

A meeting of the Chili Planning Board was held on May 11, 2004 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 Don Faso.

PRESENT: Ray Bleier, Dario Marchioni, Karen Cox, James Martin, John Nowicki and Don Faso.

ALSO PRESENT: Keith O'Toole, Assistant Counsel for the Town; Daniel Kress, Director of Planning, Zoning and Development; Dave Lindsay, Town Engineer; Charles Robinson, Conservation Board member; Bill Arnold, Fire Department Liaison; Fred Trott, Traffic Safety Committee liaison.

Chairperson Don Faso 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 Vellano Brothers, owner; 797 Beahan Road, Rochester, New York 14624 for renewal of conditional use permit to allow retail sales of construction equipment at property located at 797 Beahan Road in L.I. zone.

Mark Annello was present to represent the application.

MR. ANNELLO: Hi. Mark Annello, A-n-n-e-l-l-o, from Vellano's.

DON FASO: Are there any changes, because this is a renewal?

MR. ANNELLO: No. The same thing from the last eight years we have been there.

DON FASO: Nothing on the site plan has changed?

MR. ANNELLO: Nothing.

DON FASO: Same type of equipment, same --

MR. ANNELLO: Same everything. Nothing has changed at all.

KAREN COX: Nice to know some things stay the same.

RAY BLEIER: I had a question for Dan, Dan Kress. Do you have the conditions that were imposed from the previous time and for how long a period of time they were?

DON FASO: While Dan (Kress) is looking, anything else, Ray (Bleier)?

RAY BLEIER: Yes. I did go by the place there. It is very well screened from the road. You hardly know anything is there until you drive around in the back. What is happening to the other big warehouse building?

MR. ANNELLO: I wish I knew.

RAY BLEIER: Anything going on in there?

MR. ANNELLO: No. The guy was trying to lease it, but I haven't heard anything.

DON FASO: Was that Sun Chemical?

MR. ANNELLO: No. Champion.

DANIEL KRESS: The answer is I did look them up. I failed to bring a copy to the meeting. I can retrieve it right now if you have a particular question about that.

DON FASO: Did anything jump out at you that was in violation?

DANIEL KRESS: It was pretty much the standard list.

RAY BLEIER: Do you recall how long, for what period of time we gave the conditional use?

MR. ANNELLO: It was three years ago I was here.

RAY BLEIER: That's all?

JOHN NOWICKI: How do you find business these days?

MR. ANNELLO: We basically sell underground utilities, water mains and stuff. Contractors, all of the municipalities around.

DON FASO: Similar to last year, better or worse?

MR. ANNELLO: About the same.

KAREN COX: Are you hit with the steel prices?

MR. ANNELLO: Yes. Price is going up. A lot of the jobs are not going because of the prices.

JOHN NOWICKI: Do you see any change in the physical structure at all as far as any -- coming back in for additional space?

MR. ANNELLO: No. We have been pretty steady for the last eight years there.

JAMES MARTIN: Nice looking site. My question was anticipating any growth in the business, but you have answered that question, so that is all I have.

COMMENTS OR QUESTIONS FROM THE AUDIENCE: None.

KAREN COX: Could we go a longer period of time?

MR. ANNELLO: That is what I was going to ask. We tried last time to extend it to see if we could get it lifetime or whatever. It don't matter.

DON FASO: I would go five. I wouldn't go more than that. It is just an opportunity, if there is a problem, to have you come back.

MR. ANNELLO: Okay.

KAREN COX: Five is good.

DON FASO: Ten minutes every five years, what is that?

MR. ANNELLO: No problem.

DON FASO: Dan (Kress), is there anything on the conditions, if we put on here, all of the previous conditions in effect -- is there anything there?

DANIEL KRESS: There was nothing extraordinary.

DON FASO: So if we do that, it would not cause a problem?

DANIEL KRESS: I don't see why it would.

RAY BLEIER: Who is responsible for maintenance of the driveway in there?

MR. ANNELLO: I have been taking care of it, but nobody actually. Everybody uses that road, and what we found out, I think Monroe County actually owns that road. It is actually a street name. I think it is Jonathan Drive and they took it over back in the '70s. So I have been -- I fill the potholes in after they get so bad. I take care of it --

RAY BLEIER: It's a challenge.

MR. ANNELLO: Oh, yes.

KAREN COX: That is odd that they wouldn't be taking care of it.

MR. ANNELLO: It don't look like it has been finished. No gutters, no nothing.

KAREN COX: Does it get plowed by the Town crew?

MR. ANNELLO: No.

KAREN COX: I don't think it is a County road then.

MR. ANNELLO: We researched it. It is.

DON FASO: Okay. All previous conditions are still in effect. It is already in a drainage district. Dave (Lindsay), you don't want engineer's approval?

DAVE LINDSAY: No.

DON FASO: This is a Type II action for SEQ, so nothing is retired since it is a renewal.

DECISION: Unanimously approved by a vote of 6 yes with the following conditions:

1. All previous conditions are still in effect.
 2. The conditional use permit is hereby granted for a period of five years.
2. Application of NYS ARC, owner; 1000 Elmwood Avenue, Rochester, New York 14620

for renewal of conditional use permit to allow a day treatment center at property located at 10 Ballantyne Road in RAO-20 & FPO zone.

No one was present to represent the application.

DON FASO: This will be the first call, and we'll go on. Is there anybody here for this application?

No one responded.

DON FASO: Three calls.

3. Application of Doug Stacey, owner; 1415 Scottsville Road, Rochester, New York 14624 for preliminary site plan approval to allow a Valvoline Quick Lube business at property located at 1415 Scottsville Road in G.I. zone.
4. Application of Doug Stacey, owner; 1415 Scottsville Road, Rochester, New York 14624 for conditional use permit to allow a Valvoline Quick Lube minor automobile repair business at property located at 1415 Scottsville Road in G.I. zone.

Doug Stacey was present to represent the application.

MR. STACEY: My name is Doug Stacey, S-t-a-c-e-y. Basically we want to rearrange our building a little. We're getting out of the camper rental business due to insurance problems. It is getting harder and harder to get insurance. We want to move our Rent-A-Wreck business to the rear of the building and put in a Valvoline Express Care. We're doing some signing updates, cleaning up the front of the lot a little bit.

DON FASO: Can you show the Board what you are planning on doing?

MR. STACEY: As far as the signage? Some of the signage is not on the original plan. Avery Engineering kind of dropped the ball on that one on me.

Basically right now all of the offices are in the front of the building for the camper rental and Rent-A-Wreck. The camper rental is on its last year because nobody will write insurance in New York. We barely got -- the major company that writes it was part of the U-Haul conglomerate that went bankrupt. We don't think we'll have insurance for next year. The camper rental, we'll be dropping out of. The Rent-A-Wreck, there is a sidewalk in place. The rear entrance, we'll put its office to the rear of the building, clean it up with a different door. The front of the building, two doors for L bays and Valvoline office in the front. Parking of Rent-A-Wreck vehicles in front will stop. That will move to the rear. This will be opened for customer parking. They will call in by the concrete pad, techs pull it in and around for the service. We want the front nice and open for Valvoline customers to -- Rent-A-Wreck doesn't need street exposures because everything is out of the phone book and internet.

Another scare is we don't know how long we'll be able to have insurance for Rent-A-Wreck. We used to have 12 companies, then eight, this year there are only two insurance companies that will write for it. So the Valvoline is not having all our apples in one basket.

DON FASO: Is that all because of the New York State liability laws?

MR. STACEY: Vicarious liabilities, it is coming to a change. Small companies can't -- Budget is out of the area. Alamo is about gone. It is getting ridiculous. Our insurance costs in the last two years have gone up almost 110 percent.

There are some sign changes in all this. They really don't have them on this one. The one in the packets, basically the front existing sign -- the Rent-A-Wreck sign is pretty well wedged. That is coming down. There will be a pole-lit sign higher. The Valvoline sign there will be the first one to go up. Then there will be a large medallion sign put on the front of the building. The Rent-A-Wreck sign is also coming down. The only thing they really didn't have on there that we wanted to do also was for the Rent-A-Wreck, since it is in the rear we wanted a small sign on the corner of the building directing customers and then the new diagrams you have in the packet with a small lit up arrow directing the

traffic to the back for the Rent-A-Wreck.

JAMES MARTIN: Oil change bays will be in and back out?

MR. STACEY: They won't be a pull-through. Not at this point. If the business takes off the way Valvoline believes it will, we may do that.

DON FASO: Pits or lifts?

MR. STACEY: Lifts.

DON FASO: There now?

MR. STACEY: One is there. We're putting a second one in.

DON FASO: Did the side table get this hand out?

MR. STACEY: No. I have a couple handouts if they want one.

RAY BLEIER: I went by this facility. There wasn't room for one more car on your whole lot there. I mean it was jam packed. As far as there were some trailers, your rental trailers were parked on grassy area right out in front on the side of the building, and, you know, I honestly can't see how you can support any additional vehicles there. I like the idea of that -- the piece you're giving up, the trailer rental business, but I think it is a little premature to try to add this business to a situation that is far more crowded already.

MR. STACEY: In the past month we have probably removed 20 vehicles from the fleet and back lot. We have been under major clean up. I have to apologize for that. My son who was an integral part of the business, his family died in a car accident a year ago. So I'm a little slow getting the back lot up to speed. In the last month and a half we have been majorly cleaning up stuff back there. We did a test run for Valvoline when they came in. Parked everything out back during the winter, our slow season, and were able to clear the front row for them.

RAY BLEIER: When I go by there, when I went -- I went next-door, it didn't look all that bad in the back, but your front was a disaster.

MR. STACEY: The front is where -- we're totally cleaning out the front. There will be small signs "Valvoline parking only." Just for the Rent-A-Wreck, they will use the back parts of the parking lot here.

RAY BLEIER: You are saying you will be doing away with the campers?

MR. STACEY: We have four motorized units that will be gone by the end of the summer and five trailers we're weeding out. We may do a few trailers if we can keep the insurance going, but the motor homes, they started their busy season, they will be out a lot and then come fall they will probably go to an auction.

RAY BLEIER: As a matter of fact, there were so many vehicles, I couldn't even find the sign that was posted for this meeting tonight. Did anybody see a sign on the place? I didn't.

DON FASO: Sign for what, I'm sorry? Did you have a sign posted for the meeting?

MR. STACEY: Yes. On the phone pole out front, next to the mailbox. Right in the center of the lot.

RAY BLEIER: There was so much there, I missed it.

MR. STACEY: That went up April 30th.

RAY BLEIER: I can't honestly see how I could support this at this time, not with everything that is still there.

KAREN COX: Where are the customers going to be? Is there going to be a reception area?

MR. STACEY: We're rearranging the waiting room. The Rent-A-Wreck is going to a kitchen we'll remodel and the whole front glass will be waiting room.

KAREN COX: Valvoline thinks even though most people are used to a pull-in, pull-through operation, something like this where they to get out --

MR. STACEY: Most of the Express Cares are set up like this because they have existing. They do stores like on Chili Avenue, built from scratch, and expresses are add-ons. I have gone through several sites and promotions where they have done it this way.

KAREN COX: Successful?

MR. STACEY: Yes. They have done demographics on everything, all of the traffic that goes up and down the road. They feel strong about it. They're putting up a good share of the money to do this.

KAREN COX: That is a good thing. I share Ray (Bleier)'s concerns with the way the property

looks, but you have indicated that you're going to be cleaning that up, and I understand how you have to clear out the vehicles to have this work in the front. I guess I would like to just -- you know, what is the time frame for this type of -- for this project?

MR. STACEY: We would like to be up and running for the summer. It is the busiest time for the contractor. All of the oil equipment is ready. This gentleman is from Clinton Signs and they're ready to go on the signs.

KAREN COX: You have enough -- you would have enough time to do all those improvements before summer starts?

MR. STACEY: I will be working a lot of nights.

DON FASO: That is what happens when you own your own business.

