

CHILI PLANNING BOARD
June 11, 2019

A meeting of the Chili Planning Board was held on June 11, 2019 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 Michael Nyhan.

PRESENT: Paul Bloser, David Cross, Matt Emens, Glenn Hyde, John Hellaby, Ron Richmond and Chairperson Michael Nyhan.

ALSO PRESENT: Michael Hanscom, Town Engineering Representative; David Lindsay, Commissioner of Public Works/Superintendent of Highways; Eric Stowe, Assistant Counsel for the Town.

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

PUBLIC HEARINGS:

1. Application of Howitt-Paul Road, LLC, owner; 758 South Avenue, Rochester, New York 14620 for recommendation to modify overall PNOD development plan for the Greenwood Townhomes project at property located at 751 Paul Road.

Jess Sudol and Jack Howitt were present to represent the application.

MR. SUDOL: Good evening, Mr. Chairman, members of the Board, my name is Jess Sudol, civil engineer with Passero Associates representing Howitt Paul Road, LLC. Also with me here this evening is the applicant, including Mr. Jack Howitt.

We appeared before this Board one month ago on a sketch plan review to introduce a new site layout and proposal for the commercial or what we previously referred to as the commercial component of the Greenwood project which has often been referred to as a PNOD because it's the only district in Chili zoned PNOD.

But, of course, it's the south side of Paul Road and the specific site that we're looking at is approximately 7 1/2 acres between the Wegmans parking lot and the Greenwood Townhomes which were built some years ago now and have been very successful, all in details at our very last meeting.

The process that we are going through is not necessarily a conventional site plan process that this Board might be used to. Instead, we're required by the PNOD zoning district to -- we are proposing changes that deviate from that PNOD code to go through a process that includes and starts with this Board and then goes to the Town Board and then to the Public Hearing and then to Zoning Board and finally comes back to this Board at some point for areas where we're not compliant with the original PNOD code as I just stated.

Again, those areas are and primarily deal with -- building height is one of them. All of that relates to the underlying NB code and really primarily the uses and size of the buildings, as you recall, and also as detailed in Mr. Hanscom's letter, the PNOD code has such requirements that a building can't be more than 10,000 square feet in footprint and you can't have any residential units on the first floor and things like that.

The Neighborhood Business District has a height restriction of, I believe, 35 feet and we're closer to 45 feet. But with all that said, we do think we have compiled a very feasible project here and just to do another quick overview, essentially what we're proposing on the two larger L buildings there is retail space on the first floor, broken up into 2 to 4,000 square foot retail areas, you know, depending on the size of the user. But it is just under 40,000 square feet in total retail and then two stories of residential above. We have the architecturals we submitted and we reviewed last time if you want to look at those again.

So it would be retail on the bottom, two stories of residential above for a total of three stories in height.

Then the back building, the rectangle furthest to the left on the drawing there would be three stories of all residential. Because that sits a lot further back, because quite frankly 40,000 square feet is a pretty healthy amount of retail space already, it seemed a lot more feasible to make that all residential.

The reason why we are pursuing residential as we have discussed before really has -- starts with the success of the Greenwood Townhomes project and all of the interest that there continues to be. Of course, that 100 percent occupancy and people -- there's a waiting list. People constantly making inquiries.

One of the highest things in demand is the smaller units, so the -- more of a one-bedroom unit with some two-bedroom units. So while this project currently has 92 units proposed, primarily or essentially all one and two-bedroom units really meet that demographic that has been showing at such a high demand and a high need.

So the residential component is also -- I don't really want to get into the details of it, but much more easy to finance and allows us to build the commercial space and then start working on our letters of intent and our leases and everything that goes along with that.

But really the financing behind the initial multi-family piece allows us to build all of the infrastructure that's required in order to make this happen.

So -- but tonight I don't think we're really necessarily here to get into the nitty-gritty of the site plan, which I am, of course, however, happy to discuss. Certainly by the time this goes to the Town Board and gets their input and then we go through a Public Hearing and then we go to the Zoning Board for a number of variances and then we actually go through and conduct the real nuts and bolts of the engineering, which we haven't got to yet because it doesn't make sense to do all of the work and spend all of the money until we know we have a feasible concept anyway -- of course, some things will move around a little. But really the concept, I think, we're asking for recommendation to the Town Board is this idea of okay, we can have bigger buildings, 10,000 square foot. We have been trying to market that type of building for ten years now and it hasn't worked out. Yes, you know, maybe we do think that three stories can be a lot in most places of Town, but if it was going to be appropriate anywhere, it probably would be here. And certainly I don't mean to speak for the Board here.

Along those lines, I did want to bring up we did have a neighborhood meeting where we didn't receive any objections to any residences and townhomes on the slightly higher building height.

With that said, so just to go back to the Town Engineer's letter, Mr. Hanscom I think did a good job, a thorough job of identifying all those code variations that we currently do have from the PNOD, which is really why we're going through this whole process to begin with. Once we get to the Town Board, there will be a number of variance applications we'll be submitting in order to justify and hopefully obtain many of those variances to allow those deviations.

Some of the other site comments were more site-plan oriented. I will just step over here quickly. One of them was to add this sidewalk up the side of the entrance road which, of course, we wanted to do that. Makes good sense. Dr. Howitt spent all of the money to put this sidewalk in when we built the townhomes. Of course we are going to want that connectivity into the project. Things like bike racks we can add.

I do want to point out that the last iteration of the architectural plans as we're putting the shell together and we're starting to earmark areas for mechanicals and that type of thing, you know, we originally looked at the total square footage of the retail just based on the footprint of the building.

But once you start to take out those mechanical circulation spaces, the amount of retail space drops a little bit. Where it was previously, I believe, about 42,000, now we're closer to 39 and change. And what that allows us to do is the corresponding parking requirement drops down.

So we're looking at different areas where we might not need as much parking. One of the areas that we're identifying now is along Paul Road and we're removing some parking there. And certainly as we go through the process with all of the other Boards, maybe we end up removing this last handful of spots there to maintain that green buffer kind of along the entire corridor there.

Those are the types of things that we're thinking about, but we know that we do have somewhat of a long road ahead of us. One of the comments specifically had to do with circulation where we hadn't yet shown a loading space.

But I think either side of this drive aisle that cuts those two buildings certainly gives us the opportunity to have an area to put some smaller trucks when we're loading into these facilities. We just haven't got to that level of detail yet, but certainly we know that we're going to be required to show that and plan on showing that when the time comes.

So with that, again, I'm happy to go into as much detail as you would like or as a little as you would like. Just kind of respecting the process and kind of the fact that we have many months of various Boards before finally filing a bonafide site plan application with this Board with typical review to provide all of the levels of drawings and reports that you're typically accustomed to.

MATT EMENS: I just went through your response letter. To your point, I think a lot of this will shake out in the -- the design as it progresses. I don't have anything right now.

JOHN HELLABY: I unfortunately apologize because I haven't had a lot of time to go through your response letter. I appreciate the statement made that I think again things will work out. One question I do have, though, is, you know, Mike (Hanscom) made it clear that you would require a revised market study which is apparently required under the Section 500-23, but in here, you made the statement the amount of proposed retail is less than the original, therefore, a market study is not warranted.

It would seem to me with a statement that Michael (Hanscom) made, regardless of what happens, it is warranted.

