that is being proposed is, you know, minimal disturbance of these with the placement of the houses and the grading itself. So we want that to be kept in mind, as well.

Other than that, I -- I am done.

The comments. We didn't get -- we got the comments from the Town Engineer, and based on the SPDES requirement, if we were disturbing more than one acre -- we are not disturbing more than one acre. I know we have to submit that to him. It is approximately .93 acres of disturbance. That is with the houses, the grading, everything involved, in area that we're disturbing. So it is under one acre, so that should not be required.

We have also received DRC comments which state that the Monroe County Health Department has reviewed this and they have no comments as well as the Monroe County Environmental Management Council. Everything else is fairly typical.

JAMES MARTIN: Okay. Keith (O'Toole), I have a question for you. Have you had a chance to read this proposed easement?

KEITH O'TOOLE: Yes.

JAMES MARTIN: It goes with the land according to what I am reading here. So one of our concerns was, you know, when you have joint shared driveways, somewhere down the line, maybe the first two people that own the houses just love each other and there are no problems. Somebody decides to move away and the next person moves in and all of a sudden there is a lot of disagreement as to who has to do what. So I guess based on the fact that you have a 16-foot wide driveway proposed at this time, we were thinking widening that to perhaps 20 feet, so each party would have 10 feet and they could get a vehicle in and out -- they could do it in 8 feet, but 10 feet would be better. I'm assuming, Keith (O'Toole), with this ingress/egress, that becomes a moot point, that they really have to do this according to the document?

KEITH O'TOOLE: They could -- the document simply says that over the easement area, the two lot owners have to keep the area open so vehicles can go back and forth, and that they are to pick up the tab when it comes time to plow it, to seal it and so on.

So if, in fact, the property owner decides they hate that common driveway, I suppose they could build their own driveway over to the side because there is over 40 feet of width there. They could do that.

The thing with these sorts of driveways, they're often actually a good thing because of cost of maintaining a driveway that goes back 300 feet, just on the easement area, and then another X number feet back to the individual houses, so they're stuck with it whether they like it or not is the short answer.

KAREN COX: Can I ask a question, Keith (O'Toole)? Even with the easement, if the situation was encountered where one of the owners was not abiding by their -- by this easement, what would -- what would be the vehicle of enforcement for -- to use a strange term.

KEITH O'TOOLE: Properly drafted easement will have a provision in there that says that the homeowners can sue each other.

KAREN COX: Okay. That answers that.

DARIO MARCHIONI: Will they be blacktopped, these driveways?

MR. ROBERT AVERY: Proposed to be blacktopped, correct.

DARIO MARCHIONI: One other thing I would like to see on this site plan, a concern about, you know, the back side of the property. You know, it backs up to Laredo Drive. I would like to see a conservation easement put in place, you know, so that --

MR. ROBERT AVERY: To the Town?

JAMES MARTIN: Well, we have had conservation easements on other, you know, development in this Town. Like 30 foot that basically states forever wild. I mean the homeowners own it, but they're constrained from cutting the trees down or doing anything with it.

Keith (O'Toole), you will have to help me out on the legal aspects of this, but I would really like to see a conservation easement along that property line to insure that, you know, that those trees or whatever is back there is maintained as a visual site barrier between the proposed new houses and the existing houses.

MR. ROBERT AVERY: I'm sure that the applicant would not have any trouble with that seeing as we're not proposing anything to be disturbed within 100 feet. But I'm sure that that might be a little much. Wouldn't it more likely be in a covenant than an easement form?

KEITH O'TOOLE: Presumably the purpose of the easement is that it is dedicated to the Town, and the Town has the right to intervene. Otherwise one could impose an easement in the nature of a tract restriction as between the property owners, but that doesn't involve the Town at all. So if they violate it, it would be a question between the two lot owners.

KAREN COX: So the easement is the way to go.

MR. ROBERT AVERY: If the Town wants to take it.

KEITH O'TOOLE: If the Town wishes to be burdened with the obligations that go with it.

JAMES MARTIN: I'm a little puzzled. For Park Place Subdivision there is a 30-foot conservation easement around that entire property. I never heard that the Town was responsible to go in and do anything with that property. It was basically to constrain the homeowners from doing anything with that property.

KEITH O'TOOLE: It is not that we're obligated to do something. It is that if anyone were to do something, it would be us, on the taxpayers' dime.

JAMES MARTIN: I understand.

Well, the chances of it happening are fairly small, and it would protect Laredo Drive homeowners.

MR. ROBERT AVERY: I'm sure the applicant would have no problem with a buffer zone, however the Board would like it to be protected, in whatever format.

JAMES MARTIN: What is the feeling of the Board?

DARIO MARCHIONI: My question is, why would they ever want to cut those trees?

KAREN COX: You never know, Dario (Marchioni).

JAMES MARTIN: You don't know, Dario (Marchioni). A homeowner can go in there --

MR. ROBERT AVERY: We can design things with sound environmental thought and process and the reasoning why we're trying to do this, we're going out of our way to save the vegetation, but once you have sold it --

KAREN COX: Why do people put sheds in the middle of drainage swales?

DENNIS SCIBETTA: If you come up with the answer to that, Karen (Cox), I would like to know.

(Laughter.)

DENNIS SCHULMERICH: Would the Town assume the liability for the conservation easement?

KEITH O'TOOLE: No.

JAMES MARTIN: That would be the south property line.

Any other presentations at this point?

RAY BLEIER: In your letter addressing the point about sanitary sewer, the gravity flow there, you mentioned that you will have an adapter installed in the homes so that they -- the owners could have a generator?

MR. MYERS: Uh-huh.

RAY BLEIER: Well, chances are they're not going to probably get a generator. The only way you will make sure they have a generator to avoid some future problems is by stipulating that, that they should come equipped with a generator is my feeling.

It says infrequent instances of power loss. Well, I live in the Ranchmar tract also. Further removed from these properties, but, you know, we do experience very frequent power outages. Granted most are short duration, but occasionally we get one that lasts several days, and in some case, ten days. If there was some concern about providing a facility to have a generator, then why don't you just go the next step and go buy one?

MR. ROBERT AVERY: He is going to go ahead and the circuit box will be, you know, adapted so that as the -- he has a line going out. I think he was going as far as placing a concrete pad behind there, a small one to place it on, with the wiring already in place.

KAREN COX: That will not guarantee that -- if the builder provides it, that the homeowner will maintain it so it will work when the time is necessary.

JAMES MARTIN: I think that is the problem with generators. People buy them and let them sit around for three years and they go around to use them and they don't work.

KAREN COX: The 110 gallons is a large capacity. In a power outage, you're not using appliances that generate large quantities of waste water. You can't. And so you would have to have a very long power outage to fill 110 gallons.

MR. MYERS: That was selected based on the distance that that pump has to pump to -- that is why it is that size.

KAREN COX: But I'm saying flushing a toilet one gallon at a time, how many days are you going to be out of power before you would be filling that up?

JOHN NOWICKI: Are these like ejector pots?

MR. MYERS: They're called ejector pumps, so I guess --

JOHN NOWICKI: So the pot itself you're saying is 110 gallons?

KAREN COX: That is the way I understand it.

JOHN NOWICKI: This would be in each one of the houses?

MR. MYERS: Yes.

JOHN NOWICKI: How far up do they have to pump? Are they pumping up -- is it a forced main directly out to the main road?

MR. MYERS: Yes.

JOHN NOWICKI: You have friction loss there.

MR. MYERS: That is what we worked with, was determining the losses, and then the loss attributed to the elevation.

JAMES MARTIN: This is well-engineered technology, the way I understand it.

MR. ROBERT AVERY: Well, you know, just to give a little background on pumps and -- pumps are used quite a bit in many parts of this town. Obviously when people don't have a public waterline running down in front of their house, they have a well and they have a pump. Okay? So they don't have any water either, I guess, when the electricity goes out. We have many systems, septic systems in the southern part of this town, most of this town south of the creek that is not on public sewers except where they pumped through on Union Street with septic. Many of the septic systems are raised fill systems. You have to pump those. And those are all approved, existing homes.

I don't know if many of you know it, but the Wegmans facility down the road here uses a pump for its effluent.

JOHN NOWICKI: Did you do Robfogels on the Ballantyne --

MR. ROBERT AVERY: Henderson House over across -- that is also pumped. Most of Chili Center drains gravity to the pump station located on Old Chili Scottsville Road, from whence it is pumped to eventually get to the ultimate treatment site, Van Lare. Do we use pumps, yes. If you have used the facilities in this building, it will end up getting pumped when it is down at the end of the road on Chili Scottsville.

MR. MYERS: It wasn't our initial option. We would have liked to have seen gravity as well, but with the amount of fill you would have to bring in, based on the lay of the land there, it is too substantial. And then the other option would be extending the sanitary sewer and then for maintenance reasons placing a manhole, which isn't cheap, as well. So based on our options, this is why we have selected pumps.

DARIO MARCHIONI: I have a question in that line. I think your design is a little short. I think you will have to come in with a 4-inch line right to the right-of-way property line, and then you will have to put a clean-out and then connect a 2-inch to that 4-inch line. You have it here tapping right into the main line on the street, which is not --

MR. MYERS: No. We have got comments -- that is one of the comments from Pure Waters.

MR. ROBERT AVERY: That was one of the only comments from Pure Waters we received.

MR. MYERS: We had offset from the property line 20 feet, placed in the clean-out, and then from the clean-out to the property -- or to the right-of-way, we'll all have 4-inch line.

MR. ROBERT AVERY: Pure Waters didn't have any issue with using ejector pumps.

DARIO MARCHIONI: We have standards for our town, too.

KAREN COX: Presentation tonight answered the question that I had, but I wanted to comment that I feel the engineer listened to the comments from the public from the last meeting and addressed them as best they could. It is not the ideal situation, but based on the shape of the lot, this is much better than what you came in with last time, so thank you.

JOHN HELLABY: Same thing. Better layout than last time around.

JOHN NOWICKI: Much better. Much better.

DENNIS SCHULMERICH: Yeah. The change from last time to this time is very much appreciated. You dealt with a series of issues. First the street address has been dealt with. You have eliminated all variances. You have looked at a way to maintain the buffering and vegetation. Your management of the sewage is not unique. Maybe not preferred, but not unique. And the management of the drainage and runoff, all very positive comments. I will be interested to hear input from the audience. I may have some other questions, but nothing at this point.