MR. STACEY: Right. I also have a gentleman who is a contractor who has been renting a van for me for a month, and now he owes me a weeks's worth of labor that he will earn.

KAREN COX: Is that a week of 12-hour days?

MR. STACEY: Oh, yes. He has had free use for a month. He owes me.

JOHN NOWICKI: What about the storage of the oil, the used oil and new oil?

MR. STACEY: Used oil will be outside the building in back in a double-walled special tank specially designed for this. There is an estimate in there from Phil Trecks (phonetic), who will be setting up the whole system.

JOHN NOWICKI: It is not shown on the drawing.

MR. STACEY: Yes. That was another part of the miscommunication with Avery. It is right outside the back door of the garage. The fresh oil will be stored in the basement. There is a full basement. Four 275-gallon tanks all with special alarms so they cannot be over filled. Once they're installed, a small dam will be built around them in the basement. In the unlikely event they should leak, it will all be contained within the basement.

JOHN NOWICKI: I would like the Fire Marshal to review these ideas before we go with final on this one to make sure it is satisfied and that we're protected here.

DON FASO: We can make that a condition.

JOHN NOWICKI: I want that as a condition, if we move ahead on this thing.

That is inside the building and outside the building. The other question, the Rent-A-Wreck sign you say is coming down.

MR. STACEY: Yes. The whole sign pole and everything.

JOHN NOWICKI: Okay. And the only sign out front then will be the standing Express Care sign?

MR. STACEY: Right.

JOHN NOWICKI: The new ones on the building?

MR. STACEY: Right.

JOHN NOWICKI: Has this picture been taken recently?

MR. STACEY: January, I believe.

KAREN COX: That is a mock-up.

JOHN NOWICKI: What is your intention in regards to the parking lot in front of the building?

MR. STACEY: We hope resealed, relined this year and then paved in a year or two.

JOHN NOWICKI: Valvoline had no concerns over that?

MR. STACEY: No. Their contracts are sitting on my desk.

JOHN NOWICKI: Well, again, I would like to see something cleaned up. The parking lot area, the whole piece there.

DON FASO: Mr. Stacey, did you get a copy of the County comments?

MR. STACEY: No, I did not.

DON FASO: They probably went to the engineer.

JOHN NOWICKI: Anything on them?

DON FASO: There is just a standard comment about backflow prevention, standard note about monumentation being checked. John (Nowicki), this is also not been reviewed by Monroe County Environmental Management. And D.O.T. did not participate in a coordinated review.

KAREN COX: State D.O.T.

DON FASO: Excuse me. The State D.O.T. did not participate in the review, and they

recommend you contact the State. It is a state road.

JOHN NOWICKI: He needs a copy of that for his engineer to follow along.

JOHN NOWICKI: Is Mr. Avery still involved in the project?

MR. STACEY: Yes, he is.

JOHN NOWICKI: Did you mention that you're going to show signs, some kind of signage directing people in and out of those bays for oil changes?

MR. STACEY: Not in and out of the bays. We want to create and draw the Rent-A-Wreck traffic out back. One small one on the building. There is a sidewalk there, how they will get to the rear office. A small one in the upper corner of the lot directing them to the back.

JOHN NOWICKI: You're saying right now that all of the Rent-A-Wreck stuff will be behind the building?

MR. STACEY: Correct.

JOHN NOWICKI: Nothing will be in front of the building?

MR. STACEY: Just a line of cars along the back part of the parking lot. Right long here (indicating). We will still utilize this parking here (indicating). The front will be empty for the Valvoline.

JOHN NOWICKI: For Rent-A-Wreck?

MR. STACEY: To store the vehicles when we're in and out. When we line the trucks in and -- when the cars are busy, whatever is going in and out quickly, we'll line them up there.

JOHN NOWICKI: What about the spaces against Scottsville Road, the buffered area there?

MR. STACEY: Those are empty, the parking for the Valvoline cars. Basically it will stay empty because we'll use it to wrap around and pay -- average person waits with it, 15, 20 minutes, so there won't be that many cars lined up there, because it is just not that type of business.

JOHN NOWICKI: Again, if we don't waive final here, I would like to see that on the drawing, so that is indicated on the drawing, or somehow. If those parking spaces are eliminated and it is indicated that is for the Valvoline customers for driving in and out, I want to make sure we have something on record to show what is being parked out front, what is out back and how we'll move things around here.

Your business right now, are you still in the business of selling automobiles and trucks?

MR. STACEY: We never really were. The only thing we sell off is our used stock. We don't retail to customers, no.

JOHN NOWICKI: You don't. Okay. That is all I have for now.

JAMES MARTIN: Couple things. You indicate minor automobile repair. What is implied in that?

MR. STACEY: Oil changes, transmission flushes, cooling system flushes, some tires, wiper blades, that kind of thing.

JAMES MARTIN: You won't be into radiator changes?

MR. STACEY: No. Strictly maintenance type work.

DON FASO: No brake, muffler?

MR. STACEY: No.

JOHN NOWICKI: A question. Along with the tires, how much are -- how about used tires?

MR. STACEY: Recycler picks them up.

JOHN NOWICKI: Stored in the back.

MR. STACEY: Stored between the rear building and large storage truck there. Modern Recycling picks them up once a month. We just signed a new contract.

JOHN NOWICKI: How many cars would have stacked up there?

MR. STACEY: About 100. Just off the rental cars.

RAY BLEIER: There are probably 50 tires back there now.

JOHN NOWICKI: Exposed?

RAY BLEIER: Yes.

JOHN NOWICKI: We need some containment there.

DON FASO: You mean enclosed storage or just fenced?

JOHN NOWICKI: Something fenced in.

JAMES MARTIN: Something --

MR. STACEY: They're pinned in. Some are next to the building because they're mounting

them. The rest of the ones they pick up, there is a 4-foot alley way between the building and the storage truck where they're stacked until Modern picks them up.

JOHN NOWICKI: The file should show the tire storage, the oil containment inside and outside of the building and get this cleaned up, with the drawing done right.

JAMES MARTIN: As far as, you know -- I understand you're actively pursuing cleaning up the site, which obviously there was some need to do that. I'm just wondering from a condition standpoint if we ought to look at a timeline for completion. I heard "I hope to do this," "I plan to do is this."

Is there a way we can be more rigorous in getting a timeline done to see these are done?

DON FASO: If the Board sees fit to grant preliminary and come back for final, we could have a timeline for final.

JAMES MARTIN: I would feel more comfortable if we did something like that, because I would like a little more assurance that these things will be done. Now, we're not trying to jeopardize the business, but we want it to look nice when it is done.

JAMES MARTIN: So I think, again, we have talked about a lot of drawing updates here Avery will have to do. There a lot of things missing here, but that is all I have got.

DARIO MARCHIONI: Is he going to need any building permits for any phase of this work here?

DANIEL KRESS: Probably for installation of the oil tanks and also for the signs, and we may have a variance issue and permit issue for the signs.

DON FASO: What about the second lift he wants to put in? Does that get inspected?

DANIEL KRESS: It is not subject to building code requirements.

DON FASO: Would OSHA have to come in and look at it?

DANIEL KRESS: Don't know.

DARIO MARCHIONI: We have to put this thing all together here. I see what you're trying to do, and it looks good, but we have to, you know -- you have to understand our interests, too. We want to see a nice site there, so that is what our -- that is what --

JAMES MARTIN: Did you have a lift in place in your first bay?

MR. STACEY: We have one now. We put it in when we moved in in '98. They're above ground, electrical, hydraulic. There is no excavation for oil service. They hold the 5 gallons of oil that they operate off of.

JOHN NOWICKI: Did you have to meet with the Conservation Board at all?

MR. STACEY: Not that I'm aware of, no.

DON FASO: I had --

JOHN NOWICKI: They mentioned no significant environmental impact. They must have looked at the drawings.

RAY BLEIER: I think the Conservation Board, John (Nowicki), was indicating that -- what about applicable permissible use for removal of petroleum.

DON FASO: What permits are needed for petroleum products?

DARIO MARCHIONI: One more question. I don't know if this is part of this. I remember one time there used to be an apartment upstairs for this building.

MR. STACEY: Yes. Just bare attic now that we use for storage. Actually, my son's possessions are up there. My son's household is stored up there at the moment.

RAY BLEIER: Is anybody living in that building?

MR. STACEY: No.

RAY BLEIER: At one time it was a gas station?

MR. STACEY: Originally the manager lived in the building when they were Sunoco and Rotary. That is why we have the space. The rear office will be a kitchen. We'll pull it out and remodel it.

KAREN COX: Do you think that is why it has a full basement?

MR. STACEY: Yes. There is setup there for laundry and everything else.

KEITH O'TOOLE: I notice there are no foundation plantings on the building. You might want to consider that. That would require adjusting a few of the parking spaces. Nothing further.

DANIEL KRESS: If I understand the drawing we're seeing tonight correctly, we have a total of two signs on the building, and two more signs out at the road. One of each within certain size limitations is permitted by the ordinance, so I just want everybody to be clear this is why a variance is likely

required here if this is going to proceed as proposed.

DAVE LINDSAY: Nothing in addition to what Larry (Nissen) spelled out, wanting to see some of the improvements shown on the plans.

COMMENTS OR QUESTIONS FROM THE AUDIENCE: None.

RAY BLEIER: Before I consider voting for this here, I would like to have the owner see about the possibility of having some of his vehicles off site someplace, if he could make an arrangement so it wouldn't be, you know -- so it would be, you know, more presentable. But barring that -- I can't see how you could add one more vehicle to the property. I don't know if it is in violation or what, but it is an eyesore. Very honestly speaking.

DON FASO: Well, I always look at the nature of the business, Ray (Bleier).

RAY BLEIER: I don't think it is fair to the other businesses.

DON FASO: It is not a florist.

KAREN COX: The applicant has also indicated in another year, by the end of the summer, the trailers will not even be an issue because of the insurance. And so I would say if you -- if there was assurance that -- that would indicate the spots in the front of the building are going to be for Rent-A-Wreck, if those weren't going to be doubled up on, if there was going to be one car per spot, then it would appear to be more like a -- the way a convenience store parking lot would look. So I think it will be more attractive with the cars in the stalls than it is now where they're all haphazard.

RAY BLEIER: I guess once again, Dan Kress, I'm sure there were a lot of conditions imposed on this application before when it came in for the camper rentals and that. Do you have any of those conditions, conditional use?

DANIEL KRESS: We don't -- Ray (Bleier), I did not bring that part of the file with me tonight. If you need that so you can make a decision before next month, I would be happy to get Board members copies of that.

JOHN NOWICKI: We need that.

KAREN COX: That would probably -- for this one.

JOHN NOWICKI: For final.

JAMES MARTIN: Discussion has brought up another question. Assuming the State Legislature ever does something, which is doubtful, except for spend money -- if they were to revoke the current vicarious liability law which is on the books, which we all know probably should be changed, would you go back into the camper rental business at that point if insurance were to become available again?

MR. STACEY: No. The campers aren't in the long-range plan. It is a tough living. You get one or two bad falls or springs, you don't make any money that year. The Rent-A-Wreck is on the cuff. It may stay or go. I'm hoping if Valvoline will stay, the Rent-A-Wreck will shrink to two-thirds and just local rentals. We'll get out of the custom vans and just go to cars for local use. We have three stores. I closed one in Buffalo. If Valvoline does what they say it will do, the Rent-A-Wreck will shrink and the campers are gone.

JOHN NOWICKI: Is the handicapped parking identified somehow? Is there a sign out front?

MR. STACEY: There. It got damaged. I had to have another one up. We just have it sitting in the window. The nature of the business, we don't get a lot of that.

DON FASO: That law will never change. I saw an article, if anybody looked into leasing before, say a 20,000 vehicle and your lease was ten grand, you paid tax on ten grand. Now they pay tax on the entire thing.

JAMES MARTIN: I read the same article.

DON FASO: The State is making a fist full of money on it.