MR. SUDOL: The market study, what I'm trying to say, it was required and provided back when the initial PNOD overall Master Plan was approved. At that point there was 53,350 square feet of retail. Now we're under 40. So we have reduced the amount of square footage retail by approximately 14,000 square feet. The point I was trying to make is that the initial market study -- although market conditions have changed -- with the drop in retail we currently have, you know, we're not increasing it. We're less. We did provide a study when the overall approval was granted.

We're actually approved right now to build that 53,000 square foot of retail Just in a different configuration than what we're proposing based on that initial market study.

JOHN HELLABY: Mike (Hanscom), do you agree with that statement or analysis?

MICHAEL HANSCOM: Um, I was just trying to point out what was in the code, because it was -- because it was such a significant change. With the orientation of the commercial district on the way it was originally laid out, it appeared to be more likely to have one -- one or two larger businesses in each of the freestanding buildings.

Here now they're going down to much smaller businesses in the -- in the large building.

MR. SUDOL: You need a layout -- the intent was to have the retail space be very flexible. We have initially shown the shell to have approximately 2,000 square foot tenant spaces. But, of course, if we have a tenant that wants to take 8,000, we would more than happily develop four for that tenant.

And similarly, with the old design, we had some buildings that were 10,000, some that were two. We just provided all that flexibility inside one building rather than having all these different buildings all over the place that had to be very specific to specific tenants, which is really one of reasons it didn't work out to begin with. That is certainly something we're willing to hear an official interpretation from.

JOHN HELLABY: Might be something you have to supply later on.

The other question I have for you and again, I apologize I don't have all of the original meeting minutes and whatnot.

Can you refresh my memory about this traffic light issue down there? Because I know that was talked about quite a bit between your entrance over there and the Wegmans entrance.

MR. SUDOL: Yeah. At one point it was contemplated that a traffic light would be constructed at the Wegmans entrance that is right down on Paul Road. Um, and that we would be connecting to that light out through Wegmans. But because we're no longer proposing to connect and travel out into the Wegmans parking lot, there is no longer that need for that light to be constructed. At least -- unless Wegmans has their own independent traffic study that says they're supposed to have it.

JOHN HELLABY: I guess what I'm hearing is that you no longer have even researched the opportunity to have a joint connection there, correct?

MR. SUDOL: We have not been in recent dialogue with Wegmans -- unless, Dr. Howitt, you have?

MR. HOWITT: No.

JOHN HELLABY: Again, it is something that can take place during this whole process.

MR. SUDOL: I appreciate it.

JOHN HELLABY: I think it would be a good idea, to be honest with you.

DAVID CROSS: I agree with Al (Hellaby). Certainly a vehicular connection between your site and the Wegmans parking area and pedestrian linkage, too. I see the effort to put the sidewalk through the site. It looks like you're close. You're not quite connecting the end of the private drive.

MR. SUDOL: We'll connect it. I see what you're saying. We missed that.

DAVID CROSS: My stuff is site plan related. I thought I would throw that out there because I didn't have anything else to say.

MR. SUDOL: Got you.

DAVID CROSS: That's all.

PAUL BLOSER: I'm all set. Dave (Cross) just said what I was going to say.

MR. SUDOL: Tried to give you a softball, Dave (Cross). Came through.

MICHAEL NYHAN: How many zoning variances will you need based on what you know so far?

MR. SUDOL: Well, I believe it's four or potentially five. There is a front setback parking area. We'll need one for residents on the first floor. We will need one for building size, and we will need one for building height. And we will likely be pursuing one for parking not because we can't provide as much parking, but the Town's code doesn't deal with the mixed use nature of this project and the (indiscernible) transportation engineer has recently come out with a lot of publications and studies on mixed use parking which show that you really require a lot less parking than when you just add one plus the other.

If you take retail, it needs all this parking in the middle of the day and residential, which there is that overlap there, there has been a lot of studies on that. I don't mean to go into the weeds on this, but there is an opportunity for us to eliminate some parking and still be very comfortable with the amount we have and get a little more green space. And if those calculations prove that out, we would add that variance to that the mix.

Michael Nyhan made a motion to close the Public Hearing portion of this application, and John Hellaby seconded the motion. The Board unanimously approved the motion.

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

MICHAEL NYHAN: Any further discussion on the application? Comments, procedures, where we go from here?

You have outlined the items that you're going to be changing as you read them off. Is that in your letter that you just responded to the Town Engineer on?

MR. SUDOL: Yes.

MICHAEL NYHAN: Okay. Good.

Any other comment from the Board on those modifications? Any changes to them that you want to see?

SEQR will be handled at a later date and we'll be looking at this point just for your recommendation or a non-recommendation to the Town Board for further review.

So with that, looking for a vote on the recommendation of application of Howitt-Paul Road, LLC, owner; 758 South Avenue, Rochester, New York 14620 for recommendation to modify overall PNOD development plan for the Greenwood Townhomes project at property located at 751 Paul Road.

JOHN HELLABY: Second.

DECISION: Unanimously voted for an affirmative recommendation to the Town Board by a vote of 7-0. The particulars of the recommendations are outlined in the letter of intent dated April 10, 2019 from Mr. David Cox, PE, Senior Project Manager for Passero Associates (on file with the Town). This affirmative recommendation is based on review of the proposal, previously approved PNOD, presentation from Mr. David Cox, Board discussion, and after a public hearing. The modified plan is still in keeping with the intent of the zoning resolution. The plan provides for a transition from the heavier commercial use of the Wegmans/Target development to the west by providing a mix of commercial and residential uses. The residential uses in response to market demand for this type of housing. Additionally, Mr. Howitt has indicated they will work to extend the walking trail from the initial PNOD development to incorporate a trail to connect the new Chili Community Center now in progress.

It is the Planning Board's understanding that if the Town Board approves this modification, the applicant would return to the Planning Board for preliminary and final site plan approval. The Town Board will be notified of the Planning Board's decision by copy of their decision letter.

2. Application Chili Plaza Properties LLC; owner; 349 West Commercial Street, Suite 3300, East Rochester, NY 14445 for revised site plan approval placed on applications granted on 4/9/19 for suites B12, B13, and B14/15 at property located at 3240 Chili Avenue in G.B. zone.

Michael Kuskin, Steve Orenstein and Shannon Fitzpatrick were present to represent the application.

MR. KUSKIN: Thank you so much for putting us on today's agenda. Greatly appreciate it. First, I want to introduce myself to anyone who might not know me. My name is Michael Kuskin. I'm one of the owners --

MICHAEL NYHAN: Michael (Kuskin), could you hang on one second? Excuse me. Thank you.

MR. KUSKIN: Again, thank you so much for putting us on today's agenda. Greatly appreciated.

I wanted to introduce myself to anyone who might not know me. I'm Michael Kuskin. I'm one of the owners of Two Fronts Shopping Center, Chili Plaza or whatever you may call it.

I live in New Jersey. I have a wife, three boys, 9, 6, 2 1/2. My wife, Emily, wanted to be here tonight more than you know as what is happening affects her, my kids, me and a lot of other people.

She couldn't be here tonight because it is my six-year-old son's little kindergarten graduation ceremony today, which I couldn't attend because it was just too important for me to be here tonight. I prioritized this meeting and speaking here tonight over everything because my family intends -- or are counting on me.

One of us had to stay home for the kids and cheer for Henry. So she just couldn't make it work. Still, she insisted on giving me many notes on how to communicate the message I want to communicate to you tonight because public speaking is where she shines far more than I do. So thanks for bearing with me.

Um, I'm worried that somewhere along the line I may have given the wrong impression about who I am. And in this moment I know it is critical for me to tell you some things about myself. I'm someone who takes great pride in his work, tries to make everything around him better for the people who come to the shopping center and enjoy the Town of Chili, the hard working business owners who support their businesses and work so hard to make them thrive.