DARIO MARCHIONI: What type of house will you be building here? Anything proposed so far, the value, price range, anything?

MR. ROBERT AVERY: Two-story Colonial, I imagine.

DARIO MARCHIONI: Price range?

MR. ROBERT AVERY: I think it could be -- very similar to what he has going on Paul Road Estates.

DENNIS SCIBETTA: 168,000 plus.

DARIO MARCHIONI: That type of caliber?

MR. ROBERT AVERY: Yes.

DARIO MARCHIONI: Are these going to -- is this -- this project is going right away?

MR. ROBERT AVERY: I'm not quite sure of the time frame. If he does receive all necessary approvals, he may start one of the homes, yes, this construction season.

DARIO MARCHIONI: Great improvement, by the way.

KEITH O'TOOLE: The sump discharge from Lot 2-A seems to be heading to Lot 1-A. Temporary sediment basin. Since you're discharging drainage onto adjoining lot, you will need an

easement for that purpose.

MR. MYERS: I think that sump discharge could be moved or rotated away from that area so an easement wouldn't be required.

JAMES MARTIN: You have it basically going towards the swale; is that correct?

MR. MYERS: Yes, right now, the way it is shown, it is. But it does not have to be.

KAREN COX: Could be rotated further, slightly further east.

MR. ROBERT AVERY: If it is rotated, we won't be in need for an easement. We'll make that change.

JAMES MARTIN: So you will rotate the sump discharge --

MR. ROBERT AVERY: Alleviate easement required between the two homeowners.

DENNIS SCIBETTA: I would ask if you're going to do that, that you not waive final. Don't take it for their word that we're going to get those improvements. We would like a time frame on that.

JAMES MARTIN: Could I make that part of the Town Engineer approval on this?

LARRY NISSEN: Yes.

JAMES MARTIN: Okay. I'm going to -- I will condition it that way, Dennis (Scibetta)? Is that acceptable?

DENNIS SCIBETTA: That's fine.

The issue of the driveway, Jim (Martin), I know you addressed it, but I did not catch all of that. Are we going to increase the size of that?

JAMES MARTIN: Based on Keith (O'Toole)'s comments regarding the ingress/egress easement, it probably is not necessary at this time.

KEITH O'TOOLE: That is my take.

JAMES MARTIN: All right.

DENNIS SCIBETTA: Only other thing I had was the condition of somehow making something stick that where those turn-arounds are, so no lights shine into the other houses. The landscaping, something that is put in there so that the homeowner can't remove it then if we have a problem with that. Being the condition of a flag lot.

JAMES MARTIN: Certainly, you know, as you design this, you know, whatever site barriers that are required to prevent headlights from shining in people's rear windows. The conservation easement, that is along the southern part of the property, because they're going to be coming downhill to those properties, and -- so --

MR. ROBERT AVERY: Adequate landscaping will be put in place to protect and guard against that.

DENNIS SCIBETTA: Jim (Martin), I would like a condition that it be placed in there, like a row of Austrian pines that maybe be made a condition between those, and that that is maintained.

MR. ROBERT AVERY: On the common property line?

DENNIS SCIBETTA: Yes. I'm sorry. Between Lots 2 and 3.

KAREN COX: Maintained under that driveway easement?

KEITH O'TOOLE: No. I think what he is referring to is the common lot line called out as 227.01, the distance, he wants to have a wall, I guess, what, between the corner of the house on R-2-B, on that line, that runs back to the sediment basin?

DENNIS SCHULMERICH: Lot line between R-2-A and R-2-B?

KEITH O'TOOLE: Yes.

DENNIS SCHULMERICH: Intention for that is just to define the property lines?

DENNIS SCIBETTA: No. To keep headlights, a visible break between those properties. A flat area between those -- anybody turning around in those driveways, it will shine into the other side of the house.

JAMES MARTIN: So you want -- you know, natural screen barrier between Lots R-2 -- R-2.

DENNIS SCHULMERICH: R-2-B and R-2-A.

MR. ROBERT AVERY: I would just indicate that we have to keep them clear of any swale so that the swale still works for its intent.

DENNIS SCIBETTA: Thank you. All in the same vein. Thank you.

BILL ARNOLD: How far off the road are these houses located?

MR. ROBERT AVERY: They vary. We're about 220 feet for the northern one, and over 300 on the southern.

BILL ARNOLD: My only concern is in conjunction with Town Code that the addresses clearly be labeled at the street and somehow be identified as to which way it branches out, which way is which for emergency traffic.

DENNIS SCIBETTA: Which does not alleviate the address on the house.

MR. ROBERT AVERY: With the 4-inch?

DENNIS SCIBETTA: Yes.

MR. ROBERT AVERY: You guys enforce that, right?

DENNIS SCIBETTA: Yes. Contrasting colors, if you want to go the full route of the code, so that we can see it.

MR. ROBERT AVERY: I live in a fairly new townhouse and I don't recall that they're that size. It is neither here nor there, in Chili.

DENNIS SCIBETTA: Get your tape out on that.

(Laughter.)

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

DOROTHY BORGUS, 31 Stuart Road

MS. BORGUS: Is there a federal wetland on this site?

MR. MYERS: Not on the site, no.

MS. BORGUS: No?

MR. MYERS: No.

KAREN COX: Next property.

MS. BORGUS: Next property. Thank you.

FRED TAURIELLO, 27 Laredo Drive

MR. TAURIELLO: You first said you had no comments from Monroe County Water Authority. Then the guy on the end was hammering you about that 4-inch water main; oh, yeah, they did mention that.

JAMES MARTIN: It is not a water main.

MR. TAURIELLO: I'm sorry, sewer main. So you are already contradicting yourself. Then there is a lot of stuff, "We're doing this because he can't afford this. And we're doing this because we can't afford that."

Well, that's like I want to make a high rise out of a cardboard box because I can't afford bricks. So you're doing all this work because you can't afford it. I will tell you something, the only thing that is holding back 120 feet of crap in a sewer ejecting line is a little 1-inch thin plastic flap. That is all it is, that comes with the pump. And being a plumber, if you ever have to snake that, you will get yourself a lot of stuff coming back. When we had all that rain that was what, Sunday, it was like a little river coming out of there right by number 25's house. All it has to take is somebody to plant a tree in that path and all of a sudden it is in number 25's house, or mine. It is all it takes. We need more than 30 feet of property between us.

I mean Mr. Hebrock, or whatever, even made the comment the last time, "I will show you, I will cut all of the woods down." The love of the land is not there. He bought the property, tried to put, you know -- he tried to extort the property, couldn't do it. And then now he is moving. So it is a win/win situation for him. And you have got to think is it good for the Town. Because he is long gone now. He is probably living somewhere else. Is he moving in Chili? You know what I mean? They're gone. So now --

MRS. HEBROCK: We're still residing at 151.

MR. TAURIELLO: Now.

JAMES MARTIN: One speaker at a time.

MR. TAURIELLO: They're gone. He already said he is moving. His house is for sale. That's for sale. I don't want to sit here and, you know -- and have to say, well, my basement got flooded because of this. You know. My basement got flooded just from what we had on Sunday, and that was with nothing.

If you look at Chestnut Ridge and you look at Laredo Drive, the pitch is just -- you know, it is just phenomenal. You need some kind of storm sewer back there. Where do you think the water is going to go running down that 20 foot road? It has to go somewhere. I mean the first thing they teach in plumbing is stuff rolls downhill.

And I call everybody a name, and nobody needs to apologize to -- to apologize for me either.

PEGGY LEE, 25 Laredo Drive

MS. LEE: Bottom of the hill. I'm opposed.

JAMES MARTIN: Thank you.

JOHN SIMONS, 159 Chestnut Ridge

MR. SIMONS: If we build these two houses here, and everything goes according to plan, what is going to stop everybody from there east all of the way to St. Pius to do the same thing? So now we have a housing tract all of the way down in the woods from here, all of the way east to St. Pius.

JAMES MARTIN: I can't answer that question. I know there are wetlands concerns and other issues in that property -- I don't know. I can't answer your question at this point.

MR. SIMONS: That has been a swamp for 30 years.

JAMES MARTIN: It is not delineated as wetlands.

MR. SIMONS: That is what you're saying. It is not a federal wetland, but it is a swamp.

JAMES MARTIN: We have to go by the map that is provided.

IRENE BRIXNER, Hartom Road

MS. BRIXNER: I would like to ask the Chairman if I could read a letter from one of the residents from that area, 33 Laredo Drive. She faxed this to me because she had to be somewhere else tonight, and she wanted me to present this statement to the Planning Board. Is it okay?

JAMES MARTIN: You're reading it on your behalf?

MS. BRIXNER: Yes, I am.

JAMES MARTIN: All right.

MS. BRIXNER: Well, I won't tell you where she has gone because I just explained to you. But one thing that is a concern is the location of the now proposed two houses.

"Will they be on the same location as the original homes? If so, then the previous objections should still be of legitimate concern.

Further, I believe that it is important to understand that the majority, if not all, of the houses on the north side of Laredo were purchased with the expectation that there was a wooded area to the rear of the houses.

This, in fact, was a factor in the purchase price of most of the homes. In fact, the seventh house from the Brassier field actually included in a recent newspaper ad reference to the fact that the home backs up to the woods.

Another factor in this whole deal is the creeping effect that this could have on the open land. It appears that Chili is the only town around that wants to get rid of parks and other open spaces while most towns are spending large sums of money to obtain such land.

Another consideration would be possible drainage and sewage problems.

Moreover, has this plan been seen by the Chili Fire Department for their input? It would be conceivable to expect that if houses are placed on the property in question, that the next homeowner, then the next, and then the next, et cetera, could sell their wooded land and we would have dozens of more houses making a congestion of houses out of the open space and thus destroying the natural environment.

In fact, I believe that this is happening now with the Vistas of Chili. Just about all available space in that area which used to be home of deer, has been destroyed. In fact, in the last flooding problem, both sides of Ballantyne Road were very much affected whereas previously we could expect Lake Archer, but not beyond. Now, the deer which we have never seen in our tract before"

--

JAMES MARTIN: Mrs. Brixner, is there something -- you're off the application. We're not talking about Ballantyne Road at this point.

MS. BRIXNER: They're saying that the deer are backing up in their properties now. They have never seen deer and all the deer are going back to their properties.

And thank you very much. I think that is very rude.