DARIO MARCHIONI: Are we going to get a site plan with more information on --

DON FASO: Well, I will now poll the Board. Is your thinking to grant preliminary and not waive final, bring him back with all of the things that we need to look at, and --

JOHN NOWICKI: Yes. We should walk him away with what we discussed, the changes we want on the drawing.

DON FASO: Because the site plan also affects the conditional use.

JOHN NOWICKI: I will not suggest that we vote on prelim tonight. I want him to come back.

DON FASO: You don't want to vote on prelim?

JOHN NOWICKI: No. I would rather do it all in one shot. That gives them one month.

DON FASO: So would you entertain a motion to table?

JOHN NOWICKI: Exactly right. Get the engineer to get it done right and we'll do it all in one shot. You have to clean it up and do some work here.

I make a motion table it subject to the conditions we talked about, and the applicant knows exactly what he has that do.

RAY BLEIER: Second.

DARIO MARCHIONI: Is there a chance he is going to put where everything is on the site?

JOHN NOWICKI: The next drawing will show where everything will go.

MR. STACEY: That is what I wanted to do on this one.

DON FASO: Okay. So we have a motion and a second to table, which goes right to a vote.

The Board discussed the proposed conditions.

MR. STACEY: In June you will see that lot wide open there in the front.

DECISION ON APPLICATION #3: Unanimously tabled by a vote of 6 yes until June 8, 2004 for the following reasons:

1. Oil storage location and tanks shall be approved by the Fire Marshal.
2. Final plans shall show the tire storage location.
3. Parking spaces for all vehicles shall be shown on the final plans.
4. Applicant shall submit a timetable for all uses of the property.
5. Applicant shall submit plans to the NYSDOT for review.
6. Landscaping plans shall be submitted to the Conservation Board for review.
7. Applicant shall make an application to the Zoning Board of Appeals for a sign variance.

DECISION ON APPLICATION #4: Unanimously tabled by a vote of 6 yes until June 8, 2004 for the following reason:

1. Tabled for lack of site plan approved.

DON FASO: Second call for ARC? Anybody here from ARC?

No one responded.

DON FASO: Second call.

5. Application of Dr. Robert Fallone, Jr., 3173 Chili Avenue, Rochester, New York 14624, property owner: Towne Plaza, LLC; for resubdivision approval of Lot #1 of the John Deere Subdivision into two lots at property located at 4390 Buffalo Road in G.B. zone.
6. Application of Dr. Robert Fallone, Jr., 3173 Chili Avenue, Rochester, New York 14624, property owner: Towne Plaza, LLC; for preliminary site plan approval to erect a 2800 sq. ft. Tim Horton's restaurant at property located at 4390 Buffalo Road in G.B. zone.

Lou Terragnoli and Mel Farmer were present to represent the applications.

DON FASO: Ladies and gentlemen, it has been brought to my attention that someone observed that the sign was not up in time. Can anybody verify that the sign was up in the specified time limit?

KAREN COX: I don't remember seeing it.

DARIO MARCHIONI: I passed by there and saw it, but I can't tell you the date. It was last week.

DON FASO: It would have had to have been up by the 1st.

DARIO MARCHIONI: Can we ask the applicant when he put it up?

JOHN NOWICKI: He is not here.

DON FASO: Applicant is not here. I am assuming it would be Fallone, not Tim Horton's.

MR. FARMER: It would be. Yes, the sign -- have a sign on Buffalo and Union.

DON FASO: Do you know what date it was put up on?

MR. FARMER: Off the top of my head, I do not. I just know we put two signs up. They were

--

DON FASO: On or about the 1st of May?

MR. FARMER: That is my recollection. I spoke --

DON FASO: I'm so familiar with the site, it just didn't dawn on me to check the sign.

KAREN COX: If you drive by --

MR. FARMER: I spoke with Kathy (Reed) last week and she indicated she had not seen it. I said if you drive by -- does she drive by daily, too? She said -- she didn't call me back, so I assumed the signs were still there and okay.

DON FASO: What is the Board's pleasure?

JAMES MARTIN: I can only say I saw them Sunday. I don't know if they were up.

DON FASO: You saw them last week?

DARIO MARCHIONI: I saw them last week when I was passing by, but I don't know when.

KAREN COX: I don't think we can hold it unless one of us can --

DARIO MARCHIONI: If the applicant said he put it up, that is good enough for me.

DON FASO: So you're inclined to hear it. Okay.

Unfortunately, Dr. Fallone is not here, because I have a lot of questions for Dr. Fallone.

JOHN NOWICKI: Is he coming?

MR. TERRAGNOLI: No, he is not coming.

DON FASO: That is a shame.

KAREN COX: Big time.

JOHN NOWICKI: For that reason, I almost want to table the darn thing. Really.

DON FASO: I think I mentioned that to you. Nothing against Tim Horton's, but we have issues with Dr. Fallone, and the unfortunate thing is you're going to be the trigger.

MR. TERRAGNOLI: Okay.

DON FASO: We'll go through the application, but --

KAREN COX: The question is how useful of the Board's time is this going to be? We have already had one time -- I don't know if Dr. Fallone is not using the engineer that was here before in front of us before, but we came up, I think when it was John Deere, they were doing their thing, and we hammered him, and unfortunately, his client wasn't here -- he couldn't answer 95 percent of the questions, because it was all related to the existing property, and things that are going undone. And the same thing is going to happen tonight. So is this really worth everybody's time? Nothing is going to get accomplished?

JOHN NOWICKI: The only thing I could add to that is maybe we should take the opportunity that we have got here, to inform.

DON FASO: Run through the site with Tim Horton's.

JOHN NOWICKI: The information that was presented to us, in the last few days -- for example, the letter here from Mr. O'Toole, explaining our position here, because this applicant, Tim Horton's, may want to have other thoughts on it.

KAREN COX: Well, that is true.

JOHN NOWICKI: Because we're going in a direction here that some people are not comfortable with. And we have not seen any action on this site. If you go back to our November 19th, 2001 letter, most things have been ignored. We're getting tired of being ignored.

MR. TERRAGNOLI: I can't speak to -- anything to that.

JOHN NOWICKI: This gentleman here, representing a very good outstanding business here, is going to have to be made aware of what we have been having to deal with, and what we would like to stop having to deal with. We would like some action rather than just a bunch of words.

MR. TERRAGNOLI: Overall, I mean we are buying this piece of property from the plaza. We will be making substantial improvements to this piece of property. I'm more than happy to hear other concerns the Board would have. Even though I can't control it or Tim Horton's can't control it, I would certainly commit to bringing it to Dr. Fallone's attention. I just heard what you said about there has been rhetoric before. I mean that is the best I can do. We are buying the site. The site will stand independent for Tim Horton's.

JOHN NOWICKI: But we have questions about that.

MR. TERRAGNOLI: Sure.

DON FASO: You see we have an entirely different site plan that was approved by the Planning Board a couple years ago. And the Board was reluctant in doing this. Now we're looking at carving it up a little bit differently than what has already been approved.

KAREN COX: He never followed through, he, being the owner, has not followed through with the conditions.

JOHN NOWICKI: All he is doing is selling off parcels. We're saying this is becoming ridiculous. We don't have a plaza. It is individual parcels. It will be a subdivision of things.

MR. TERRAGNOLI: Well, it will be a plaza in the respects of we'll be using the existing ingress and egress that are to the plaza. From the perception of whether it is a separate Tim Horton's parcel or part of the plaza, if you're going by the site, you would not know the difference because all of the same curb cuts will be utilized.

I have seen that plan in the past, and I think what was approved on this particular site was an over five, maybe 5,400-square-foot building, and I would be happy to go through my presentation whenever you would like to hear it.

DON FASO: I don't have a problem with that.

MR. TERRAGNOLI: But one thing, our building is roughly half of the size, 2,800 square feet.

DON FASO: You're familiar with what this Board is looking for because you just went through it a couple months ago.

KAREN COX: But I mean we're not granting approval for anything, or at least I'm not, unfortunately for the applicant, until he comes in front of us to answer the question. This is his standard MO. He sends the applicant or --

MR. TERRAGNOLI: But I would just --

KAREN COX: -- to take the bullet.

MR. TERRAGNOLI: I'm willing to do that, but it is really not Dr. Fallone's application. It is really Tim Horton's that has designed this site plan on this part of the site. He had nothing to do with the design or the parking spots or the landscaping or anything, irrespective of the other issues on the plaza you have. I don't mean to be disrespectful of that, but Dr. Fallone could not speak to the site plan and why it is laid out.

DON FASO: But we're also looking at subdivision. He is directly involved with that.

JAMES MARTIN: He is directly involved because he is selling the parcel.

JOHN NOWICKI: Mr. Chairman, do you think it would be advisable to read this into the record?

KEITH O'TOOLE: We can give him a spare copy. That is fine, too.

DON FASO: Do you have an extra copy?

KEITH O'TOOLE: Yes.

JAMES MARTIN: It is not so much the out parcel itself. It will become a strip mall all along Buffalo Road if he continues to do what he is doing. We have a major concern about that. You will not be able to see the rest of the plaza.

DON FASO: Now he has a graded pad to the west. I would like to know what the intention is of that pad. We lost a carwash in the back. I hear talk about another carwash wants to go in. I'm kind of reluctant to have a carwash face Buffalo Road in the front of that plaza. I don't think the other tenants, probably you, wouldn't want to see a carwash.

MR. TERRAGNOLI: Mr. Chairman, if I even heard of what might be going in there, I would relay it to you, but I don't know.

DARIO MARCHIONI: You still would be interested in what is going to be next to your property?

MR. TERRAGNOLI: We would be interested from a standpoint of competition.

JOHN NOWICKI: I think Tim Horton's should be interested also where they put their business, if it is going into an area that is decaying around you, I don't think they do that. Right now I see a decaying plaza.

MR. TERRAGNOLI: Um, I disagree somewhat. I mean Eckerd's made a substantial investment right on the corner. We would be going next to them. This site has been approved by highest levels of people at Tim Horton's that have reviewed the site, the area, looked at the fact we're in between the school district, the school municipal buildings, we're down the street from Roberts Wesleyan College. There is new construction going on in the area. Like I said, I'm respectful of the fact that the plaza behind us isn't what you want. I think it is fair to say that. But I think to have this plan, you know, discussed -- we were in front of the Conservation Board with a landscaping plan and received approval that same night. If you're concerned about the area, going in the wrong direction, and you have a retail business wanting to come in to spend about a million dollars on that corner, I would be surprised if you wouldn't welcome that project.

JOHN NOWICKI: Well, I still think you should read the letter from Keith O'Toole first.

DON FASO: Those are plaza issues.

JOHN NOWICKI: Still, in all, it is under subdivision approval.

KAREN COX: The problem is the two are intertwined at this point.

JOHN NOWICKI: They sure are.

KAREN COX: If Tim Horton's had -- if their proposal was to go in on the old plan we have in front of us, the two issues would not be so intertwined. But because we're having to look at a resub, it brings Dr. Fallone into the picture. I don't think it is that the Board or the Town doesn't want the business. It is a good business, a good clean business.

MR. TERRAGNOLI: Dr. Fallone's first proposal to us was to lease that ground and keep it a part of the plaza. It is Tim Horton's corporate philosophy to buy whenever they can, and we insisted that -- when we looked at other opportunities in the area, some purchase opportunities, we would want to purchase that property and then he was amenable to it. He was not just looking to sell it off, day one.

KEITH O'TOOLE: So, in fact, if this deal falls through, you have alternatives in the area?

MR. TERRAGNOLI: There are other purchases that we have seen in the greater area. If this deal falls through, we won't be at this intersection.

JOHN NOWICKI: Mr. Chairman, can I ask you a question? We have the first application, Number 5, for the resubdivision approval of Lot 1. Is that to accommodate this application?

DON FASO: Yes, it is.

JOHN NOWICKI: That is the Dr. Fallone issue, and he is not here.

DON FASO: But the preliminary site plan is strictly Tim Horton's.