And for my own family who are counting on me to make this all work and take care of them, I work as many hours as I can possibly work in a week to try to accomplish all these goals.

My mother grew up in Rochester. That is how my family ended up in the real estate business here. When the opportunity came up for me to come here and work in real estate development, my wife and I decided it was too great an opportunity to turn down.

While our family is very settled and with school -- with school children in New Jersey and my wife still is a licensed attorney there, we decided it was worth the sacrifice for me to spend my weekdays away from the family to try to make a life for us my previous job was never going to afford.

When we started commuting to Rochester over three years ago, Chili Plaza was a massive redevelopment undertaking, as I'm sure you're all aware. There were many inherited problems, far more than just a lighting layout. I have given you all a set of pictures to help show you the before and after of this redevelopment. Needless to say, as the picture shows, it was anything but minimal and anything but typical. After we borrowed a lot of -- we borrowed a lot of money to redo the parking lot, millions. A lot of additional obstacles were thrown -- thrown in my way as we discovered a massive amount of underground issues that needed to be dealt with. No one could have predicted how costly that would turn out to be, which is a very difficult position to be in especially right at the beginning of such a large project.

At the same time I was determined to persevere and found ways to still do a comprehensive redevelopment of the project and fill the tenant spaces with many new renovations and beautiful spaces and businesses, many wonderful local businesses. Some of those wonderful local business owners are here tonight.

So while the cost of the redevelopment skyrocketed and we had to put any money earned and so much more than that right back into the project, we pushed forward to fill the plaza to make it work regardless. Just like each of you, I want to make the Town of Chili the best it could be and bring businesses to the area that would help the community thrive.

Along the way, additional expenses continued to haunt us and every time we thought we finally made enough progress to turn a profit, something else would happen. Two years in row this past January, before that, we had such problematic pipe repair needs, the cost rivaled the days of the early redevelopment and insurance barely covered a blip. Hurt us financially, but we did all of the fixes and repaired many damaged tenant spaces and kept pushing forward.

Just as we were finally finishing those repairs, we felt truly optimistic for the first time after this -- all this time. We had filled the plaza to 100 percent occupancy and it seemed as though the Taco Bell project long in the making was finally going to proceed. Just a few weeks later, the April Town meeting changed that trajectory. The C of Os were paused on numerous tenants including brand new and long-time tenants. The Taco Bell deal was a question mark and we also had a long list of very expensive requirements to complete.

Believe me, when I say that I more than understand that this Council's job is to hold us accountable and work to make Chili everything it can be. I truly appreciate those efforts and they align with my goals, as well. However, and I say this only so you understand where I'm coming from, while I wish I was someone with unlimited funds, my family is far from that. Quite the opposite really.

Believe me when I say before the setback in April, I truly felt we were progressing slowly but surely and with open communication between us and the Town of Chili -- has always been my goal and if it has not always seemed that way on your end, please believe me, it was not intentional. I sincerely apologize for any delays that may have happened along the way.

Back to April, when we heard the news of the amount of money that again needed to be spent immediately in order to achieve the progress that we definitely needed, it was very, very difficult news to receive. But as you are aware, we purchased forward, hard and fast with the help of so many -- so many people to achieve so much in such a little amount of time.

At the same time, the tenants whose C of Os were affected were and are impacted deeply. They have been caused to leave the plaza and not paying rent which is making it that much more difficult to pay for all of efforts we are currently tasked with.

Yet even when it seems impossible, we have a responsibility to our tenants and to the Town of Chili to do everything we can do meet the expectation. With my tenants in such a dire situation unable to operate their businesses, that responsibility has never felt greater. I'm doing everything I can -- possibly can to complete the Town's requirements and to make the shopping center the best it can possibly be.

Made so much progress over the past few years. And we'll -- with the Town's support, we'll only continue to improve. In order to do everything the Town is looking for, we need to be able to have the businesses in the shopping center be open for business, paying rents and having funds to afford the improvements. We have been doing everything we can, but we're in a very difficult situation without the rents coming in and tenants threatening to take action.

Like I said, before taking on -- like I said before, we are very far from people with unlimited funds. I, myself, have not taken a salary in months, taking on debt and living off any savings my wife and I had instead since it was just too critical to put any money coming from the plaza directly toward the effort to make all these projects happen and then some.

As many of you know, raising three children is quite expensive, so it's been difficult. However, I -- most -- most sincerely want to have a positive working relationship with the Town of Chili and have been determined to complete as much as we possibly could before this meeting.

My point is, our limited funds are stretched very thin. That much more so without being able to collect the rents, we are stretched thin to operate, let alone do everything the Town is requiring, but we're figuring that out. This has been the constant (indiscernible) with this plaza. We have been scraping by and collecting and putting everything we can towards the plaza, but struggling at the same time.

Although, of course, this concerns my own family's welfare, I also feel huge responsibility or concern for the welfare of the tenants. Many of whom are new small business owners and are dangling on the -- on the edge before they're even in business without being allowed to open the doors to customers.

These are hard-working people trying to make a living but nothing to do with any of the

improvements on the project list. Even so, they're paying a very big price.

I have attached -- let me see if I can -- I have two copies of this. I will pass this out to each -- just take a momentary -- take a momentary look and pass it down.

It's -- this is a recent Google review posted online by one of our tenants that I think illustrates the struggle, very, very well. I want to read that to you. As well as the business owner's posted response. This is a widely available and public rating. It is the only one she has thus far and the real reviews will be glowing once she is open. It's for Climbing Vines West Side. A month ago, there -- there was one review a month ago, one-star review says, "Went here today and they were closed. No notice on door or website. Very disappointing."

Read the business owner's response, "Hi, Heather. I'm so sorry you stopped by today and saw we were closed. There's a sign posted on the left door. We also update our website and Facebook page and Google business page to let people know we aren't open yet due to an issue with the Town and our C of O. Feel free to reach out to me for any other comments or concerns. We hope to be open mid- to late May at the latest. This was an issue out of our control unfortunately. We'll be given our C of O when the landlord fixes some issues around the plaza. Hope you come visit when we are legal and allowed to open again."

I'm asking you to please help me help these tenants. I can't continue to let them suffer for something they really had nothing to do with.

And I desperately need the Town's help to make this okay for these businesses and allow them to operate while we complete the final items on the list. We will in no uncertain terms complete the list.

You will see we have pictures coming up that show the progress we have made up to this point, which is really quite significant in this short amount of time. Only two items -- only two items remain.

One, the curbing which the Town has already agreed to waive it until we know what is happening with the Taco Bell situation because that affects it.

The other is the lighting upgrades. Simply something that takes time. The plan has been submitted, but -- but the -- the (indiscernible) itself takes time. The most recent proposal estimates it would take 60 to 90 days to complete the shopping center and these businesses simply can't survive another two or three months when they're -- when they're -- with their doors closed and no money coming in, not paying rent, loan payments due, et cetera, et cetera. The effect keeps tricking down, as I'm sure you can imagine.

So I am here tonight asking for your help. Hoping you hear my sincerity how hard I have been working to get the job done. How hard I will continue to work. How much I respect the important job that you're tasked with doing. Hoping you see all these pictures and agree with me about how much progress we have made. Hoping and determined for us to find a solution tonight that I can call my wife about after the meeting to let her know it is all going to work out.

Everyone in this room wants this -- the same thing, the Town of Chili to thrive and shine and I most sincerely am hoping we can all work toward that together.

