

A meeting of the Chili Planning Board was held on August 10, 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, John Hellaby, 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; Larry Nissen, Town Engineer; Charles Robinson, Conservation Board member; Bill Arnold, Fire Department Liaison; Fred Trott, Traffic Safety Committee member.

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.

RAY BLEIER: Can I interrupt for a second? I would just like to say that this is Don (Faso)'s last meeting with the Chili Planning Board. Don (Faso) is moving out of town, so -- therefore, he can't qualify as Chairman. I would personally like to thank Don (Faso) for the service he has given to the Town of Chili. I have known Don (Faso) for over 30 years, and working on various boards, committees and so on. He has done a tremendous job and we're going to miss him terribly. I just want to say thanks, Don (Faso).

COUNCILWOMAN SPERR: Okay. I will introduce myself. Thanks, Ray (Bleier). I'm Mary Sperr, Councilwoman for the Town of Chili. I just stopped in tonight because I want -- we're friends with Don (Faso). We have known him for years. I wanted to pay my personal regards to Don (Faso) and thank him for all his years of service to the Town. I don't know how many of you know he was the previous Planning Board Chair, became a member of the Town Board and served as Councilman for several years; then served a term as Deputy Supervisor and then returned when we needed his help on the Planning Board as Chair.

So Don (Faso), my personal thank you, and Ginny (Ignatowksi) is at the Historical Society picnic and she sends her regards also. I want to thank you and wish you the best and we're going to miss you very much.

DON FASO: If you're able, please stand and join me in the pledge of allegiance.

If there is anybody here for Item 2, Judy Bamburowski, she has asked to voluntarily be withdrawn, so we will not hear that application tonight.

OLD BUSINESS:

1. Application of Excel Development, P.O. Box 220, Spencerport, New York 14559 for preliminary subdivision approval of 25 lots to be known as Maple Hollow Subdivision at property located at 30 Dallas Drive in R-1-15 zone.

Rob Fitzgerald was present to represent the application.

MR. FITZGERALD: Rob Fitzgerald, Project Engineer with Avery Engineering. It has been two months since I have been before the Board. Last two months we have been crunching drainage numbers for the most part. Quite a bit. Our drainage studies are a good inch thick. A couple meetings ago, I met with Larry Nissen and went over our drainage study. He has some concerns as far as the SPDES requirements, so we have made those revisions. We're pretty much in general compliance with all requirements from the Town and DEC regarding SPDES requirements.

I will start with that topic. We have made some changes to -- to the overall grading plan. If I can approach the Board, we have eliminated this pond (indicating), which was discussed before, this northeastern corner. We have added a pond in the southeastern corner. That was

necessary to -- because the requirement is now to take care of quality issues, the storm water runoff. So a portion of Knights Trail and Kings Way will drain into that pond and discharge back to the north with this existing -- it will be a proposed catch basin discharging to the east. The natural drainage course.

The other pond we had the same, but we have made some improvements to that, as well. We're dropping a catch basin in this western corner (indicating), heading south and then east and tying into that pond. So instead of having all that water flow across these people's backyards (indicating), we'll intercept that, get in an enclosed system, into our pond, into our water quantity control and discharge to an existing manhole. It is more of a clean project, if you will. I was concerned as far as putting a pond in someone's backyard, if you will, and according to my client, who could not be here tonight, he said as far as selling, that will probably be the first lot that will sell, because it will be a wet pond.

We got tabled two months ago, and I think the condition was for me to review the minutes. I think it is probably fair to say most of the concerns were with traffic and more specifically drainage. So I think we're getting up to speed anyways with the Town Engineer, and as far as traffic, it did go back in front of Traffic & Safety Committee, and we did research it once again to see if there are different methods of relaying out this, but with development, it is 25 lots. Somebody is going to get more traffic, part of development. We thought this would be the best because we don't have the through traffic, the cut through and the Traffic Safety Committee did agree, once again.

DON FASO: Rob (Fitzgerald), I have a letter that was dated today from Larry Nissen, telefaxed to you. Did you see it?

MR. FITZGERALD: Yes.

DON FASO: I would like to read it for the record. From Larry Nissen. "Revised plan draft drainage report and draft storm water pollution and prevention plan were submitted to our office on August 9. As a result, we have only conducted a cursory review of the submitted material. We suggest that the submitted material appears to address drainage requirements for preliminary basis and have no objection to the Planning Board granting preliminary approval from an engineering standpoint. If final Planning Board approval is granted, we request it be contingent upon Town Engineer's approval."

That was the Town Engineer's comments.

Fred (Trott), they were at your meeting?

FRED TROTT: The citizens were.

DON FASO: It was all discussed?

FRED TROTT: Yes. We discussed it.

DON FASO: Traffic Safety have a recommendation? Plan as submitted?

FRED TROTT: Yes. We just discussed them, what to do with traffic issues when it arises.

DON FASO: Dan (Kress), Joe Carr, Superintendent of Highways, Commissioner of Public Works?

DANIEL KRESS: I have a letter from Mr. Carr dated August 5th. "Meeting Traffic Safety Committee Meeting, the plan was discussed. Citizens from Knights Trail were at meeting and expressed their concerns, and the committee members explained the fact that connecting the proposed roadway through to Meeting House Road would only invite additional traffic passing the existing homes on Knights Trail." It concludes, "The committee then confirmed their earlier opinion to recommend acceptance of the plan as submitted."

DON FASO: Thank you.

MR. FITZGERALD: I lost my train of thought here.

DON FASO: Sorry.

JOHN NOWICKI: Can I just ask this -- Dave, who just addressed the traffic over there and Joe Carr, when you had the meeting with the neighbors over there, was there any discussion at all in regards to the traffic, controlling traffic flows on Dauntion Drive, as far as speed bumps or anything like that is concerned?

FRED TROTT: Yes. We discussed it, but it is not something that the Traffic Safety Board would consider at this time.

JOHN NOWICKI: Why is that?

FRED TROTT: Um, because we put -- we don't feel that there is enough traffic flow through

there at this time. When the development comes through, we would look at it and see what we can do and see what kind of influx they have. Because it is a landlocked subdivision, they're dealing with their neighbors, and so what we recommended was that they get the word out to their neighbors. They already have existing speeding problems now, and they're disobeying the stop signs that are there. So we feel it is a need for awareness within the subdivision.

JOHN NOWICKI: This is my personal opinion. I think you better do some more homework and research on that. There has to be ways to get that under control over there. That is -- I don't find your answer acceptable.

DON FASO: It is 25 lots.

JOHN NOWICKI: I'm sorry. There are issues over there. There are other --

DON FASO: Speed bumps won't control it.

JOHN NOWICKI: They're using them all over the county. They're also getting their enforcement officers out there to call -- go in these neighborhoods and slow it down.

DON FASO: You have seen studies when they do traffic reports on those things; it is usually the neighbors that get caught.

MR. FITZGERALD: Another issue was as far as us leaving the buffer around the entire parcel, we still want to do that. As far as putting in a conservation easement, we're concerned, Excel Development, as far as how we would do that. Not all lots have nice mature trees around there. If someone wants to clean out shrubbery and plant pines or nice trees, we would hate to prohibit that from happening.

We're also thinking about ice storms. Ice storms, you have limbs that are broken down. How do you put clauses saying you can remove those on certain occasions? So I guess we would like to propose the buffer, but we would like to kind of get away from doing a conservation easement, if you will.

DON FASO: I don't think we would be looking for a conservation easement. There is too much involved. Then it would have to be dedicated to the Town.

KEITH O'TOOLE: Not necessarily.

DON FASO: Not necessarily?

KEITH O'TOOLE: No. The developer can declare an easement over the entire parcel for the benefit of all of the lot owners.

DON FASO: Oh, okay.

KAREN COX: Then what happens if someone buys a parcel, someone buys a house ten years from now, decides they want to mow down, cut down lots of trees? What is the vehicle for enforcing that easement?

KEITH O'TOOLE: The declaration would typically have some language which would allow the other property owners to sue the individual who cut down the trees.

JAMES MARTIN: Is there a way to word that so -- I mean the example he brought up of ice storm damage, you know, that the property owner would have the ability to go in and clean up broken branches, trees, et cetera, et cetera, even though it may be within the conservation easement area of the lot?

KEITH O'TOOLE: Yes.

JAMES MARTIN: That could be worded?

KEITH O'TOOLE: Yes.

JAMES MARTIN: There should be a way to work around that, from a wording perspective, in any documentation concerning that.

DARIO MARCHIONI: I have a note from the Conservation Board that would like to see the developer come before the Conservation Board. Have you gone before the Conservation Board?

MR. FITZGERALD: We have not gone before the Conservation Board. I guess with a larger subdivision we're going to be proposing deciduous trees at appropriate caliper every 50 feet on either side of the road. I know in the course -- there will be a letter of credit, too, so -- for the Town if that does not get in place. Landscaping plans, short of just showing trees every 50 feet, that is all it is. I know there is an acceptable planting list that, of course, we have to comply with.

DON FASO: In the course of the decision if the Planning Board likes the condition of having a conservation easement, you should probably meet with the Conservation Board to discuss the impact there.

MR. FITZGERALD: Certainly.

JAMES MARTIN: You touched on my follow-up issue with Dario (Marchioni). I really think you need to do that and figure some way to insure that, you know, that there is a conservation easement on the property. We have required other developers to do it.

MR. FITZGERALD: Maybe we can research some of that verbiage that would help us out.

JOHN NOWICKI: I think those issues, the drainage issues, from the sounds of the letter from Lu Engineers, they're not resolved yet.

DON FASO: They had a cursory review.

JOHN NOWICKI: We have work to do on drainage so I'm not in a position to do -- feel comfortable voting on this.

JOHN HELLABY: I tend to agree with John (Nowicki) inasmuch as they just gave it a cursory review. This is a big issue here, especially along that north line. If that buffer is left in there, Rob (Fitzgerald), you're looking at roughly 4 foot fall over a little over 600 foot running down through there. As I mentioned before, I know for a fact that the back end of that lot -- Lots 192, 193, 194 in that upper left-hand corner have standing water all of the time. So I don't know -- again, looking at your grading plan, I don't see a lot of attempt to try to correct that situation, and I want to make sure you're not going to make it worse.

MR. FITZGERALD: If I can address that -- I'm not even sure if it is shown on those plans we submitted, because it is something Larry (Nissen) and I discussed I think around two weeks ago. What we're doing, shown on this plan, we're proposing a catch basin. I did summarize it up quickly before. We're proposing a catch basin to gather up the water that is going to run it to the south and then cut and tie toward a closed storm system and empty out into the pond.

JOHN HELLABY: A new set of drawings updated from what we're looking at here?

MR. FITZGERALD: Yes. Work in progress. After I met with Larry Nissen two weeks ago to go over the drainage and some concerns, that was one additional concern he had. So we have taken care of that.

JOHN HELLABY: I just -- to reiterate, though, I guess I would have to agree with Mr. Nowicki, the fact that I would like to see all of these issues put on paper and resolved before we push this thing forward, to be honest with you. That is all.

KAREN COX: Well, catch basin -- if there is such a long-standing problem of standing water in those backyards, is one catch basin going to be enough to address that? Or to help it out? You're proposing what size pipe, 12-inch? I mean I know you --

MR. FITZGERALD: Yes. It did size out to be a 12-inch pipe.

KAREN COX: We just have not seen it. The concept sounds good.

This pond down on the southeast corner is a new location, correct?

MR. FITZGERALD: Correct.

KAREN COX: Is that collecting any drainage from the surrounding properties such as 106, 116, 117?

MR. FITZGERALD: To the south of us? No, it is not collecting any of that drainage. But what it is doing is prohibiting our area to drain to the south, because we're putting the pond there. So we're intercepting the water that is heading to the south. So there won't be any water going off our site from the south, with the exception of a small portion, maybe 15 feet. But presently there is a couple hundred feet draining to the south off our property.

KAREN COX: What is the average distance between the pond and the houses -- the existing houses surrounding it, do you know?

MR. FITZGERALD: Proposed houses or existing?

KAREN COX: Existing. Approximately. What I am getting at is, there may be some concerns from people on Battle Green and Daunton Drive that all of a sudden they have got a pond in their backyard where there was none, and maybe it is a safety concern.

MR. FITZGERALD: As far as -- I'm not talking the standing water, the everyday water, the level of the pond, but for the 100-year storm frequency, when it does raise up, it will still be 40 feet away from the property line, so there is a buffer there.

JOHN NOWICKI: You say you design these for 100 years?

MR. FITZGERALD: Yes.

KAREN COX: That is a requirement for SPDES Phase II?

MR. FITZGERALD: Yes.

KAREN COX: Any thought about perhaps putting some fencing along the property line in the back around the pond?

MR. FITZGERALD: We -- there is a small portion of fence to the -- in that vicinity for one of the property owners. We have not discussed that, no. We do have a berm that -- well, I guess they would have to go on our property and go up the berm and be a good 40 feet or so and then start traversing back downhill before they get to the water.

KAREN COX: I mean I'm just throwing that out as apparent if -- if something like this was put in my backyard, I would be somewhat concerned. I would tell my kids not to go on other people's properties, but it tends to sometimes be a magnet.

DON FASO: 104?

MR. FITZGERALD: At -- the very back portion is a 105. And then, of course, into the water it is just flatter than that. The max is 105. There is 103 per Town Code, but not real fun to mow 103, so I usually do 105 at the maximum.

KAREN COX: That will be owned by both property owners? Or is that going to be on easement to the Town?

MR. FITZGERALD: It would be owned by the property owners with an easement to the Town.

KAREN COX: Okay. I would like to see the drainage report before I vote on this.

RAY BLEIER: All of the proposed drainage here is in conformance with the SPDES requirement?

MR. FITZGERALD: Yes. I think -- well, it -- in general terms, I think Larry (Nissen), the Town Engineer's letter does illustrate that. We did our -- the last route we were trying to go last time, discharging into the 24-inch pipe, we weren't getting the quality control, so it did not conform with the SPDES requirements, so that is why we need the pond in the southern corner.

RAY BLEIER: Actually, when I saw that Larry Nissen's -- didn't receive this report until yesterday, I thought that is a little bit of an imposition, and putting a lot of pressure on the engineer to make a recommendation, you know, for this type of a project here with the concerns that -- we have discussed previously. I know you have discussed this with him over this period of time, as well.

MR. FITZGERALD: Our other submitted plan got kicked back.

RAY BLEIER: Couple minor things. Two of your lots are undersized. Lots 5 and 8 are under 15,000. I think it would be a simple thing to correct.

MR. FITZGERALD: We could swing some lot lines. What was the minimum size we had?

RAY BLEIER: 14 5.

MR. FITZGERALD: We could swing the lines.

RAY BLEIER: I was a little concerned about Lot 17 where there -- where the pond is draining, the area. It looks like the foot pad is just about at a point where it is going to slope down, right to the pond there. And I'm not sure that that is going to be a lot to sell. I have would have a lot of concern about it.

MR. FITZGERALD: We can look at fine-tuning the grades maybe to have more of a uniformed slope going down, pushing some of the contour lines back a little bit.

KAREN COX: Don (Faso), I had one other thing I just thought of. The issue of the speed bumps. As I understand it, there are several streets in the City of Rochester that have speed bumps, but they have also formed -- the neighbors agreed to form a district to pay to have those put in, and to pay to have them maintained. And that is the only way those got put in. I don't know how other towns are doing it, but it was -- that is the way the City of Rochester handled it. That was the way to handle in an area where there was a lot of cut-through traffic between Dewey Avenue and Lake Avenue. It wasn't neighbors that were speeding in their own neighborhood.

DON FASO: In a case like this, the roads come under the strict control of the Superintendent of Highways. This Board could not put a condition on this developer that speed bumps be put in place for approval for the subdivision. The property owners in the neighborhood would have to petition the Town Board for the speed bump, and the Town Board would have to authorize it. If the neighbors are here and so concerned --

JOHN NOWICKI: I think as long as it is on the record that one or two people from the Planning Board have made a recommendation this should be looked at, and seriously looked at, I think the people have a right to petition the Town Board there and there is justification of it.

DON FASO: We could not make it a condition of approval there be speed bumps.

JOHN NOWICKI: If that is how the legal counsel advises us, I don't have a problem with it.

KEITH O'TOOLE: The question is?

DON FASO: Is my statement somewhat factual?

KEITH O'TOOLE: Yes. In fact, to create a special improvement district you have to require the consent of the property owners or the majority of the property owners.

DON FASO: Keith (O'Toole) --

JOHN NOWICKI: Are the downspouts tied to the storm sewers or sheet across the lot?

MR. FITZGERALD: They're tied.