DARIO MARCHIONI: Let's hear that one. Dr. Fallone, he has to be present.

I said that ten minutes ago.

JOHN NOWICKI: Applicant has to be made aware of what we're contending here. He has to make some decisions to go through with this. Whether he gets preliminary tonight or not, that is his gamble. That is what he is here for. But again, there are other issues on the site that are really very difficult and tricky to handle.

DON FASO: We welcome you. You would be a great neighbor in North Chili.

JOHN NOWICKI: We're waiting for you to open in Chili Center.

DON FASO: That is not a problem. I would be willing to go through the site plan just to hear your presentation and hear the Board's comments, but I don't think the Board is ready to do the

subdivision without Dr. Fallone being here. And I'm sure you're going to be on the phone to Dr. Fallone first thing tomorrow morning.

MR. TERRAGNOLI: If not this evening.

KAREN COX: Just seems like the standard MO, that he is not here to answer any questions when one of his applications is --

MR. TERRAGNOLI: If I would have known his presence was so crucial to the Board, I would have made every insistence to --

KAREN COX: He knows.

MR. TERRAGNOLI: -- for him to be here.

DON FASO: He usually is, but the last month, he did call me. He had a family vacation planned when we heard the parcel on Paul Road. He was willing to fly home to be here if I thought it was necessary, and I said, "Don't ruin your vacation. Stay in Florida with your family."

KAREN COX: But you get other times when we have had discussions on this, this property in particular, he hasn't been here. That is the thing that is most upsetting to me, that essentially we waste the Board's time every time something for this property comes up. The Board's time and the applicant's time.

DON FASO: So the Board's pleasure is to hear the application on site?

DARIO MARCHIONI: Yes.

DON FASO: Let's do that.

MR. TERRAGNOLI: As I mentioned, I'm here to present plans for a 2,800-square-foot Tim Horton's restaurant, both interior seating, 52 seats and a drive-through window. I apologize in advance for coughing a lot. As you mentioned a moment -- Lou T-e-r-r-a-g-n-o-l-i.

RAY BLEIER: Feel free to compare this facility to the one that is going up in Chili Center. Similarities or differences.

MR. TERRAGNOLI: Chili Center is slightly bigger. It is 3,080 square feet, thereabouts. It would have 63 seats. What drives a 2810 versus a 3080 is predominately the shape of the site. If we were to put the 3080 on this site, it is more of a square building. We would not be able to have an efficient traffic flow through the site. We would also lose a whole row of parking and it is just not something that would work for us.

We typically look to have either the 2810 or the 3080 on a site. The company is very happy with both from both an operation standpoint, the number of seating in the front of the restaurant and also the back room capabilities for the franchisee that is there.

This site has the appropriate commercial zoning. It is currently part of the Towne Plaza, part of our -- the discussion we just had would be for Tim Horton's to buy this site and own the parcel that you're looking at that, that has the boundaries in green, which are the green areas to the site.

The access to the site would be through the existing curb cut on Buffalo Road. There is also a curb cut on Union Road. That is the approximate location in front of where the bank is. Those two are staying the same. We're not suggesting any changes to those curb cuts, and our traffic would be able to access the site through those curb cuts.

There is also an ingress and egress easement from the Benderson Development parcel, which is the Eckerd's Drugs. That is to the benefit of both parties.

DON FASO: The site itself has 31 parking spaces, with two handicapped spaces. If I may just leave the microphone, I would state these two handicapped spaces are here because this is the main entrance to the restaurant. We have a handicapped walkway here. They would -- handicapped customers would be able to access the restaurant conveniently. They would be able to park into the building.

Right back here (indicating) is the dumpster location. We have done two things. We're going to have a brick enclosure here (indicating) for the dumpster. That brick would match the building brick. We have also landscaped around the dumpster to enclose it even more, even though we're proposing for brick.

A change we have made to the site plan, when we had our informal meeting with various Town officials is we added a sidewalk from Buffalo Road and a striped area here (indicating), so a customer that could be walking into the site, they would be able to walk through here (indicating), not in between just two parked cars. We have widened that so they're able to get through and across the site and

made an appropriate walkway here (indicating). They would be onto the concrete here (indicating). And into the building.

JOHN NOWICKI: Can I stop you there for a second? Our Town Engineer and Dan Kress, has anybody seen the intersection improvement drawings for Buffalo Road and Union Street?

DON FASO: When Lou (Terragnoli) was at DRC, we mentioned you should probably check with Joe Carr. You're Mel?

MR. FARMER: Mel Farmer with Stantech.

DON FASO: Did you check the State improvements?

MR. FARMER: I have not seen those plans specifically, but I did speak with, I believe it was Joe (Carr). I don't think there is going to be anything planned this far back, on the north side. It didn't indicate that the two driveways were going to be affected.

JOHN NOWICKI: What about sidewalks?

MR. FARMER: Sidewalks across the front of the site?

JOHN NOWICKI: Yes.

MR. FARMER: There is none proposed now.

DON FASO: I have seen the plan, but I just can't remember.

JOHN NOWICKI: Does anybody know?

DAVE LINDSAY: I haven't seen the plan.

DANIEL KRESS: Can't tell you.

MS. NEDER: The last plans I saw at Roberts Wesleyan, there were going to be sidewalks from Attridge Road up to Union.

DON FASO: On the south side of the road?

KAREN COX: Both sides?

DON FASO: North or south side?

MS. NEDER: I can't say. I know there is supposed to be sidewalks, but on what side --

JOHN NOWICKI: That is one point you have to look into. Because that is going to start up this year, I understand, and that would be beneficial to everybody, including the college people, to have sidewalks on both sides. I hope they're doing that. My God. You go through and spend all this money and not put a sidewalk in there.

KAREN COX: They might have trouble with sidewalk on the north side of the area with the historic house. That is one thing that -- if there is -- the north side of this area, that may be a problem because of that.

JOHN NOWICKI: We don't have the drawing. That is why we don't know what they're doing.

MR. FARMER: We can coordinate that. That is not a problem.

RAY BLEIER: I think I read something it was only on the south side.

JOHN NOWICKI: Check it out.

MR. FARMER: No problem.

DON FASO: Lou (Terragnoli), one of the things, the landscaped island that you have to the west of your building, who is going to maintain that? Because the property line goes right through the middle of that.

MR. TERRAGNOLI: We would make a representation to maintain that, because that is right next to our site.

KAREN COX: You said you would have a common ingress/egress point with the Eckerd's?

MR. TERRAGNOLI: It is currently in place. Both physically, and from a document standpoint, and -- it is right here (indicating). It is on record.

The only other point I was going to make in my presentation is the building coverage, the Town codes for this particular site, it would give us a maximum of 37 percent of the site to be covered. Our site has a 9 percent, so well under the Town's maximum percent for building coverage.

KAREN COX: Would the facade be similar to what you proposed for Chili Center?

MR. TERRAGNOLI: I have brought a rendering. We're going to propose a slightly different building from the standpoint of we're going to try to match the architecture of the Eckerd's with the Tim Horton's here, so they both -- you will describe it better than I, but like a cornice on the top with the peak, and we would do something similar. It would be an enhanced version over our standard building. It would also be an enhanced roof line what the plaza has, but to try to match with the Eckerd's, given

we're right next-door and try to keep that architecture consistent.

DON FASO: After Mrs. Neder pointed out -- took the pictures of the one in Batavia, I had the opportunity to be there. I took a look and said that design would probably be suitable for North Chili.

MR. TERRAGNOLI: That building has never been duplicated since the Batavia situation. It has caused a number of problems from a physical standpoint, roof leaks and such a departure from our standard building, that it -- that store hasn't --

DON FASO: We'll soon be looking to have the rooftop units screened.

MR. TERRAGNOLI: Without question.

DON FASO: Do you have a rendering?

MR. TERRAGNOLI: Yes. We have another side, but if I could just state, this would be the front of the building (indicating), that would be facing Buffalo Road. What we did is we put a peak here in -- and this cornice on top to try to match the architecture of Eckerd's. The cornice would continue around all four sides of the building, and the building would be brick on all four sides. I think we have one other side elevation that shows the cornice and the brick, accent brick, brick, accent brick. This would be the vestibule here (indicating), windows here (indicating), brick, windows (indicating).

DON FASO: West side elevation?

MR. FARMER: East.

MR. TERRAGNOLI: The east. You would be coming -- heading west on Buffalo Road.

DON FASO: So the east elevation?

MR. TERRAGNOLI: The west elevation would be very similar, except you would have the pickup window -- with the exception of the pickup window on that side of the building.

JOHN NOWICKI: So how high is the parapet wall, the total elevation? How high --

MR. TERRAGNOLI: 17 feet.

JOHN NOWICKI: What is the depth down to the roof? How -- what is the parapet?

MR. TERRAGNOLI: I'm not sure what that answer is, but I will represent to you that it will be sufficient to -- you wouldn't be able to see the rooftop units.

JOHN NOWICKI: Just a square parapet all of the way around?

MR. TERRAGNOLI: Yes.

JOHN NOWICKI: Not tapered in or anything? We'll want to see that, especially the rooftop units, what height they are.

JOHN NOWICKI: Same Horton colors?

MR. TERRAGNOLI: Yes.

JOHN NOWICKI: You said you went to Conservation Board.

MR. TERRAGNOLI: Yes. They stamped and signed the plans.

JOHN NOWICKI: Are they in here?

MR. FARMER: I'm sorry?

JOHN NOWICKI: Are your landscaping plans in here?

MR. FARMER: Yes. CS400.

DON FASO: You have a copy of the County Comments?

MR. FARMER: I sure did. I think the only issue -- most of them were just standard comments, the one about --

DON FASO: The backflow for the water. Monumentation.

MR. FARMER: Right. All standard comments. We did submit to the D.O.T., Ken Bittner (phonetic).

DON FASO: Here is the same. NYS D.O.T. did not participate in the coordinated review.

MR. FARMER: They never do unless you beat them over the head.

KAREN COX: Since they lost -- I forget the name of the guy that was really difficult -- for two years they have not been taking part in it.

MR. FARMER: Exactly. But we have submitted to them.

DON FASO: You are not making any changes to the curb cut, are you?

MR. FARMER: No. I don't anticipate anything from the D.O.T. other than utility permit to do work in the right-of-way.

DON FASO: Fred (Trott), does Traffic have any concerns about the traffic flow?

FRED TROTT: We do have a couple questions. On the east side of the building, between your

parking lot and Eckerd's, how is the traffic flow going to flow through there? It is our understanding that that Eckerd's drive-up window is there, and that is a one-way.

MR. TERRAGNOLI: That's correct. I went through the plaza again today. It is a one-way.

FRED TROTT: Will there be enough room for somebody to come down the Eckerd drive to get into your building? How would they get in?

MR. TERRAGNOLI: Yes. I would say that, but I think I would add to that yes a quick note about signage.

What exists now, as we talked about it a moment ago, both physically and from a -- something that is recorded from an easement is for traffic to come in through here (indicating).

The traffic on the Eckerd site is back here (indicating). So they have completed their transaction. They're driving up. They could come into the Tim Horton's site. I think more of a concern what you're asking, if someone were to come in here and make a left with a traffic coming out here (indicating), it is all in full view. I think we would need to find a place on our sign -- on our side of the property where we could have some signage that would direct the customers into our site so they're not going this way (indicating).

I see something that we could add to the plan to help that traffic.

FRED TROTT: Okay. Then on the back of the building, how would the traffic flow come in there? Say if you're already going to like IGA, how would you come out and go into there?

MR. TERRAGNOLI: IGA up here? You would have to come down here (indicating), and into the site. Or you would be able to get into the site -- we have a -- we have a 30-foot wide ingress, egress area here (indicating) that we would also be able to just follow the traffic flow here, on the site.

DON FASO: Is that going to be enough of a turning radius to turn in there without hitting the curb, if there is a car exiting and a car entering?

MR. FARMER: We could certainly demonstrate that for you.