Now, if you would like us to go through item by item the -- the items on the requirements list.

MICHAEL NYHAN: We have a copy of that. We have been reviewing that. I'm not sure if the Board had an opportunity to review these items. They seem to be reviewing them now.

RON RICHMOND: I don't need each one addressed individually. The responses are there.

MICHAEL NYHAN: You have a follow-up inspection from 6/11 of '19 from the Building Department Manager.

MR. KUSKIN: I can pass this around if it helps.

MICHAEL NYHAN: Each of us have it.

MR. KUSKIN: With our comments about the status.

MICHAEL NYHAN: We have that, as well.

MR. KUSKIN: Okay.

MICHAEL NYHAN: That was already passed out to us. So with that, I will ask for any questions from the Board.

RON RICHMOND: I'm all set.

MATT EMENS: So to be clear, what we're looking at with the red comments is the most current -- or you have an additional document from Paul (Wanzenried) or Dave? The one of -- the inspection from 6/11 is the most recent one. This one (indicating).

RON RICHMOND: That we --

MR. KUSKIN: Do we know they have the most recent one?

JOHN HELLABY: While he is looking at that --

MS. FITZPATRICK: The letter we handed out with the web comments, that is their response to the letter on April 10th.

JOHN HELLABY: The issue is there are two letters up here with red comments on them. One is yours, which I appreciate you saying -- with the photographs. The other one we had is from the Building Department.

As you have already mentioned, there are three actual -- actually two, not three open issues that we need some sort of commitment on here tonight. One of them is being yeah, okay, the Town said you don't need to do the landscaped islands right now because it is sort of pertinent as to what Taco Bell does. But they want a commitment from you as to when they're going to be done. Is it going to be six months or is it going to be six weeks? We need a definite answer. This isn't going to drag on for eternity, all right?

The other item, as you already mentioned, is the parking lot lighting. The parking lot lighting has been atrocious over there from day one. I'm surprised somebody has not got run over there in that dark place. That needs addressing immediately. They're looking for a date when will -- that will be done before you get an answer out of us.

The last issue is, you know, the -- you're saying these businesses are in there ready to open. The problem is, is none of them have been issued a building permit. And they were told that when they were in here on that April meeting. You need a set of floor plans. You need demolition plans. You need to show all of the improvements. Depending on how big the scale was they need to be stamped by a licensed architect or engineer and brought in here and got a building permit for.

Right now there is nothing. You people have never made an application for a building permit. We can't issue a C of O unless there is a building permit issued. All right? So you need to get that straightened out with the Building Department immediately before you can even think about opening these businesses. Especially if they went in there and did all this work uninspected. You might end up having to open walls back up. I mean, you're in the business. You know you got to get a building permit.

So those are the three issues that are hanging over your head right now. I can't speak for the rest of the Board, but if you can put some definitive answers down here tonight, you might walk away with what you're looking for, but still it won't be tomorrow those businesses are open.

MR. ORENSTEIN: Can I speak on his behalf? Because he doesn't really know 100 percent what is going on.

Steve Orenstein with Stonewood Builders. I submitted building permits for my office, Stonewood Builders, Climbing Vines and Sullivan Insurance Agency.

JOHN HELLABY: When did you submit them?

MR. ORENSTEIN: Paul -- two months. Paul (Wanzenried) told me these building permits cannot be issued because of the situation going on.

Also on behalf -- I do have floor plans done. There was no interior work that was done other than electrical inspection that needed a building permit for -- for any of the spaces, which Paul (Wanzenried) is fully aware of. I wish he was here tonight to be able to speak on that behalf.

But as far as any of that, we did not take any type of walls or bathrooms or plumbing and then -- and those -- the yellow forms have been submitted two months ago. I did talk to Paul (Wanzenried) the other day about it.

JOHN HELLABY: I don't know because I just got this letter tonight and it says that no building plans have been submitted per June 11th of '19. That seems to me -- that is today's date. "Therefore, no building permit can be issued nor can a Certificate of Occupancy, C of O, be issued."

You better be in here tomorrow morning to it to get that straightened --

MR. ORENSTEIN: I already turned that into him and I offered to pay Paul (Wanzenried). He says he cannot charge me, take a check, do anything. A building permit cannot be issued. That's what he told me. I have had this discussion with him multiple times.

JOHN HELLABY: You have to find out what the problem is then. He told me you have no plans. Granted, you had all these other issues to address, but it looks like you got a lot of them cleaned up other than the three we just talked about.

MR. ORENSTEIN: Correct. Correct. I will follow back up. I have copies at my office. So everything has been submitted to Paul (Wanzenried). It was submitted to Paul (Wanzenried) honestly before the meeting. Two months ago that stuff was submitted to Paul (Wanzenried). He claimed I couldn't pay for the permit. That is what I was told.

I will come back down tomorrow morning on behalf of the plaza and submit those building permits again and say, "Can I please pay for a permit?"

He told me they can't be issued.

JOHN HELLABY: Unfortunately, Paul (Wanzenried) is not here. Dave Lindsay is here. I don't know if he has any more insight on that, but that is where it is at right now.

MR. ORENSTEIN: Okay.

MATT EMENS: It sounds like it is almost like a catch-22. But to confirm if the building permit application is incomplete, that is one thing. If it is -- if it is not issued because of the other items, that is your catch-22. So I think I'm a little confused on which one it might be but...

MICHAEL NYHAN: What are you concerned about?

MATT EMENS: Is the building permit application incomplete?

DAVID LINDSAY: I think that is what you have here. Perhaps -- Steve (Orenstein) has stated they submitted an application but it is incomplete. We don't have the actual plans.

Now Steve (Orenstein) thinks he has maybe submitted them. I would suggest he touch base with Paul (Wanzenried) tomorrow and they can sort that issue out.

MR. KUSKIN: Only electrical work?

MATT EMENS: Then back to the -- so the lighting for the site is the other one you mentioned.

JOHN HELLABY: Well, where are those conditions at? In April, when they came in for these three deals, I wanted -- you wanted a change, you were looking for the -- the -- they came back in front of us in April. The Number 3 was prior to issuance of any building permits and/or Certificates of Occupancy, application and/or owner shall remedy all outstanding conditions of prior approvals including but not limited to primary site plan approvals dated April 11, 2017, and March 13th, 2018. That is the culmination of all these things on Paul (Wanzenried)'s letter, the

15 items.

We got most of them addressed, other than Number 4, with the curved plantings, 8 and 9 for the lighting. The -- 14, the building permit thing will go away, I think.

So I think basically, if I'm looking at this correctly, what they're in here for tonight is okay, we made a good faith effort. We did all this work over there. Can we get this item Number 3 taken off the conditions? That would allow them to proceed and get the building permit for these three jobs.

MICHAEL NYHAN: There was a reason those conditions were placed by the Board because we have been in this position for 2 1/2 years where we have permitted tenants in this plaza with the understanding that these conditions would be taken care of and the work would be done and it hasn't to date. So at the April meeting, the conditions were placed it all needed to be completed prior to any additional permits being issued for this plaza. What you're looking for tonight is relief from the conditions so they can get their building permits, to change the conditions basically that were set forth by this Board on April of 2019.

MR. KUSKIN: Well, we -- the Town already provided us that courtesy for the curbs, depending on what happens with Taco Bell because that changes the configuration.

To answer your question, once we have -- once we know if we're turning left or turning right, 30 or 60 days would be the turnaround.