JOHN NOWICKI: The downstream facilities that are going to be receiving this storm water from this site, has anybody investigated the condition of the sizing of those facilities? Can they handle the flood -- or the water flow from this site?

DON FASO: He can't increase the rate. So if they're handling it now --

JOHN NOWICKI: Are there maxed-out facilities from the site?

MR. FITZGERALD: Are they maxed out presently?

JOHN NOWICKI: Are they efficient? Are the pipes open, flowing?

DON FASO: John (Nowicki), can we redirect? Dave (Lindsay), you sit with the Drainage Committee, correct?

DAVID LINDSAY: Yes.

DON FASO: Do you understand his question?

DAVID LINDSAY: Yes. You're concerned whether the downstream facilities are clear and operating properly?

DON FASO: To the best of your knowledge.

DAVE LINDSAY: To be honest, I don't know. That question was not posed when I was there.

KAREN COX: I think you would know if they weren't because --

DON FASO: You would be getting drainage complaints.

DAVE LINDSAY: Yes.

MR. FITZGERALD: Real quickly, it is contained in a closed system for approximately 600 feet and then opens into a large ditch and crosses under Paul Road.

MR. FITZGERALD: Of course, we have decreased our flow rate from this site quite significantly just because of the quality requirements, if you will.

DON FASO: Seeing we're looking at a revised plan, are there questions or comments from the audience?

JIM ALLEN - 10 Battle Green Drive

MR. ALLEN: Obviously in Chili. I thought there was no improvement to the drainage south.

DON FASO: The question is no improvements off site? That would be a fair statement. You're not proposing any improvements off site?

MR. ALLEN: On the south side? I said on the south side. That property is now draining into my property at 10 Battle Green Drive and my neighbor's also. That was my concern.

DON FASO: This should help alleviate your problem.

MR. ALLEN: I hope so. I will be in front of the Town Board if it doesn't.

What happens to the drainage ditch at the top? Will it be covered or will it still be there?

MR. FITZGERALD: We were not proposing to fill that in. It is still necessary to drain those homes from -- there was a concern from some of their members they would bottleneck the water from continuing on, so we'll leave that open.

MR. ALLEN: The existing ditch is covered through your property?

MR. FITZGERALD: That runs north/south, correct.

MR. ALLEN: How will you dump the water into that? Right now it is pretty low to the drainage coming the other way. I was -- I have seen standing water in that ditch.

MR. FITZGERALD: It is a closed system now. There is -- I think there is actually 9 feet of fall. You may not see -- it may not seem that way, but with the calculations, we actually have 1 1/2 percent slope in our 24-inch pipes, so a pretty good slope to carry the water.

MR. ALLEN: Thanks.

MR. FITZGERALD: Which is more than adequate, but we had to make up the change in elevation.

RAY BLEIER: I have one question for our engineer, Dave (Lindsay). You know, reading Larry (Nissen)'s comments about, you know, whether or not this thing is really suitable for even preliminary approval at this time, there seems to be some doubt. Even though he says preliminary is granted --

DON FASO: He doesn't have a problem with preliminary, and wants approval on final.

RAY BLEIER: I'm trying to read into -- but I guess, point blank, is this really -- this plan, to date -- the data you have on drainage, is it suitable for preliminary approval at this time?

DAVE LINDSAY: Larry (Nissen) doesn't have a problem with it. He felt whatever issues needed to be resolved as far as drainage he would work through them and get them resolved.

KAREN COX: Can a copy of the drainage report be made available to us?

DON FASO: Why don't you guys, if we grant preliminary, hold final and request that for final.

RAY BLEIER: Right. I would not want to vote for final.

KAREN COX: I don't either. But I -- to me, it is ready for preliminary, since the engineer has addressed the concerns from the -- from the first meeting. Now we just need to take a look at the drainage report.

MR. FITZGERALD: I have no problem supplying that document. It is a large one, but that is no problem.

KAREN COX: If there were two copies, it could be passed between us.

Don Faso made a motion to declare the Board lead agency for SEQR, made a determination of no significant environmental impact, based on the testimony and the material presented at this hearing. The Board all voted yes on the motion.

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

1. Applicant shall meet with the Conservation Board to discuss a conservation easement for this project regarding buffering for adjacent neighbors.
2. Applicant shall submit a drainage report and calculations to the Planning Board prior to final approval.
3. Lots 5 & 6 need to be reconfigured with regard to lot size.

PUBLIC HEARINGS:

1. Application of Wegmans Food Markets, owner; 100 Wegmans Market Street, Rochester, New York 14624 for preliminary site plan approval for private driveway connection to Chili Avenue for Market Street complex at property located at 249 Fisher Road in L.I. zone.

JOHN HELLABY: Mr. Chairman, before you continue, I would like to request I be allowed to step down as I'm employed with Wegmans.

DON FASO: You are excused.

Art Pires, Paul Colucci and Dan Aiken were present to represent the application.

MR. PIRES: Good evening, Mr. Chairman, members of the Board. First I would like to -- my name is Art Pires with Wegmans Food Markets and with me this evening we have Mr. Paul Colucci of Costich Engineering as well as Dan Aiken of FRA Engineers.

What I would first like to do is apologize, I missed the opening or premeeting celebration and best wishes, and Mr. Chairman, I would like to extend certainly a personal as well as professional extension over the years for your fine work and efforts.

DON FASO: Thank you very much, I appreciate that.

MR. PIRES: Now with business, if you would like, I would read what the application is?

DON FASO: Yes. I think the Board is somewhat familiar with what you're doing.

MR. PIRES: What I will do for the sake of the Board, brevity and the audience, a quick overview of what we have accomplished to date with this Board as well as the Town of Chili and what we see -- Chili and Gates.

Firstly, we're proposing this as the new driveway (indicating). Up here, this is the Chili Avenue (indicating). The existing Market Street intersection with Chili Avenue is this point (indicating). We're proposing the new driveway as the next step after we received the break-in access, both from the Town of Chili and the Town of Gates. The reason for that was, once again, was -- this is currently the northern property line of the Market Street complex. This is the Market Street complex (indicating). Immediately to the north and continuous are lands of New York State. The property -- the boundary line between the two towns of Chili and Gates are approximately in this location here (indicating). Chili obviously to the south and Gates to the north.

With that, we have been before the Town of Gates for the driveway review. We have had two meetings before the Town Board, July 5th and August 7th, and we'll be back to them on September 7th, following the decision on this Board. We are proposing the new driveway simply because of the need for future expansion on our Market Street complex. Right now the existing Market Street/Chili Avenue intersection is at, in essence, full capacity. We have had a traffic impact study submitted by FRA to the New York State Department of Transportation and our understanding, they concur with the methodology and conclusion in that. In fact, this report is a -- if you will, a current report, but validates the same information we received a couple years ago from the Sear-Brown Group in their traffic report which this Town had seen and accepted.

So with that said and done, in order to have further development, in particular, we're looking for a meats center and warehouse approximately in this location (indicating) with the existing warehouses and possible future office expansion over here (indicating).

With that said and done, I would like to address any questions that the Board might have or certainly the residents.

KAREN COX: Did the Town of Gates, just for our benefit, did they ask you to add something, sound walls?

MR. PIRES: Yes. Actually we have reduced site plans of what we have here. Mr. Colucci can hand this to the Board. These are reduced copies. They're 200 scales of the existing site plan above, and then also we have an existing plan of the section when we get to the Lexington Avenue properties to the west of us. Those exhibits are also being handed out. But specifically to your question to the north, as we come off of Chili Avenue -- I apologize. You should be getting that in a second.

So the proposed driveway is at the current intersection of Chili Avenue and the 204. So this would be the fourth leg of that intersection, starting at Chili Avenue, heading southeast and into and across State lands, onto our property. That would be the proposed driveway. So just north of that, yes, we have the Town of Gates, the residents there. We have had discussions both with the Town Board as well as the citizens, and in an after-board meeting, and we're proposing now and have had discussions with the New York State Department of Transportation to install a sound barrier wall on the north side of the driveway, which would be between the proposed new driveway and the rear property lines of the Gates residents.

Now I say that. We have had good conversations, in fact, with the New York State Department of Transportation they have had Dr. Frank Sciremammano from FRA Associates, who is also a professor of engineering at RIT, meet with the D.O.T. today. We're at least in concept accepting the sound barrier. The good news is they're accepting an understanding of our intentions with that wall.

DON FASO: D.O.T. -- New York State D.O.T.?

MR. PIRES: Yes.

DON FASO: Is this going to be a typical barrier wall that we see on the expressway?

MR. PIRES: In a general sense, it is a sound barrier wall, similar to those on the highway. The details and exact look we have not finalized.

DON FASO: But similar to them?

MR. PIRES: Yes.

JOHN NOWICKI: Similar in character, similar in character to some of the sound walls that you see that are somewhat aesthetically decorated with patterns and what have you?

MR. PIRES: Our intent is to work with the Town of Gates as well as the citizens in that regard.

That is why we don't have those details worked out, but yes, that is our intent.

DON FASO: I have a letter dated July 8. Did the Board get a copy of this from Larry Nissen? "With regard to the application of Wegmans Food Markets for preliminary site plan approval ... 1, A traffic impact study has been submitted that examines construction of the driveway connection, improvements to the Chili Avenue/Market Street/Route 204 intersection, and future construction of a 140,000 square foot meat processing facility and 172,000 square foot office space expansion. The study has concluded that there will be no significant adverse impacts to the intersection with regard to the above activities although a 'slight increase in the delay associated with left turning vehicles on the minor side streets' will occur.

The design for the new driveway connection meets or exceeds Town design criteria for private or public roadways.

It appears that this project will require a New York State DEC SPDES permit.

If final Planning Board approval is granted, we request that it be contingent upon Town Engineer's approval."

I have County DRC comments. Number one, the map to this project is going to be filed with the County Clerks's Office. There is a standard note about monumentation. The following agencies have reviewed this project and have no comment. A, which is County Health, and C, Environmental Management.

Number three, a request for break in right-of-way without access has been submitted to the Department and is currently being reviewed. We'll be working with the designer on details of the highway design. Any work within the State right-of-way will require a highway work permit, and that is from State D.O.T. This project was not sent to the following agencies for review because it did not meet the review criteria, and it is E, which is the State DEC. Those are the County Comments.

Dan (Kress), I have an original. I think that should be in the file. Wegmans' environmental assessment. It is original. Make sure you get it for the file.

JOHN NOWICKI: Just a question on the existing road in there, the Market Street, what is the proposal for that use of that road? Is that coming out?

MR. PIRES: The intent is to keep the existing Market Street drive there. It will accomplish two things. Number one, it will still provide access for those folks coming from Westside Drive into the site, as well as from the south, heading northbound. So with actually the two intersections, it distributes the traffic to two intersections versus one, so there is no proposal to close it.

JOHN NOWICKI: Limited or restricted to vehicle traffic or truck traffic?

MR. PIRES: Our intent, and there have been discussions with the Town of Gates as far as even possibly restricting this new driveway -- we are proposing as the traffic impact study indicates, we propose to keep both open, full access for all vehicles.

DON FASO: Do you have an indication of what the percentage of trucks using each particular access point would be?

MR. PIRES: We don't have that.

DON FASO: 50/50, 60/40?

MR. PIRES: The vast majority, because they would be -- that is the whole intent here. The ease to getting in and off the expressway is here, so the 204 is there. Right now the majority of our truck traffic in particular is coming off of 204, making a right-hand turn coming southwest on Chili and then the left into our driveway, which, in fact, those two turns are contributing to the major -- one of the contributing factors to the bottlenecks along Chili Avenue which is one of the initial reasons for seeking the break in access and the new driveway. So simply stated, the majority will be coming from the north and then coming into our proposed new driveway.

DON FASO: The stub you have proposed, will that be to service the office?

MR. PIRES: Yes. We have off to the southeast, if you will, then as you come in -- this area where we have done conceptual work internal, not submitted to any board, we have the new office (indicating), adjacent to the existing one and then the parking over here (indicating), so we would branch off into this parking area.

CHARLES ROBINSON: The applicant came to visit the Conservation Board and we had some modifications to the plan, so we would just like to see the revised landscaping plan as agreed to.

MR. PIRES: Yes. If you would like, we can walk down the list of those, or -- or whatever the Board chooses.

CHARLES ROBINSON: You wanted to -- we would be -- we were more than happy with what they proposed to do. If you want to enlighten the Board, by all means.

MR. PIRES: We'll be having extensive trees along the new driveway, coming into the site, and then the -- there was a request at the existing intersection, the southeast corner of the existing Chili Avenue/Market Street, if we could enhance that corner of the property, the existing driveway and we can certainly work with that. As far as the species along the driveway, that has yet to be worked out, but once again, we would be working closely with the Conservation Board as we fine-tune our construction plans.

Last but not least, as a side note, we're currently proposing a wall up here (indicating). Initially the wall showed a 4-foot high berm with evergreens on top. That is still obviously part of the original application, but with modifications per the request of the Town of Gates as well as the citizens, we're looking to substitute that with the sound barrier wall.

CHARLES ROBINSON: Once again, with the applicant -- they have met with the Conservation Board several times. We agree with it, and look forward to meeting again with the final plans.

JOAN ANTINORE - 40 Lexington Parkway

MR. ANTINORE: Did I understand you to say the majority of the trucks come off 204 now onto the complex?

MR. PIRES: From the north. A combination off 204 as well as coming southbound, southwesterly down Chili Avenue. That is the majority of the trucks coming in from the north, both from the 204 as well as say Brooks Avenue southbound?

MS. ANTINORE: They have done studies on this, to my knowledge driving that all of the time, they're coming from the Brooks Avenue complex around Chili Avenue. I don't see any coming off 204, hardly ever.

MR. PIRES: Actually we do. We have our trucks and we have our vendors coming off. Once again --

MS. ANTINORE: A vendor you're talking about.

MR. PIRES: We have our trucks and then we have tractor-trailers coming in. So when we answered the question of the Board, we were speaking to all tractor-trailers.

MS. ANTINORE: These trucks, these semis of various natures, yours and others, will be using access to both the new road and to Market Street?

MR. PIRES: Correct. Primarily to the new driveway, correct. We will actually be lessening the number of trucks coming down this existing driveway here (indicating). As a little point of clarification, you can see down here (indicating), we have new roadway here (indicating). This is just leading to our existing parking for the employees of the warehouse. This is not for trucking. So this is an extension, but to our parking area only.

MS. ANTINORE: To the parking lot.

MR. PIRES: We have existing parking here (indicating) on the west side of the building. This extends down so our employees coming in who are utilizing this driveway (indicating), they would be able to continue straight down here (indicating), versus coming down and around and over.

MS. ANTINORE: You will have to be putting signal lights in your own complex.

MR. PIRES: We're not proposing any signal lights. We don't see the need. We currently have a four-way intersection in a couple places and we're very comfortable with that.

DOROTHY BORGUS - 31 Stuart Road

MS. BORGUS: The last time that Wegmans was here about this project I broached the subject of the wetlands because I believe that those are wetlands that are on the border between Chili and Gates. I wonder if that issue has been resolved.

MR. PIRES: There are two points. Yes, there are wetlands approximately in this location (indicating) that we're not disturbing, and then right in the path, approximately this location (indicating), I believe we have half an acre of existing wetlands, but only disturbing three hundreds of an acre in this area. With -- basically, comparable to the State Environmental Quality Review Board, we have to submit what they call a NEBA as part of our break-in access documentation, and within that we mention that there is less -- approximately three hundreds of an acre

disturbance, so in effect no significant disturbance to those wetlands. That is part of the report going to regional D.O.T. and then to Albany.

DON FASO: Regional DEC?

MR. PIRES: D.O.T.

RAYMOND JERMYN - 60 Lexington Parkway

MR. JERMYN: This meat processing plant you're proposing, you mentioned that. How much is that going to add to the trucks that are coming in here, and the increased noise? We have already got plenty of noise coming from your property. I'm just wondering how much more noise we're going to be able to tolerate.

MR. PIRES: Well, we are -- once again, we don't have an exact number of that because we don't have it finalized here, but number one, it will be nominal as far as incremental traffic to the site.

MR. JERMYN: How many trucks do you use on Brooks Avenue now for meat processing?

MR. PIRES: I don't have that number here.

MR. JERMYN: Those will all be coming over here?

MR. PIRES: There will be a number of trucks coming over to the site, yes, but they'll be coming into the site, and that is why we have the berm there. Actually, the truck traffic will be coming further away from this property line than it is today.

MR. JERMYN: Further away. It looks like it is coming closer.

MR. PIRES: Once again, this is the new driveway coming in. Then they would come over down this road into our complex here (indicating).

This little course here (indicating) is for the employee parking area. So they're not coming closer to the property.