JAMES MARTIN: Is there a --

MS. BRIXNER: Thank you.

JAMES MARTIN: Is there a signature on the letter, please?

MS. BRIXNER: I'm sorry?

JAMES MARTIN: Is there a signature on the letter?

MS. BRIXNER: She typed it on and she would like me to give it to you, and -- and whatever. To you? Should I hand it to you?

JAMES MARTIN: Yes, please.

RAY BLEIER: Who signed it?

MS. BRIXNER: Florence Goodwin. I think she was here the last time. She just couldn't be here tonight.

JAMES MARTIN: I think the applicant and their engineers have done due diligence to control all of the impacts that may result, all right, from the development of this property to the best of their ability. Obviously we look to the Town Engineer to insure that the interests of the Town of Chili are maintained and all of the property owners in adjacent locations to this property are protected from flooding, from sewage problems and everything else.

Certainly we have no control over what happens to private property down the road or up the road, all right, from this particular development. That is the subject of future meetings, perhaps.

So are there other comments at this time?

TOM BOYCE, 157 Chestnut Ridge

MR. BOYCE: The neighbor that is west, the first one west.

First I want to commend the engineers for revising their plan. It looks better than what it did. My concern that hasn't been mentioned yet is how these two new homes will fit in with the looks and environment of the rest of the houses and the neighborhood. Most of the houses on Chestnut Ridge, like mine and my neighbors, are 50 years old, built in the 1950s. I couldn't hear from the surveyor because his voice was going that way about what style the houses were going to be. Could you tell me again?

MR. ROBERT AVERY: I believe they'll be similar to what the developer has been constructing in the Paul Road Estate Subdivision that he currently is working in, which is located on Paul Road, to the --

MR. BOYCE: What style?

MR. ROBERT AVERY: East of Chestnut Ridge. On the north side of the road, there is a 12-lot subdivision where he is constructing homes.

MR. BOYCE: Two-story?

MR. ROBERT AVERY: Suspecting it will be two-story.

MR. BOYCE: I just wonder how they will fit in with the whole looks and the ambiance of the neighborhood. I just don't want to see a redwood A-frame in the back there. I don't think it will --

MR. ROBERT AVERY: No. These will be very similar to what he is currently constructing in Chili.

JAMES MARTIN: I have seen his houses, and that particular development there. They are rather conventional looking two-story colonials. He builds a very good looking house. So I don't think that is a concern.

MR. BOYCE: One other question, I know the developer -- I commend him for it, is going to try to take down as few trees as possible, which is of concern to me because I enjoy the appearance of the woods as being my next-door neighbor. However, isn't it correct that once the person buys the lot of land, they can do what they want? And if they want to take down every tree, they can?

JAMES MARTIN: With the exception of the 30-foot conservation easement along the south edge of the property backing up to Laredo Drive, that would be exempted from anything they can do. But you're correct, if there is a tree that dies on the property, they have a right to cut it down.

Jim Martin made a motion to close the public hearing portion of this application, and John Nowicki seconded the motion. The Board unanimously approved the motion.

The Public Hearing portion of this application was closed at this time.

Jim Martin made a motion to declare the Board lead agency as far as SEQR, and based on evidence and information presented at this meeting, determined the application to be an unlisted action with no significant environmental impact, and the Board all voted yes on the motion.

Jim Martin reviewed the proposed conditions with the Board.

The Board discussed how to document the proposed landscaping.

The Board further reviewed the proposed conditions.

MR. SCIBETTA: I want that to be able to be overrode by the Building Department. I don't want to give up that ability to enforce that condition.

Jim Martin further reviewed the proposed conditions with the Board.

DECISION: Unanimously approved by a vote of 7 yes with the following conditions:

1. Pending Town Engineer approval.
2. A 30 foot conservation easement shall be provided along the south property line of Lot 2A and recorded on the site plan.
3. The sump discharge location shall be rotated to alleviate unnecessary easement concerns. Relocation to be approved by the Town Engineer.
4. Adequate landscaping to be provided to mitigate any privacy intrusions created by the subdivision either on or off site. Landscaping plan to be approved by the Conservation Board, but with provision for modification and approval by the Building Department.
5. A natural screening barrier should be placed between Lots R2B and R2A with no negative impact on the drainage swale or associated easements.
6. House numbers should be clearly presented at the driveway access at Chestnut Ridge Road and on the houses to prevent confusion in case of an emergency.

Note: Final resubdivision approval has been waived by the Planning Board.

MR. ROBERT AVERY: Did that include the waiver of final?

JAMES MARTIN: We did not make a motion to waive final.

DENNIS SCHULMERICH: Can we make that motion now, motion to waive final?

JOHN NOWICKI: Make a motion to waive final.

DENNIS SCHULMERICH: Seconded.

The Board was unanimously in favor of the motion to waive final.

JAMES MARTIN: I assumed it was in there.

MR. ROBERT AVERY: I didn't hear it. Thank you.

DARIO MARCHIONI: We don't want to see you again.

(Laughter.)

3. Application of Curves for Women, c/o Donna O'Neil, 125 Candy Lane, Rochester, New York 14615; property owner: Chili Plaza Properties; for preliminary site plan approval for a change of use in portion of building (space B-14/15) to allow a fitness center at property located at 3240 Chili Avenue in G.B. zone.

Gina Keyes and Donna O'Neil were present to represent the application.

MS. KEYES: Gina Keyes from Kravetz and Donna is from Curves. She would like to explain her application.

MS. O'NEIL: I believe I sent over to you, as far as what Curves was all about, it is a 30-minute workout, designed for women only.

I have been in the business for five years now, and I have been located in Chili for four and a half years in the Chili Paul Plaza. We moved in April of last year two doors into the building that we're in now, and that is what has caused some problems. Are there any questions as far as what Curves is about? No. Okay.

MS. KEYES: In regard to Curves' functioning in their current space, the drawings submitted with the application tonight show the handicap accessible facilities proper for the space and use. However, I have a question and I think I need to direct it to Dennis (Scibetta). One of the things that I was unaware of that I just learned this evening from Donna (O'Neil) was that her facility is for women only, and are we required to have a men's bathroom at a women's only facility?

DENNIS SCIBETTA: Let me explain that. Under the code purposes they don't -- there is poddy parity. I'm sorry. I don't make those rules. That is not my term. That is what they call it. But I do believe that they will allow -- I believe you are allowed to have a unisex in this case because of the facility being only for women. So I would rather defer that until I can check on it for sure and I can give you that application.

MS. KEYES: The paperwork is in your office for -- Dan (Kress)'s office for the building permit to do the interior work that is necessary to comply. So if it is not required, we would like a chance to revise those drawings.

DENNIS SCIBETTA: We could do that.

MS. KEYES: To try to give them back some of the floor space that they moved to gain that they're not getting now.

Anybody have any questions for Curves? I'm sure there must be questions about the plaza, which I know we'll get to.

JAMES MARTIN: I have read your letter regarding all of the site improvements underway or proposed to be underway. You're getting bids on a lot of the activity at this time. Hopefully we'll start to see some of the work completed. Obviously congratulations. I understand they won an award --

JOHN NOWICKI: You will be notified from Gates-Chili Chamber of Commerce that they won a beautification award for Chili.

JAMES MARTIN: I guess that is Bill Deans.

It is on its way.

MS. KEYES: In regards to the work outside that is still required, the dumpster enclosures are all being changed over. We did forward information regarding that. They are in process. I believe all of the shells, the three sides are in place for all of the units that are there now. The ones that were in the way of traffic, over on the Paul Road side, behind the Claridge space, behind Building 2 where Bill Gray's is, those are been removed or will be removed and will be put out back by Paul Road. Instead of having three different or two different corrals, they will be one that will hide three dumpsters, so it is it not just kind of plopped along the way. I think the design looks really good. I don't know if you have had a chance to go back there.

JAMES MARTIN: I wondered what those posts were in the ground for. That is where you're going to put them?

MS. KEYES: Yes. Three sides of everything is up now. It is just the doors that have to be put on. They will also address the Monro Muffler side as we. They will not rebuild the corral, but beautify the doors in the same manner that other ones are being done.

JAMES MARTIN: Obviously we have been up one side and down the other on site issues. I think there is still a concern about the traffic speed that goes down, you know, with the front -- the front of the property.

MS. KEYES: Yes.

JAMES MARTIN: The west side of the plaza there.

MS. KEYES: Yep.

JAMES MARTIN: You know, I haven't seen anything yet that addresses that or mitigates that issue. I still think it is a significant safety issue, and I don't know if you have any answers to that particular problem tonight for the Board or not.

MS. KEYES: I don't have any answers to give you. I know they're considering different solutions to that, whether they have speed dips or bumps. Speed bumps I guess causes certain damage to certain handicapped vehicles. That was brought to our attention by Tracy Logel. We were discussing remedies -- I don't know if you're familiar with the Charlotte area and all of the renovation down there. When you get down to the end, you can go left or right down there. Now when you go down there, as you make the turn, instead of having a stoplight or any kind of other traffic control device, they have the road that actually raised up to a crosswalk, so you come up onto it, and then you come back down off it, so it is gradual and doesn't cause damage to vehicles.

JOHN NOWICKI: Speed bump.

MS. KEYES: Very, very wide.

KAREN COX: Similar to what the city installed, three residential streets between Lake Avenue and Dewey Avenue, and they installed pretty wide.

MS. KEYES: Bernice Street has them.

JAMES MARTIN: I'm familiar with what you're talking about.

MS. KEYES: We're looking at things like that. I have heard talk of, and I don't want to over commit because that is not a good thing, but I have heard talk redesigning the parking lot and putting in proper medians to control and direct traffic properly, but I know that is sort of the last

end of everything that they're looking to address.

JOHN NOWICKI: The business, this young lady here, I don't have a problem with that. I'm just trying to figure out, we're getting decent weather here, and the parking lot, and the other issues and things that we discussed with the Planning Board months ago, something has to start happening here to get it cleaned up a little.

MS. KEYES: As far as the parking lot, the asphalt plants just opened, the Gates plant. We're in line with our contractors. So they're -- so they have us, I believe, scheduled to handle things.

JOHN NOWICKI: Will you put in any type of landscaping on the islands to break that up?

MS. KEYES: I don't know 100 percent enough to say yes to you. I could find out and address you guys with a letter so you know where we stand.