Um, which really leaves one issue, which is the lighting, which is obviously a very large job. 60 to 90 days is fast. Because -- like you have stated, it's wholly insufficient, the lighting. So it's a full complete job that takes time and we have the proposal and contract ready to go and that -- that timeline is 60 to 90 days.

JOHN HELLABY: So you think parking lot lighting will take 90 days?

MR. KUSKIN: That is what -- that is what the proposal estimated.

MICHAEL NYHAN: No. This is -- this is not a new issue that came up in April of this year. This is an issue that has been going on for over two years. You wouldn't be in this position had you completed the items that were required to be completed almost two years ago. This is not anything new that came up in April of this year. I understand, but ultimately, you are the one responsible to get those things done when we grant permits. And we permitted other tenants in the past to move into this plaza and granted those C of Os without the conditions being completed with the understanding that they would.

To date, they haven't been completed. We have recently seen some great progress over there, but it seems to me the only thing that is motivating that progress is the lack of being able to issue a C of O for those tenants. Which was what occurred in the April meeting of this year.

So this is not a new condition that has been placed on this plaza in 2019. This goes back to 2016. When they first came in for their preliminary site plan approval, these items were outlined. We have been waiting since 2016 to have these items corrected. I'm not going to argue with you about that, Michael (Kuskin). I'm stating what is in the minutes from any meeting you want to go back to of this Board. They're all public meeting minutes. And the Board has been asking for these things since 2016.

There have been tables of the plans, all of you will recall, and the promises of completion. We have heard applications. We have approved applications. And yet we still do not have a corrective action taken in this plaza to date, which is almost since 2016. Almost 2 1/2 years old. That is my comment to the Board in response to there is a lot to be done and we're looking for a waiver of the conditions this Board placed in order to get this done.

MATT EMENS: So I just want to make sure I understand this, though. From the lighting standpoint, he has a drawing.

Do we -- do we need to review that?

MR. KUSKIN: It's -- a temporary C of O would be sufficient, if possible, and then we would complete the work in the given timelines.

MICHAEL NYHAN: Go ahead.

MATT EMENS: My question is, I want to understand, what are the steps that need to be taken on the lighting plan? We have the lighting plan. It needs to be reviewed and approved.

MICHAEL NYHAN: Correct.

MATT EMENS: Then once that happens, then he can sign the contract and get the work started.

MICHAEL NYHAN: There is also the parking study that was completed but it was just completed so we have to have that reviewed by the Town Engineer. Well, to validate that we have the same numbers that the plaza engineer, I think it was, came up with for that parking study.

So all of the things that have been submitted up to this point still need to be reviewed and validated as the proper numbers or that the Town is accepting that as the remedy for parking spaces, for lighting, um, for the two major ones still outstanding. Those are the conditions that were placed in April as a result of the lack of action on those items.

MS. FITZPATRICK: Sorry. Shannon Fitzpatrick, Property Manager. We actually do have a contract with an electrician who is ready to implement the lighting study. Ty Electric is on Board and they're ready to order the materials as soon as it is approved.

MICHAEL NYHAN: Thank you.

DAVID CROSS: They basically need C of Os to move forward with any of the tenants there so our conditional -- is the Town willing to -- to give conditional C of Os?

MICHAEL NYHAN: No. They're not -- what they're looking for is relief from the requirements this Board placed at the April meeting for the plaza to rectify the issues that have

been outstanding for many years before a C of O will be issued. So they're requesting relief from the Board's conditions that were placed in the April of 2019 meeting.

DAVID CROSS: That's all I have.

MR. KUSKIN: There is really only one item.

MICHAEL NYHAN: Pretty big item that has been asked for for 2 1/2 years.

MR. KUSKIN: But it takes that amount of time to get it done. And this list of requirements has -- has -- has had a bit of an evolution. Somebody unsolicited brought a lighting plan to a meeting and that started that whole process. Um, which -- which before that wasn't even a discussion point. But I agree regardless that it is necessary.

I just can't do any more right now. As I stated before, it was -- there was a lot of money put into the plaza. It just wasn't so easy to just do everything because these are high ticket items. And I -- I just -- I have gone as far as I can go right now.

MICHAEL NYHAN: Okay. Thank you.

ERIC STOWE: General comment on temporary C of Os. My long-standing advice has been no. Because once the temporary C of O is issued, it's really hard to not -- in order to take it away.

DAVID LINDSAY: Couple comments in relation to Paul (Wanzenried)'s letter. I keep hearing the applicant stating there is one thing left to be resolved. If I understand things correctly, Number 6 and number 7 have been submitted but not reviewed by the Town. Number 8 and 9 and number 10 have not been completed if -- do you understand that the same way?

MICHAEL NYHAN: Correct. That is the letter from the Town.

DAVID LINDSAY: Also on Number 4, because some of those are -- I won't use the word "waived," but let's say tabled pending update on Taco Bell.

Do we have an update on the status of that project from the applicant?

MICHAEL NYHAN: Is there an update on the status of the Taco Bell? They placed their application on hold.

MR. KUSKIN: It's awaiting these results.

MICHAEL NYHAN: The results of this?

MR. KUSKIN: Uh-huh.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

STU BLODGETT

MR. BLODGETT: My name is Stu Blodgett and I'm an insurance agent who hopes to have a space here in Chili. We have never been in this Town. We closed three small offices in Bergen, Holley and Scottsville to move them in here and we looked at Brockport and we looked here. We loved this plaza. This is -- I don't know the plaza from before, but it's beautiful. It's a beautiful plaza.

I, as well, serve in my small Town as a Trustee and I served on the Zoning Board. And within legal limits, my charge has been to be as pro business as possible. Um, Taco Bell has been trying to come in here for quite some time.

I'll be contacting them about new work as soon as I possibly can. Businesses talk to other businesses. These are businesses that want to come into your Town to give you dollars.

The Village of Newark, prior to my terms, had a developer who wasn't the greatest developer, but he won a lawsuit against our Village called "Death by a Thousand Paper Cuts" that they discriminated against him. They treated every other developer this way, but this guy you can see, well, you're -- you're kind of pushing this -- this one gentleman a little harder than you're pushing the others. And I'm not pleased to admit that. It was before my time.

But I have now got salaries, no sales coming in. I know the Climbing Vines place that I saw on R News -- they had a nice little article about them or story, and I said, "Wow, west side. I'm not a west side guy." I'm like, "I want to be over there. I want to get on the west side."

I don't know the lighting at night. Though, I might hang around long enough tonight to see. We have got plazas in our small town. Some of them have potholes. Since we have been in there, putting stuff in and building out, I have seen them put plantings in the island. I saw the new parking lot. Again, I haven't seen the lighting.

Ferrari Pizza is a friend of ours and I think that's a beautiful location. They have a little outdoor eating area between buildings. Um, don't look a gift horse in the mouth. There is many small villages in Upstate New York, also known as "Cuomo Land," that would love to have more businesses coming in. So just -- just be careful of how you proceed.

I understand your comment, the Assistant Town Counsel, that you don't want to give a temporary C of O. I kind of think you guys have the right to remove that C of O, as well, legally because -- you're an attorney, I believe. So if you give a temporary C of O, he's getting income, Climbing Vines is earning income, you can do a Taco Bell. What is the -- the Bill Gray's can do their tap room. I'm -- my head is spinning as I'm sitting out here listening to this.

Yes, it has been three years. I understand that. But we have worked in my small town with developers like we don't want to upset them because they will leave and developers talk to other developers. And if the word is, "Boy, it's kind of tough over there in Chili," you know, you're going to set a precedent for yourself. I will just warn you as a small village that Newark is -- you guys are bigger -- just be careful.