MR. JERMYN: I understand that, but the question is, when the meat processing plant gets built, we're going to have these refrigerator trucks running 24 hours like we got right now?

MR. PIRES: The incremental trucks will be parking in the exact -- roughly an extension of this parking field here (indicating). There will be a building say in approximately this area at the south end (indicating). So then we would extend our parking over into this field here (indicating). So you would have the blocking of the -- where the tractor-trailers are located, between you and the parking, you would have the new building itself as a sound barrier.

MR. JERMYN: So --

MR. PIRES: In fact, we have done sound studies here (indicating), along here (indicating), and we have actually invited a neighbor to come out, and at the last minute it was canceled, but we have shown we're clearly in compliance with any code.

MR. JERMYN: Well, in compliance is coming into my house 24 hours a day.

MR. PIRES: I can only speak to the fact that we're in compliance.

MR. JERMYN: Well, I don't think you're in compliance, to be honest with you.

DON FASO: Let me state on the record I called Mr. Pires probably two months ago, and with the specific intent of going around and looking at the site, and listening at the ambient noise levels, and from where we parked, it was a calm day, with very light winds. I know at night sometimes sound travels a little better, but during the day I could not hear the refrigerator trucks.

MR. JERMYN: I must have super hearing then.

DON FASO: Middle of the afternoon.

MR. JERMYN: In the afternoon. Try 3 o'clock in the morning.

DON FASO: As I said, maybe sound carries a little further at night, but during the day I could not hear the trucks.

MR. JERMYN: Evening, late night, early morning, the sound sometimes wakes me up. I'm just wondering, you know, how much further this is going to go.

JOE ANTINORE - 40 Lexington Parkway

MR. ANTINORE: I can't sit by and have Ray (Jermyn) comment about the noise level and stand on his own. We deal with it on a daily basis as well, 40 Lexington Parkway. We can hear the turbines turning on. There have been times when they have been testing various kinds of generators that are supposed to be temporary to test them out and they have gone for an entire week. There is noise that comes from the complex.

DON FASO: You're telling me that the generators have been running for an entire week?

MR. ANTINORE: A test one, yes. They tested one. I called to Gates what the noise was. I was told it was a generator being tested, being placed between buildings with a semi or whatever, parked between the generator and the berm, and we still heard it constantly, this constant humming that went on. We also hear the trucks working back there, when the dump trucks finish their load and drop their loader back in place, and the gate slams up against it -- I am standing to agree with Ray (Jermyn) that there is noise.

Ray (Jermyn), it is not your hearing. We hear it, too.

I am also happy to hear that the people in the Town of Gates are finding fault with a 4-foot sound barrier because that berm that is behind my house is somewhere between 15 and 25 feet tall with trees that have been growing for somewhere in the neighborhood of eight to ten years. And we're still hearing it -- all of this noise. So for them to have agreed to a 4-foot sound barrier would have been absolutely ridiculous. A 4-foot barrier doesn't stop noise. And as far as any trees that are going to be planted, I have grown old waiting for those trees to mature to a point where they enclose off my sight of the buildings. So those younger people with children that are living in Gates and are going to be contending with this new driveway or road -- it seems to me as though when I attended the Gates Town Planning Board meeting, that -- it was being referred to as a road. Now I'm hearing Mr. Pires refer to it as a driveway. I own a driveway. Only my vehicles and those people welcome on my driveway are allowed on it. A highway, anyone can drive on it. Or a road. Thank you.

SUZANNE PLUMMER - 39 Kernwood

MS. PLUMMER: Suzanne Plummer, P-l-u-m-m-e-r, 39 Kernwood in Gates. I totally agree with these two gentlemen, everything they just said, it is 100 percent correct. The noise, 24 hours a day. The banging, the generators, they're right on the money with that.

I do have -- I do have two small children so I appreciate your comment. We purposely moved to Kernwood Drive because of the area and what a great, safe area it is for the kids.

I do have a question. I know we discussed the new road. Is it going -- if there is going to be any time limits for your tractor-trailers and your vendors to go through, are you anywhere on that, or is it 24 hours access, seven days a week, these trucks behind my house?

MR. PIRES: As originally proposed and we're continuing to propose, it would be open 24 hours, yes.

MS. PLUMMER: Thank you.

Don Faso made a motion to declare the Board lead agency for SEQR, made a determination of no significant environmental impact, based on the testimony and the material presented at this hearing. The Board all voted yes on the motion.

RAY BLEIER: I just have a question, a clarification, since this road is across two townships here. What are we really dealing with here, the Chili portion or the whole thing or what?

DON FASO: That is a very good question. I think we're basically approving the portion that goes into Chili.

MR. PIRES: My understanding, Mr. Chairman, is the Board, if they approve it, is approving this new driveway into this complex as a minor adjustment to the originally approved plan of 1987, 1989, the master plan. So this is just a minor modification to that, is my understanding. The fact that it crosses over New York State lands as well as Town of Chili lands, it is still part of this complex. And my understanding, and if I heard it correctly, my understanding as far as Gates' involvement, they don't even have site plan approval. The Supervisor Esposito, for the sake of the citizens, brought it to informational meetings. We made our presentations, expressed communications and have been in communication with the residents. It is not a site plan approval by the Town, but they're reviewing the driveway, if you will.

DON FASO: Mr. Esposito brought it before the Town Board?

MR. PIRES: Correct.

DON FASO: What did I read in the paper about the Planning Board?

MR. PIRES: The Planning Board -- my understanding is the Town Board, and hopefully on the 7th, if they approve it, will make recommendations to the Planning Board.

DON FASO: September?

MR. PIRES: Yes.

KAREN COX: That is because there are no buildings in the Gates --

MR. PIRES: It is really just -- it is -- it is a driveway. I mean that is really what it -- it is not a matter of semantics. It is a driveway into a complex, just like the existing roadway, driveway. I don't know if there is a technical difference between the two. So it is really just a highway, not a site plan that they're reviewing. It is a very unique thing, but not elevated to the point of site plan review by the Town of Gates. That was my understanding. So it comes back full circle, this property in total is under your jurisdiction, and we're requesting and you're reviewing a proposed modification to the overall site plan.

DON FASO: But you took into account the comments from the Town of Gates and pulled the driveway a little west?

MR. PIRES: That's right. There are questions that may switch it even further to the west, but in meetings with New York State D.O.T. and multiple sketches, that layout there, the alignment as it approaches Chili Avenue is the best engineered design. We just can't put the road where we want as far as engineering principles. We're working with New York State design standards.

DON FASO: For the record, you still have to get State approval.

MR. PIRES: Number one, they will have to review highway plans and we'll have to secure a highway work permit as well as permit for the driveway itself.

DON FASO: So the State could still come back with comments --

MR. PIRES: Definitely.

DON FASO: -- requesting changes?

MR. PIRES: Correct.

RAY BLEIER: So we can impose these conditions then pending approval of the State and Town of Gates?

DON FASO: Well, Gates wouldn't have approval.

KAREN COX: Gates has no approval. It is courtesy.

RAY BLEIER: It is the Town of Gates that is insisting on a barrier and also some landscaping?

DON FASO: Well, we're approving the site plan and that 12-foot barrier is shown on the plans. So essentially we're -- it is not a condition. It is shown on the plans and they're obligated to build it. Any deviation from that site plan, he is back before this Board.

DARIO MARCHIONI: Give us a little background. Was the State supposed to do -- when they acquired this land to extend this road, and actually, if I remember the original master plan from Wegmans, you were going to get an exit into that?

MR. PIRES: Yes. A number of years back, certainly with the expressway that was to extend, if you will, due east and into the city, and -- that has just been sitting aside for years. Haven't seen anything currently on that. I know there have been stud --

DON FASO: I found that plan in an old box about two weeks ago in my basement.

KAREN COX: I would love to see it.

MR. PIRES: My understanding is nothing has been adopted by the County or the State in that regard, the Airport Corridor Study.

The Board discussed the proposed conditions.

RAY BLEIER: Charlie (Robinson), are you set with the Conservation Board?

CHARLES ROBINSON: As I stated earlier, the applicant came to the Conservation Board meeting and we proposed enhancements onto the Market Street entrance. So we want to see those revised plans. That is all we're concerned with. We did address the issue of coming across Gates and into Chili, and as far as the Conservation Board was concerned, although it did cross boundaries, we cannot be concerned with what Gates had to do. We were concerned with Chili.

DON FASO: How about if we put it on a condition they meet with the Conservation Board to discuss their proposed plantings?

CHARLES ROBINSON: Proposed what?

DON FASO: The proposed plantings.

CHARLES ROBINSON: That's correct.

DON FASO: We'll make it a condition, Charlie (Robinson).

DECISION: Approved by a vote of 6 yes with 1 abstention (John Hellaby) with the following conditions:

1. Pending approval of NYSDOT.
2. Landscaping plan shall be submitted to the Conservation Board for review.

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

2. Application of Judy Bamburowski, 17 Jamie Lynn Drive, Churchville, New York 14428 property owner: Kravetz Realty; for preliminary site plan approval for a change of use to allow a temporary dog grooming business (space A7-R-formerly used as indoor soccer stadium) at property located at 3240 Chili Avenue in G.B. zone.

DON FASO: As I stated earlier, Application Number 2, Judy Bamburowski has voluntarily withdrawn and we will not hear that.

3. Application of Ed VanDeWater, owner; 38 Bunny Run, Churchville, New York 14428 for preliminary site plan approval to erect a 60' x 45' warehouse addition at property located at 3530 Union Street in G.I. zone.

Rob Fitzgerald and Ed VanDeWater were present to represent the application.

MR. FITZGERALD: Thank you. Rob Fitzgerald, Avery Engineering. This is the Amish Outlet on the east side of Union Street. They presently run their business there. They're a little scrapped for space right now for retail and for some of the workers in the back, so I guess this addition is needed due to a successful business here in Chili.

Like I said, it will be for warehouse, and presently back there it is at pretty good grade. We might have to do some fine, earth improvements besides the building itself, to bring in gravel to smooth out things, but we're not doing any grade changes back there at all. We're pretty much sticking with existing grade.

As far as the structure, it will match the existing building itself and will be located to the rear of the existing structure. We did have to get a variance for the -- what would be a rear setback, for the one leg, which is only 28 feet. That was granted from the Zoning Board of Appeals at last month's meeting. Any other improvements, besides -- just the structure and to take care of our 1 percent for conservation, match, if you will, we're proposing two additional Red Maples and two Bradford Pears in the front of the area.

As far as screening, we thought maybe screening would be an issue. Behind our building, there is quite a significant ditch. Then beyond that there is about 40 feet of brush, if you will. There is about 200 feet of parking lot and then another industrial building, so we didn't feel it was necessary doing screening for the back of the parcel. So they want the 1 percent up front and put in a couple more hardwoods.

Ed VanDeWater is here if you have any questions regarding the business.

With that, I will open up to any questions.

DON FASO: Mr. VanDeWater, are you still pursuing that property in the back?

MR. VAN DE WATER: Um, that is pretty much on hold right now.

DON FASO: I have County comments dated August 9th. Number one, the sewage disposal system must be shown on the plan.

MR. FITZGERALD: As the Board probably knows, the sewer line is there now. We're just waiting for the go-ahead to tie into that. I can show it on there.

DON FASO: Number two is their standard note about monumentation.

Number three, the following agencies reviewed this project and have no comment, and that is Environmental Management.

Number four, the New York State D.O.T. did not participate in a coordinated review of the application. The applicant should contact regarding the permitting process. The Board may wish to require that the applicant supply the Board with all correspondence with related access to D.O.T.

MR. FITZGERALD: We're not doing access improvements.

DON FASO: Number five, the project was sent to the following agencies -- was not sent because it did not meet the criteria, and that is -- DEC. I have Larry Nissen's letter dated August 5th. The rear setback variance will be required?

MR. FITZGERALD: That is correct. That has been obtained.

DON FASO: We also recommend that the proposed side setbacks be illustrated on the plan.

Number two, if the asphalt pavement is to be revised to access the new addition, the extent of the revision should be indicated on the plan.

Number three, if the location and size of areas designated for placement of gazebos, sheds, et cetera, is a concern to the Board, we suggest they be located by swing ties and dimension.

If the Planning Board approval is granted, we request that they be contingent upon engineer's approval. Tongue tied here. Okay.

Was there a condition that the display area can only go out so far? Did I see that on original approval someplace?

DANIEL KRESS: Prior site plan there was a designated area.

DON FASO: A designated display area?

DANIEL KRESS: That's correct.

DON FASO: Do you remember what that dimension was? Or Mr. VanDeWater, Rob (Fitzgerald)?

MR. VAN DE WATER: We got approval for a revised site plan, where we could put four gazebos out in the front lawn and any sheds would have to be near the front -- or behind the front of the building and along the side of the property and the rear of the building. That's the best --

DON FASO: And picnic tables and Adirondack chairs didn't matter?

MR. VAN DE WATER: That was not a matter at all.

DON FASO: Four gazebos in the front?

MR. VAN DE WATER: Yes.

JOHN NOWICKI: Is that what he got from the last approval?

KAREN COX: I remember we had to -- originally was not going to be any outside storage, and then --

JOHN NOWICKI: He came back.

KAREN COX: -- then they came back for -- for that condition.

DON FASO: I thought I saw that somewhere in my review.

RAY BLEIER: What are you actually going to be storing or doing inside this addition?

MR. VAN DE WATER: Most of the time now it is just a facility for indoor furniture storage. We're trying to expand our showroom. We also needed warehouse space. So it is basically to store furniture, materials.

RAY BLEIER: I was out to your property recently. I noticed going down the little side street there, you have wall-to-wall sheds. You know, one on --

MR. VAN DE WATER: It is just a product of this wet -- this wet spring. Or this wet summer. People are ordering the sheds, and they don't want them delivered because they're telling us we can't accept them now because the lawn is too wet. And I can't tell -- I got to have them on site, so when it does dry up, I can move them out. It is just a product of this wet summer.

RAY BLEIER: Have all of the sheds been ordered?

MR. VAN DE WATER: There is probably -- more than half are sold that are out there right now.

RAY BLEIER: You have got tons of those sheds all along there.

MR. VAN DE WATER: Yes. As an example, Monday, Tuesday and Wednesday this week, it has been dry. We can get rid of three a day. So we're going to get rid of nine sheds in three days. If I didn't have them there on the property -- if I had them left at the factory --

DON FASO: What three days were dry again? I must have slept through them.
(Laughter.)

MR. VAN DE WATER: But in any case, it is just a matter of -- it has been so wet. It is normally not as crowded with sheds.

DON FASO: But business is still good?

MR. VAN DE WATER: We're doing fairly well with sheds this year.

RAY BLEIER: What is the boat doing out there behind the building?

MR. VAN DE WATER: That is mine. It got broke and I'm having my worker fix it.

KAREN COX: What is the -- I notice there is a door, 15-by-15 door on the new addition. Is there going to be asphalt or a driveway to that door? What is the purpose of that door?

MR. VAN DE WATER: Sometimes we need to bring in a shed or a gazebo for touch up or paint, and that is why we need the big overhead door.

KAREN COX: Would you want to have asphalt there?

MR. VAN DE WATER: I really don't because a lot of times what they're -- sheds and gazebos are dropped off, it damages the asphalt and digs it up. I just as soon leave it stone.

DON FASO: The stone doesn't damage the gazebo?

MR. VAN DE WATER: They're on skids.

KAREN COX: The areas that are shown crosshatched, areas designated for gazebos and storage sheds, right now those are all full?

MR. VAN DE WATER: Yes.

RAY BLEIER: They're all over.

KAREN COX: That is what I surmised when I looked at it, those are the areas that were designated by the Board when you came back in?

MR. VAN DE WATER: Yes.

MR. FITZGERALD: I believe it was last year.

KAREN COX: Might even have been two years ago.

MR. VAN DE WATER: I don't remember myself.

JOHN HELLABY: No actual concerns. I think Mr. VanDeWater runs a very nice operation over there. I honestly believe that the biggest concerns as far as the onset of all of the odds and ends in the front lawn is somewhat of an oversight on this Board's part. I distinctly remember talking about sheds and gazebos and what not. I don't think any mention was ever talked about Adirondack chairs or Amish buggies and whatever else might end up out there. And I think we might want to consider, you know, how do you curtail some of that situation now that he is back in here. That is my only comment right now.

DON FASO: Well, have you -- you guys gave him approval for four sheds or gazebos in the front. Plus the crosshatched area as designated for gazebos and storage sheds.

JOHN HELLABY: But I don't think any actual discussion was ever said, "We'll have 50 Adirondack chairs out there." I do not recall any of that, and I think -- I think we are somewhat at fault as not to investigate that, and that is his way of interpreting it, well, gees, they didn't say anything, it must be okay.