JOHN NOWICKI: Could you let us know on that?

MS. KEYES: Sure.

JOHN NOWICKI: How about some of the other issues we had with the Fire Marshal and the building and the Building Inspector? What about those issues?

DENNIS SCIBETTA: The issue of the fire lanes will be addressed Friday morning with the Fire Marshal, Dan (Kress) and myself. Supposedly the signs will go back up immediately. We have been assured of that. The meeting will take place at 10 o'clock on Friday morning.

MS. KEYES: Who you meeting with?

DENNIS SCIBETTA: With Jim (Christian).

MS. KEYES: The only thing I know about on that, I did check -- he was going over the letter of potential topics. I don't like to be blind-sided any more. The pillars that some of those signs go on have been damaged, and they're going to be redone so they were -- on some of them they were hesitating to put them back up.

KAREN COX: How were they damaged?

MS. KEYES: From the roofer. When they didn't seal the roof properly and we had all of the rain and the melt off, it popped the new Dryvit system, the EFIS off the pillars.

JOHN NOWICKI: If you could somehow show us a letter or even a sketch what they propose to do with that parking lot, because their intentions, as they told us, were to reconfigure landscape islands and so on and so forth. We want to see that.

BILL ARNOLD: As far as the fire lane signs go, can we possibly put temporaries in the meantime? There is no way enforcing the fire lane laws as long as those signs aren't there. Couldn't we put them in a concrete post until your posts get fixed? It is just a temporary issue.

DENNIS SCIBETTA: We'll address it Friday morning.

JOHN NOWICKI: You will pick up a lot of the issues on Friday?

MS. KEYES: Friday is just with the Fire Marshal.

DENNIS SCIBETTA: Some of them. That -- that is -- I believe the initial -- that is the one that I know about it. The reason I know about that, I believe Jim (Martin) has given them until the end of the month, until the end of April or whatever. He gave them 30 days, and they're within that 30 days, and this meeting, hopefully, will help the problem.

JOHN NOWICKI: Sprinkler systems fine, everything okay here?

MS. KEYES: I'm aware that has been cleared.

DENNIS SCIBETTA: Sprinkler system has been cleared.

JOHN NOWICKI: We're okay on that.

MS. KEYES: Yep. The other items on that list, if -- just to put it all out there, rooftop unit, I believe that they either have or they are going to be installing the poles for the system that is going to screen that. The poles are going to be attached to the exterior of the building. But they can't put up the screening and whatnot on the poles permanently until the coping is installed by the roofer. So once he sets his, we can put ours up against it and it will all be done.

The enclosure for the dumpsters, we talked about those. Lights in the parking lot have been repaired.

JAMES MARTIN: Is that true, because it seems like there are still some fluctuations which lights are on and which are off.

MS. KEYES: We'll check on the timers, but all of the electrical work and excavating work to have it done is done.

JAMES MARTIN: You don't have the timing sequence or something?

DENNIS SCIBETTA: It would make sense because we have been noticing it. They're on in different locations at different times, and it seems they're not on at all times.

MS. KEYES: I'll have them synchronize the timers. The parking lot in general we talked about. Fire lanes we talked about. Leaking roof. We fired our roofer. Got a new one. He did

Building 2 where Leaf & Bean is. He did that last week, and I think either late this week or early next week he is starting building one where Town & Country used to be. That should get wrapped up fairly quickly. I don't want to profess that I know, but it is not rocket science. If it could be done in a week, it should have been done.

JOHN NOWICKI: Wasn't there some financial management company moving in there?

MS. KEYES: Town & Country. Yes, it was. They did move in. Their name is Wealth Management Strategies. They're there.

JOHN NOWICKI: Still there?

MS. KEYES: Yes. To the far right.

JOHN NOWICKI: Monroe County Sheriff's Department, for the handicapped signs.

MS. KEYES: Did I miss that?

DENNIS SCIBETTA: Sheriffs have contacted us about the fire lanes and handicapped signs.

MS. KEYES: Is that on your agenda?

DENNIS SCIBETTA: I don't know if it is, but it probably will be. Along with those. That is part of that, I believe.

When you were here for the Town & Country rebuild, I think there was a discussion around the project plan actually being delivered, so we had some sense as to what the outstanding action items were and what the anticipated completion was? Did we receive that?

MS. KEYES: Yes. We turned in about 12 copies of that.

JOHN NOWICKI: Is that updated on a regular basis?

MS. KEYES: That looks like it. I don't do it myself, so I won't say yes, but I can ask for an updated version for you.

DENNIS SCHULMERICH: The only reason I'm asking for that, it seems like when you come in with an application, we go through these piecemeal, and if I just saw a project plan, status of the project plan, the discussions would be a lot briefer and you wouldn't -- we wouldn't be hassling you.

MS. KEYES: But we have so much fun.

DENNIS SCHULMERICH: I have a question for the applicant based on some input. There is a note there seems to be recreational vehicles or trailers frequently parked in the rear, to the west of the building, behind the business, and one such vehicle has been there for the entire winter.

MS. KEYES: Yes.

DENNIS SCHULMERICH: Not yours?

MS. KEYES: No.

MS. O'NEIL: I don't have a back door.

DENNIS SCHULMERICH: Then it can't be yours. We have to find out.

MS. KEYES: It belongs to the operators of Scrapbook Treasurers. I believe -- I will check to be certain, but that has been a provision of their lease -- not that it makes it right, but it has been a provision of their lease since Bernie Iacovangelo owned the plaza, so it is like we inherited this.

DENNIS SCIBETTA: We just recently found this out and we're researching the legalities of anything being parked back there. If it is parking or indeed storage as is, we have issues with that.

DENNIS SCHULMERICH: Sounds like they have an extension to the plaza.

DENNIS SCIBETTA: Exactly.

DENNIS SCHULMERICH: Trailers, comes up again. Okay. Then I don't have a question for you. I'm all set.

JOHN NOWICKI: This business is a health spa for women? Is that what it is?

MS. O'NEIL: 30-minute workout circuit training.

KAREN COX: You can't go, John (Nowicki). You're not allowed.

(Laughter.)

DARIO MARCHIONI: How is business?

MS. O'NEIL: Very good. Chili is a good area.

DARIO MARCHIONI: Congratulations.

DENNIS SCHULMERICH: Actually, I do have a question for you. The Board has on frequent occasions had an opportunity to challenge the plaza owner about the safety of that right-of-way, the driveway. You have a business right there. What is your perspective on the traffic flow, the speed, the safety issue associated with that? Do you see it as an issue, or are there no problems?

MS. O'NEIL: I -- really, being there for the five years, it has slowed down a little bit because most of the people seemed to be going to Leaf & Bean now, the other direction.

But the biggest issue that we have is the skateboarders with kids. That stopped.

JOHN NOWICKI: That is a good question. I do frequent the Chinese restaurant in there and the new place, the bookstore. If you haven't been there, try it. It is a unique one.

The speeders still are a little tricky through there. So you got to find some way of slowing them down. That is still a problem there.

MS. KEYES: Absolutely.

JOHN NOWICKI: If you get that parking lot configured, the islands and some direction, and controls in there, you will not have a problem.

DENNIS SCHULMERICH: Speed control on your project plan would be a great bullet to add.

KAREN COX: Do we agree that quite a bit of it is cut-through traffic from Chili Avenue and Paul Road?

MS. KEYES: Absolutely. I have been there and had to step aside myself.

JAMES MARTIN: One other issue, it has been brought to our attention that oftentimes some of the clients I believe of Curves ignore the handicapped -- there still are some signage issues that have to be resolved, but they tend to ignore the handicapped parking situation there, and it would be helpful to put up a small sign or something, "please pay attention to the handicapped parking spaces." I understand there was an incident that happened with the Supervisor of the Town where they were not able to get their handicapped accessible van open because somebody had parked near a -- so close to them they couldn't use it. So just a subtle reminder to your clients that they're there for a purpose and they should --

DENNIS SCHULMERICH: That is not specific to Curves. That is probably more generally the whole plaza.

JAMES MARTIN: Just happened to be one of your clients.

DENNIS SCIBETTA: The other one that we would -- we would like to get -- the roofing, would like the roofing contractor to have a conversation with me. It's never been said before, and I really didn't want to say that here, but I would prefer that he call me and talk to me about the roof. I'm extending an invitation for him to call me and suggest for him to call me.

MS. KEYES: Okay. What number?

DENNIS SCIBETTA: Our 889-6143.

MS. KEYES: Okay. His name is Bob Robinson. So when he calls, you will know it is him.

DENNIS SCIBETTA: I already had some discussions with him, and I would like to further those conditions.

JAMES MARTIN: I won't list that as a condition.

DENNIS SCIBETTA: Please don't. Sorry.

MS. KEYES: I have a question. Am I in the wrong spot?

JAMES MARTIN: You can ask question.

MS. KEYES: Can we put our sign back up?

JAMES MARTIN: What sign?

MS. KEYES: The Curves sign that advertises that she exists there. We were asked to take it down.

JAMES MARTIN: Well, it is because of -- Dennis (Scibetta), there was a request to put their sign up. I assume that is dependent on an inspection, correct? There is a request that they reinstall the sign for Curves. I'm assuming that is subject to some sort of inspection or approval at this point.

DENNIS SCIBETTA: If I remember right, and you will have to correct me if I am not, I believe it was withdrawn by the sign maker. He probably still has the sign. All it needed was the proper application, and this to be approved, I believe, so --

MS. KEYES: If we get our approval tonight, the sign maker can make his --

DENNIS SCIBETTA: I would resubmit that application and we'll see -- or see if it is still on file.

MS. KEYES: Okay.

DENNIS SCIBETTA: The sign maker was the one that pulled that application from us. And that is when we found out he took the sign down. That wasn't a requirement of ours. It wasn't a request of ours.

MS. KEYES: But we couldn't put it back up because nobody would hear applications. Okay. I will check with the Skylight Signs.

DENNIS SCHULMERICH: Is that Planning Board or Zoning Board?

DARIO MARCHIONI: They're not there legally, yet --

DENNIS SCHULMERICH: They have been there. They have been there for over a year.

JAMES MARTIN: That is part of the problem.

DENNIS SCHULMERICH: I'm with the program now, okay.

DENNIS SCIBETTA: Thank for dragging that through, Denny (Schulmerich).

DENNIS SCHULMERICH: I'm with you now.