This is a Planning/Zoning Board combined?

MICHAEL NYHAN: No.

MR. BLODGETT: Still has to go to Zoning Board then? Ours is Planning first, then

Zoning.

MICHAEL NYHAN: The application in front of us is for the Planning Board.

MR. BLODGETT: That would have to go to the Zoning?

MATT EMENS: No.

MR. BLODGETT: There is nothing --

MICHAEL NYHAN: Nothing in front of the Zoning Board.

MR. BLODGETT: Thank you for your time.

BRIANNA SPUCK

MS. SPUCK: Hi. I'm going to try not to cry, but I can't really promise anything. So I am new to Chili. We moved here like last year, I think.

MICHAEL NYHAN: Excuse me. Your name?

MS. SPUCK: I'm Bri. Brianna Spuck, I guess, is my full name and I am trying to be the owner of Climbing Vines West Side, because when we moved over to the west side, we knew that I was just so sick of packing up my four kids and driving a half an hour to always go have them do something. And I am friends with the owner in Victor and they were like, "We have a great idea. We want to open this. We want to be able to be this place for moms and for kids."

And there are many of us over here that don't have a lot to do.

And when we had signed the lease last year, we were actually in the hospital because my son had gotten diagnosed with neuroblastoma, which was a whole big thing, and we thought our dream was just going to be crushed and weren't going to be able to bring this to Chili and we were going to have to deal with this medical complication with my four-month-old.

And Michael (Kuskin) -- I'm not saying he is perfect and I get that this has been going on for a long time, and I'm really young and I'm new to Chili and I'm new to being a business owner. And I didn't know everything that was going on back then and, you know, I didn't know like the right way to do things. I was just kind of just following him.

But in our time of need when we really thought we weren't going to be able to have this place, Michael (Kuskin) did everything he could to make our dreams happen anyway and not have to have our life on hold because he believed in us.

So I'm not saying that he is perfect. And I know this is so beyond my like level of knowledge, but we were supposed to open in January and so we have, you know -- we had to start paying our loan back in January when we were supposed to open and I know like I said -- I know this is not like to do with us and you guys are using this to try to motivate him to get what you want done. And I get that.

But we're just really struggling on top of this and medical bills and I know you guys are just doing your job, but this has just been really hard for me and my family and we just want to -- we want to do things the right way and we just want to be able to bring this to Chili and be a place that people can come together and that people can bring their kids.

You know, when you think about Chili, you can be like, "Oh, yeah. They have that Climbing Vines there."

Because there is nothing like this on the west side. We wanted to be in Chili because this is our home town. We moved here. We are very involved. We go to Open Door Baptist Church. And we are very involved with the stuff that they do around the Town and we're really passionate about Chili and we didn't want to be in Spencerport. We didn't want to be in Ogden.

I get there is all this stuff going on and I know, you know, if you already give a temporary C of O, you feel bad taking it away. But if he could give you a timeline, saying 90 days, I would sign something saying if in 90 days he didn't have his stuff done, you could take our C of O. That is how confident I am that we will make sure that he gets it done.

But this is just really affecting us and we just want to be here and we just want to serve the community as best we can.

I'm sorry that I cried through that.

MICHAEL NYHAN: We appreciate your hardship and what you went through.

MR. ORENSTEIN: I just wanted to say one last thing. Steve Orenstein with Stonewood Builders.

So on a couple of the items. If you guys are aware of this, we had a list. We had executed a plan. I also, along with Michael (Kuskin)'s help, financially have funded six figures of my own money between myself and my friend, Louie Ferrari, that own Ferrari Excavating, to get these items done at the plaza.

We actually were -- had a stakeout done, ready to dig the curbs for the Taco Bell because I was told they had to be done. So I was putting in ten islands. If you actually can go out there now, there's spray paint on the pavement. Somehow between Michael (Kuskin) making a telephone call to Paul (Wanzenried), which has been -- I have great working relationship and I like Paul (Wanzenried), but he somehow changed that condition that did not need to be done. That -- in return, I had a guy that I contracted pulled off a job, paid him additional money to give him a deposit that I am not now getting from Michael (Kuskin), cost for damages, due to the fact that I don't know how that condition was changed, but every item on that list was never intended to say, "Hey, we're not going to do this" or "We're not going to do that."

The reason the lights can't be done is because the engineer took so long to finally get the study done, which he paid someone \$20,000 to do. The reason is that the electrician is ready to go. Myself and Ferrari Excavating is ready to do all of the trench work and that can't be done because also when you approve it, we have to order these poles. No one has them in Town. They take between three and five weeks to get them.

So in the meantime, we can dig trenches and put bases in doing whatever needs to be done, but I can assure you from being in the plaza; being a Chili resident -- my business, Stonewood Builders; Ferrari Auto Detailing and Ferrari Pizza Bar is in that plaza. I have customers and tenants that complain daily about lights. So I want it to be right. I, as much as Michael (Kuskin) does, but I want it more because I live in that plaza seven days a week.

So I just want to say I've got a good working relationship with the Town of Chili. That -- those lights are getting done because I am technically financing along with Michael (Kuskin) what we can do to get them done. That with my help is the reason this stuff has been able to get completed because he didn't have the funding. So we put our heads together to do it. I wish today we were here saying, "Hey, everything is 100 percent completed," but there has been delays and obstacles that were not really in our control. So I just want to say that on the plaza's behalf.

MICHAEL NYHAN: Thank you.

Michael Nyhan made a motion to close the Public Hearing portion of this application, and John Hellaby seconded the motion. The Board unanimously approved the motion.

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

MICHAEL NYHAN: Further Board discussion?

JOHN HELLABY: Well, I think unfortunately no fault of ours, that the owner has gotten a couple of people behind the eight ball on these lease agreements. My personal gut feeling is okay, we modify that one item that was from April to allow these people to move forward. That doesn't mean they can open tomorrow. That means they can start the process of securing the building permit and whatnot with the Town to get the inspections behind them. With the understanding that folks, that's it. That's through. Don't make any more lease promises over there unless this whole thing is straightened out with the lighting and the curbing. Because basically you're -- you're -- you're defrauding these people telling them they can come in there when technically they can't. And you knew these issues were hanging over your head.

MR. KUSKIN: I just wanted to say these leases occurred prior to the April meeting.

MICHAEL NYHAN: Okay. Thank you.

JOHN HELLABY: That's my personal feeling. It is a shame we had to hold these people hostage and get them behind the eight ball, but it is what it is.

MICHAEL NYHAN: Nobody is being held hostage. We're just simply following the Planning Board -- multiple times these conditions have been requested and promised with given dates of completion. And each time we have probably approved five, six, tenants at this point with the understanding that it would get done for the last 2 1/2 years.

I have seen great progress now. I think that is wonderful. But we have done that in the past. We see the progress stop once we release the conditions or modify them in any way or are lenient with them. So that is my only comment on that. Everybody has an individual vote. But we -- you know, it looks like we have five -- five conditions on here, and I understand they're -- will take time, but, you know, you have had 2 1/2 years to do that. So while these conditions are not new, requesting to have it get done maybe -- but all of the responsibility falls on the plaza owner, not this Board for not getting it done. It is the plaza owner's to all of those tenants that are currently there and that have made application to be there in the future. So those are my comments to that.

Any further discussion?

RON RICHMOND: Yeah. I -- I sit here month after month and I don't pay attention to a lot of the technical stuff. It's not what I do. It's not who I am. I pay attention to the personal side of everything.