DON FASO: When you drive by, I mean the place does not look like it is in a disarray.

JOHN HELLABY: Don't take it wrong. I think he is running a great operation over there. I personally don't have a problem with it. I know there are some people out there that do, and I think sometimes it becomes overwhelming, and if we want to investigate it, now might be the opportunity.

DON FASO: Do you count them at night and recount them in the morning? That is a question. I think it would be awfully easy for somebody in a pickup truck to load some in there.

MR. VAN DE WATER: It has happened once or twice.

DON FASO: Really? That is all?

MR. VAN DE WATER: That is all.

JOHN NOWICKI: My question, all of the storage sheds and all of the other equipment that you're storing in this parking lot, is there an infringement on the required number of parking spaces for customers that come in there? Are we overcrowding that parking lot with so much product that we can't get cars in there?

DANIEL KRESS: I don't believe so. Although that was the reason I asked what was the reason for the additional area that be added because it -- if it is used simply for storage, it is less of an issue than if we're opening up more retail space.

JOHN NOWICKI: I wanted to explore that, too. Are you manufacturing this product on site or

do you bring all this product in already manufactured?

MR. VAN DE WATER: We bring it in already manufactured.

JOHN NOWICKI: And --

DON FASO: His letter of intention says the additional space is needed for storage of products. So it is not going to be a showroom.

JOHN NOWICKI: He also indicates he will use it for repair service, right?

DON FASO: Well, that is on something damaged in transit.

JOHN NOWICKI: He has a big door there, 15-by-15 door there. If you start doing repair in there --

DON FASO: If you have a gazebo on a forklift, that has to be 8, 9, 10 feet tall.

JOHN NOWICKI: The site is maxed out already. This going to definitely max it out now. How much more do you think you can put on this site, I don't know.

DON FASO: Do you remember when Mr. VanDeWater was in four months ago with the sketch of the possibility of picking up some additional property in the back?

JOHN NOWICKI: Well, that would be a good idea.

DON FASO: Well, as I -- it is on hold.

MR. VAN DE WATER: I'm still working on that.

DON FASO: Money or access? Yes and yes?

MR. VAN DE WATER: All of the above.

JOHN NOWICKI: You come back in here again looking for additional space or something in the back, we would have to have some restrictions on the front as far as all those Adirondack furniture there. The gazebos are one thing, but once you throw everything else out there with the kitchen sink, we have a problem.

MR. VAN DE WATER: It is a seasonal issue. It is late spring and summer. By the time fall comes around, it is back inside. Or most -- 90 percent of -- even what is out there now, as far as outdoor wood furniture, is underneath the porch area.

JOHN NOWICKI: The sanitary sewer, what is your intention there as far as how soon can you hook into that?

MR. VAN DE WATER: I'm just waiting for the word. I would be hooked up tomorrow if they gave me the word. I don't know what the holdup is. I have been paying taxes on it for two years now and still not able to hook up.

DON FASO: Rob (Fitzgerald), do you know what the holdup is?

MR. FITZGERALD: No, I do not.

JAMES MARTIN: I would kind of like to second what Al (Hellaby) and John (Nowicki) have already talked about. It just seems like there is an awful lot of stuff out there in the front yard. When he was here before and we approved the gazebos, I don't remember --

DON FASO: But if it looked dumpy, I think it would be an issue.

JAMES MARTIN: I understand. I'm just saying is there a way it could be reduced somewhat? I don't know how many different styles of Adirondack chairs you have, but people don't need to see two of the same style. Is there a way to reduce the amount that is out there? I think that would be -- you know, with the -- with the addition, there is storage space, so could some be removed from the front, stored to the back? I don't think that was our intent when we did that before. That's all I have got.

DARIO MARCHIONI: I would like to vouch that there is a little storage building with a lot of red tags on them saying sold, sold, sold. So there is a lot of them that are sold. They're just stored there.

Just one question, that road, is that part of the telephone company? There are a lot of big potholes there.

MR. VAN DE WATER: That is owned by the major property owner, that would be Jarvee Associates, and that's a private road. It is up to them to maintain it. I have to pay for a certain amount of the upkeep, but I don't have any control over how that road is maintained.

DARIO MARCHIONI: I was driving down there, and I had to drive sideways.

DON FASO: Well, that would be where, if they ever decide to do it, the proposed Paul Road Extension --

Tracy (Logel), where does that stand? Still on hold?

SUPERVISOR LOGEL: In limbo.

CHARLES ROBINSON: Point of clarification, am I to understand that the applicant is choosing to do the landscaping?

DON FASO: To -- what trees?

MR. FITZGERALD: Two -- they're presently out there. So we're expanding on what is there. Two additional Bradford Pears and two additional Red Maple.

CHARLES ROBINSON: The Conservation Board would like to see it on a plan, please.

KAREN COX: It is on the plan.

DON FASO: They're on the plan.

CHARLES ROBINSON: We gave him an alternative. They could either approve it -- are you choosing that option?

MR. FITZGERALD: We're choosing to use the 1 percent on our site, which is the additional plantings.

DON FASO: Two trees equal 1 percent of the cost of the construction.

MR. FITZGERALD: Four trees.

CHARLES ROBINSON: Still, we would like to see it on a plan. That is how we check and do follow-up.

KAREN COX: It is right here, on the plan (indicating).

CHARLES ROBINSON: I have not been privy to the plan. I have not seen the plan. As long as you say it is there, I just want to make sure the Conservation --

DON FASO: They are shown on the plans.

JOHN NOWICKI: Two Red Maples and two Pears?

MR. FITZGERALD: Yes.

DON FASO: They're on the plans, Charlie (Robinson).

CHARLES ROBINSON: Once again, I have not seen it. As long as it is on there and the Conservation Board gets a copy, I will be happy.

If it is going to be approved, he has to stamp it anyway?

DON FASO: No.

CHARLES ROBINSON: Can I have a copy of the plans to make sure we have it?

DON FASO: Right here.

BEVERLY NEDER - 82 Attridge Road

MS. NEDER: Being at the majority of these Planning Board meetings, I do remember that the storage was supposed to be sheds and gazebos, and no mention was ever made of the accessory furniture. And it is another case where you give somebody an inch and they end up taking a mile. I don't care if in your opinion it looks junky or not. That stretch of road has been a continuous problem between the Nina Ball property and other properties there.

DON FASO: I wouldn't go so far as to call this -- what it looks like across the street.

MS. NEDER: I'm not saying it is.

DON FASO: Then don't compare it.

MS. NEDER: I'm not. If you don't enforce the conditions that you have put down, and there have been complaints about it because I have complained and other people have complained, and it is -- nothing has ever been done. It just keeps inching closer and closer to the road. I don't know how much further he can go before he is out on the road. I think when conditions are put down, it is up to this Board, the Building Department, to enforce those conditions when they get complaints.

DON FASO: Thank you, Bev (Neder).

DOROTHY BORGUS - 31 Stuart Road

MS. BORGUS: I would just like to say that I agree with what has been said about the furniture. There was never any mention of furniture. There was never any mention of wooden play equipment. And there was a definite hatch mark put on the site plans when the last approval was made for him to begin to come out toward the road. And I am positive that over time he has far exceeded those limits. He maybe isn't now, but he has had a lot of stuff out there.

And again, I agree with Mrs. Neder. These plans are put in place. There were complaints made, but no enforcement. Also -- I'm not done, please.

Were the prior conservation plans ever complied with?

KAREN COX: It is landscaped.

DON FASO: I'm not sure that I follow that question.

MS. BORGUS: Well, at one time I do not believe that they were -- the landscape plan was followed. Was that ever corrected?

DON FASO: I have no knowledge of that.

Dan (Kress), do you have any idea?

DANIEL KRESS: I would have to defer to the Conservation Board to answer that question. I wasn't -- I'm not aware that has been an issue.

DON FASO: So we're assuming that the landscaping --

CHARLES ROBINSON: In response to that, the Conservation Board had the same question, so we deferred back to the Building Department.

DANIEL KRESS: I would be happy to go and check the drawing.

DON FASO: Okay. We'll get back to you.

MS. BORGUS: The other point I would like to make, I would like it on the record, plain, plain and clear, that if this gentleman buys more land anywhere else, that he pull back on some of the merchandise that he has currently for sale outside, and that that condition be removed so that we don't have this forever.

DON FASO: You're on the record.

MS. BORGUS: And I hope that it is clear in the minutes that this site is maxed out.

DON FASO: Your opinion.

MS. BORGUS: But you just said it. I hope that the secretary has this down, because if this comes up again, I want to go back to the minutes and find it.

DON FASO: As I said, your opinion. Thank you.

CHARLES ROBINSON: I have one more question. In regards to the applicant choosing the option one, with these trees, is there any way we can insure compliance?

DON FASO: That will be up to the Building Inspector.

CHARLES ROBINSON: Can we make a notation that the Conservation Board would like to see notation on the plans?

KEITH O'TOOLE: We can have an inspection done.

DON FASO: Okay. We'll do it, Charlie (Robinson).

JOHN NOWICKI: I would just hope that the applicant walks away tonight with an understanding of some of the feelings of this Board and the audience, and that in the future proposals and plans, that you seriously consider what has been said tonight, because if you come back before this Board, I think you will find it a different set of rules that you will play by.

DON FASO: I can't get excited about a business that is doing well and is well maintained, John (Nowicki).

JOHN NOWICKI: Well, this Board ruled in one way, and it was abused. I agree with what was said tonight. It was abused.

DON FASO: Well, if you didn't put a maximum of 10 picnic tables and 20 Adirondack chairs --

JOHN HELLABY: I don't know if you can honestly say it was abused.

DON FASO: Neither can I.

JOHN HELLABY: But in all fairness, I tend to believe that not knowing that it was pushed to its utmost limits -- I mean right now, the only constraints that Mr. VanDeWater has on him is that none of these items that are stored in the front, being the gazebos and Adirondack furniture, can impede within the right-of-way; am I correct? So if that means -- that being said, I have no clue where the right-of-way goes down through there. Is that adequate to say, that he should hold his product 50 foot back from the right-of-way line? I mean that is something we could state here and now. How you would ever check it, I don't know, but I do agree with John (Nowicki). He understands the feelings of these -- or several of the members of the community, some of the members of the Board.

Again, I don't want him to take it the wrong way. It is a viable business, doing a nice job over there, but just keep an eye on it kind of thing.

JOHN NOWICKI: I understand what the Board is saying.

KAREN COX: There is a concrete right-of-way monument you could probably see from the road, and then it just parallels the road.

KAREN COX: It is one of those State D.O.T. concrete monuments. You can see them from the road. I don't believe that Mr. VanDeWater purposely abused our --

JOHN HELLABY: I don't think --

KAREN COX: -- set out to purposely abuse our requirements. So I tend to feel more -- it is a viable business. Sometimes it does look a little cluttered, but it is brand new stuff. Grass is well taken care of, unlike across the road.

DON FASO: Well, the plans show it is indicated it is a 30-scale map, and my 30 scale indicates that the front overhang to the monument is 80 feet.

I'm sorry, wrong line. 100 feet. The crosshatched area is 20 by 800. Or 80. I'm sorry, 80.

At the north property line, the setback for the storage area with the fence is 115 feet. So there is a lot along there.

Don Faso made a motion to declare the Board lead agency for SEQR, made a determination of no significant environmental impact, based on the testimony and the material presented at this hearing. The Board all voted yes on the motion.

The Board discussed the proposed conditions.

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

1. Pending approval of the Town Engineer.
2. Landscaping plans will be reviewed by the Town to see if they are in compliance with the original site plan approval.

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

4. Application of Pat Evans, 1436 Management, Inc., owner; 1436 Scottsville Road, Rochester, New York 14624 for renewal of conditional use permit to allow motor vehicle repairs at property located at 1430, 1434, 1436 Scottsville Road in G.B. zone.

Pat Evans was present to represent the application.

MR. EVANS: Good evening. My name is Patrick Evans. I represent 1436 Management, a corporation for myself, my wife and my young son. We're back because we had approval from this Board and were unable to comply with the conditions as they were due to several things. I have submitted a letter to the Board and I hope I covered everything in there. I'm open for questions.

DON FASO: Yes, according to your letter, this is kind of long-story history.

MR. EVANS: Sure has.

DON FASO: This brings back nightmares, absolute nightmares.

MR. EVANS: For me, as well.

RAY BLEIER: Don (Faso), I would like to ask Dan Kress, do you have a list of those previous conditions, Dan (Kress)?

DANIEL KRESS: I gave those to the Chair before the meeting.

DON FASO: He just handed them to me before the -- I will review them when we get into it.

JOHN NOWICKI: What is the date of the letter you got with the conditions?

DON FASO: I have one that says 15 October '02. November 19th, '01.

JOHN NOWICKI: That is what I have.

DON FASO: On October 15, '02 is a modified condition. The Planning Board October 8th, 2002 meeting, unanimously approved by a vote of six the above described application with the following conditions. The November 13th, 2001 Planning Board approval conditions are extended to October 31st, 2003. "Applicant is to be" -- "Applicant is to resubmit a letter," that is what it says, "to the Town Building Department indicating a phase date for the completion of original conditions. All conditions are to be in compliance by October 31st, '03. The Town Code Enforcement Officer is to make an on-site inspection to verify compliance of all conditions, and applicant is to provide the Town

Building Department with a copy of the property sales contract agreement between himself and Sidney Spector."

I guess you can do that one now, right?

MR. EVANS: We did that at the time. And it got changed quite a bit after that, but at any rate, we were up and down with that forever, and never really knew for sure if we would ever close on this property until the day it happened. In fact, there was some question even on that day. When we walked out of the meeting was when we first knew for sure.

DON FASO: In the interest of time, you have described all that in your letter and the Board does have copies. It does give a clear history of the property, and I thank you for that. But I would like to get into the application.

Is there some reason why you can't combine the three lots?

MR. EVANS: Well, we have done that. That is -- that has been -- basically that is all done except the approvals, and I believe we finally have final drawings now to go to the County. In fact, I am planning on getting those down there.

DON FASO: You need subdivision approval from the Town.

MR. EVANS: We have done all that.

DON FASO: Has that been resubbed?

JOHN NOWICKI: Not before this Board.

DON FASO: No.

MR. EVANS: That was --

DON FASO: Is your engineer here?

MR. EVANS: That was the first thing we did. We did that long before we ever even started the purchase offer.

DARIO MARCHIONI: I got the map.

JOHN NOWICKI: Do you have any records of that being resubdivided?

MR. EVANS: It has not been filed. The only thing left to be done is have it filed with the County. I have copies of that. In fact, that is what -- the map you have is the resubdivision map. That is the one that is going to the County.

DON FASO: What is the date? How come that is not in my packet?

DARIO MARCHIONI: Because a -- I took that out of the old packet.

JOHN NOWICKI: There are no signatures on this thing.

DON FASO: This has been filed?

MR. EVANS: No. It still has to be filed.

DON FASO: What is the date on this?

JOHN NOWICKI: June 25, '01.

DON FASO: Long expired.

MR. EVANS: Which part? I don't understand. You mean the map?

JOHN NOWICKI: It has never been filed. It has to come back before the Board.

DON FASO: The map was made, but was it ever submitted?

JOHN NOWICKI: I don't think so. No.

DON FASO: Wait a minute. I'm looking for a date on this one.

KAREN COX: March 10th, 2003. The resub map?

DON FASO: No. The site plan.

KAREN COX: Mine says resub now.

JOHN HELLABY: March 10, 2003, resub.

DON FASO: All right.

MR. EVANS: That is the resubdivision map that you have a copy of.

DON FASO: Okay.

MR. EVANS: It has not been filed with the County. We took it down there once and dropped everything off. The fellow called me off and told me we didn't have a checklist, the checklist that is required to go with it. I got back to Rod (Prosser) and told him what I needed, and it was A, B -- I tend to believe it might have been close to a year before he ever got stuff back to me I was supposed to have. And I now have it ready to go down there.

DON FASO: Here is my problem. I'm looking at this for renewal of a conditional use to allow motor vehicle repair on the property -- and I'm assuming it is the motor coaches, Spector's old

warehouse?

MR. EVANS: Right.

DON FASO: Is the car lot next to it a separate entity?

MR. EVANS: Well, not really. It is just a part of it. We aren't doing repairs on the car lot. But, unfortunately, two lots, the other two lots that are left, kind of split right down the middle of the building. So the building is sitting on two separate pieces of property and while we're really only working in the one end, it was Larry Smith's idea originally to resub it, and -- which is what we did. I thought we were all done with that with the exception of getting it signed.

JOHN NOWICKI: Dan (Kress), the tax account number on this property, is it one or more than one?

DANIEL KRESS: There are three tax account numbers. This is not a single piece of property.