BILL ARNOLD: Did I hear you say you don't have a back door?

MS. O'NEIL: That's correct.

BILL ARNOLD: Do you have a second way out?

MS. O'NEIL: No.

BILL ARNOLD: Is that a code issue?

DENNIS SCIBETTA: No. Fire Marshal is aware of that and has given approval.

BILL ARNOLD: Secondly, from the realty company, is there a way you could forward a site plan or an occupancy diagram to the Fire Marshal and possibly to the Fire Department as well so we know who is where?

MS. KEYES: Sure. Do you require contact information for each tenant?

BILL ARNOLD: That would be wonderful, if you had it.

DENNIS SCIBETTA: The Fire Marshal does have that.

MS. KEYES: They will never send me here again.

BILL ARNOLD: As long as the Fire Marshal has it, you can update him, or he could send the Chief of the Fire Department a copy.

DENNIS SCIBETTA: I don't mean to seem like I'm picking on them. The back doors have been labeled, and the correct tenants have been put on most of them. There are still a couple that we have to get that taken care of.

FRED TROTT: The traffic concerns in the plaza you have addressed.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

DOROTHY BORGUS, 31 Stuart Road

MS. BORGUS: I would just like to make the comment it is quite interesting to sit here and hear all of the things that were, quote, legal, unquote, when Mr. Iacovangelo owned the plaza and now they're being deemed illegal and being fixed. It is quite amazing. Thank you.

Jim Martin made a motion to close the public hearing portion of this application, and Dennis Schulmerich seconded the motion. The Board unanimously approved the motion.

The Public Hearing portion of this application was closed at this time.

Jim Martin made a motion to declare the Board lead agency as far as SEQR, and based on evidence and information presented at this meeting, determined the application to be an unlisted action with no significant environmental impact, and the Board all voted yes on the motion.

John Nowicki made a motion to waive final approval, and Dennis Schulmerich seconded the motion. The Board was unanimously in favor of the motion to waive final.

JAMES MARTIN: Final is waived.

DECISION: Unanimously approved by a vote of 7 yes with no conditions.

Note: Final site plan approval has been waived by the Planning Board.

JAMES MARTIN: I excuse Karen Cox at this point due to personal commitment. We have concluded the formal part of the hearing tonight.

INFORMAL:

1. Application of 1436 Management, Inc., owner; 1436 Scottsville Road, Rochester, New York 14624 for final site plan approval to allow the sale, repair and rental of automobiles at property located at 1434 & 1436 Scottsville Road in G.B. zone.

Robert Avery was present to represent the application.

MR. ROBERT AVERY: Robert Avery from Avery Engineering here on behalf of the Evanses who are unable to be present this evening.

We have -- I don't quite know how this will pan out because I know the Evanses have to appear before the Board in the fall, but we have submitted, in any case, coming back for final and taking into consideration a few of the items from the appearance before you on February 8.

JAMES MARTIN: I'm assuming that you're going to address the site plan issues that we cited.

MR. ROBERT AVERY: Yes. I'm unable to answer any questions about housekeeping of the property. Just my plan.

JAMES MARTIN: I think you can go ahead and indicate that, you know, from your standpoint, you know, you have gone ahead and made all of the modifications to the site plan that were requested.

MR. ROBERT AVERY: Yes. I can't build it. I can change my map based on the comments, but I am not the overseer of the --

JAMES MARTIN: Go down through the list and tell us what you have done.

MR. ROBERT AVERY: All right. Pending approval of the Town Engineer, we're not ready to give it to him for a signature yet, so that is not done.

Conditional use permit has been approved until the October 11th Planning Board meeting, at which time comprehensive review of all current and previously imposed conditions will be held to insure compliance. That is going to occur at that point in time once some of these issues are handled at the site.

No vehicles parked on premises shall encroach on to the right-of-way. Well, we have revised our map and placed a note on there under parking notes that no vehicle parked on premises shall encroach onto the right-of-way.

Item 4. Pavement changes will be spelled out on the site plan. Well, we have indicated in the front area where the existing asphalt pavement and concrete is located, that all areas of the broken asphalt are to be resurfaced. There is one section of concrete pad in the front that the applicant wanted to remain, if possible, and not pave over, so we have made that note on the drawing. A lot of this going to be subject to the on-site inspection by the Town officials.

KEITH O'TOOLE: Excuse me, Bob (Avery). When you say "resurfaced," resurfaced with what?

MR. ROBERT AVERY: Asphalt.

KEITH O'TOOLE: Thank you.

MR. ROBERT AVERY: Item 5, landscaping will be completed in accordance with the approved plan. They haven't started the landscaping yet, because it is still mid April.

Parking spaces will meet requirements imposed by code or applicant will seek necessary variances. I actually was awaiting some sort of a ruling based on the use of this building from Dan (Kress), and I didn't receive it yet as to what his reading of the code was for the required number of parking spots, but we have gone ahead and specified per Item 9, and Mr. Bleier I think wanted that shown on there as well, where these vehicles -- a scheme for where he should be parked. We have done that on the drawing which follows pretty much right where his display vehicles are, showing the eight in the truck display area, right in the front of the main building, just to -- off opposite the proposed landscaping of the Bradford pears. Show eight vehicles there internally. He has his trucks parked there. Over and against -- to the north of that I'm going to say we show another four vehicles in the vehicle display area. I think he has currently had trucks in that area, as well.

As you know from driving by the site, he generally has a couple of buses stacked in front of the building there. We have shown that there is enough room for three. Whether he ever has three there or not, I'm not quite certain. I have seen two there. I think two is what he generally has. If you go to the south of the last bus, you will see we have indicated a marked handicapped slot by the entrance. Along the southerly line we have six parking spaces, and actually -- that is supposedly for customers, because we have moved all of the employee parking spaces to the rear of the building. As you see, seven employee parking spaces. There is a door on the back of the building that can access right from the building from there.

Moving over to the old Gaseteria site or whatever that station was, we pretty much mapped where he has stacked his vehicles for sale right now in two rows, kind of under where the canopy is. We have 20 in this whole group here. As I indicated the last time we were here, he doesn't use the northerly access off of Scottsville Road on the old gas station parcel. So we have shown 20 there, which is generally -- which is basically what he has. And also, on the division line between the parcels, because the map is not recorded yet because we only have preliminary subdivision

approval, we have shown 12 vehicles in that area for display, as well. So all and all total we have shown display vehicles 44. We have also shown three customer parking spaces behind the old gas station building. In the rear we have shown an area for parking for not only buses, but vehicles that they're working on. So once again, 44 display vehicles, 9 customer parking spaces, 7 employee, 1 handicapped, and 3 in the temporary bus staging area in the front of the building.

So we have mapped accordingly. It is pretty much true to what he has going on out there now, based on a site visit.

Once again, Item 9, he never got a ruling as to what the code read on what the requirement was supposed to be. I have kind of shown what the maximum number vehicles that can be fit on the parcel is just based on the drawing.

All building improvements will be spelled out in a site plan. Well, once again, with the client not here, I can't speak for his facade improvement that he had presented to you at the last meeting. But anything in that nature, of course, would have to go through the Building Department. So I basically have done everything that I gathered from our previous meeting, and placed it on our site plan drawing.

And speaking on behalf of the client, and I can only do so on a limited basis, he is aware of the importance of getting out and starting the site cleanup, and continuing to meet all of these previously placed conditions so that we can move on with this.

JAMES MARTIN: I guess -- I don't know. I don't know what contractual agreement. I think you have fulfilled your part. You have done what we asked you to do, delineating the parking spaces and all that. I don't know the answer to the question with maximum number of vehicles. I went through the code again. I really couldn't delineate anything in there. There is automobile repair. There is -- I couldn't find anything that was specific to this particular vocation, so I don't know how to answer that question. I don't know if Dan (Kress) has researched it to the point that we know the answer, but I couldn't find it.

DENNIS SCIBETTA: I couldn't tell you on that either, Jim (Martin), and it is a difficult situation, but just for what it matters, this issue has been coming you up now -- I have been here four years almost. This issue has come up time and time again. None of the preexisting conditions have been met at this time.

JAMES MARTIN: I know.

DENNIS SCIBETTA: I don't even think -- in all respect to Mr. Avery, I don't think that, you know, we should waste his time, but --

JAMES MARTIN: Well, I think -- for his benefit, I mean, he has done -- you know -- they may come back to you, because right now I feel moving ahead with this would be ridiculous. We can't go ahead with this.

MR. ROBERT AVERY: I have done basically all I can do on the site plan drawing. I can't --

JAMES MARTIN: You have done all you were asked to do.

My proposal would be, you know, that we table this. I mean there are just too many things that haven't been done. The applicant himself is not here. That would be my suggestion, that we table this.

KEITH O'TOOLE: What can we do with this guy legally? This guy is ignoring us for years. Can't --

JAMES MARTIN: He has been in court once.

KEITH O'TOOLE: My understanding is the last time we were here we gave him until October to get his house in order. Now -- or on October 12th, whatever the day after is, we bump him. We drag him into court and whack him again and again and again.

JOHN NOWICKI: We have to whack this guy very good.

KEITH O'TOOLE: I have great familiarity with this property.

DARIO MARCHIONI: He got this from Spector, right?

MR. ROBERT AVERY: Until he meets the conditions, I can't continue any further with the final site plan or for final subdivision. I can't file the map.

JOHN NOWICKI: All of the conditions must be completed by October 11th, 2005. So mark your --

KEITH O'TOOLE: Presumably if you're satisfied with the site plan, then the burden falls on him to actually install the improvements. Without the site plan approval, he is not going to install the improvements. That is the problem. So if you're comfortable with the site plan, then I would say approve the site plan which hardly guarantees anything will be implemented. It is just paper, after all. If there are a couple stray issues that need to be resolved, like the parking calculation, I would suggest to you make it subject to the approval of the Building Inspector and the Town

Engineer as to how those items get calculated and laid out, if necessary.

But as I said, nothing is going to be done until we have a plan.

DENNIS SCHULMERICH: October 11th means nothing if we don't approve –

KEITH O'TOOLE: Right. "How could I install the repairs and asphalt and everything else unless you said" –

JOHN NOWICKI: I marked my calendar, October 12th, Pat Evans taken to court.

KEITH O'TOOLE: I will accept supporting depositions from anyone that wants to follow.