DON FASO: If a car is exiting right through there and a car is entering that wants to use the driveway, is that enough of a radius where they're not going to be bouncing over that curb?

MR. TERRAGNOLI: We'll verify that, and if it is not, we'll cut this back appropriately so they can get in.

The other point I would like to make, Tim Horton's is -- we're all becoming more familiar in the Rochester market, it is primarily a morning business. We're doing the vast majority of the business before Eckerd's and the plaza is open. We consider ourselves a great second user to the site where we're not competing for the same day parking on a site that some other business might be.

I would also like to address -- I was just able to, as I was listening to comments, take a look at Keith O'Toole's letter, site plan item 1. I would like to explain why we put our building in there. I just received a copy of this letter a few moments ago, and I understand what he is saying about visibility to the plaza and the tenants behind.

Once again, our building is roughly 50 percent of what was originally proposed on the site. Our concern, why we want it to be over west on the site, was that customers, if we were more -- on the east end wouldn't be able to see us, because of blocking of the Eckerd's. So I just wanted to give you somewhat of an idea, get an idea in our heads, why we're placing the building where we are, and the different things we see on the site to help us do business.

JOHN NOWICKI: Can I ask a question? I'm not sure on clarification. The businesses in that plaza that are leasing those spaces, is the Town required to send them a notice of this hearing tonight about this project going in here?

KEITH O'TOOLE: Tenants, no. Just posted the signs.

JOHN NOWICKI: But property owners within 500 feet of the plaza get noticed?

DANIEL KRESS: That's correct.

DON FASO: Not 500 feet. 100 feet. The only 500-foot restriction is for rezoning.

JOHN NOWICKI: 100 feet around the plaza, people should have gotten notice.

DON FASO: But IGA is a tenant. IGA would not have gotten a notice.

JOHN NOWICKI: They would have seen the signs posted, I would assume, the tenants there.

DON FASO: My barber told me about this before --

MR. TERRAGNOLI: John (Nowicki), if I might, we do out parcels all of the time, and issues that sometimes dealt with that I am told are not here on this site, is a tenant may have some particular

item in their lease with regard to what can happen out in front of them. It has been represented to me there are no issues like that, with regard to the tenant leases behind us here.

I would also like to maintain, if this project goes through, I think it would be a boost to the area, a help to the plaza and maybe other tenants might come in to be behind us.

DON FASO: Lou (Terragnoli), one of the concerns I have, and I personally have observed this at the one on Buffalo Road and Howard, because that is out in my neck of the woods where I work, there is a real problem in the morning when you get three or four pickup trucks in there, like lawn care people, hauling the trailers with lawn equipment. You get three or four in a parking lot, you have a bottleneck. I think that site in Gates is just too restrictive for that type of traffic. Howard Road. I'm sorry, what did I say? Howard and Buffalo.

MR. TERRAGNOLI: One thing we have at this site that would help mitigate that, we'll have the ability for our cars to not only access through the plaza and the park --

DON FASO: You will have a cross agreement?

MR. TERRAGNOLI: Yes. The owner is a local person. They get to know the customers and a person that would have a larger truck, they would make a suggestion to them. Buffalo and Howard, there is no opportunity for anywhere else for that to happen. That is why these out parcels provided many benefits to a retailer.

DON FASO: I have seen pickups with trailers trying to maneuver around the parking lot. They block people, there is grid lock on Buffalo Road.

KAREN COX: Like Wendy's used to be before they -- until they put their new parking in.

DARIO MARCHIONI: I have some questions. Parking requirements, total shown 292 spaces with 12 handicapped. Where is that shown? I didn't get that sheet.

MR. FARMER: Where is what shown?

DON FASO: Are you looking at the notes on --

DARIO MARCHIONI: The notes on the site plan, on the side of the site plan.

MR. FARMER: Where is the handicapped park --

DARIO MARCHIONI: No. Towne Plaza, parking requirements.

DON FASO: That is for the entire parcel. That is total aggregate parking.

DARIO MARCHIONI: But it says -- you have 292 parking spaces and 12 handicapped. Where are they?

JOHN NOWICKI: There is no drawing attached to it. That is what he is saying.

MR. FARMER: The overall --

DARIO MARCHIONI: Where did you get your information from?

MR. FARMER: The overall site plan has the parking areas shown with the parking counts.

DARIO MARCHIONI: It does?

DON FASO: Yes. This is the site plan -- I didn't see that.

DON FASO: This was not submitted. This was the old application.

JOHN NOWICKI: Have you seen this drawing?

MR. FARMER: Yes.

JOHN NOWICKI: His question is what are you taking out of that total? Has that total been adjusted for your project; that 292, has it been downsized?

MR. FARMER: Yes, it has. I think that plan shows -- I got it after we submitted, so bear with me. That plan shows proposed about 350 parking spaces.

DARIO MARCHIONI: That plan shows parking in the back of the building. This site plan says 75 existing parking spaces here.

JAMES MARTIN: On the north side of the plaza.

DARIO MARCHIONI: I don't see any parking behind the plaza.

KAREN COX: There is junk behind the plaza.

DON FASO: There is also that graded pad in the front to the west that has the curbs in it, but nothing has been -- no asphalt, so that is not really a parking area, but I think it is all proposed parking to that site.

MR. FARMER: That's correct.

KAREN COX: On this site plan, in the general vicinity of where this new site is, there were a certain number of spaces shown, so the question is, does the number that was shown here equal

or is it equal or less on the new plan?

MR. FARMER: It is equal to, because I believe on that plan there, it says the required number of parking spaces, 304.

KAREN COX: I'm just counting where they showed the proposed 5,500 retail.

MR. FARMER: We're equal to the amount of parking required for the plaza.

DARIO MARCHIONI: I understand on your site. I'm talking about the rest of the plaza, is there enough parking space left?

MR. FARMER: Yes. That is where there's 304 parking spaces for the plaza, also including the Tim Horton's site.

JOHN NOWICKI: That drawing --

KAREN COX: I don't think the -- they just kind of reconfigured the parking configuration.

JAMES MARTIN: There are 75 on the back, on --

KAREN COX: Yes.

DON FASO: This also has a graded pad here that is graded for parking, but nothing existing.

DARIO MARCHIONI: I don't see any parking spots here.

JAMES MARTIN: That is a crock.

JOHN NOWICKI: That has been changed.

DARIO MARCHIONI: Is he counting these 18, 22, 14?

MR. FARMER: Correct, yes.

DARIO MARCHIONI: That is all dumpsters there. I don't see anybody parking there.

KAREN COX: That --

JOHN NOWICKI: That is the issue that we have.

MR. TERRAGNOLI: Parking spaces.

MR. FARMER: Understood.

JOHN NOWICKI: This is a brand new building back here. Not only that, these parking spaces back here are all occupied by John Deere equipment.

DON FASO: There are 54 back there.

JOHN NOWICKI: That are gone.

DON FASO: That don't exist.

DARIO MARCHIONI: Where will we put those?

JOHN NOWICKI: This has to be recalculated to see if it conforms to our parking requirements. There are a lot of issues here.

DON FASO: Fallone issues.

DARIO MARCHIONI: Another question here. On the setbacks, lot and area requirements, it says rear side and side not required, non-required, non-required.

MR. TERRAGNOLI: That's correct. I believe it is just a front now.

DARIO MARCHIONI: Also the front setback, 60 -- I understand Daniel (Kress) said 75. Are there 75?

DANIEL KRESS: For Buffalo Road, 75 is required, that's correct.

MR. FARMER: The building is 76 plus feet, so we're okay with that. I did speak with Dan (Kress).

DARIO MARCHIONI: How about setbacks and the property line, once it is subdivided?

MR. FARMER: My understanding of the code is that there is no side.

DON FASO: No, there is not, not if it is commercial to commercial.

DARIO MARCHIONI: Even when you subdivide?

DON FASO: The setback would be on a different zone. If this abutted a residential zone, it would require a side setback, but G.B. to G.B. does not have any.

JAMES MARTIN: We talked about the parking issue. That needs to be clarified.

JOHN NOWICKI: Snow removal problems?

MR. FARMER: Just like how many -- how many hundreds of Tim Horton's sites do we have in Canada, we have quite a few, snow removal is always a problem in Canada and also Rochester, as well. Any time where we get a site where there is not a lot of room for snow removal, there are a couple spots on the front of the site where we can push it off, but we typically hire an independent contractor to remove the snow from the site. If that becomes an issue, we get it hauled off.

DON FASO: One of the issues I wanted to bring up with Dr. Fallone, now he has repaved his part, he has conspicuously left off your proposed part and Eckerd's. Now Eckerd's looks like it is in total disrepair and I wanted to ask who is -- whose responsibility that would be and when that would be done.

JOHN NOWICKI: We're starting to lose control here.

MR. TERRAGNOLI: The paving where? I just want to understand, because obviously I'm going to have my conversations before we have our next meeting, and I want to convey accurately what your concern is.

DON FASO: He has repaved and resurfaced, but he has left off your pad and the Eckerd's pad.

DARIO MARCHIONI: And the other pad next to it, to the west.

DON FASO: There is nothing there yet.

JOHN NOWICKI: Behind the plaza.

MR. FARMER: From that standpoint we would prefer he doesn't pave it, because we'll go in and put new stuff down.

DON FASO: My concern is when and if and who.

MR. FARMER: Understood.

JOHN NOWICKI: The project in Chili Center, you're proposing dark sky lighting there. Are you proposing the same type of lighting at this site?

MR. FARMER: I was not involved with that project, but the lights that we have here are -- I believe the light poles are on there. We're proposing a 18-foot-high light pole, and actually the standard detail we have here is sort of drawn out of scale. The lights don't extend below the fixture.

JOHN NOWICKI: Are you familiar with dark sky lighting?

MR. FARMER: Yes, I am.

JOHN NOWICKI: Again, we would appreciate consideration as you're doing that, like you did in Chili Center.

MR. FARMER: Understood.

JOHN NOWICKI: That's probably it for now. We have kicked it around a bit. They have enough to take home and work it.

KAREN COX: I feel the same way as John (Nowicki). The proposal itself is not what I have a problem with. They are nice looking stores. They're well taken care of. The food is good. It is just the person you want to buy the parcel from is -- doesn't seem to take us seriously, so you have the letter from us.

JOHN NOWICKI: Can I ask a question? That's a good point you just brought up. Are you folks going to have the same problem with the low carb diets?

MR. TERRAGNOLI: Our dominant retail item we're selling is coffee. You're going to -- typical Tim Horton's, 50 percent of our business is beverages. Coffee, iced cappuccino and pop.

DON FASO: They have pretty good lunch.

JOHN NOWICKI: I know.

KAREN COX: That low carb craze will be gone quickly when people don't lose their weight.

DON FASO: I love your chili, too.

KAREN COX: Egg salad sandwich on the ad looks good.

DON FASO: We digress.

MR. FARMER: From a standpoint of a site plan we submitted, everybody is pretty much in agreement. From what you have seen thus far, we're on the right track what we're trying to do for that. Really the overriding issue is the subdivision and the --

DON FASO: I think for final we would like to see a colored rendering.

MR. TERRAGNOLI: Of the building, no problem.

JOHN NOWICKI: The legal issues, too, that Keith O'Toole brought out, as far as who is going to be able to maintain and control this stuff so we have proper maintenance on this stuff. If we start tearing this apart, I get a little concerned. I think we'll have a problem.

DON FASO: Keith (O'Toole), have you seen the ingress and egress papers on this thing?

KEITH O'TOOLE: No, I haven't.

DON FASO: Do you want to?

KEITH O'TOOLE: Not really. I think they would have to be brain dead to close a deal without

easements in place, so I am not concerned.

RAY BLEIER: 24 hours?

MR. TERRAGNOLI: Yes, sir.

DON FASO: That is just drive-up, though?

MR. TERRAGNOLI: Inside and out.

DON FASO: Chili here, too?

MR. TERRAGNOLI: Yes, sir.