JOHN NOWICKI: And -- we have got a question, then, on what is going on with these properties. We need a resubdivision. You have got a used cars business going on over there. You're repairing those cars, I believe, down at your former site.

MR. EVANS: No.

JOHN NOWICKI: Who is operating down there? You have some violations down there that I want to discuss.

MR. EVANS: That property is leased.

JOHN NOWICKI: Well, I know you have been talked to about it, because he has 55-gallon drums sitting out there and tires all over the place. You have to address that issue.

MR. EVANS: I am not aware of that at all. Nobody has talked to me about it.

JOHN NOWICKI: Then something has gone wrong here because I have reported it to the Building Department.

MR. EVANS: They may have talked to him.

JOHN NOWICKI: It still has not been cleaned up.

MR. EVANS: I'll certainly look into it. Nobody has said anything to me about it.

JOHN NOWICKI: We'll make it a point again to make sure that the Zoning Enforcement Officer takes another look.

MR. EVANS: Okay.

JOHN NOWICKI: I would expect to get it cleaned up.

So let's go with this issue. There has to be something done here. Let me ask you another question: Has the transfer of property been filed now in this gentleman's name? Do we have a deed on file or anything? Has the ownership been transferred to him?

MR. EVANS: We submitted a copy to Kathy (Reed) of the transfer.

DANIEL KRESS: Yes. We have a record of a deed transfer dated June 21st.

DON FASO: A deed for which parcel?

DARIO MARCHIONI: All three of them.

MR. EVANS: For all three.

KEITH O'TOOLE: It would appear to be one tax account number. That is all that is listed.

JOHN NOWICKI: For what size parcel?

JOHN HELLABY: Tax account numbers again.

DON FASO: Keith (O'Toole), can you answer a question?

KEITH O'TOOLE: Sure.

DON FASO: If this was resubbed and filed, even by deed, wouldn't Linda Leach take the three addresses off and give it one address? If it was one parcel, she wouldn't keep three addresses, would she? I have never run across it. I don't know what the procedure would be.

KEITH O'TOOLE: If there were a resubdivision, there would be one tax account numbers.

DON FASO: What would she do with the numbers?

KEITH O'TOOLE: The old numbers?

DON FASO: No, the address. We're looking at 1430, 1434, 1436. Would Linda (Leach) combine that to maybe 1434 Scottsville Road?

KEITH O'TOOLE: Don't know.

DON FASO: Never run across that, so I have never had the reason to get a clarification on that. The application does have three addresses on it, so I'm assuming we're looking at three different parcels.

JOHN NOWICKI: Which we at this point do not have a resubdivision for.

DON FASO: Right.

JOHN NOWICKI: It has not been filed.

DON FASO: Because you're maxed out where those cars are. That looks terrible. You have cars right up, bumpers hanging over the curb on the Scottsville Road. It appears the site is definitely over maxed. We were trying to get that property cleaned up with the pumps and the old building when Sid Spector had it, and --

JOHN NOWICKI: Even when Ken Stein was there.

DARIO MARCHIONI: Mr. Chairman, I have the site plan we approved on that project.

DON FASO: You do?

DARIO MARCHIONI: Yes. This is the one we looked at.

DON FASO: Okay. Property lines. Dario (Marchioni), do you remember what the original application was for on this one?

DARIO MARCHIONI: For site plan approval.

DON FASO: For motor vehicle repair?

DARIO MARCHIONI: No. For that site.

DON FASO: For the sales, too?

DARIO MARCHIONI: No, strictly for -- here it is.

DARIO MARCHIONI: I got the --

DON FASO: Okay. That is one address. 1436.

DARIO MARCHIONI: Here are the comments from Mr. O'Toole.

KEITH O'TOOLE: Mr. Chairman, I was reviewing this. Apparently there are other deeds attached to this packet. It appears they conveyed all three parcels.

JOHN HELLABY: I do somewhat recall him, Mr. Evans, talking about combining these three lots at the initial presentation on this thing. I think the stumbling block was that he didn't own it, therefore, he couldn't do them, and if you're saying that this finally just closed, what --

MR. EVANS: June 16th.

JOHN HELLABY: A month or so ago. Then Mr. Evans might be misinformed in the procedure on how this should take place and then realized that he has to secure approval and signatures on a plan.

MR. EVANS: We had actually planned to schedule this meeting a month ago and when I came in -- two days before I was to have everything in on time, I talked to Mr. Spector and asked him to sign the application because he was still the owner, and he told me that he would do that, and I should meet him at 10 o'clock. I met him at 10 o'clock and he changed his mind and decided he would not sign it, and so, therefore, we couldn't do anything until we closed on the property at all.

So at that point, he had been dragging his feet since February 1st because we were supposed to close on February 1st, no matter what, when we made our agreement. So we finally closed two weeks later, and...

DON FASO: I wish I had known that. I would have loved to have been sitting across the table from him, one last time.

MR. EVANS: He didn't come to the closing. He wasn't at the closing.

DON FASO: No, your last meeting with him.

MR. EVANS: Well, it was in the parking lot of a bank where we could get the papers notarized, but we never went in the bank because there was nothing to notarize.

DON FASO: So what are we going to do to clean this up? I want it cleaned up.

MR. EVANS: We do, too. We are working hard to try to get that to happen.

DON FASO: Okay. How are you working hard to get it done?

MR. EVANS: Well, we have plans to do it all, as much as we can. Unfortunately, we can't go with the plan that Mr. Stein had submitted.

DON FASO: So let's talk -- Mr. Evans, what are you going to do?

MR. EVANS: We plan to redo the parking lot and get some sort of landscaping up, and I don't really know what we can do. We had cars -- we had a car with a broken window from snowplows throwing stones. To put any kind of vegetation out by the road in that island area which is what he proposed, I just don't think we could keep it working and growing. The traffic is so bad there in the wintertime with the slush and the slop and all of the snow. So we propose to leave that island as it is and maybe put some plantings along the front of the building.

DON FASO: I wouldn't consider the ballards to be landscaping, but anything would be an improvement. Anything at all. Boulders would be an improvement.

MR. EVANS: That's true.

DON FASO: I mean was it Mr. Kozel who had his desert landscaping further down Scottsville Road.

Let's talk about the used car lot. Why is it so jammed up? Where do your customers park?

MR. EVANS: I don't really think we have so many as the boys have been parking them out front.

DON FASO: What boys?

MR. EVANS: The guys that work for us.

DON FASO: Whose cars?

MR. EVANS: They're our cars, but it is the people who work for us, they're trying to get them out where they can be seen, I suppose. I don't discourage it because it has been working.

DON FASO: You put the top of the line out front with the signs on them and when they come on the lot and can't afford it, you take them in the back where they can afford?

MR. EVANS: Whatever works.

DON FASO: I mean the Town, every other business that has come before this Town on Scottsville Road, we have tried really hard to clean up Scottsville Road. That is the corporate entrance to Monroe County. That is where all of the corporate executives come in, and I would be embarrassed to have them go by this place. I really would. I mean we tried for years to get Spector out of there.

You got to help us out here. What can you do --

MR. EVANS: The biggest problem we have is financial right now. If it weren't for that, we would have already had a new front on the building, on the concrete part of the building. We hoped to have a new facade on it with an overhang on the door with coach lights along the door. We really have intentions of making it look nice, but financially we have been strapped, to be honest, and that is the main reason we have not been able to do what we wanted to do.

DON FASO: In your letter of intent you said that the attack on the World Trade Center had an adverse effect on your business.

MR. EVANS: Practically out of business. We were in the transportation business. We had six or seven motor coaches. We had eight 14-passenger vans. Three mini coaches. We're down to one motor coach, one minivan, no other.

DON FASO: Strictly insurance?

MR. EVANS: We can't afford the insurance. The insurance tripled. It tripled last year. It doubled the year before that.

KAREN COX: That is exactly what the guy who rents the campers said on the same street.

MR. EVANS: Right. We're totally out of the rental business. We used to rent 15-passenger vans. We were the only one in the city that had those type vans that could go out of state.

DON FASO: How are these guys managing, these companies managing to put four or five stretch Hummers on the road?

MR. EVANS: That is their problem.

JOHN NOWICKI: We still see buses carrying people all over the place.

MR. EVANS: There are buses, and there are a lot fewer than there used to be. Coach America is even having a problem. When insurance companies pull out of New York State, when you have maybe five insurance selling chauffeurs livery and four pull out, that leaves you pretty much at that guy's mercy. If you can afford the payments, what it costs to operate, you can stay in business. If not, you have to get rid of the equipment. If you can't make payments on the equipment, you have to let it go. All of a sudden the business comes back, like it is now, but we don't have the equipment now. Luckily I have a little knowledge about the automobile business so it has kept us going. We were heavy into that as we were -- we were almost out of the automobiles for 15 years, 18 years.

DON FASO: Used car sales?

MR. EVANS: Yes, cars and trucks. Actually, the biggest business is in the trucks.

DON FASO: What do you mean "the trucks"?

MR. EVANS: Pickup trucks. We have a good calling for that. We have done some good advertising. We have a good website and get lots of response from -- over the State from those trucks.

DON FASO: Earlier you said you have room in the back for additional parking.

MR. EVANS: I meant behind the front line. There is plenty of room between the small building and the first line of cars. It is not a problem parking customers.

DON FASO: Can you clean up that front line?

MR. EVANS: Yes.

JOHN NOWICKI: I think somehow we're going to have to review the conditions that were placed on this property and see if they have been complied with at all.

MR. EVANS: I think what you will find is everything except the paving and landscaping has been done. In fact, we have gone even further. The scale house wasn't supposed to be removed, but we talked Sidney (Spector) into letting us take it down.

JOHN NOWICKI: November 19th, 2001, I have a letter with your name on it, and there are several conditions on this letter, and this was a -- for conditional use to allow motor vehicle repairs for site plan for change of use in a portion of the building to allow the sale, rental repairs of vehicles property located at the three addresses at Scottsville Road.

DON FASO: You know what --

JOHN NOWICKI: There are several conditions.

DON FASO: But I did not have this letter in front of me when I had the letter of intent. I think Mr. Evans has addressed these in his letter of intent as to the conditions -- well, the --

JOHN NOWICKI: Not according to what I see.

DON FASO: Where is the one I just had here?

JOHN NOWICKI: Look at four.

DON FASO: "The following shall be completed within 90 days." A lot of that was assuming that he was going to take conveyance of the property. And that never happened.

JOHN NOWICKI: Are we just going to say we don't have to do this now?

DON FASO: No, no, no. If you want to reiterate the conditions, we can do that.

JOHN NOWICKI: I think we did that back in 2003. What I am saying, I think -- for example, under four, there is -- just one here, for example -- let me find it here. "If applicant decides to lease or rent any part of the buildings, he must appear before the Planning Board with proposed tenant for approvals." I don't think we have ever seen that.

MR. EVANS: We have not rented anything. We have not proposed to rent. We are occupying the entire parcel.

JOHN NOWICKI: But you -- there were three separate parcels at that time. I'm not --

MR. EVANS: We're occupying the entire parcel, all three of them. We have not rented to anyone.

JOHN NOWICKI: "Due to shallowness of the site and limited points of access, this approval is restricted to one user who shall operate and be responsible for the use. Simultaneous multiple tenants and/or simultaneous users for the use granted by this use variance are prohibited."

KAREN COX: Only one user.

JOHN NOWICKI: I would like to see another site plan come in, with final subdivision map --

MR. EVANS: Excuse me, but I'm not sure how I'm in violation of that, what you just read.

JOHN NOWICKI: There are some other ones here.

DON FASO: Keith (O'Toole), do you have the November 19th letter?

KEITH O'TOOLE: Yes.

DON FASO: Number five, "If a court of competent jurisdiction strikes down any condition of approval contained herein, then the subject site plan approval shall be deemed void." What was the reason for that?

KEITH O'TOOLE: Caution.

DON FASO: On whose part, the Town?

KEITH O'TOOLE: The Town's.

DON FASO: We were leery of?

KEITH O'TOOLE: Litigation.

DON FASO: From? Spector?

KEITH O'TOOLE: Spector or whoever he has conveyed the property to.

JOHN HELLABY: The fellow that was in the mix there, the moving guy.

DON FASO: Ken --

JOHN HELLABY: Ken Stein.

JOHN NOWICKI: This number three, "The entire parking area shall be repaved with asphalt, all parking spaces shall be striped and handicapped parking shall be provided consistent with Town Code and ADA standards."

MR. EVANS: According to my letter, that is what I addressed had not been done.

JOHN HELLABY: Honestly, John (Nowicki), in all fairness, I honestly believe Mr. Evans and his family have put forth a good faith effort in what they're doing. I, unfortunately, think the bad guy in this whole scenario was Spector, who held them up forever. He just took possession -- I don't blame the gentleman for not wanting to put any money -- he didn't even know until last month he would -- was going to secure this property. Would you have wanted to dump thousands of dollars of your money into this thing to find out Sid (Spector) was going to walk away with it? I think the gentleman will do it. I think what he is asking for tonight is a little more time. Now that he owns the property, I wouldn't have a problem with it. I think he will make the improvements, but we need to give him the avenues how to clean this up with a resubdivided plan, filed, squared away, put to rest and move on.

JOHN NOWICKI: And get these --

DON FASO: I think Al (Hellaby) has a very good point.

JOHN HELLABY: This thing has been so messed. Here is a guy that really wants to do something with it, but his hands have been tied.

DON FASO: Unfortunately, you're the guy standing before the Board.

JOHN NOWICKI: Let's get it cleaned up.

DON FASO: All right. Anything further from the Board?

RAY BLEIER: Yes. I go back to when Ken Stein had three or four trucks there. We thought that was horrible. You know, that is nothing compared to what you're seeing there now. You know, this is just completely outlandish. You have at least twice as many vehicles on that piece of property -- or these three pieces of property than you should have. You know, you got to get rid of at least 50 percent of those vehicles. You know, it is more than maxed out. And I personally could never vote for an extension on a conditional use or reapproval the way the property looks like now. No way.

DARIO MARCHIONI: How about the back? There are all kinds of cars there without plates, and -- is that his property, the back?

DON FASO: If it is a used car lot, they're cars for sale.

DARIO MARCHIONI: Did you drive back there? Did you see what is back there?

DON FASO: I was afraid to. It is bad enough in the front.

DARIO MARCHIONI: I went back there.

DON FASO: Junked cars?

DARIO MARCHIONI: Is it a mess back there. I am just trying to say, can it be cleaned up?

DON FASO: All right.

DARIO MARCHIONI: There is everything back there. Tires, metal, there is scaffolding.

JOHN NOWICKI: Really, laying around there?

DARIO MARCHIONI: In the back of the building.

JOHN NOWICKI: That is the same problem we have down where he came from.

DON FASO: Let's move on with the hearing.

KEITH O'TOOLE: I only remind the Board of the time and significant expense the Town went to clean up this property. It would be unwise to backtrack. Nothing further.

DON FASO: Well taken.

DANIEL KRESS: With all due respect to the comments just made by Mr. Hellaby, I would also like to point out that given the amount of time that has already gone into this property, if, in fact, the impediment to moving ahead was Mr. Spector, Mr. Spector is no longer an issue. There should not be a need for an extraordinary additional amount of time here.

JOHN NOWICKI: We should get it cleaned up quick.

CHARLES ROBINSON: The Conservation Board has a problem with the whole entire strip and we beat ourselves to the point where....

DOROTHY BORGUS - 31 Stuart Road

MS. BORGUS: I don't know if the members of this Board took the time, as I have, to go get

past minutes. You see all those little red flags (indicating), those are all --

DON FASO: Those are all your quotes?

MS. BORGUS: No. They're your quotes, and quotes from the people on this Board and Mr. Evans' quotes, and -- you know, I feel sorry for anybody who is caught in a financial pinch these days. A lot of people are. We have been hearing this same sorry tale with problems about money from Mr. Evans about 2001. Three years is long enough. I would like to give you some quotes from the Zoning Board of Appeals minutes from 8/27/02.

JOHN NOWICKI: I got those right here. What page are you on?

MS. BORGUS: Page 20. Halfway down the page. Mr. Evans says, "We have no reason to be working outside." Well, at 4:30 today they were working outside. Because I was past there. Why?

A little further down, he says -- same page, he says, "We probably don't sell more than 10 or 12, maybe 15 cars a year, and most of those are cars we brought in to use in the business, and it comes time to dispose of them. However, we have been buying and selling a few odds and ends there."

And then further on he says, "As I said, if we were to get into a full-fledged used car operation again, where we are selling 30, 40 cars a month, I don't think that would necessarily be the place to do that." Exactly what he is doing now. And by his own admission, it wasn't the place to do it.