DENNIS SCIBETTA: How did this vary from the original site plan that was approved, and why haven't those conditions been held --

KEITH O'TOOLE: Let's not go there.

DENNIS SCIBETTA: I have been asked not to ask that.

JAMES MARTIN: Basically they have done what we asked on the site plan, the delineation and all that. If I understand under advice of counsel, if we don't approve this tonight, we really -- he can't get started. So here we are between a rock and a hard spot with somebody who --

JOHN NOWICKI: We're going to get screwed here, surely I know. I'm sorry.

KEITH O'TOOLE: If that occurs, John (Nowicki), it won't be because you approved the site plan.

JOHN NOWICKI: I hope not.

JAMES MARTIN: I understand.

DENNIS SCHULMERICH: What is our best course of action to try to have some leverage?

JAMES MARTIN: We have got it in -- you know. He has until October 11th.

DENNIS SCHULMERICH: If we approve this.

KEITH O'TOOLE: Has nothing to do with this. His conditional use permit expires on the 11th, unless he gets an extension from the Planning Board. He is not going to get an extension from the Planning Board unless he actually implements the site plan.

JOHN NOWICKI: All of the conditions.

JAMES MARTIN: And all previous conditions.

KEITH O'TOOLE: So the sword has been hung in the air. We just need to wait until October 12th to see if it drops.

DENNIS SCHULMERICH: No more motivational elements that we have to approve this site plan.

KEITH O'TOOLE: Not motivational. It is a prerequisite before he could hire the contractor.

JAMES MARTIN: I understand that now. I didn't understand that before. Okay.

RAY BLEIER: Isn't the conditional use permit for the operation excluding the repair and this repair is a separate issue from the conditional use?

DENNIS SCIBETTA: That is what I was asking, the original approval he had when he first came in, are we redesigning that or giving him leeway on his original agreement?

JAMES MARTIN: The application that we addressed at the February meeting was application for preliminary site plan approval to allow the sale, repair and rental of automobiles at this property.

RAY BLEIER: That's one.

JOHN NOWICKI: That's one.

RAY BLEIER: Then there was a conditional use.

MR. ROBERT AVERY: There were three applications.

JAMES MARTIN: I'm sorry. Then the next one, application for conditional use permit, use permit to allow motor vehicle repairs at property located – okay.

And then we also approved to combine the two lots into one lot so there was subdivision approval at the February meeting. So all three of those were addressed at that meeting. But all conditions that applied to the site plan also applied to the other applications.

DARIO MARCHIONI: Are we making comments on the site plan?

JAMES MARTIN: Be my guest. I mean I think -- what are we going to say? He has done what we have asked him to do.

DARIO MARCHIONI: First of all, you know, he has all these buses parked on somebody else's property, and he says he has an egress easement, existing egress agreement with Niagara Mohawk. Did you ever get a copy of that?

KEITH O'TOOLE: I have seen -- I saw the one that said Spector had executed. And they represent that they have extended it.

DARIO MARCHIONI: Does it cover parking the vehicles, or storing of the vehicles, or --

KEITH O'TOOLE: Generally speaking, with rights-of-way, they don't mind if you cross it.

DARIO MARCHIONI: I mean egress, you drive through something. You --

KEITH O'TOOLE: It is actually a lease is what it is.

RAY BLEIER: This is a bit of a stretch. I mean -- to my way of thinking.

DARIO MARCHIONI: Also, part of the property here, which is in the New York State -- State of New York, which I think is part of the Greenway or something, the fence is in that property. Does he have an agreement with them on the south side?

MR. ROBERT AVERY: Part of the chain-link fence encroaches over the southerly boundary line clearly on the map. We're not purporting any vehicles in that area, no.

DARIO MARCHIONI: Can we regrade the gravel, storage of stuff there?

MR. ROBERT AVERY: I think that is an existing condition when we purchased the property. We're not showing any parking on the State property.

JAMES MARTIN: That was addressed at the last meeting. It was an existing condition.

MR. ROBERT AVERY: That fence was there when he bought it.

RAY BLEIER: Whoever heard of three customer parking spaces to the very rear of the property. You know? This is so ridiculous.

MR. ROBERT AVERY: It is behind the display vehicles. People can walk here and then walk through the display areas.

RAY BLEIER: I can't picture anybody driving back there to find that parking spot. I really can't.

MR. ROBERT AVERY: We have actually shown the plan -- there is one drafting error on that map, it should be labeled strictly customer parking along the line with the diner there.

RAY BLEIER: Right. That I can appreciate, but the other one behind the old gas station --

MR. ROBERT AVERY: Once again, I was waiting on some sort of a ruling with this convoluted use of this parcel, and even as Dennis stated, he said he can't determine what the -- what the code -- what the density requirement is for this use. I don't know. I'm waiting for a ruling from the Town.

RAY BLEIER: When I was there the other day, he is double-parking buses in the front, side by side. And over where the gas station is, I pulled into Logan's parking lot over there and I was looking. There are cars to the northeasterly parking there. He has a whole bunch of vehicles over there.

MR. ROBERT AVERY: On somebody else's property over there?

RAY BLEIER: No. They're on this parcel in question here.

Right next to the one-story masonry building. He has about four vehicles, you know, parked over there.

KEITH O'TOOLE: You know, Ray (Bleier) -- if I may interject --

RAY BLEIER: I know it is not a final approval, and he doesn't have to conform to this layout.

KEITH O'TOOLE: Ray (Bleier) does make a rather valid point. You don't need a site plan to park a vehicle. You might want to remind your developer that he could demonstrate to us over the next six months or so that he knows how to park a car without putting it in the right-of-way, and things of that nature.

MR. ROBERT AVERY: We have stressed it to him.

KEITH O'TOOLE: I suspect you have.

DENNIS SCHULMERICH: I have a question regarding the current business aside from the application before us. If this business continues to be in violation of the existing conditional use permit, why are we not citing them on a daily basis now?

KEITH O'TOOLE: We gave them an extension basically until October 11th.

RAY BLEIER: To get in conformance.

DENNIS SCHULMERICH: Irrespective of this particular application in front of us? In another document we gave them an extension.

KEITH O'TOOLE: This was part of that. Our normal practice on conditional use permits tends to be when someone is through the door the first time, we give them one year and then we extend it beyond that, sometimes three, sometimes five, sometimes more.

In this instance, because of the history of the property, the Board had concluded at the time it might take time to come into compliance. October was a good date. Asphalt plants were open. Landscaping takes time to coordinate, but after October you have run out of excuses. As I said on October 12th, the fun will start.

JOHN NOWICKI: Why don't we table this until October 12th?

KEITH O'TOOLE: He needs the site plan to hire the contractors to do the work.

JOHN HELLABY: Otherwise he will come back and say, “You never told me I could do it.”

DENNIS SCHULMERICH: Catch-22. We know what will happen when we do this, but if we don't --

DENNIS SCIBETTA: If you give them the approval, is there any way we can put a condition on it that this work starts and commences in a timely fashion?

KEITH O'TOOLE: No. Let's not go there. October 11th is our date.

JAMES MARTIN: As Keith (O'Toole) said, we have the sword hanging.

JOHN NOWICKI: That's it.

JAMES MARTIN: We're in a rock and a hard spot.

JOHN NOWICKI: I'm ready to get this to a vote. October 12th, mark our calendars and get him to jail.

Jim Martin made a motion to declare the Board lead agency as far as SEQR, and based on evidence and information presented at this meeting, determined the application to be an unlisted action with no significant environmental impact. The motion was approved by a vote of 5 yes to 2 no (Ray Bleier, John Nowicki).

DENNIS SCIBETTA: Site lighting was asked by the Town Counsel to remove.

KEITH O'TOOLE: The site lighting was lighting on the ground.

DENNIS SCIBETTA: It was an original bone of contention in the first place.

JAMES MARTIN: This is for final site plan approval.

RAY BLEIER: No.

JOHN HELLABY: Yes.

JOHN NOWICKI: No.

DENNIS SCHULMERICH: Everything in my being says I should vote no, but on advice of counsel, if we want leverage to deal with this down the road, which will probably result in court action, I have to vote yes.

DARIO MARCHIONI: No.

JAMES MARTIN: Yes. We have a tie.

DENNIS SCHULMERICH: What leverage do we have on October 11th?

KEITH O'TOOLE: Not much. You might want to tell Mr. Avery what deficiencies you have identified in the plan.

JOHN HELLABY: Site lighting for one. I don't see any on here.

KEITH O'TOOLE: Those that voted no --

JAMES MARTIN: I guess I would like to hear your rationale for voting no, okay?

KEITH O'TOOLE: Without the back story about the property owner. Not trying to be --

JOHN NOWICKI: You get to a point where you have cow-towed to this guy over the years and he has done nothing at all to try to comply with anything that this Town Planning Board or community has wanted him to do over there. He has just -- just a bad guy all of the way around. I mean if you really sincerely feel that we will have more leverage with him on October 12th bypassing this final thing, I will change my vote, but I just -- I am just very uncomfortable giving this guy anything else. He has not done anything else to show me he deserves the respect of this Board.

JAMES MARTIN: By not approving it, we have given him another out.

KEITH O'TOOLE: That is the issue. You can -- if the Board approves a site plan, all you're doing is approving the paper. You're not approving the people behind it. And I'm not referring to the engineer, by the way.

JOHN NOWICKI: The engineer, I have no problem with him.

JAMES MARTIN: He has done his job.

JOHN NOWICKI: He has done his job. I have no problem with him. It is Pat Evans. Can I change my vote? I will change it then.

JAMES MARTIN: Mr. O'Toole, what do --

KEITH O'TOOLE: Since there is a no action, you can revote.

JAMES MARTIN: Okay. There was a no action. I make a motion that we revote on this application.

DARIO MARCHIONI: Can we all make our comments now? I mean I --

JAMES MARTIN: Can I get the -- can you do your comments?

DENNIS SCHULMERICH: He wants to comment why he voted no.

DARIO MARCHIONI: You got a chance.

DENNIS SCHULMERICH: You asked for that in terms of -- why people voted no.

KEITH O'TOOLE: Are there changes to the plan that would make it better is the question?

JAMES MARTIN: That is the question, and -- can we do a motion to revote and then entertain comments?

DENNIS SCHULMERICH: So moved.

JAMES MARTIN: Okay.

Seconded it.

RAY BLEIER: To revote, go ahead. Sure.

The Board unanimously was in favor of the motion to revote the application.