RAY BLEIER: I'm an occasional visitor up there to that plaza, but in all honestly I think you're making a big issue out of parking. Every time I have gone there, that thing is never more than 5 percent occupied.

DON FASO: I don't have a problem with the parking. It is just like the K Mart they said. Height of the Christmas shopping season I never seen it overflowed. Same in North Chili. I don't think it will be an issue. It is the other issue, the maintenance of the parking, the striping, the appearance of the back of the plaza. I explained to Lou (Terragnoli), the unfortunate thing is, Horton's will be the trigger for Fallone.

KAREN COX: Maybe a good one, though.

JOHN NOWICKI: One thing we forgot to bring out. Joe Lu, the engineer's letter, drainage considerations. Do you want to address those?

DON FASO: Oh, wait a minute.

MR. TERRAGNOLI: I have not seen a copy.

DON FASO: Joe or Larry (Nissen) at the DRC -- Dan (Kress), do you remember how Larry (Nissen) described the drainage? It has been taken care of.

DANIEL KRESS: The drainage issue has been resolved. It no longer runs.

DON FASO: I do believe -- I do believe -- going from memory, Larry (Nissen) said it now comes down through the west property line, or close to it. To Buffalo Road.

DANIEL KRESS: Down to Buffalo Road, rather than under the parking lot.

DON FASO: It has been resolved.

JOHN NOWICKI: That will tie into the new drainage that the State will improve there.

DANIEL KRESS: That's correct.

DON FASO: That was my understanding, in listening to Larry (Larry).

Dave (Lindsay), are you familiar with what we're talking about?

DAVE LINDSAY: No. I have Larry (Nissen)'s letter that talks about needs for the easements for the drainage.

JOHN NOWICKI: Drainage, just make sure that drainage is taken care of, too.

DARIO MARCHIONI: How about the 250-foot depth of the lot? You only show it on one side. How will you deal with that?

MR. FARMER: We'll deal with that -- I did speak with Dan (Kress) today on that. Essentially what we'll do, is just for appearances' sake it was configured this way. This is the 250 line from there to there. We'll essentially square that off to make sure the lot conforms.

DANIEL KRESS: Can we anticipate some sort of sign variance application somewhat comparable to what you folks did for K Mart?

MR. TERRAGNOLI: That's correct.

DAVE LINDSAY: Look at Larry (Nissen)'s letter. His letter deals with easements to the existing storm system.

Also, a couple other points. Is there a need for access easement for the entrance? I guess it is on the southwest entrance.

MR. TERRAGNOLI: The Buffalo entrance to the plaza?

DAVE LINDSAY: And -- the west entrance there.

MR. TERRAGNOLI: Yes. Our agreement, we'll have a specific easement for Buffalo Road and Union, meaning that those curb cuts can't change unless a municipal authority mandates him to change it and we'll have a general easement over the entire plaza.

DAVE LINDSAY: Maybe give some thought to some additional signage on that one way, between Eckerd's and the Tim Horton's there, maybe an additional do-not-enter sign.

MR. TERRAGNOLI: Yes. That is a good suggestion. We talked about that.

DON FASO: Yes. I also anticipate some confusion in that area. You will get people that are going to pull in off of Buffalo, on that -- in that entrance, that are going to cut through to go to IGA, and it is going to be very confusing because now you will have a car on the opposite side. If they're using both of the drive-up windows. If somebody is going northbound, that conflicts with somebody going southbound. I don't care how it is resolved, but I just foresee it as a problem.

FRED TROTT: He will show on the next drawings the traffic flow for that drive-thru?

MR. FARMER: Sure. We'll provide that. Absolutely.

FRED TROTT: Because it just looks like it is a 0 turn.

JOHN NOWICKI: My own personal opinion, I hope when these gentlemen show up, because they have done a good job in both cases we have worked with them, that the issues with the owner of that plaza are taken care of and he addresses them at the next meeting openly and publicly in a time frame, with a scale, so we have an idea when this will be done and how soon it will be done without any more jerking around. This Town deserves better than we have got from this applicant. It is time he stood up to the plate.

DON FASO: Did you get all that?

MR. TERRAGNOLI: Actually, I was going to ask, because I have listened to the issues on the larger track and the three I have, unless I missed something -- I want to introduce these as soon as I can with Dr. Fallone -- total parking counts. The paving for the entire plaza, with the exception of the proposed area for Tim Horton's, and the appearance of the back of the plaza. Did I miss something in there that you -- that --

JOHN NOWICKI: All of the dumpsters in the back of the plaza, our ordinance calls for enclosures. All of that has to be cleaned up. The back has to be cleaned up. We want to see something done, some drawings, something presented. The graffiti off the walls. There are walls falling apart in the back.

MR. TERRAGNOLI: Spend some time at the rear of the plaza.

JOHN NOWICKI: I have pictures.

MR. TERRAGNOLI: I'm just the messenger on that.

JOHN NOWICKI: There are tires along the back. It is housekeeping, and it is really poor. It is not fair to the people that live in North Chili. They deserve better than -- this community deserves better than that.

DON FASO: John Deere has not been out of the plaza that long. I think a lot of the problem in the back of the plaza was created by John Deere. I think we were told when we gave them site plan and subdivision they would clean it up, and there would be no need to have their storage -- now I think Dr. Fallone has got the golden opportunity to get in there and clean it up. He can't use John Deere as a --

JOHN NOWICKI: There is baled paper over there. Bales of it. What is all that stuff? Come on. Up against the back wall.

DARIO MARCHIONI: Did John Deere get an occupancy permit on the building they moved in?

DON FASO: They're open for business.

DANIEL KRESS: John Deere has got a temporary conditional C of O pending resolution of a few final items, among which are their site items.

JOHN NOWICKI: Such as landscaping?

DANIEL KRESS: Yes.

JOHN NOWICKI: Such as dumpster enclosures?

DANIEL KRESS: That's correct.

KAREN COX: Well, there were conditions that we put on the original approval, site plan approval, and I would say another item is for him to review the conditions that were put on the original site plan approval and determine what, if any, of them have been done.

JOHN NOWICKI: You got that in your letter from Keith O'Toole.

DARIO MARCHIONI: Mr. Chairman, can I make a suggestion? If I am out of place --

DON FASO: Let me hear it first.

DARIO MARCHIONI: Would it be advisable, before our next meeting or something, to spend an hour with Mr. Fallone, invite him over and go through this so we have time to really go through this

item by item.

DON FASO: As a Board, no, I don't want to do that. We have to advertise it.

DARIO MARCHIONI: It could be a public hearing. We could start the meeting earlier so we could deal with these things. Just a suggestion. Because we do have to deal with this item by item here.

JOHN NOWICKI: I think Mr. --

DON FASO: Dario (Marchioni), I will get a telephone call, "Can we meet for coffee?"

JOHN NOWICKI: He knows what he has to do and he better get it done.

DARIO MARCHIONI: Go item by item with him now.

DON FASO: Dario (Marchioni), I will tell you a story. I met with Dr. Fallon and his attorney at Jitters in North Chili. And I said, "Bob (Fallone), I can't tell you to go out and get a landscape architect. I can't tell you to put a design team together. I can't tell you you're going to have to spend some money on this application before you come back to the Board. You're going to have to put a team together, but I can't tell you that." And you saw the results. He put a team together. I can't tell him to do that. I made it very clear I couldn't tell him to do that.

DARIO MARCHIONI: We should solve this.

DON FASO: I will probably get a phone call five minutes after he hangs up with Lou (Terragnoli).

DARIO MARCHIONI: I would like to see a Tim Horton's there.

KAREN COX: It will make the area.

DON FASO: I'm not afraid to tell him the Board's feeling.

JOHN NOWICKI: I'm glad. That is what we're here for.

DON FASO: You guys are the bad cops. I'm the good cop.

(Laughter.)

DARIO MARCHIONI: We could have a straw poll vote here now. I'm not approving the subdivision.

KAREN COX: That wasn't even on the --

DARIO MARCHIONI: That is my straw vote.

DON FASO: The Chairman was going to use his pseudo-subpoena power.

KAREN COX: I have to remember that phrase.

DON FASO: Look at the enabling legislation. I have -- I can compel the appearance of a witness. Can't fine them.

JOHN NOWICKI: When are they starting Chili Center?

MR. TERRAGNOLI: Mylars are being circulated and once the municipalities have signed off, on our end, we're -- yesterday would have been a great opening day.

DON FASO: Dan (Kress), whatever is on the table back there, it has got signed.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

BEVERLY NEDER, 82 Attridge Road

MS. NEDER: I have been sitting here biting my tongue.

DON FASO: Good girl. You didn't interrupt.

MS. NEDER: Number one, respectfully, those signs were not up a full ten days. I talked to Maria at the restaurant last night. She did not see them before Sunday, this past Sunday. She is the owner of the restaurant. She is there every day. I go by that site at least four times a day. Minimum. I started looking for the signs after I saw the notice of the public hearing in the Gates-Chili News last week on Wednesday. I did not see any sign there until yesterday. One point.

Second point is where is the front of this building going to face? Buffalo Road? And are there peaks on either end of the building like that picture up there?

DON FASO: That is not the picture. That is not Tim Horton's. That is left over from the gas station.

MS. NEDER: Oh, all right. Will we have peaks on the end of the building, gables?

DON FASO: No.

MS. NEDER: Just the thing on the front?

DON FASO: It will match in character the Eckerd Drugs.

MS. NEDER: I can't say Eckerd's is any great piece of architecture.

JOHN NOWICKI: They're all over the place.

MS. NEDER: But if Chili Center is getting peaks, I want peaks. I have -- think we deserve it. You look at the Glue Factory over there. That is an outstanding piece of architecture. Eckerd's is so-so. You have a chance here with Tim Horton's. You held the line in Chili certainly. Hold that same line in North Chili. What is good for them is good for us. I don't want to be any -- treated like a stray dog over there. Which we have been in the past.

And as far as that plaza goes, it is a mess. I don't even know how long that so-called paving job of his is going to last because it was quick and hurried. Nothing was blocked off. People were parking on it as soon as it was laid down. I also have a question about the parking over there, in front of the store. Where are there emergency fire lanes in front of the buildings?

DON FASO: Apparently that meets code. That was one of my questions to Mr. Kress. That is allowable.

MS. NEDER: Is it?

DANIEL KRESS: That design was reviewed and approved by the Fire Marshal. There is no requirement that says a fire lane has got to be immediately next to the building.

MS. NEDER: Where is the fire lane then?

DON FASO: It is the driveway.

DANIEL KRESS: Basically, it is the aisle immediately next to those spaces, which is more than sufficiently close if there were a fire.

DON FASO: If you notice, Bev (Neder), if it is a total vertical wall without an overhang, there is usually a fire lane next to a total vertical wall. This has an overhang, so parking is allowed in front of the building. That is my understanding.

MS. NEDER: And I agree with Mr. Nowicki, the back of that building looks like it is going to fall down. Pieces are missing. It is moldy, ugly. There are bales of cardboard there. Day in and day out. I don't know how often they pick them up, but there is always a new supply. The parking lot back there is a disaster. The parking lot or the drive-through by the bank is a disaster. I don't know if that is part of the plaza, or if the bank owns that property, but that needs paving. Eckerd's is owned by Benderson Development, so I don't think Fallon is going to do anything over there. And as far as the extra parking in the plaza, for Tim Horton's, with oversized vehicles, I wouldn't count on that. I think there was a problem when that medical building was put up on Paul Road in front of the plaza there behind the --

JOHN NOWICKI: Post office?

MS. NEDER: No. Paul Road, there is a medical building -- behind the Pizza Hut. Weren't they counting on using some of the spaces in the plaza, but when the plaza changed hands --

KAREN COX: They never needed it.

JOHN NOWICKI: They never needed the extra parking.

MS. NEDER: I wouldn't count on anything if this is going to be a separately-owned parcel. And is there going to be a Tim Horton's sign out front?

DON FASO: Probably.

MS. NEDER: Plus the one on the building?

DON FASO: Probably.