"I think that may be the place to get them ready to sell, clean them up and do the repairs on them and take them back down the street where they could be displayed properly." His own words.

JOHN NOWICKI: Down the street, so the original place.

MS. BORGUS: I think. Then at the bottom of that page he says, "Anything" -- the question was about junk. Junk cars. Didn't we just hear about junk? Mr. Evans: "Well, first of all, we don't have any wrecks and we're not going to. We would not be storing wrecks there. Anything that is not moveable or usable, we have no plans for that at all."

Now, I don't know if you people saw it, but he also even has a boat in the front yard down there.

DON FASO: I saw that.

MS. BORGUS: A boat. A large boat.

DON FASO: It is a motorized vehicle.

MR. EVANS: That's for sale.

MS. BORGUS: Well, I don't think this Board ever meant for there to be boats there.

Now, on page 21, Mr. Schulmerich asked do -- do -- "and the property there, here, gives you both the space to do the repair work as well as to park the vehicles to store them." Mr. Evans says, "Yes, right. A large portion of the interior building is not usable for an awful lot of anything except for storage of vehicles." Then why are they outside?

DON FASO: What was the ZBA application for, John (Nowicki)?

MS. BORGUS: Land use variance.

JOHN NOWICKI: For a land use variance to allow the sale and repair of automobiles.

MS. BORGUS: Mr. Evans goes on to say, same page, "Vehicles that will be outside will be the ones coming and going out or vehicles that will be over in front of the little gas station is where we plan to park the things for sale." He wasn't going to have anything for sale, only in front of that little gas station. The gas station, which, by the way, has a different business name on it. I don't know if you people noticed that. Tough Trucks.

DON FASO: Didn't notice that.

MS. BORGUS: I know. You people don't seem to notice a great many things.

All right. On page 22, I would just like to quote Mr. O'Toole. He says, "Mr. Evans has been at this forever and a day. As was Mr. Stein before him. And frankly, I feel like I'm dedicating my life to this particular property. Good reason to move on," and that was stated almost -- just shy of two years ago.

DON FASO: Okay, Dorothy (Borgus), we're trying to clean it up.

MS. BORGUS: I know. I don't want you people to get schnuckered again here. We have gone on and on with this piece of property. We have gone on and on with this applicant and now we're going to give him another chance? I heard Mr. Hellaby's comment, and I would like to point out to you that Mr. Evans agreed to some of these conditions knowing that he could -- was not going to close for 19 months. Just give me a minute, I will find it here. Mr. Cross is saying that "It appears the current conditions should basically stay in place and come back, and ask us for, you know, a formal extension period like six months from the end of the year, say June 30th, 2003, something that is reasonable to

work with, so the concrete and asphalt work can be done in the spring or early summer." And Mr. Evans answers, "Okay," and that was right after he said that he -- he told them that it would be 19 months before he could -- he could close. So knowing that he couldn't close even for 19 months, he still agreed to have all this work done by the 30th of June, 2003. Enough is enough here. Enough. Thank you.

BEVERLY NEDER - 82 Attridge Road

MS. NEDER: I was by there on Sunday, and the cars were parked almost on the road, and I can see where a car window would be broken by throwing stone. Anything that goes by there would throw up a stone. There were two buses, big buses parked right in front, and if I recall correctly, there were to be no buses parked there. One belonged to Roberts Wesleyan. I don't know if it was over there for storage, or repair, since Roberts has their own facility they're putting up there on Buffalo Road. And I think the answer to this problem is quite simple. He is back here for conditional use permit. You deny him the permit. By his own admission, he has financial problems. Where is he going to get the money to do the work?

DON FASO: He is here for a renewal of a conditional use permit.

MS. NEDER: Well, you don't have to renew it.

DON FASO: There are legalities involved.

MS. NEDER: Pardon?

DON FASO: There are legalities involved.

MS. NEDER: Well, it is another case where conditions have --

DON FASO: In the interest of time, your point is taken.

MS. NEDER: Well, again and again and again it happens.

BERNICE WILCOX - Stuart Road

MS. WILCOX: I think the Town has spent an awful lot of time trying to improve the Scottsville Road area over the years, and I think you should take that into account and make sure this is done. The same case could apply to the former applicant before this one. We don't want Union Street to turn into what Scottsville Road formerly was. So I think you better put a 30-day time limit or something on this gentleman, and get the job done.

DON FASO: Thank you.

JOHN NOWICKI: Let's get it cleaned up.

DON FASO: What do you want to do?

DARIO MARCHIONI: I would like to see it cleaned up.

JOHN NOWICKI: I want to see him back in here with a site plan.

JOHN NOWICKI: Site plan, subdivision map. I want every one of these issues addressed. I want him back in before this Board so the public will know this will be done, done and over with.

DON FASO: Okay. Are you suggesting a tabling?

JOHN NOWICKI: I'm suggesting a tabling --

DON FASO: With reasons for tabling.

JOHN NOWICKI: We have enough on the record.

DON FASO: Well, just which direction do you want to go?

JOHN NOWICKI: I will not vote on it. I will not give this guy another extension until it is cleaned up.

DON FASO: If we move to renew the conditional use, it will fail.

JOHN NOWICKI: Yeah.

DON FASO: Then are you suggesting a tabling, list of things that he has to have done prior to coming back? Then entertain the motion.

JOHN NOWICKI: I will put the motion up to table it.

RAY BLEIER: I will second it.

DON FASO: Hang on a minute. We are tabling it.

Time limit on the table, or until he resubmits, Keith (O'Toole)?

JOHN NOWICKI: No, no more than 60 days.

KEITH O'TOOLE: Table to a date.

DON FASO: Specific date?

KEITH O'TOOLE: Yes.

JOHN NOWICKI: We should be able to get all of the conditions brought up to speed, maps done, subdivision filed, all in 60 days.

DON FASO: 60 days, the Planning Board meeting would be October 12th.

JOHN NOWICKI: Period. That is as far as I go.

DON FASO: October 12th.

JOHN NOWICKI: Sounds good to me.

DON FASO: Meeting date. October 12th.

The Board discussed the reasons for tabling.

DON FASO: Is Rod Prosser your engineer?

MR. EVANS: Was. He doesn't want to do work for us any more he said. I am really not sure what the reason is. I called him the other day asking a question and that was the message conveyed to me. It took him several months to get what I needed the last time.

DON FASO: The reason I say that, maybe some of the Board members may not say that, but Rod (Prosser) used to sit with this Board as Town Engineer when he was with Joe Lu, a long time ago. Very familiar with our code.

JOHN NOWICKI: Mr. Kress, make a note of that for the Zoning Enforcement Officer to stop down by Scottsville Road for the tires and 55-gallon drums out there.

DANIEL KRESS: He has done that, but I will mention it again.

JOHN NOWICKI: And the Fire Marshal.

MR. EVANS: I will also mention it to him tomorrow. We'll see it getting taken care of.

Incidentally, I do have one other thing I would like to mention. Regarding the sign on the building next door, if you look closer you will see that our name, Tiffany Transportation, is the name on the business. The sign up over the door, Tough Trucks And Fine Cars, is an advertising slogan of ours. If you go on our website, you find that is where we do our advertising on the website. The name of the site is toughtrucks.com. We get business from all over the State.

DON FASO: So you're not -- that is not a d/b/a?

MR. EVANS: Not a d/b/a or business name. We may eventually make a business name and look for a dealer license under that name, but as it stands today, that is strictly an advertising name and is not in the phone book, unfortunately. It is all owned by the same company, Tiffany Transportation. There is not more than one business being run out of there.

DON FASO: Thank you for the clarification.

DECISION: Unanimously tabled by a vote of 7 yes until October 12, 2004 for the following reasons:

1. Applicant shall comply with the Planning Board conditions as stated in a letter dated November 19, 2001.
2. Applicant shall comply with the Planning Board conditions as stated in a letter dated October 15, 2002.
3. Applicant shall apply to the Planning Board for resubdivision approval.
4. Applicant shall submit a new site plan for review and approval.
5. Application of Paul Tenny, 10 Loyalist Avenue, Rochester, New York 14624, property owner: M/M James Reynolds; for conditional use permit to allow an in-law apartment at property located at 30 Ironstone Drive in R-1-15 zone.

Paul Tenny was present to represent the application.

MR. TENNITY: Good evening. Good evening, Board members. For the record, my name is

Paul Tennity; T as in Tom, e-n-n-i-t-y. I live currently at 10 Loyalist, L-o-y-a-l-i-s-t, Ave., Rochester, New York, 14624.

I am in the process of purchasing this home at Ironstone, 30 Ironstone, and I am getting married and my daughter-in-law will be taking that apartment. That is it.

JOHN NOWICKI: Will you be living in part of this house?

MR. TENNITY: Yes.

JOHN NOWICKI: You will have -- did you say father-in-law?

MR. TENNITY: Daughter-in-law. This is my daughter-in-law (indicating).

KAREN COX: This is an addition that you would put on?

MR. TENNITY: It is existing.

DON FASO: You're modifying?

MR. TENNITY: No, just moving right in. I'm just going for the proper procedure. This is what it calls for, and this is what I am doing.

KAREN COX: This is existing, to make it legal?

JOHN NOWICKI: It is an existing in-law.

MR. TENNITY: Yes. I'm just here to get your graces and move on. That's all.

DON FASO: Mr. Kress, was this an approved in-law before?

DANIEL KRESS: Not to my knowledge.

KAREN COX: Doubt it.

DON FASO: You see, that is why I told you we used to file those decisions in the County Clerk's Office.

JOHN NOWICKI: Mine is filed there.

DON FASO: That was a condition, John (Nowicki). How come you got away from it?

KAREN COX: It is like the doubles over by Roberts Wesleyan.

DON FASO: That was always standard condition on in-laws that it be filed. I remember we had to do that.

MR. TENNITY: That is how it was listed. I was naive to that.

DON FASO: We're digressing on it.

KAREN COX: We're talking amongst ourselves.

DARIO MARCHIONI: I did see that on the real estate sign, in-law apartment.

MR. TENNITY: You're the gentleman that was there. You came to my house first.

DARIO MARCHIONI: I was confused.

JOHN NOWICKI: Dan Kress, is it in a drainage district? Is it in or out?

DANIEL KRESS: Property is already in the drainage district.

DON FASO: Probably that whole subdivision.

MR. TENNITY: It is a gorgeous subdivision. Very nice. I'm only moving a block over, so... I'm only moving a block over. I live at Loyalist. The house is sold.

KAREN COX: Does this have a separate outside entrance?

MR. TENNITY: Yes, it does.

DON FASO: Is it handicapped accessible?

MR. TENNITY: No.

DON FASO: So you're not making any modifications whatsoever?

MR. TENNITY: None whatsoever. Probably eventually putting a roof on it.

KAREN COX: Legalizing what is -- was not legal before.

MR. TENNITY: Going through the formalities.

DON FASO: No problem with that.

RAY BLEIER: I have passed by both residences. When I saw the first one, I said that house is quite large, could accommodate an in-law apartment itself.

MR. TENNITY: Unfortunately, I only have one girl and the rest are boys, so we're going to isolate that situation. We're blending the family. Thank you.

RAY BLEIER: I saw the other house you're in the process of buying and it was gorgeous there. It is a three-car garage?

MR. TENNITY: Yes. Rare.

RAY BLEIER: You won't have any trouble parking vehicles, I would assume?

MR. TENNITY: No.

DANIEL KRESS: For the record, if the property does not have some legal preexisting status as a two-family house, which is basically what we're talking about here, whether the applicant intends to make changes or not, the building code is going to require it.

MR. TENNITY: Such as?

DANIEL KRESS: Such as fire suppression, fire doors, smoke detectors.

DON FASO: There is a whole set of regs.

MR. TENNITY: Yes, that's correct.

DON FASO: If it was not approved before, that means that the Town did not get a chance to go in and inspect. So there may be some retrofitting involved.

MR. TENNITY: That is up to the person that is selling the house to me, that has to make that correction.

COMMENTS OR QUESTIONS FROM THE AUDIENCE: None.

RAY BLEIER: Did you want to read the set of conditions that we typically apply for --

DON FASO: I asked Dan (Kress) to give me some conditions. There used to be five I carried on a little index card I could read.

KAREN COX: Will you will that to the new Chairman?

DON FASO: I did will it to the past Chairman. But -- this is pending approval of the Building Inspector and Fire Marshal, and petition the Town Clerk to include this parcel in the Chili Consolidated -- this is done. We used to put a condition on there to -- it had to be filed in Monroe County Clerk's Office, and that if the applicant ceased to use it, it ceased to become an in-law apartment.

Don Faso made a motion to declare the Board lead agency for SEQR, made a determination of no significant environmental impact, based on the testimony and the material presented at this hearing. The Board all voted yes on the motion.

The Board discussed the proposed conditions.

MR. TENNITY: Question back to you. Do you have to have an in-law situation here? I mean, can I just purchase the house as is and not go with an in-law type of situation? I don't know. I'm naive to this. Can you explain it to me?

DON FASO: The definition of the in-law would be -- required separate entrance and cooking facility. Doesn't cooking facilities --

MR. TENNITY: It has its own separate identity.

DON FASO: If you were to remove the cooking facilities, then it would not be considered an in-law.

MR. TENNITY: Okay.

DARIO MARCHIONI: Just a sink.

MR. TENNITY: Okay. I'm just -- I just want to clarify it, because if I have to go through any more hoops, I will just throw a towel and go.

JOHN NOWICKI: What about an in-law apartment, does that have to come under the multiple family code?

DANIEL KRESS: The code does not speak to who lives in the apartment or what relation they are to the owner. If there were two dwelling units --

JOHN NOWICKI: Why do you call it in-law apartment?

DANIEL KRESS: Frankly, as far as the building code is concerned, that term is meaningless.

JOHN NOWICKI: Our code addresses in-law apartments.

DANIEL KRESS: It may have some meaning in terms of the zoning requirements, but in terms of building code requirements, it is meaningless.

KAREN COX: Zoning, it is a related family member.

DON FASO: There were two ways to go. In a residential zoning district you could apply for a two-family dwelling, or you could apply for an in-law apartment. With the in-law apartment, generally it

meant common access between the two dwelling units.

RAY BLEIER: There had to be a family relationship?

DON FASO: There had to be a family relationship.

KAREN COX: Whereas two family is --

MR. TENNITY: Two separate identities.

RAY BLEIER: One of the additional terms is that the applicant has to pay the filing fee to have that recorded in the County.

DON FASO: What is the filing fee?

KEITH O'TOOLE: Why don't you just state the filing fee required by the Monroe County Clerk.

DON FASO: It is payable to you. You file it.

KEITH O'TOOLE: They will supply a check to me that will be payable to the County Clerk.

MR. TENNITY: Who is going to do this?

DON FASO: You do.

MR. TENNITY: I do? Not --

DON FASO: I don't care who writes the check.

MR. TENNITY: Not a problem.

DON FASO: But our Town Attorney gets it, and he files it. The reason it is on file, so in your particular case, when your attorney does the deed research, he finds the restriction on there it is an in-law apartment and it is not really a two-family dwelling and he makes it aware to you as the purchaser.

MR. TENNITY: I interpret this, this was not filed prior to this?

DON FASO: Not according to our Building Inspector, no.

KAREN COX: Is this the original owner?

MR. TENNITY: Second owner. They have been there for 14 years.

KAREN COX: Did they put the in-law in?

MR. TENNITY: I do not know that.

KAREN COX: They might --

MR. TENNITY: I'm sure you would have some type of permits, based on that.

KAREN COX: Not necessarily.

MR. TENNITY: Oh.

KAREN COX: Sometimes those things go in without permits.

DARIO MARCHIONI: The way I understood it, it was originally built with an in-law.

MR. TENNITY: I didn't know that.

DARIO MARCHIONI: Buttarazzi, I think, built that. Buttarazzi built that subdivision.

DON FASO: I have the two. What else?

DANIEL KRESS: Frankly, if you include the Building Inspector, you have just included the Fire Marshal.

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

1. The conditional use is granted for use by in-law only and shall cease to exist when the in-law ceases to use it.
2. The apartment may not be used as a rental unit.
3. A copy of this decision must be filed in the Monroe County Clerk's Office under miscellaneous records and tied to the liber and page of your deed. The cost for filing is to be reimbursed by the applicant.
4. Furnish a copy of your deed (both sides) to the Assistant Town Counsel.
5. Pending approval of the Building Inspector.

Note: It should also be noted that the applicant should consider wider doors in

the in-law apartment to be handicap accessible (including grab bars, wheelchair ramp, etc.)

There was a recess in the proceedings.

Charles Robinson left the meeting.