JAMES MARTIN: Now, I will entertain comments as to what significant changes you would like us to ask for on the site plan that drove you to vote no the first time.

DARIO MARCHIONI: Well, as I started with me, I think the whole general appearance of this whole building. The roof is rusting out. The building itself looks like a shack. I mean I don't see any park --

JOHN NOWICKI: Parking lot, fence.

DARIO MARCHIONI: It is just terrible. These are not even things that have to do with the site plan. The building itself.

JOHN NOWICKI: Is he in compliance? Do we have compliance?

DARIO MARCHIONI: This is the worse building in the whole street.

JOHN NOWICKI: Do we have Fire Marshal's approval he could operate? Do we know what is in the building? How about the gas tanks, the storage tanks? Safety considerations? Holy cow.

JAMES MARTIN: Let's settle down here. One at a time. Give me a specific. I can't write down these generalities, okay?

DARIO MARCHIONI: The we have been fooling around with this piece of property for so many years under Spector and allowing this, ba da bing, ba da bing and it never comes to any conclusion. I think it is about time to say no.

JAMES MARTIN: That is an opinion. Do you have something specific you want me to write down that you want on this as a condition of approval?

DARIO MARCHIONI: Too many vehicles all over the place over there.

JAMES MARTIN: So you would like him to reduce the number of vehicles on site.

DARIO MARCHIONI: Especially these back to back. For better circulation. That's it.

RAY BLEIER: Before he came in here to get final approval, you know, I would have liked to have seen some good faith on the part of the applicant to show and come in with a, you know, a better plan for the storage of all these vehicles, and, you know, apparently, you know, he is cramming these things in all over the place. He is double parking, and all these other things. He has to come forward in good faith. You know, most applicants, they dress up their property a little bit, trying to get an approval. Site plan, conditional use. Not this guy, no way.

JAMES MARTIN: He did propose some cosmetic improvements to the building. But that is part of -- it is part of what he has to do.

DARIO MARCHIONI: He should do that automatically without us pushing him into it.

JAMES MARTIN: He has until October 11th, Dario (Marchioni).

DENNIS SCHULMERICH: That is the question. It becomes a question what leverage do we have now between October 11th.

JAMES MARTIN: He goes out of business on October 12th if he doesn't conform.

DENNIS SCHULMERICH: If we don't approve the final, do we have any alternatives on October 12th? Do we need this site plan approved to a final to enable us to have some leverage on October 12th? If the answer is yes, that is the only reason I will vote yes.

JAMES MARTIN: That is what I heard counsel to be telling us, if we don't do this, he has another out to say you never told me, you never approved my site plan.

KEITH O'TOOLE: By the same token, however, if there is something wrong with the site plan, now is the time to get it down.

JAMES MARTIN: Now is the time to get it down. That is what I am asking for, fellow Board members, what are the specific things you want me to put into this to put some more teeth into it?

JOHN NOWICKI: What about all of the conditions that we asked for over the last two or three years?

JAMES MARTIN: They already have been cited. All previous conditions.

KEITH O'TOOLE: Most of that actually builds into the conditional use permit.

JOHN NOWICKI: It comes here October 12th, I expect Mr. Keith O'Toole will take serious action along with other members of this Town.

JAMES MARTIN: It is getting late. Do you have some specific issues you want me to put down on this final site plan approval or denial tonight --

JOHN HELLABY: Site lighting.

JAMES MARTIN: -- to refer to the site plan?

This is ancient history. We already said you got to meet all of the previous conditions.

JOHN NOWICKI: Just call for the revote.

JAMES MARTIN: I have reduce number of vehicles on the site.

JOHN NOWICKI: Lighting doesn't meet Town standards.

RAY BLEIER: I personally don't like the storage of the vehicles on -- off his own property.

The Board discussed the proposed conditions.

JAMES MARTIN: If he had an agreement with the property owner, either by lease or something to allow him to store the vehicles on the property, that would be acceptable, correct?

DARIO MARCHIONI: Are we doing site plan on somebody else's property?

JAMES MARTIN: If I cite that as a condition, is there any legal, you know, teeth in it?

KEITH O'TOOLE: You could. A lot of people -- Curves for Women, is a leased space so they have their right to use the space. I wouldn't locate any critical -- in light of the history of the property, I won't locate any critical elements off site. That is for sure.

JAMES MARTIN: How should I word that?

KEITH O'TOOLE: If you don't want the spaces there, just remove them.

JAMES MARTIN: Remove off-site storage from site.

KEITH O'TOOLE: The Town's position, frankly, is more about the curb appeal of this property. Once we get done with the safety issues.

DENNIS SCHULMERICH: Any questions on the structural integrity of the building that need to be verified?

KEITH O'TOOLE: Building code issue.

JOHN NOWICKI: What about ADA?

DENNIS SCIBETTA: Again, that is something that would be covered under that.

JOHN NOWICKI: Call for a vote.

KEITH O'TOOLE: If I may, because -- I know it is late, but I'm tired of hearing this. If there are any of these spaces you don't want, why don't you just X them out and hand them to Mr. Avery and he will know exactly what it is he has to remove so there is no misunderstanding. I know Dario (Marchioni) had concerns. Ray (Bleier) did.

JAMES MARTIN: All right, guys. There you go. That is my contribution.

The Board discussed what proposed parking spaces they didn't like.

DENNIS SCHULMERICH: I think we're on thin ice because we have not provided the engineer with a maximum allowable parking space and now we're using personal preference to identify how many parking spaces we want to remove.

JOHN NOWICKI: Call for a vote and let's get on this thing.

DENNIS SCHULMERICH: Am I off base there?

DENNIS SCIBETTA: You may be, because the conditions for those parking spaces may not be there. I think that is what the quandary is about this. There may not be anything that tells us that he has -- that he could have -- those aren't parking spaces. The problem is that is not a parking space. That is a storage space. You're using his as a car dealership, a lot with items being sold. It is not parking --

JAMES MARTIN: It is inventory.

DENNIS SCIBETTA: -- under the definition. So I don't think we should be determining if they're parking spaces.

DENNIS SCHULMERICH: Okay. I agree with you on that. That is part of the problem we're researching.

I want to make sure if we make changes, we're well founded in our changes.

KEITH O'TOOLE: Make it subject to the Building Inspector and Town Engineer's approval, as I said earlier.

JAMES MARTIN: On the revote.

Jim Martin reviewed the proposed conditions with the Board.

DECISION: Approved by a vote of 4 yes to 2 no (Ray Bleier, Dario Marchioni) with the following conditions:

1. The number of vehicles on site for sale, repair or commercial use shall not exceed the number of spaces shown on the site plan. Parking spaces provided for customer or employee parking shall not be used as overflow spaces to offset the above limitation.
2. All town code lighting requirements will be met.
3. Pending Building Inspector and Town Engineer approval.
4. All previous conditions imposed by this Board are still in effect.

FOR DISCUSSION:

1. Carriage Enterprises, Inc., - proposed change of use to allow a paving/landscaping business at property located at 271 Paul Road in L.I. & FPO zone.

Steve Carozza was present to represent the application.

MR. CAROZZA: Just that. I would just like to be able to use the property for a landscaping and paving business. The building was originally built for a paver. I'm looking at purchasing it, and I would like to have the use switched back to paving and landscaping.

JAMES MARTIN: That was the former --

RAY BLEIER: ServPro.

JAMES MARTIN: What do you plan in the way of any outside storage of equipment, that type of -- something that might be related to your business?

MR. CAROZZA: I have trucks and trailers. Everything outlined in the letter that I sent.

JAMES MARTIN: That will be stored outside of your building?

MR. CAROZZA: Yes. There are only two bays inside the building.

JAMES MARTIN: How much of that is this going to be? You have trucks. Ten, two.

MR. CAROZZA: No. I have three -- one ten-wheeler and two six-wheelers, and a couple pickup trucks with plows. And then landscape trailer and backhoe trailer.

JAMES MARTIN: I don't know if you're aware of the fact or not, but there are some plans on moving forward that could modify or change the route of Paul Road in that particular location fairly substantially. And I don't know if there would be any adverse impact on your business as a result of that. I think it is something that you should be aware of. Paul Road, you know, the possibility is it will be rerouted and it will be a fairly substantial bridge over the railroad tracks to carry Paul Road over the tracks so there is no more on-grade crossing at that particular location. And the way that it is going to happen, it is going to curve, kind of in the direction, I do believe, that it could have some impact on your business. I think you should be aware of that. I don't know what it would mean to you. But anyhow, all right.

JOHN NOWICKI: You know, just -- are you in the process of purchasing this property?

MR. CAROZZA: Yes.

JOHN NOWICKI: Because in your letter here, you indicate not only are you in the landscaping business, but you also indicate you're in the paving business.

MR. CAROZZA: Correct.

JOHN NOWICKI: And I think in this particular case, that site is somewhat limited, I think, for all of the equipment that you are talking about. I would like to see some kind of a layout of how you plan on putting all of the equipment on the site, and then you indicate storing mulch and topsoil and all kinds of stuff there. I think we have got to have some kind of an idea how this thing is going to look.

MR. CAROZZA: Okay. On the one drawing I submitted I showed where I would place mulch and topsoil, in the back of the lot.

JOHN NOWICKI: I have a drawing here that doesn't say much.

JAMES MARTIN: Well I, I think -- you have got to -- you have got a start here. We'll

obviously -- for site plan approval, we're going to need -- we're going to need a specific location, much better drawing. You will have to hire yourself an engineer or something like that to work with you.

JOHN NOWICKI: You're doing maintenance work on these vehicles?

MR. CAROZZA: Two high-bay garages for that. What specifically are you looking for? I'm talking about a little pile.

JOHN NOWICKI: Visual considerations.

MR. CAROZZA: Everything is fenced in.

JOHN NOWICKI: Not exactly. Depending what direction you're coming from, from the airport down you have a good view into that site there. I think you need to get it on a map to show us what you intend to do, how you will store these things, these piles of materials. We had this problem over on -- by the railroad tracks in the Ballantyne/Beaver Road, the tree company over there. Until we got them under control, they just got out of hand with piles too high and stuff all over the place. We can't do that.

JAMES MARTIN: Our advice would be that you're going to need, obviously, a better plan pulled together. We're going to want to know where your vehicles will be parked around the building. Any lighting considerations that you will put in place.