And if we're -- if we have 2 1/2 years into this, and we haven't gotten the steps accomplished that we wanted accomplished in a timely fashion, then shame on the applicant. I mean that is really why we're -- where we are right now.

However that said, there are citizens of the community, business owners of the community, real people that are trying now to put an effort forward. And everything does require a human side. And people do require additional opportunities. And I'm just saying that at this point where we are, we have gotten some business owners that have spoken about the hardships that they're dealing with, and I think it's incumbent upon us to look at things on a personal side as much as following processes and procedures and taking into consideration what we have heard tonight when we do our vote. That's all I have.

MICHAEL NYHAN: Any further comments? Questions?

MATT EMENS: I would like to outline what I think needs to happen. And that's -- obviously they will go talk with -- I think Steve (Orenstein) will talk with Paul (Wanzenried) tomorrow morning, iron out the building permit issue so we can understand where we really are with that. Because I don't -- I think we understand that, but I don't know that we do. We have the parking analysis submitted. We have the lighting analysis plan, foot candles and everything outlined. So am I to understand we're going to have an engineer review that now it has been submitted?

MICHAEL NYHAN: Engineer review of all items submitted as well as Town Building Department for all items submitted with any approval for them to move forward with it and it is appropriate and meets the conditions.

MATT EMENS: So is that going to come back to us or are we just --

MICHAEL NYHAN: No. I'm just saying it-- they're reviewing it and as long as they worked out items, they're good to go. Nothing comes back to us.

With the conditions if they stay as provided at the April 2019 meeting, then the plaza will complete all of the conditions that were placed on there. The Town Building Department will inspect that and validate that it has been -- all those conditions have been met. When those conditions have been met, they will issue the appropriate occupancy for each of the tenants that are in the plaza.

What the applicant is asking for is the waiver of those requirements from the April of '19 meeting. Let me clarify that. You're asking for just waiver of one of those, and that is for the lighting poles to be installed per the lighting plan? Is that what you're asking for?

MR. KUSKIN: It's not a waiver of anything. The items are still going to get done. It is just the -- the one takes a certain amount of time and the other depends what happens with Taco Bell.

DAVID CROSS: How much time are you -- how much additional time do you need to get the lighting done?

MR. KUSKIN: I mean -- 90 days.

MS. FITZPATRICK: Once approved.

RON RICHMOND: If the approval is given tonight and you can proceed forward with the process with the Building Department and completing the items that are still on the list, 90 days would allow you to get that lighting done which seems critical at this point because the curbing and islands are based on Taco Bell's outcome.

MR. KUSKIN: Again, that is our -- that's our estimate that we were given.

RON RICHMOND: If it is just an estimate, would you say 120 or 150 days?

MR. ORENSTEIN: No.

MR. KUSKIN: 90 days. If it were 100, I just want to make sure.

DAVID CROSS: Was there curbing, Al (Hellaby)? That was the question I had. I'm sorry. I lost it --

GLENN HYDE: We're waiting on the Taco Bell project.

MICHAEL NYHAN: That is indefinitely on hold. The curbing is the responsibility of the plaza, not Taco Bell.

DAVID CROSS: They're tied together.

MICHAEL NYHAN: But they are tied together. Indefinitely the Taco Bell is placed on hold and nothing was stated as a result of this -- current conditions that have been placed on the plaza, nobody will be able to move forward. There may be other circumstances why Taco Bell has decided not to move forward. We had a letter just at our last meeting when Taco Bell requested it be put on hold, there may be issues with some of the contracts within that plaza and some of the tenants in that plaza. So Taco Bell has indefinitely asked that to be placed on hold and they have not reapplied to come back to this Planning Board with any timetable whatsoever. It was just asked to be placed on hold.

So there are really two major outstanding items here. I think one is the lighting and the other is the islands and the curbing.

Is that what you're looking for relief on, those two items?

MR. KUSKIN: Not from doing it, but just --

MICHAEL NYHAN: From delaying it. So you're saying within 90 -- you're asking for relief that in 90 days, you will have all of the lighting completed based on what the Town approves and the curbing completed unless there is an approved final plan from any other tenant that may move in that may change that?

MR. KUSKIN: Yes.

MATT EMENS: Steve (Orenstein), what is your estimated timeframe on construction for the curbing?

MR. ORENSTEIN: They would have been done. If Taco Bell is done, those curbs will be done and landscaped within seven to eight days.

MATT EMENS: Let's be conservative and say two weeks.

MR. ORENSTEIN: The lights I'm actually doing the majority of the work alongside the electrician. If everything goes to plan, I'm planning on having it done in five to six weeks. But he is buying time from time of approval. If stuff comes in three weeks, I'm going to have it done quicker. But we're trying to play it safe. I will be contacting Paul (Wanzenried) to do a walk-through.

Everything else has been completed. I think that we have done additional things that you guys never asked for to be done in the plaza. That will be done and I will be contacting him tomorrow morning regarding building permits and everything else. If he is missing something, I will make sure everything is up to snuff and doing walk-throughs with all of the tenants' spaces and with him and Dave Sauer, the Fire Marshal.

MICHAEL NYHAN: Hang on a minute. I'm trying -- we're trying to be clear on what we're asking waiver from. There are a number of things on here. Let's be clear about that. We'll discuss those items in particular.

MR. ORENSTEIN: 90-day extension. If there is anything on that list that is not complete as of right now, will be completed 100 percent in 90 days.

MR. KUSKIN: 90 days from approval.

MR. ORENSTEIN: From the approval of the lighting study. If that gets approved on Monday, 90 days from then, everything will be completed. There won't be an outstanding item on that list.

MR. KUSKIN: And the curbing depends on Taco Bell and I understand you wouldn't want to live on indefinitely without knowing when that day is going to come. Perhaps is it -- is there a timeline that Taco Bell has --

MATT EMENS: That's what would happen. What I would be comfortable with is knowing it is two weeks' worth of work. Already scheduled. You already planned it. You know what you're doing. You just need to implement it. You're waiting because of Taco Bell. Unfortunately, I think if we extend this to 90 or 100 days, you know, from approval, I think that has to be added into it to say that you have got that many days to determine whether Taco Bell is moving forward.

JOHN HELLABY: I think we're trying to overthink this. This -- the application that is before us is the application of Chili Plaza Properties for revisiting site plan approval placed on applicants granted on 4/9/19 for the Suite B12, B13 and B14 and 15. Those are the three store fronts. All right?

And the only thing that we are tasked with tonight in my eyes and that application is just basically saying okay.

Then all these items -- there were nine items placed on each one of them. All three of them were the same. Is that -- Number 3 is they're in here asking to be eliminated. Prior to issuance of any building permits and/or Certificates of Occupancy, the applicant and/or owner shall remedy all outstanding conditions and that goes into the whole myriad of the lighting and the curbing and all that stuff. They're just looking for these three store fronts. Taco Bell shouldn't be in the discussion or anything else tonight.

So once they get those three in there, that is not to say that that is still in effect. We still need them approved. That is why I said when they walk out of here tonight, that is it. There is no more until this is all resolved.

MICHAEL NYHAN: Correct. You're absolutely right. They're looking for the ability to permit the tenants that were put on hold until these conditions were completed.

However, you know, we waived the conditions for that -- that we waived the conditions for that. Just remember that. We have done that in the past. We have had several applicants we have waived these conditions for and permitted them to move into that plaza and that is why we're here tonight because it was not completed and there was no action.