INFORMAL:

1. Application of William Howard, 3313 Chili Avenue, Rochester, New York 14624, property owner: Five Star Properties, LLC; for revised preliminary site plan approval to erect a 3,220 sq. ft. retail building (1,936 sq. ft. previously approved) at property located at 25 Old Chili Scottsville Road in G.B. zone.

Rob Fitzgerald, Bill Howard, Pat Fedele and Al Arilotta were present to represent the application.

MR. FITZGERALD: We have made a revision to the size of that building. It will be 46 by 86.

DON FASO: Hang on a minute. John (Nowicki).

MR. FITZGERALD: 46 by 86.

JOHN NOWICKI: Okay. 86. We got it.

DON FASO: Does that change the square footage?

MR. FITZGERALD: Yes, to 3956.

DON FASO: Application is so amended.

MR. FITZGERALD: This application was in front of the Board September 14th, 1999 and received preliminary site plan approval. Going back five years. I can't believe it has been five years.

KAREN COX: No wonder I don't recognize it.

MR. FITZGERALD: At that time we also did seek a two-lot subdivision approval, which we did receive final subdivision approval, and that map has been filed so there is an existing separate parcel. That portion was done.

DON FASO: This looks like it is a resub of a resub.

MR. FITZGERALD: A resub of a resub, yes. But this map, we're just dealing with the one parcel. We're showing improvements to the south because it all kind of works together, some of the same parking.

DON FASO: Rob (Fitzgerald), when you got this reapproved for resub, are there cross access easements in place?

MR. FITZGERALD: There is cross access in cross easements.

DON FASO: On Chili Avenue.

MR. FITZGERALD: Yes, that is my understanding.

DON FASO: Mr. Easton still owns the other property?

MR. HOWARD: That's correct.

MR. FITZGERALD: The building is on existing asphalt parking so we're not having any increased drainage running off. The ponds to the east immediately, and the two ponds in series to take care of the drainage are in place. So we don't have any drainage issues, if you will. We're going from asphalt surface.

DON FASO: You're not adding impervious?

MR. FITZGERALD: Exactly. We have the utilities on Old Chili Scottsville Road with laterals. Pretty easy there. I guess if I can go down the condition of approval from the last meeting, for the preliminary or --

DON FASO: Seeing that I don't have them, go ahead.

MR. FITZGERALD: To get everyone else up to speed, there were four conditions five years ago. One was to submit landscaping to the Conservation Board, address the DRC comments, shield the HVAC units, and to look into having an access to the ball fields across the street. I guess I will go in reverse.

MR. FITZGERALD: There is a crosswalk that ties into the ball fields, but then the people would have to walk up through the parking lot, so we're actually looking into having an

additional crosswalk where people can come from the baseball fields, tennis courts and walk across and get to this complex, if you will.

DON FASO: You lost me on the -- Bill (Howard), can I ask a question?

MR. HOWARD: Sure.

DON FASO: What is the proposed tenant that you want access to the ball diamond?

MR. HOWARD: The ice cream shop. Pat Fedele. What happens is a lot of people are parking over there and using the ball fields or vice versa, parking and coming across the way.

DON FASO: That was the intent before?

MR. HOWARD: Yes.

DON FASO: Now I'm up to speed. I have been away, but now I'm back.

KAREN COX: Now you're leaving.

DON FASO: And now I'm leaving.

MR. FITZGERALD: As far as the landscaping plans, we have landscaping in place. We'll be hitting the Conservation Board for their approval. We're just proposing foundation plantings around the structure. This is the southern portion of the building (indicating), if you will, so we have our foundation plantings. We have some out in the front for the front street, as well. This is the southern view (indicating). So if you're at the present gym, looking north, this is the view you will see. It is --

JOHN NOWICKI: Other view?

MR. FITZGERALD: From the street, Old Chili Scottsville.

DON FASO: Nice looking building.

KAREN COX: Yeah.

JOHN NOWICKI: Picnic area would be on Old Chili Scottsville Road?

MR. FITZGERALD: Yes. Al (Ariotta) did a nice job on the rendering. There would be a fence to close that off, if you will, because there is the pond down here (indicating).

JOHN NOWICKI: On the floor plan of the building, is that the correct word -- does that say "wedding"?

MR. FEDELE: Wedding cake room.

MR. ARILOTTA: That is the correct word.

MR. FEDELE: Wedding cake room.

JOHN NOWICKI: So people can come in there and sit down and get cakes designed?

MR. FEDELE: Yes. We design them right there.

KAREN COX: Thinking about getting married again?

JOHN NOWICKI: Three times is enough. (Laughter.)

DON FASO: So full service bakery, ice cream?

MR. FEDELE: Ice cream, yep.

KAREN COX: What would be the hours of operation?

MR. FEDELE: Right now, 6 to 6. Closed on Mondays right now, but would probably be open on Mondays, so it would be 6 to 6. 6 to 4 on Sunday. All depends on the ball field right now. Sometimes they're open, you know -- they run late.

JOHN NOWICKI: Feel comfortable with the market?

MR. FEDELE: Yes. I have been here seven years.

DON FASO: Now, do you have the ice cream store?

MR. FEDELE: No.

DON FASO: So you are moving the bakery and expanding into ice cream?

MR. FEDELE: Right.

KAREN COX: You will have walk-up service?

MR. FEDELE: Yes.

DON FASO: What is the change in elevation from the Wegmans parking lot and the first floor elevation?

MR. FITZGERALD: Wegmans?

DON FASO: Not Wegmans, McDonald's.

MR. FITZGERALD: It drops off.

MR. HOWARD: 4 foot drop, I think.

MR. ARILOTTA: Has to be about 4.

MR. FITZGERALD: About 4. Looking at the north brim elevation, catch basin to the north, elevation of almost 551, and we're going to be set at 547. So 4 feet.

We had the building turned at one point, but we thought this would be nice to shield out the view of McDonald's.

JAMES MARTIN: Any rooftop units? HVAC units?

MR. ARILOTTA: No HVAC units, so no need for screening.

JOHN NOWICKI: To the left of the building, proposed dumpster enclosure -- but it is not pointing to it, I don't believe.

MR. FITZGERALD: That is what that is.

JOHN NOWICKI: What is up above to the right next to the building? It looks like a screened-in area.

MR. FITZGERALD: This would be the proposed dumpster enclosure. This is probably an error issue, a drafting issue.

JOHN NOWICKI: So the wrong point?

MR. FITZGERALD: Correct.

DON FASO: What is it? What does that square represent?

MR. FITZGERALD: It is just a drafting issue. Shouldn't be there. It is a mistake.

DON FASO: Drafting malfunction?

MR. FITZGERALD: Yes.

KAREN COX: The drafter was trying to put his or her stamp on there.

(Laughter.)

JOHN NOWICKI: Will you consider exterior lighting on the building, or is there also exterior parking lighting?

MR. FITZGERALD: The rendering shows that once again nicely.

JOHN NOWICKI: Will you consider dark sky lighting?

MR. FITZGERALD: I don't think any downcast lighting would be necessary. Just the building lighting, carriage style.

MR. ARILOTTA: Landscape uplighting from the fence area.

MR. HOWARD: It will match the other building.

DON FASO: Do you plan on having picnic areas under the canopy, picnic tables?

MR. ARILOTTA: Yes. Out in -- I have been talking. I haven't told my name. My name is Al Arilotta, the architect for the project. My office is located at 530 Summit Point Drive in Henrietta.

Yes, we're hoping to capture a crowd from across the street in the picnic area, and there will be benches and tables up in a little more safer area than past ice cream stands. There will be lighting under the canopy. There will be decorative lighting in the front and again landscape up lighting through the fence area.

DON FASO: Mr. Fedele, do you know what use is going to become of the property you're going to move out of?

MR. FEDELE: No, not right now.

DON FASO: Do they have any perspective tenants coming in?

MR. FEDELE: Not that I know of.

DON FASO: Parting words for the Board. He comes in, cross-access easement.

KAREN COX: Yes, that is right.

DON FASO: Cross-access easement.

JOHN NOWICKI: How about cross-access agreements here?

DON FASO: That is all done.

JOHN NOWICKI: Sorry. Didn't hear it.

DON FASO: Because it is a revised plan, I will take some public comment if it is short and brief.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

JERRY BRIXNER - 14 Hartom Road

MR. BRIXNER: I think it would be a good idea. Would certainly give them probably more room than they have now, if I am guessing correctly, and would be able to expand their bakery

business.

DOROTHY BORGUS - 31 Stuart Road

MS. BORGUS: Since part of that plaza is owned by Mr. Easton, I'm wondering about parking. Will there be enough parking for everything they want to put in there?

DON FASO: That was my initial question when I first saw the plans, and I guess all of the cross access and parking easements are in place.

MS. BORGUS: They would be able to -- even park on Mr. Easton's?

DON FASO: Yes.

MS. BORGUS: I see. Thank you.

BEVERLY NEDER - 82 Attridge Road

MS. NEDER: Just one off-topic question. Last month on an informal we were not allowed to speak. This month on an informal you're taking public input.

DON FASO: Revised site plan. Chairman's prerogative.

JOHN NOWICKI: It is his last night. Come on.

MS. BORGUS: Every time it is different.

KAREN COX: That is what keeps you on your toes.

MS. BORGUS: That is what makes it unfair.

DON FASO: Not really.

IRENE BRIXNER - 14 Hartom Road

MS. BRIXNER: I really agree with what is being said, because a lot of times people come in here for the first time and they don't know what -- what and when they can speak. I think it would be a good idea if on this paper, somehow you could inform people that when you have discussion or you have informal -- it should be on -- on this. Just like at the Town Board meetings, there is something stating there, public forum, and it explains. It is only fair to the public.

RAY BLEIER: I believe at the start of the meeting Don (Faso) made the announcement that public input would be solicited for only those items under public hearing. He did state that.

MS. BRIXNER: Yes, but at the same time, it changes. This is -- it is a double standard.

DON FASO: In my opinion, Irene (Brixner), the size of this building increased a little bit, slightly changed in the site plan, I decided I would take some public comment.

MS. BRIXNER: Double standard.

DON FASO: Not a double standard.

JOHN NOWICKI: Chairman's prerogative.

HEATH MILLER - 69 Bel Mawr Drive

MR. MILLER: I wanted to read a section from the Town Code Section 115- 32 on hearings. It says, "Before a site plan is approved, the proposed preliminary site plan shall be considered by the Planning Board at a public hearing. Notice of said hearing shall be given as provided in Section 115- 67."

This proposed preliminary site plan is more than twice the square footage of what was initially proposed back in 1999. I feel that it is a completely new proposal and as such there should be a public hearing on it before any vote is taken. Thank you.

DON FASO: Was SEQR done on this originally? Anybody tell me that? If none, we can do it again.

DANIEL KRESS: The answer is yes. It was done in 1999, so unless you conclude you have got significant changes that trigger redoing it --

DON FASO: Probably because of the size increase we should do it again, Keith (O'Toole)?

KEITH O'TOOLE: No harm.

Don Faso made a motion to declare the Board lead agency for SEQR, made a determination of no significant environmental impact, based on the testimony and the material presented at this meeting. The Board all voted yes on the motion.

The Board discussed the proposed conditions.

MR. FITZGERALD: I don't know if there is a certain requirement where you can't have crosswalks closer than X amount of feet apart. We have to look into it. It makes sense. Hopefully we'll be okay.

DON FASO: How about if I say check with Joe Carr regarding the crosswalk?

MR. FITZGERALD: Sure.

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

1. Pending approval of the Town Engineer.
2. Landscaping plans shall be submitted to the Conservation Board for review and approval.
3. Applicant shall check with Joe Carr, Superintendent of Highways regarding any proposed crosswalk.

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

FOR DISCUSSION:

1. Robert Fallone, Jr. - revised conceptual plan for the proposed Villas of Chili at property located at 741 Paul Road in PNOD zone.

MS. BRIXNER: We could speak earlier.

DON FASO: I give you the courtesy of giving public comment and you're beating me up on it.

MS. NEDER: You leave it --

DON FASO: I have not seen this plan. I have no idea what is he proposing. We're going to sit here and exchange ideas. If we like it, we'll tell him to come back with preliminary plans and it will be a public hearing. If we don't, it goes home.

MS. NEDER: Did you see the other one?

DON FASO: Yes, I did.

MS. NEDER: Nobody else did and it was never advertised as a public hearing.

DARIO MARCHIONI: Mr. Chairman, I would like to make a motion we do not hear this application because there is a question of who the ownership of this property -- also purchase offer validation. I would like to have these things cleared up before we hear it, this application.

DON FASO: Mr. Kress, that notarized letter you gave me, does Mr. O'Toole have a copy?

KEITH O'TOOLE: I do.

DANIEL KRESS: Yes, he does.

DON FASO: Opinion? Mr. Marchioni is saying there are two owners of record.

KEITH O'TOOLE: I believe the concern is if there are two owners of record and the authorization is only signed by one, then there is a question as to whether the authorization is truly adequate. And since this is not a permit, that would be what we would be issuing tonight, I would be comfortable with getting a copy of an amended authorization along with a formal permit. Certainly we could not hear that permit if the authorization were not proper.

DON FASO: So we can proceed?

DARIO MARCHIONI: One more question. The authorization was given 8/6/2003. Is the purchase offer, or whatever contract they have with this applicant, the owner, is that still valid?

KEITH O'TOOLE: I don't know if the purchase offer is valid, but we can certainly have the property owners -- I made note on the file we can have the property owners sign the permit application or sign authorization specifically referencing the permit application. So whether or not there is a contract in effect, it is possible that the property owner can have a party, his agent for site plan -- even though there is no contract present to convey the property. It is fixable.

DON FASO: Pardon?

KEITH O'TOOLE: It's fixable.

DARIO MARCHIONI: I still object to hearing this application.

JOHN NOWICKI: If they moved forward to a prelim for public hearing?

KEITH O'TOOLE: Yes.

JOHN NOWICKI: Do we have a requirement in there for financial disclosure, and that would be a requirement to tell us who owns this property and what kind of contracts are involved with it; is that correct? Keith (O'Toole), is that a requirement of our site plan review?

KEITH O'TOOLE: I'm not familiar with that. I could certainly check that.

JOHN NOWICKI: Because I certainly would want to know what is going on here on this property, who owns it before we go too far with this thing. I would like to know we're on legal solid ground here.

KEITH O'TOOLE: We could certainly check that.

DON FASO: Generally a lot of options are pending approval of all of the necessary approvals on an option on a piece of property. That is very common.

JOHN NOWICKI: Those could be presented to our legal counsel excluding dollar amounts so we know what we're doing here and who we're dealing with.

DARIO MARCHIONI: I make a motion to table this until this is cleared up. Do I have a second?

JOHN NOWICKI: I will second it.

DON FASO: Motion to table goes right to a vote without any further discussion. So a motion has been made to table, and it has been seconded. On the motion?

DECISION: Tabled by a vote of 4 yes to 3 no (John Hellaby, Ray Bleier, Don Faso) for the following reason:

1. Applicant shall furnish the Planning Board a notarized letter from all owners of the property stating he has permission to proceed with the approval process.
2. Application of Robert Baumgart, owner; 743 Morgan Road, Scottsville, New York 14546 for proposed motorized recreational vehicle off-road track at property located at 735 & 743 Morgan Road in A.C. zone.

Robert Baumgart was present to represent the application.

MR. BAUMGART: Robert Baumgart, I live at 735 and 743 Morgan Road.

Earlier in the year we were operating off-road vehicles on our property and we had some complaints made regarding needing a special use permit. After talking with Tracy Logel's office we were originally going to go for a permit. They said to come in to discuss it with you before we went any further.

I do have one concern at this point. I did contact Mr. Kress' office to request when we received complaints about the property. He gave us three dates, 11 -- June 11, June 14th and June 30th. The last time we have used our property was June 29th after I contacted counsel, which was the 31st. He also put down that they have received complaints regarding us on July 2nd, July 8th and July 12th. We have not used our property since June 29th, so, therefore, those other three dates do not apply or should not have been called in that we were operating our vehicles.

DON FASO: Are we confusing the date you received the call or --

MR. BAUMGART: He received the call.

DON FASO: I'm asking Mr. Kress for clarification.

DANIEL KRESS: Mr. Chairman, if I may clarify, there is some confusion here. The dates I listed were the dates complaints were received. Those were not complaints saying this day.

MR. BAUMGART: That is more than two weeks after. The 8th and 12th are more than two weeks after we rode a motor vehicle.

DON FASO: If --

MR. BAUMGART: That's fine.

DON FASO: If somebody went on vacation for a week --

MR. BAUMGART: I'm looking for direction from you is all I am saying. Mr. Kress gave us -- Mr. Kress gave us his copy of the laws or whatnot.

DON FASO: You asked when he received the complaints. He probably checked the log and that is what he came up with.