JOHN NOWICKI: Then he says he will store paving stone and balled trees and shrubs. Holy cow, a lot stuff.

JAMES MARTIN: You have stuff to -- you have a lot of stuff to delineate for us.

JOHN NOWICKI: You have to show us more than that.

MR. CAROZZA: You want parking stalls drawn on there?

JOHN NOWICKI: Well, I would take this letter and just read this, and I'm looking at this site and saying, where are you going to put the stuff?

MR. CAROZZA: The facility I have now is half the size, and I'm able to store everything there.

JOHN NOWICKI: That is irrelevant. This property is not even an acre, is it?

MR. CAROZZA: Just under an acre.

JOHN NOWICKI: I don't know. That is only my opinion.

JAMES MARTIN: I think you will need to expand that. You will need to delineate where all of the stuff will be, where you will park your vehicles, you know, before you come back in for site plan approval, because I don't think we would be able to deal with that limited amount of information.

MR. CAROZZA: Okay. I guess what process do I need to do, because if I don't get this approved, I'm going to be in violation of my contract for the purchase.

JOHN NOWICKI: You have to have a site plan put together.

You got to get back to the Planning Board as quickly as you can.

JAMES MARTIN: I can tell you the schedule.

MR. CAROZZA: I submitted this stuff at the end of January. This is the first point -- all this was submitted initially at the end of January.

JAMES MARTIN: This is the first time it has shown up on our radar scope. I don't know where it went between January and now.

MR. CAROZZA: I wrote a letter at the end of January.

JAMES MARTIN: This is just on for discussion. This is not even an approval of anything, okay? So, I don't know. I mean, we don't see it until it shows up in our mailboxes.

JOHN NOWICKI: This just came in for discussion.

JAMES MARTIN: I can tell you right now, you are already passed the April deadline for application to the May meeting. The next deadline would be May 13th for the June 14th meeting. For site plan approval.

MR. CAROZZA: Okay.

JOHN NOWICKI: Here is a letter signed by Dan Kress to this gentleman here, three sort of conditions on here. He sort of spelled it out for him, what he had to do. I mean -- you know what I am saying? It is right there. This is dated February 10th, and he got that letter.

JAMES MARTIN: You need a conditional use permit.

JOHN NOWICKI: It is all right there.

JAMES MARTIN: You need to make an application to the Planning Board for this.

MR. CAROZZA: Correct. That was all submitted and hand delivered on the 15th of February.

JOHN NOWICKI: This is just a discussion we're having. This is not a formal application.

JAMES MARTIN: Well, I don't know what happened to it. I mean it didn't show up for --

to us.

KEITH O'TOOLE: Mr. Chairman, I have been advised that the gentleman has a contract that is about to expire for the purchase of the property. Apparently it was contingent upon municipal approval.

MS. SARKIS: I'm an attorney for Trevett, Lenweaver & Salzer. What I just told the Counsel for the Town is true. It is conditioned upon this approval, and has no affidavit of service as to when it was sent here. With all due respect to the Board, I mean it goes back to the first application. You know, you shouldn't have the applicant pay for something or, you know, have any kind of detrimental effect especially with a breach of contract situation because he can't explain as to where it went in the chain of command and how it got in the mailboxes. He is willing to supply whatever it is that you need, but, you know, this was served back in January.

JOHN NOWICKI: Why is this on for discussion?

DENNIS SCHULMERICH: We're not asking you this.

JAMES MARTIN: That is the way it was presented at the preliminary meeting, 2/16/05.

DARIO MARCHIONI: Application is for conditional use permit.

RAY BLEIER: It was probably too late for the March meeting and now you're in April.

JAMES MARTIN: We never got it.

KEITH O'TOOLE: I think I figured out what is going on here. We have it stamped received February 14th and the cut-off date for the March meeting was February 4th.

DENNIS SCIBETTA: Ten days late. So this is the first available meeting.

DENNIS SCHULMERICH: The question is why is this for discussion and not public hearing?

KEITH O'TOOLE: That I don't know.

JAMES MARTIN: I don't know either.

JOHN NOWICKI: That is what hurts us here.

MS. SARKIS: That is the whole point. He doesn't want to lose this property. It is perfect for his business. He is willing to comply with whatever the Board needs. Mr. Carozza is an engineer with a Master's degree. He is familiar with what it is that is necessary. I don't know if there is -- the point is he needs an expeditious reply. We respectfully request that.

DARIO MARCHIONI: We just stated we wanted a site plan showing where you will store the stuff.

JAMES MARTIN: But the application was for conditional use, for which we should have had a public hearing.

JOHN NOWICKI: We should have a public hearing on it. I mean --

JAMES MARTIN: There has been a real mix-up on this one. I apologize to you.

KEITH O'TOOLE: There is certainly a requirement for a public hearing.

DENNIS SCHULMERICH: We have to have a public hearing.

KEITH O'TOOLE: You have to have a public hearing for this permit.

JOHN NOWICKI: Why is it on for discussion?

DENNIS SCHULMERICH: When is the contract up?

MR. CAROZZA: He wants to close by the end of this month.

JOHN NOWICKI: Can't do it.

MS. SARKIS: Paving begins the beginning of May, and the contract was specifically written for Mr. Carozza's business because you can probably realize once you start paving, seasonal business, depending on the weather, May through I guess September, October, so they really worked around his schedule. The real estate contract. Which I can probably provide if you need it. I have all his files.

DENNIS SCHULMERICH: Do we have an opportunity for a special meeting?

JAMES MARTIN: Well, we could hold a special hearing, yes.

RAY BLEIER: Did the Building Department tell you about postage of the sign? You have to post a sign in front of your property when you're applying for a conditional use permit.

DENNIS SCHULMERICH: Were you given signage?

MR. CAROZZA: Nothing about that.

JAMES MARTIN: Who did you talk to in the Building Department?

MR. CAROZZA: Dan Kress, actually on three different dates to try to find out where this was and what the holdup was.

JAMES MARTIN: Well, I would --

DENNIS SCHULMERICH: Without --

JAMES MARTIN: Let me make a proposal at this point. I mean obviously there has been a significant mix-up in the Building Department. For posting purposes, to have a public hearing, let's

see, we would need what --

JOHN HELLABY: Ten days. Those have to be submitted by Friday to the Gates-Chili Post, which would be the 15th. It wouldn't appear in the paper until the 20th. So that would be -- it takes us to the 29th of April.

DARIO MARCHIONI: Might as well wait until the May meeting.

JAMES MARTIN: He has to close by the 30th.

MS. SARKIS: He doesn't want to lose his contract.

JAMES MARTIN: I understand. Is there any possibility that it could be extended for a week?

MS. SARKIS: It is dependent upon counsel's approval. Steven's real estate attorney and the seller's attorney. I don't know.

DENNIS SCHULMERICH: Do they have other bids on the property?

MS. SARKIS: Not to my knowledge.

DENNIS SCHULMERICH: Are they motivated to move with you, or is there -- we're not looking to drag this out.

JAMES MARTIN: Are you the only game in town or do they have other possibilities?

MR. CAROZZA: That I don't know.

DENNIS SCHULMERICH: Keith (O'Toole), what options do we have?

KEITH O'TOOLE: The applicant might want to be advised the cost of a special meeting is not exactly insignificant, far more than what they paid for this meeting. It is something like \$800. The next meeting is May 10th. So you're talking about a -- I mean -- I know counsel's concern, but we're talking about a contract extension of ten days on a commercial property. I mean unless they have a better offer, you know, standing in the wings, I would assume they would be able to get ten days. Can I guarantee that, no.

JAMES MARTIN: I mean we could waive the April 8th deadline for the May meeting. That is not a problem, because we have plenty of time to post the public hearing notification.

To have a special meeting is generally at the applicant's expense for the Planning Board to hear a special ap -- and a special meeting. It is between 700 and \$800 to do that.

So I tell you -- you know, we'll waive getting past the deadline of the 8th. If you can work on the extension, all right. But you're going to have to let us know before Friday, because if you request a special meeting, before the end of April, the only -- the way it works out is it would have to be on the 29th of April, I guess.

JOHN NOWICKI: That is if he wants to do it this month.

JAMES MARTIN: If you get an extension, we would do it on Tuesday, the 10th of May. I really apologize. I have no idea what transpired and why this didn't show up when it was appropriate to show up, because it just sounds like something wasn't handled correctly.

RAY BLEIER: For what it is worth, you know, from some of the comments you're hearing tonight about what you're going to have on the property and where to put it, if you had been appearing tonight with just what you submitted so far we probably would have tabled it.

DENNIS SCHULMERICH: It would not have passed tonight.

JAMES MARTIN: It would have been difficult for us to approve it with what you have brought.

MR. CAROZZA: The thing is I hand delivered the drawing, what I had, and asked if there was an issue with that or if that is what they were looking for.

DENNIS SCHULMERICH: He typically wouldn't speak to that.

JOHN NOWICKI: Based on this letter, I don't see how that could even fly. This letter was sent out --

RAY BLEIER: It is a letter of intent is all it is.

JAMES MARTIN: I guess those are your options, okay, at this point.

MR. CAROZZA: Okay.

DENNIS SCHULMERICH: So do you understand what needs to happen?

MR. CAROZZA: I have to let you know by Friday.

DENNIS SCHULMERICH: Decide if you want a special meeting this month. If so, you carry the burden. Otherwise it is May 10th.

JOHN HELLABY: This application has to be signed and notarized by the current landowner, as well.

DENNIS SCHULMERICH: And as far as diagraming out how you want to use the property, whether you choose to do the engineering yourself or get assistance, the more specifics there are and what you're going to put on the property, where, how high, what the appearance, basically a site plan that we can look at and understand in a very graphic way how the property works.

MS. SARKIS: Where would we get the requirements? Mr. Bleier suggested we have to post a sign and all that jazz.

JAMES MARTIN: The Building Department.

DENNIS SCHULMERICH: The Building Department should have given you that information.

JOHN NOWICKI: Right.

DENNIS SCIBETTA: Please don't -- I will refer -- call our office and ask that. I don't want to give any misinformation. I'm not --

JOHN NOWICKI: Get them the information they need.

DECISION: As per the discussion with the Planning Board at the 4/12/05 meeting, the applicant has been asked to submit a proper application along with a detailed site plan for the proposed landscaping business to be located at 271 Paul Road.

The meeting ended at 11:32 p.m.