MS. NEDER: Any additional signs other than that?

JOHN NOWICKI: We have not seen any.

MR. TERRAGNOLI: Just signage directing people at the plaza, you know, enter exit.

DON FASO: Directional signs.

MR. TERRAGNOLI: No -- nothing other than that.

MS. NEDER: So the Tim Horton's sign would go on the existing pole out front now?

MR. TERRAGNOLI: Yes.

MS. NEDER: I would really like some consideration given to the building, though. I don't like that cornice. I want peaks.

DON FASO: Thank you, Bev (Neder).

MS. NEDER: Could we please have read into the record Keith O'Toole's letter, because I have gone to the files before looking for things over in the Building Department, to be told what I am looking

for is not there, or that no such file exists. To make sure it that doesn't get lost or misfiled someplace, I would like it in the record.

"Dear Chairman Faso. I have some comments regarding the above project: Subdivision approval. I am troubled by the creation of the proposed Lot R-1B. This proposal undermines the intent of the GB zone which is intended to create 'unified shopping centers.' Section 115-16A.

By creating a wall of pad sites along Buffalo Road, the visibility of the strip center to the rear is greatly reduced. As visibility is what drives retail business, the viability of the strip center to the rear is reduced.

Stopping this resubdivision minimizes this risk. In the event that the pad sites cannibalize rents from the strip center, then at least the rents from the pad sites can be used to cross subsidize the viability (and property maintenance) of the common area and the strip center itself.

Moreover, this resubdivision appears inconsistent with the Comprehensive Plan's goal to discourage, 'strip development' (Comp. Plan 2010 at 4-16).

Site plan:

1. This plan is inconsistent with the preliminary site plan of November 19, 2001. A review of the 2001 map (Towne Plaza site plan dated 10/10/01 by DDS Engineers) shows that the proposed pad sites were pushed to the side to avoid visually blocking the view of the strip center discussed above. Here, the proposed Tim Horton's is flopped to the west side of the pad site which limits the view of the strip center. Note also that the building is moved forward 25 feet. Moving the building back to the original location would at least mitigate these problems.
2. The new landscaping plan shows less landscaping than that proposed on the 2001 map.
3. Proposed lighting design is inconsistent with the lighting design in the rest of the plaza and the Eckerd's site next-door.
4. Encroachment on Chili Community Center -- the 2001 map showed a parking lot encroachment on Town land. Before granting any permits, please require a redated survey map to prove that the encroachment has been removed. The applicant has had two and a half years to get this done.
5. Site coverage numbers are misleading. They assume that the resubdivision will occur.
6. I attach the November 19, 2001 decision letter for your review. Before granting a new permit, I urge you to verify compliance on the old permit.
7. For the record, I enclose a copy of my July 26, 2001, which touched on a number of these issues.

Miscellaneous: Architecture should be at least as good as the proposed Tim Horton's on Chili Avenue.

Very truly yours, Keith O'Toole Esquire."

DON FASO: I move we table resub until the applicant reappears.

JOHN NOWICKI: I second that. All in favor.

KEITH O'TOOLE: I would urge you not to vote on 6. They're kind of tied together.

DON FASO: They are tied together.

DON FASO: You are in between a rock and a hard place, but you have heard the Board's

feelings. You know what you need to come back with.

JOHN NOWICKI: It is not you guys.

DON FASO: I explained that to Lou (Terragnoli).

MR. TERRAGNOLI: I understand. We'll carry the message.

JOHN NOWICKI: I'm sure you will.

DON FASO: Table for one month.

JOHN NOWICKI: So moved. All in favor.

DECISION ON APPLICATION #5: Unanimously approved by a vote of 6 yes until
June 8, 2004 for the following reason:

1. Applicant failed to appear before the Planning Board.

DECISION ON APPLICATION #6: Unanimously approved by a vote of 6 yes until
June 8, 2004 for the following reasons:

1. Application for resubdivision approval was tabled.
2. Applicant may not have posted the sign notice within the proper time limit.

DON FASO: Third and final call for ARC of Monroe County. Anybody representing the
ARC?

No one responded.

DON FASO: I move we table the ARC until the applicant reappears.

JOHN NOWICKI: Second. All in favor on the motion.

DECISION ON APPLICATION #2: Unanimously approved by a vote of 6 yes for the
following reasons:

1. Applicant failed to appear before the Planning Board.
2. Application will be rescheduled when applicant resubmits.

INFORMAL:

1. Application of Mr. & Mrs. John Spennachio, owner; 3935 Chili Avenue, Churchville, New
York 14428 for sketch plan approval for a four-lot subdivision to be known as Spennachio
Subdivision at property located at 3935 Chili Avenue in R-1-20 zone.

Ed Summerhayes and John and Judy Spennachio were present to represent the application.

MR. SUMMERHAYES: My name is Ed Summerhayes, a land surveyor. I'm here on behalf of
my clients, John Spennachio and his wife, Judy, who doesn't want to join us up front here, but the last
time I was before the Board, I believe you were either on the Board or Chairman at that time, and that
was when I did the Spennachio Subdivision in 1986, '87. So I am back here again on behalf of the
Spennachios.

In 1987 they built their house at 3935 Chili Avenue on the south side of Chili Avenue, west of
Union Street, and generally the -- it is a 12-acre parcel that drains from the road westerly towards the
Black Creek. The rear portion of the property is occupied by flood plain, so nothing can be or will be
ever done in the back. However, what they would like to do at this time, is they're investigating the
possibility of subdividing the 12-acre parcel into four lots. Lot 1 with the existing house, and Lots 2, 3
and 4 would be the proposed three lots. There are sewers on the northeasterly side of Chili Avenue.

Water is also over there, so it would be serviced by public sewers, public water. Drainage would be to the west. And I know Don (Faso) has already told me he doesn't like flag lots, but what we would like to do is put one access onto the State road that would serve the three proposed dwellings so that we would have one access servicing the three houses.

So what we would like to do is get your questions and comments and see what we need to do or address what we should be aware of so we can continue with this application.

KAREN COX: That will be a -- the road going to the houses or the entrance, access to the houses is going to be a privately owned driveway, private road?

MR. SUMMERHAYES: A driveway in common. They would have a common cross easement for access. It would be like a 60 foot -- I think I have it even labeled a 60-foot wide common access -- access and utility easement. So that in their deeds they would have covenants that would address the maintenance of the driveway, the common driveway.

KAREN COX: Who would be responsible for plowing it?

MR. SUMMERHAYES: That would be up to those individuals. This would not be -- this would not fall under the Homeowners' Association.

JOHN NOWICKI: Why not?

DON FASO: Doesn't meet the criteria.

JOHN NOWICKI: What do you mean? Why couldn't they do it?

DON FASO: Not for a homeowners --

KAREN COX: I live up the road in Whispering Winds and that's a Homeowners' Association. But there were three 5-acre parcels that were left purposely out of the Homeowners' Association that were going to be larger houses with one common -- when we moved in, the site plan showed one common entrance with three driveways splitting up. When they finally built the driveways for the house, each house has its own separate entrance, because -- what we were told was there were too many concerns on the part of the homeowners about who was going to take care of the driveway, even if the deed has the covenants in it. You still run into a situation where you -- or you can run into a situation where you have one homeowner that just shirks the duty and says "I'm not going to plow my part," or "I'm not going to hire somebody to plow my part." So what is the vehicle to assure that the house in the rear -- if somebody is not going to be blocked in by the fact that the middle house won't plow the driveway?

MR. SUMMERHAYES: Unfortunately, that is a question, a legal question that I am not normally anticipating answering. And from what I recall of reading other common driveway agreements, it is really, in this particular case, a maintenance issue of each homeowner is responsible for a third of the cost of the maintenance.

I would think that if someone, if one of the homeowners refused to pay, then the courts would take over, and I hate to ask the Town Attorney for advice, but I am assuming that that is what would happen. The courts would take over, and -- or at least place a judgment on this, and get payment that way.

As far as who is responsible for making the decision for the repair, or the maintenance, I quite frankly don't know. I would have to find out what is normally done on something like that.

DON FASO: Just a flag lot with one driveway entrance is a lot less mushy when you come to those questions than a flag lot -- than three driveways coming off of one common entrance, and yes, you might have -- the first three homeowners might be great people and everybody agrees, but then somebody sells their house off and all of a sudden you have problems, because that has happened in our neighborhood, even with the Homeowners' Association, the person selling the house didn't make the person buying it aware of the rules, rules got broken, ugliness occurred, um, you know. It has a possibility of happening.

JAMES MARTIN: I agree. I could see some real ugliness on this arrangement.

JOHN NOWICKI: I have a friend of mine who lives in one these situations and it is nothing but trouble.

DON FASO: Keith (O'Toole), on a Homeowners' Association, usually the developer would retain ownership until 51 percent is sold.

KEITH O'TOOLE: Yes.

DON FASO: In a three-lot subdivision, that would be two and who would comprise the Board

on a three-lot if we recommended an HOA?

KEITH O'TOOLE: Well, the common driveway and utility easement is essentially the crux of the whole Homeowners' Association, and if you talk to the State Attorney General's Office, they will tell you you have to do a filing with them, come what may. I know a lot of people don't in a subdivision of this size. What you have to do, however, is a written agreement and you set out the rights and liabilities of the parties. Usually the individual lot owners have standing to take the other lot owners to court if they refuse to pay, and you can go after them for everything, interest, attorneys' fees, court costs, the whole routine. It tends to be more of an issue with paved driveways, as well as long driveways, because the costs tend to go up. Here we have around 600 feet it would appear, so it is not an insignificant expense, and, there is somewhat -- sometimes you have to turn to your neighbor once a year and say, "Cut me the check." But at minimum you will have snowplowing. You can't get around that. If you have to do a repave every 20 years, or depend, you know, if you're doing your sealing on schedule, then that could be a big cost item. I believe the last estimate I saw, something like 50 cents a square foot to do a retop.

JOHN NOWICKI: Just sealing the driveway.

KEITH O'TOOLE: Sealing, the number I saw was six cents a square feet. That was the last one I saw.

KAREN COX: But we have people now that -- granted our subdivision is larger. There has been some turnover, but we have people that have not paid their homeowners fees, which are minimal, for close to three years. And so there will be some ugliness and people being taken to court over that.

DON FASO: What is the problem with your Board of Directors?

KAREN COX: Nonexistent for the last three years.

DARIO MARCHIONI: Why can't we have one common entrance and then branching out to three separate driveways going out to each.

DON FASO: Who will maintain the lawn?

DARIO MARCHIONI: Whoever owns the house that is using the lawn. You have 40 feet.

DON FASO: I wouldn't want to buy that house.

DARIO MARCHIONI: We're here to solve problems, not create problems for future homeowners.

JOHN NOWICKI: We're trying to solve a problem.

KAREN COX: Is there enough room?

DON FASO: Lot Number 2 meets criteria because it fronts by 100 feet. The other two were minimum at --

DARIO MARCHIONI: You have a 40-foot within the 40-foot and a separate driveway for each lot. But on the entrance, could you make a common entrance? Could you branch it out? They all use the same entrance.

JOHN NOWICKI: Chestnut, two flag lots back with two separate homes --

KAREN COX: Probably that would be a common one also, I am guessing.

JOHN NOWICKI: They own their own driveways. Out here, Number 2 could go up to Chili Avenue.

DON FASO: How wide is that driveway?

MR. SPENNACHIO: Right now about 16 feet.

KAREN COX: There would be.

DON FASO: Is there a possibility of reworking it somehow to make sure that -- instead of going off and meandering halfway back onto Lot 4, that it can be manipulated that it does straddle the lot line and each would have 8 feet on either side?

MR. SUMMERHAYES: I want to make sure I understand you.

DON FASO: The purpose of the driveway is actually for Lot 3 and 4.

MR. SUMMERHAYES: Well, also 2, because I'm eliminating State access.

MR. SUMMERHAYES: You're saying on Lot --

DON FASO: 3 and 4.