MR. BAUMGART: In the copy of the laws he gave us it states racetrack is any residential area that is three or more motorized vehicles racing simultaneously under timed conditions. We don't have that. Just my family and I ride on the property. I guess my ultimate question is, what is the use for our special use permit if we're just riding on our property and do not have a racetrack?

DON FASO: You have made no site improvements whatsoever, no grading?

MR. BAUMGART: None, zero.

DON FASO: Didn't take a hedge hog out?

MR. BAUMGART: I mowed the whole property, not a track. A -- a professional racetrack is totally separate from what we have at home. We race professionally on the weekends. I travel from here to Virginia and race professionally. What we have at home doesn't come close to what we have.

KAREN COX: Machine wise you mean?

MR. BAUMGART: Property wise. Machine wise, yes, I have a -- race an off-road vehicle. I have a 50 my four-year-old rides and another 50 which my two-year-old rides, a 700 which my wife rides and another 400 that I ride. We own six of them all together.

JAMES MARTIN: If you go back, you have two vehicles that children what age are riding?

MR. BAUMGART: A four- and a two-year-old, which legally they can race in AMA rules under supervision and not otherwise.

DON FASO: Well, one of the reasons -- you had actually applied to get on --

MR. BAUMGART: I applied to get on board, went to talk to Tracy Logel regarding the whole issue. She then brought it to one of the Board members she was having a meeting with, called me back and said you guys would rather discuss it at this point than going forward.

DON FASO: That was my conversation with Mr. Kress.

MR. BAUMGART: Which was fine with me.

DON FASO: If you look at the sections, and you even quoted the section in one of the letters, 115-24.2, if you read that, you are sadly lacking in compliance with our code for an application for approval.

MR. BAUMGART: Where?

DON FASO: Where? "Applicant shall submit site plan prepared in accordance with Article 5 of this chapter." First paragraph. A --

MR. BAUMGART: Which we did make a copy.

DON FASO: This is not a site plan. This is not a site plan. This is nowhere close to being a site plan.

MR. BAUMGART: I did go to Mr. Kress' office and asked him what we would need. I highlighted everything. He said, "I'll take to it the Board and see if it is sufficient." That is why we're here today. Basically we ride on our property. We do not have a race track.

DON FASO: But you will need approval from this Board to continue to do that.

MR. BAUMGART: Just to ride on our property?

DON FASO: Yes.

MR. BAUMGART: Okay. So then every family -- I guess my point is, there are other families that do ride in Chili that do not have such and after talking with Mrs. Logel's office, she said basically work it out with your neighbors and don't go any further than that, otherwise that is the only reason we'll come after you.

DON FASO: I can't --

MR. BAUMGART: That is what I was told. Mr. Kress was in the office with me, and you can ask both of them at the same time.

KAREN COX: What would be -- we have got a petition here from your neighbors. Excuse me. One of the things is -- one of the -- building jumps. Would there be some reasons that neighbors felt --

MR. BAUMGART: Would -- yes, I would like to do that. Have I done that, no, I have not. I have also been denied a fill permit because they say what I have given you is not sufficient, and we were accused of having the Town drop us dirt to use for such purpose, which we are not. After explaining that at Mr. Kress' office -- we have a bad wind problem. One of the loaders from the Town had to dig

us out. Not just us, other neighbors, they had to dig out in the winter. I'm trying to eliminate that problem by putting a berm of dirt and planting trees on top of that.

DON FASO: Where would that be?

MR. BAUMGART: That would be the west side of my property. Right now they have dumped on the east side and the west -- they dumped on the east, but not have not dumped on the west side. 12 dumps all together of dirt that they have dropped for us.

DON FASO: West side would be indicating where you want to operate your track?

MR. BAUMGART: No. My property goes from north to south. I occupy Lot Number 2 as well as Lot Number 3 on that property.

DON FASO: Okay.

KAREN COX: Are the jumps and the moguls --

MR. BAUMGART: I have nothing there. It is all flat.

KAREN COX: Bear with me. Don't get defensive.

I'm just trying to understand your -- you know, you say you race. So are the -- I'm not familiar with this sport.

MR. BAUMGART: That is fine.

KAREN COX: Is that -- the jumps and the moguls that the neighbors speak about in the petitions, is that part of the sport? Is that why they feel that you may want to do that?

MR. BAUMGART: That is part of the sport that we ride in, but you -- but originally, one of our neighbors, which owns Lot Number 4 complained about the noise. You know, the way the property sits now, it would actually be quieter if I had that on the property than not. And if anybody came to a race and seen that, you would understand that. Basically the land is just flat now. There is nothing to disturb noise or to let off ad -- I'm just basically riding around the property.

DON FASO: Who made this map for you?

MR. BAUMGART: That map has been made by Avery. That is when we purchased the house last year. That was the copies that I gave you. That is why I figured it was a site map. That is the site plan they used to build our property. I mean how can that be off?

KAREN COX: That is not a site plan showing -- just showing the house.

DON FASO: That is a subdivision plan.

MR. BAUMGART: Okay.

DON FASO: Just checking dimensions here.

MR. BAUMGART: That is okay.

JOHN NOWICKI: Had you gone to your individual neighbors in the area to inform them of what you were going to do after you moved in the house?

MR. BAUMGART: I did go to them before I purchased the four-wheelers and mentioned to them that I was going to buy them. I mentioned that Lot Number 4 as well as 5 had no option at that time, whatsoever. We did ride from October until November 1st, basically didn't ride all winter long because you can't ride during the winter without a snowmobile. Subsequently started riding in May, which I can count less than ten times that we went out, period, for the whole year, and then the phone calls started. So I did confront the neighbors before we went out.

JOHN NOWICKI: What do you think is causing the neighbors now to take a different tactic?

MR. BAUMGART: I would like to know.

JOHN NOWICKI: We'll probably hear from them tonight, I would assume.

MR. BAUMGART: Which is fine. Basically they came to me with three concerns. They were worried about dust and noise, you know, and the area that we were riding in. Every time somebody came to me, I changed it. They complained about dust, I bought a sprinkler and put it in the exact spot of the property where we come anywhere close to the corner of our property. I would turn that on well before we would ride. I work over 80 hours a week. You guys specify when -- you know, the hours and times that we can ride. You know, I was basically only going out two days a week, at an hour or two at a time. We're not home on weekends. We do not ride in the morning. We do not ride at night. I'm not trying to be over and above, saying -- you allow us in your zoning, that if you gave me a permit, I could ride 64 hours a week. I'm not even close to that or asking to be close to that. My body physically couldn't do that.

JOHN NOWICKI: You know, it is like a -- living on a street where a lot of motorcycles go by. Some go by where they have an intelligence level, where they have muffler brakes and you can tolerate

them and they're professional, and they have manners, and then you have others who are just obscene individuals who could care less about other people's feelings, and in-betweens. That is what I am going to be looking for here tonight with the situation we have got.

MR. BAUMGART: As far as there are noise issues, I have gone out and spent another \$7,000 on another four-wheeler which is quieter, which we did have a gentleman coming from the stereo company that can measure decibel ratings and we were under your what zoning --

KAREN COX: With the one four-wheeler?

MR. BAUMGART: That was the loudest one we had. Now that one is subsequently gone, which was a Kawasaki, now I own a Yamaha, quieter than the one I had. I have not been on the property since June 29th. I just purchased the other one three weeks ago.

JOHN NOWICKI: Is there some reason why this equipment has to be noisy?

MR. BAUMGART: It is motorized vehicle. It can't be any noisier --

JOHN NOWICKI: Why can't it be muffled down.

MR. BAUMGART: It is. They all have to meet specifications to race AMA races and we fall well under that to race the AMA races.

KAREN COX: Just different than a car?

MR. BAUMGART: Basically I will give you an example. If you take the base -- every individual riding around on with the base up -- base is excessive --

JOHN NOWICKI: Boom boxes?

MR. BAUMGART: Yes. I have one of the largest trucks in the New York State. It sits in my garage for the last two years, I'm sponsored by --

JOHN NOWICKI: We have ordinances dealing with boom boxes.

DON FASO: And mufflers.

JOHN NOWICKI: But try to get enforcement on it, because there are so many other important issues out there and these people are abusing people who want peace and quiet. They just ignore society in general. That is a shame.

MR. BAUMGART: I agree with you. I mean basically, the vehicle -- the show vehicle that I own only goes to competitions and hasn't been out for years. I took it last week to go to Buffalo Bills training camp. I'm doing everything I can to appease everyone, too. I just moved into this house. Do you think I want to deal with this for the next 15 years while my kids get older?

If there is a happy resolution, I would like to come to it, as well.

DARIO MARCHIONI: How many people in this area have what you are asking --

MR. BAUMGART: How many people in Chili have special recreation permits? As far as I'm concerned, none. I would be the first.

DARIO MARCHIONI: Would you be opening the doors to everybody who might want one?

MR. BAUMGART: But I didn't put the special use permit on the board. Somebody else made the law for it, not me. You know. I do know other people that race. I do know the Burns. I do know the Austins. I mean they ride. They don't have permits. And I'm not saying whether it is good or bad that they do. I'm just trying to -- I'm just trying to teach my kids what I grew up doing, as well.

DON FASO: Well, my suggestion would be that you take 115-24.2 to heart, have Mr. Avery look at it, if Avery is your engineer, and come into compliance with an adequate site map, adequate written statement, C, list of all vehicles to be used on the property.

MR. BAUMGART: That doesn't list that on what I was given by Mr. Kress. All I was given was 115-24.2 that reads A, B, C, D, E, F.

DON FASO: That is what I am reading.

MR. BAUMGART: It doesn't state what I have here -- to the list of motorized vehicles that have to be ridden.

RAY BLEIER: The list goes on G through K.

MR. BAUMGART: I'm sure. I have those, as well. Access provided for emergency vehicles, there shall be no lighting permitted, which we do not have, um, let's see. Any alterations of the land shall be clearly shown on the site plan; upon termination of the track, the land shall be returned to its previous condition within six months, which we do not have. A densely -- 40 feet of densely landscaping, which I have already gone to Peterson's Nursery and got a price what can -- those cannot be planted this year. It has to be a spring plant because it is so windy.

DON FASO: We don't know where that will be. We have to see on the site plan.

MR. BAUMGART: That is understandable. That is what. Bottom, no more than two motorized vehicles. It does not say who needs to be listed.

JAMES MARTIN: I think you ought to familiarize yourself with Section 111 also.

MR. BAUMGART: Okay. If someone would give me the copy, that would be fine.

DON FASO: Actually, the whole code is on line.

MR. BAUMGART: When I went on the Town website and typed in "racetrack," barely anything came up. The only thing that came up when you went on the Town website for codes came up "racetrack" with this one right here, which is -- was your page 116-56 which says "racetrack in residential district area," which I already read to you, which subsequently goes to the next page and finishes off. That is the only thing on the website when you go on there because I did try to do that.

KEITH O'TOOLE: Mr. Chairman, Mr. Avery is a highly competent engineer. I'm sure he can figure it out.

DON FASO: Absolutely.

MR. BAUMGART: I'm sure he can, too.

JAMES MARTIN: Just for your edification, let me read a couple sections of 111.

MR. BAUMGART: Okay. That would be.

JAMES MARTIN: Vehicles motor-driven. 111. "It shall be unlawful for any person to drive or operate any motor-driven vehicle on private property containing an off-road outdoor track without a special use permit from the Planning Board.

I will skip down to the section that says, "It shall be unlawful to operate any motor-driven vehicle on public-owned lands or private property in a manner which unreasonably interferes with the use of said lands or property or unreasonably endangers other users of said lands or property in one or more of the following ways," and then goes through a whole bunch of other things.

But then I jump over to Section 111-10. "Responsibility of parent or guardian. It shall be unlawful for the parent, guardian or any person having the care, custody and control of any child under the age of 16 to permit such child to operate a motor-vehicle in violation of the terms of this chapter."

MR. BAUMGART: Then again, it is my property.

JAMES MARTIN: You have children two and four driving on your property.

MR. BAUMGART: Yes, I do.

JAMES MARTIN: You can't do that.

MR. BAUMGART: It is my property. If they're allowed to race under AMA rules, how can they not ride on property private?

JAMES MARTIN: It says so in this book.

JOHN NOWICKI: That is interesting. A heck of a chapter.

DON FASO: Keith (O'Toole), would that require a variance from the ZBA?

KEITH O'TOOLE: I'm sorry, I missed that.

JOHN NOWICKI: This chapter 111.

DON FASO: "It shall be unlawful for the parent, guardian" --

KEITH O'TOOLE: No. Chapter 111 is a regulatory body of law. It has nothing to do with zoning. Where there are multiple regulations within the town code, one must comply with all of them. However, with regard to zoning, one can get some relief from the Zoning Board of Appeals.

DON FASO: Okay.

JOHN NOWICKI: This chapter 111 is pretty strong stuff.

DON FASO: Vehicles motor-driven.

DARIO MARCHIONI: He is here before the wrong Board.

KEITH O'TOOLE: No, no. He is here before the right Board and we're here just for discussion to give the gentleman some direction before he plops down his money and so he doesn't feel damage for having done so in the wrong fashion. I believe the direction the Board is giving is that he needs a licensed engineer to prepare a formal site plan.

JOHN NOWICKI: And for him to review this code.

KEITH O'TOOLE: Again, I'm sure Mr. Avery will look at it when developing the plan.

JOHN NOWICKI: There are a couple chapters with strong stuff.

KAREN COX: Chapter 111 has nothing to do with site plan.

JOHN NOWICKI: But it has an impact on the operation of those vehicles.

KEITH O'TOOLE: The Town has had an off-road motor vehicle law on the book for decades,

as most towns in Monroe County do.

MR. BAUMGART: But therein it is only applied when someone complains, so it is not applied to everybody, and there has never been by the Town of Chili, as far as we know, a special use permit given to anybody, even if -- even if they have had other problems.

DON FASO: Well, it is not the case of we actually go out and drive the streets listening for off-road vehicles.

MR. BAUMGART: I'm not saying you do, but I can -- I can drive up any one of the streets and if anybody has even one of those mini bikes, a go-cart, a four-wheeler or dirt bike on their property, of any size, they're not within code even if they ride in their own yard.

DON FASO: You're absolutely correct, but unless somebody calls and informs the Town there is a violation -- then we'll go out and act on it.

KEITH O'TOOLE: Mr. Chairman, the gentleman has a choice to make. Either he wants the permit or he does not.

DON FASO: We have given him the direction.

KEITH O'TOOLE: That's correct.

JAMES MARTIN: A point of clarification. On your -- your decibel readings that were conducted by East Ridge Audiovisual, I'm a little confused, because it says at this time the Baumgart's personal off-road vehicles meet the 55 decibel low reading from 100 feet of the property line. The code says at the property line.

MR. BAUMGART: That is what he meant. He was at property line and we were 100 feet away from him.

JAMES MARTIN: Outside of your property?

MR. BAUMGART: He was at the very beginning of my driveway. I was more than 100 feet away from him, and my driveway is about 150 feet. So from my garage to the property line, I fall under the 65 decibel rating. With my new four-wheeler, I'm quieter than that.

DON FASO: When and if you come back in, I would suggest you bring your expert in.

MR. BAUMGART: Which is now no problem whatsoever.

DON FASO: So I think you know where this Board stands. You need to --

MR. BAUMGART: I need to choose whether I want to come back to get a permit or not.

DON FASO: Contact Mr. -- if Mr. Avery is your engineer of record, I would contact Mr. Avery, and have him review the code and prepare the proper plans and application to come before the Board.

MR. BAUMGART: No problem. You have a nice day.

DON FASO: Thank you.

DECISION: After discussion with the Board, the applicant was directed by the Board to submit a professionally prepared and complete site plan if he wishes to proceed with the application process.

DON FASO: So ends the formal. However, boys and girls, I have been handed a note via Dan Kress from Kathy Reed. "Please let the Planning Board and Sandy know that the September meeting has been changed to September 21st due to Primary Day on the 14th."

There is a primary according to Maureen so the meeting room will be used for that on the 14th. So make note, September's meeting is the 21st due to primary.

JAMES MARTIN: We have a problem. New York State Federation goes 19th to the 22nd.

DON FASO: You're right. Somebody will have to get with Kathy (Reed) and pick another day.

JOHN NOWICKI: Planning Board meeting will be late in the month?

DON FASO: Some other evening. 14th is out. No reason you can't have it that week. There is more than enough time to notify the papers.

JOHN NOWICKI: Plus some applicants have signed up.

DON FASO: No, no, no. We're not talking -- September. Who signed up already for September?

JOHN NOWICKI: I think there St. Pius Church wants to come in for sketch plan review.

The Board indicated they would have to find a new meeting date.

The meeting ended at 10:35 p.m.