MR. SUMMERHAYES: Lots 3 and 4, I would maybe split, have that driveway straddling the property line?

DON FASO: Yes. Before you do the first bend.

MR. SUMMERHAYES: Where the driveway is going straight, you're saying to bend that driveway so that I have got 8 feet on each side of the property line, going back to Lot 4?

DON FASO: Right.

MR. SUMMERHAYES: Yes, okay.

DON FASO: I see you have a turn-around there. That is probably for emergency?

MR. SUMMERHAYES: That was for emergency, yes.

JOHN NOWICKI: How do we guarantee that this driveway is not going to be a paved driveway? It could end up just being stone.

MR. SUMMERHAYES: I have that proposed now. I believe our State D.O.T. will require it paved up to the State right-of-way line, but after that it would be a gravel driveway.

KAREN COX: It would be -- if, for example, somebody wanted to build, and you just were going to have one house back on Lot 4, that person could have a stone driveway. You see them all of the time. It costs a lot of money to pave it. If they want to live 600 feet off the road, and not pave it, that is their -- that is their prerogative.

KEITH O'TOOLE: For a common drive you just need a common stub. I would assume you want it at least back here (indicating), where you want this emergency turn-around. There is no reason to have this whole section in common. That could be owned by this lot owner (indicating). That eliminates some of the liability.

DON FASO: But I was also talking about curving the road so each owner would have access. So split the common property line. You -- theoretically you can plow half a driveway.

KEITH O'TOOLE: Oh, yes. From a legal standard it has to be -- from Bar Association standard, the driveway has to be at least 7 feet wide. The nice thing about what we have here in Chili is the 40-foot minimum which gives you a fair amount of room to play with.

KAREN COX: Why couldn't you run in -- I know this is maybe --

MR. SUMMERHAYES: May I approach so I can see what you're talking about?

DON FASO: Come on up. We're informal. We're informal.

KAREN COX: Why would you not run in a driveway over here (indicating)?

DON FASO: Separate driveway.

DARIO MARCHIONI: Each one within its own 40 feet.

KAREN COX: Lot 2 here, Lot 4 back here (indicating), Lot 3 is next to it.

DON FASO: With a grass strip in the middle?

DARIO MARCHIONI: Each person have their own driveway.

KEITH O'TOOLE: I have seen that in Mendon.

The only argument against it would be a cost one, because you're talking about more paving.

MR. SUMMERHAYES: Just out of curiosity, would the Fire Marshal have any -- here with the common driveway going back like this, you have a turn-around for an emergency vehicle. If we had three separate, and I didn't see where your finger --

DON FASO: Chili Avenue.

MR. SUMMERHAYES: So we would have two curb cuts on the State then, and they may not go with that.

DON FASO: There is a caveat. If we create a subdivision, the owner is entitled to a curb cut.

MR. SUMMERHAYES: Doing it that way, I understand the concerns. Also it addresses another issue. Sometimes when you create a situation like this, one owner goes in, and he pays for 90 percent of the driveway and the last owner comes in and then you have issues like that. So doing three separate driveways, it eliminates that question, but it would also eliminate your ability to do a turn-around for emergency vehicles unless it is not an issue.

KAREN COX: They don't have it up in Whispering Winds. I mean they allowed it there, and those are driveways comparable in length to that driveway number four, that --

DON FASO: The Fire Marshal did look at it.

MR. SUMMERHAYES: I thought 500 feet was a general -- once you get a driveway over 500, they want either bypasses or turn-arounds.

DON FASO: He was satisfied. His concern wasn't a planning issue.

JAMES MARTIN: If you have an island in between, I don't know how much total width you would have here.

DARIO MARCHIONI: If it creates a problem here, they will be swearing at the Planning Board.

KEITH O'TOOLE: There will be no swearing
(Laughter.)

MR. SUMMERHAYES: I don't have the code book memorized, but on common driveways 16 feet minimum, if I had single driveways, 12 would be Town code?

KAREN COX: They can't be more than about 10 feet by us, because I'm always afraid I will slide off in the wintertime when I am out there.

MR. SUMMERHAYES: There are towns that I work in where, you know, depending how far back you are, you get 500 feet, and all of a sudden now it has to be 16 feet. Now 1000 feet, you have to be 20 feet.

DON FASO: Our code is out of line now.

MR. SUMMERHAYES: Well, I'm sorry. I still access the internet by a crank phone.

DON FASO: John (Spennachio), will you be the developer of this?

MR. SPENNACHIO: There she is back there (indicating). She is the brains. I just take the credit.

MRS. SPENNACHIO: Will we take the -- building the houses?

DON FASO: Judy (Spennachio), will you be the developer for this?

MRS. SPENNACHIO: I don't know. We have not decided.

DON FASO: Or sell off approved lots?

MRS. SPENNACHIO: That is a possibility. We might build one -- we have not decided that yet.

DARIO MARCHIONI: You still have to come back for site plan for septic system.

MR. SUMMERHAYES: Actually we have sewers available, but this is for concept and your ideas. Once we know what your concerns are -- obviously I'm glad we did this rather than spending a lot of money. The existing house is on the sewer.

DON FASO: It is hooked up?

MR. SUMMERHAYES: Yes.

JOHN NOWICKI: Hooked up to septic system?

MR. SUMMERHAYES: No. The sewer is across the street.

JOHN NOWICKI: You can hook up these three houses to the sanitary sewers and the water lines?

MR. SUMMERHAYES: Yes.

DON FASO: Does it dead-end or continue on?

MR. SUMMERHAYES: Sewer is across the street and keeps going.

DON FASO: You would have to jack under the road?

MR. SUMMERHAYES: Yes.

DARIO MARCHIONI: They just built a house just a little bit further up.

KAREN COX: We did that resub two or three years ago.

JOHN NOWICKI: He has another lot for sale over there, too.

DARIO MARCHIONI: He has two more lots left or three lots.

KAREN COX: If we can get the driveway questions worked out.

DON FASO: I would like the pads perpendicular to the west property line, because if the property to the west develops, you will have more of a backyard-to-backyard situation.

MR. SUMMERHAYES: I was looking down into the valley. That was the view. That is why I turned it that way.

DON FASO: I don't know.

MR. SUMMERHAYES: I would almost -- because if they were perpendicular, you would be facing the house next to you. If I had them turned, parallel with the westerly.

DON FASO: Perpendicular to the west line.

I think the major issue is just going to be the road, and access. I think I would put Lot 2 on Chili Avenue.

MR. SUMMERHAYES: I'm just concerned with the State.

RAY BLEIER: Me, too.

MR. SUMMERHAYES: Sight distance would not be a problem, but I'm wondering if I need to make the entrance large enough for one access, and then have them break off into separate -- then you still have that -- that driveway agreement maintenance that you would have.

DARIO MARCHIONI: Just the entrance.

KAREN COX: But it is a smaller section than what you would have -- than what you see now. The issues might be not as great.

MR. SUMMERHAYES: Certainly I would meet with the State and review them and get their thoughts on it and then we could relay that back to you.

DARIO MARCHIONI: Up Union Street you will see a lot where they have these two houses with one common entrance.

DON FASO: Three houses wouldn't support a dedicated road. Ed (Summerhayes), what I am saying is, if you were to just break out Lot 2, it would be a two-lot subdivision. They would be entitled to a curb cut. If we create the subdivision, they have to have access.

KAREN COX: So you created a two-lot subdivision -- no.

DON FASO: This is the entire parcel. Just break off the 100 by 200, for now, they have to have access, and subdivide the other two.

That is kind of a long way to get there, but --

MR. SUMMERHAYES: Well --

DON FASO: The State would listen to our reason, I think, because of the problem with the -- you know, the common driveway becomes problematic.

MR. SUMMERHAYES: And actually, I -- I appreciate that. I think it is -- it is important so that the Board sees, you know, what the future intentions of the homeowners are. I would be remiss in coming before you and saying, okay, we have got this existing lot we're going to break off 100 by 200 off the corner, go for that approval, thank you very much and then five years down the road, come in for, you know, another one next-door. So I appreciate your candidness, and perhaps, maybe that is a good way to handle it now. I don't know if it would satisfy their needs. I would have to ask the Spennachios, but -- and find out maybe coming in with the two-lot subdivision, break off Lot 2.

DON FASO: Or if you meet with the State. You know, if they were to do that, they would have to grant them access, so, you know, you presented it to the Board. The Board took a look at it, and the Board would prefer to have a driveway on Chili Avenue for Lot Number 2. I know the State would prefer as little as possible, or as few as possible.

MR. SUMMERHAYES: I could edit this concept a little bit, so we could straddle the property line on 2 and 3, for that driveway, have number -- oh, no. You want -- I could see if I could get three. Um -- three separate -- three separate driveway entrances, one going to each lot, take that to the State, and get their comments, and then come back and report to you on that.

JAMES MARTIN: Yes.

DON FASO: What do you think?

DARIO MARCHIONI: The two lots could have one common entrance and then branch out to each individual driveway. That is what I would do.

DON FASO: Say that again.

DARIO MARCHIONI: The two lots could have one common entrance.

DON FASO: 3 and 4? That is what he has got.

DARIO MARCHIONI: But then go to each within their own 40-foot, okay? Just -- just common entrance and then branch out?

MR. SUMMERHAYES: I think I see. 2 would have its own driveway access. 2 and 3 would come in on the common drive, but then immediately after crossing the State right-of-way line they would split off.

DON FASO: A three-pronged fork.

MR. SUMMERHAYES: Two or three. I think that would be what the State would really like, is just one access. I would be --

DON FASO: It is just a difficult site, John (Spennachio).

JOHN SPENNACHIO: Yes.

DON FASO: We're not really pleased with flag lots.

MS. NEDER: May I make an informal comment?

DON FASO: Sure.

MS. NEDER: They may be made aware the cost to extend the sewers across the street I heard was 10 to \$12,000 a lot. To go underneath the street and bring them over, 10 to 12,000.

DON FASO: On the north or south? There would be one boring.

MR. SUMMERHAYES: I'm not sure if you're talking about an actual extension of the sewers with an 8-inch main across the street versus a 4-inch lateral, which is what they would do.

MS. NEDER: I know the house they built there, it cost them \$10,000 to bring the sewer across.

MR. WILCOX: The sewer is very shallow. It is the end of the main right there. I think it is 3 to 3 1/2 feet.

DARIO MARCHIONI: Septic system will cost them 20 grand, so...

DON FASO: Sanitary manholes.

MR. SUMMERHAYES: It has to be deep enough because their house is connected to that via gravity. I didn't bring those maps with me, but it would certainly --

KAREN COX: It goes at least as far as Whispering Winds because we're on sanitary up there. That is not the end of the sewer.

MR. WILCOX: That is the end of that main.

KAREN COX: How do we have sewers up --

MR. WILCOX: They cut in east of there, halfway across to the subdivision. They went deep. It is a deep sewer. Across Semlers. Probably I will say 3 or 400 feet from the house, he came up through, and they made it up through to the side, because I questioned it at the time.

MR. SUMMERHAYES: That would be a phase, obviously, as we progress with this, we would be investigating the best method for the sewers. I -- but it does -- I don't think the sewers and the water are the problem here. I think we need to address the driveway access.

DON FASO: Coming back with another plan?

MR. SUMMERHAYES: As long as we're still talking informally -- and I don't know if I want to ask for a stop clock or tabled review of this.

DON FASO: On an informal, it is just --

MR. SUMMERHAYES: Not formal application. Okay. I think the best thing would be to see where the State is coming from on this, and then --

DON FASO: I typically do not write a letter on this.

MR. SUMMERHAYES: Okay.

DON FASO: You have had an opportunity to hear all of the Board members.

DECISION: The following items must be addressed upon submittal for preliminary subdivision approval:

1. The Planning Board had a concern over the placement of the private driveways.
2. The Planning Board has a concern over the placement of the house pads.
3. Preliminary plans shall show the proposed sewer and water hookups.

The meeting ended at 9:17 p.m.