So I understand, and I -- and I -- and I can feel for the applicants that are being held up on this. This is the complete 100 percent responsibility of the plaza owner they're in this predicament. Not this Board. We're simply using the tools we have at our disposal to get this plaza owner to do what has been asked for for 2 1/2 years.

And in April of 2019, you did that by placing these conditions on any future tenants that move into this plaza. So what we have before us tonight is to once again ask if we can waive that so they can have people move in without that being completed. As Paul (Wanzenried) had recommended -- or as -- was mentioned, once somebody is in, I think it is pretty difficult to issue -- Eric (Stowe), if I'm not mistaken now we have to go through a process at the Town expense to get them evicted from there or get them shut down until all of the conditions are past that 90 days.

ERIC STOWE: The question becomes does the Town go lock the door?

MICHAEL NYHAN: Right.

ERIC STOWE: I'm not prepared to -- to make that recommendation --

MICHAEL NYHAN: Right.

ERIC STOWE: -- for businesses that have been allowed to open and then start and then say close the doors.

MICHAEL NYHAN: So this predicament is unfortunate and it is for the tenants that want to move in is as a result of the inaction of the plaza owner at this point.

RON RICHMOND: That is established right now.

MICHAEL NYHAN: I believe the Board recognized this at the April 2019 meeting which is why you placed these conditions before any of these tenants can move in. I understand the hardship that was placed on those tenants. That's the responsibility of the plaza owner that failed. This Town and the Board in the -- leeway has been given to them over the years to comply with what is required of this Town code.

MR. BLODGETT: We had a sign.

RON RICHMOND: But hold on. We have established that. We don't have to keep driving that point home. We have established that multiple times tonight.

What is hindering us from taking the application on the table and voting on it?

MICHAEL NYHAN: For discussion. We were still discussing it.

RON RICHMOND: I know. We're just saying the same things over and over and I don't really see any value in that.

MICHAEL NYHAN: Other Board members may, so let's continue with that until everyone is satisfied we want to move forward.

Any other comments? Questions from this Board?

MR. KUSKIN: I would like to say one more thing if I can.

MICHAEL NYHAN: Certainly. Just identify yourself.

MR. KUSKIN: Michael Kuskin. The plaza owner. Um, Steve (Orenstein) can attest to this. In the past two years I have been trying to get these items done. I have scheduled them. I have contracted him.

And then like -- like I said, something happens that takes all of the focus and costs, so much money to repair and fix. And it has happened continually. Um, he -- he will confirm that

that's exactly what happened and that -- that many times we had him engaged to do these things. I have been trying.

When I said that we were continually shocked by what has to be done because of some new problem or new issue, typically what is underground, I meant it. That is what happens.

Um, so it has been on the queue with Steve (Orenstein) for a long time.

MICHAEL NYHAN: Thank you.

MR. BLODGETT: If we have a lease --

MICHAEL NYHAN: Excuse me, sir. Public hearing portion of this is over. So we don't hear any more public comments.

MATT EMENS: So back to Al (Hellaby)'s point, one of the options we have is -- I guess we would say we could remove Number 3, which is counter-productive based on your comments. I understand. And I guess one of the things I would like to add to it for maybe a little more clarity is maybe the only thing we haven't done is that was the first time that we actually placed that -- you know, that barrier when an applicant has come through. Right?

We thought we were getting resolution and progress when other tenants were coming through and we were approving site plan applications. The Monro Muffler, everything that came through over the last few years. So it finally came to a head and that's what we're dealing with.

So my question is, I guess, do we have the ability to revise the previous Number 3 based on the things we have talked about tonight or is that not an option for us?

MICHAEL NYHAN: You say 3, install the raised landscape items.

MATT EMENS: No. Number 3 in what Al (Hellaby) pointed out earlier, the condition.

MICHAEL NYHAN: From the previous April '19 meeting?

MATT EMENS: Correct. Because number 3 applies to this entire list, right?

MICHAEL NYHAN: Yes, it does. So I think, and I will ask for Eric (Stowe)'s comments on this, is what you're saying is could we create a condition that we could approve the previously --

MATT EMENS: Revise the condition.

MICHAEL NYHAN: Revise the condition of -- the previously approved applications would be exempt, if you will, from condition 3 which is remedy all conditions. Is that what you're asking?

ERIC STOWE: You're just -- what Mr. Emens is asking is can you remove a condition from a previously imposed -- yes.

MATT EMENS: So then -- but then what has been outlined if we do that, that is great. There is that check. Once again, we have lost our -- our stance or changed our stance and we lose our leverage.

MICHAEL NYHAN: Which we have a number of times in the past.

MATT EMENS: Correct. Understood. Just making sure everyone understands that. My question then is can we implement, with this approval an additional -- not an additional condition or a revised condition after the removal of the other one?

ERIC STOWE: It would require a new application. Right. There would need to be --

MATT EMENS: So the answer is we cannot do that.

ERIC STOWE: Not -- if it is removed as a condition, you cannot then go impose it after the fact. On those -- on the -- on the three suites that are in front of you today. On new applications, I believe those would be valid conditions because they pertain to the whole parcel. But to be fair -- I'll withhold on that. Okay.

MICHAEL NYHAN: Nothing else to say, Eric (Stowe)?

ERIC STOWE: No.

MICHAEL NYHAN: Does that answer your question?

MATT EMENS: Yep. Thank you.

MICHAEL NYHAN: So it sounds like what we're looking for is a waiver of the condition that was imposed on April 1st, condition Number 3, which is prior to issuance of any building permits and Certificates of Occupancy, the application and all surrounding conditions of prior approvals, including but not limited to, the preliminary site plan approvals of April 11th, 2017 and March 13th of 2018.

I think that is the only item that we're -- we can act on. We can't separate out those conditions and say which ones have to be -- I mean, I think it's a vote that we either want to do that or don't. There isn't a reimposition of new conditions on the application.

Correct?

ERIC STOWE: I -- I think that the cleaner way is to either have them or not have them. If only because there are three, four, five -- whatever remains, you're not reimposing the satisfied conditions as conditions.

MICHAEL NYHAN: Right.

ERIC STOWE: Those would just be the new ones and those are -- if they're 30 to 90 days out, somewhere in that ball park, we're -- we're exacting where we are right now and haven't done anything.

MICHAEL NYHAN: Right. So that is really the motion for the application, is to extend the lighting that is required to be done in 90 days and the islands extended to be 90 days as the preliminary site plan.

ERIC STOWE: Are they being extended? That is what I need to be clear on.

Is the motion for a -- for a site plan with conditions, whatever conditions are on it, removing that one? We're not saying removing it.

You're reissuing a site plan with conditions 1 and 2 and not condition 3. Or, you're

renumbering the site plan with all of the prior conditions.

Did that make sense?

MICHAEL NYHAN: It doesn't. I'm thinking about that.

ERIC STOWE: You're not exempting anything. You're removing a condition.

MICHAEL NYHAN: Right.

RON RICHMOND: Can approval be granted for a time period?

JOHN HELLABY: No.

ERIC STOWE: We can't -- this would be a preliminary. You would have the preliminary, go do X, Y and Z and then come back on a change of use that we just don't have that provision. So what this would be is to be a modification of the conditions on the original approval.

I -- I would consider it a revised site plan for B12, B13, B14, B15 and it's not waiving the requirements. It's not imposing those as a condition. It may be semantics, but it is a different position. You're not waiving any requirements. You're just not imposing those as conditions.

MATT EMENS: On this application --

ERIC STOWE: On those three applications for which prior approvals were granted subject to conditions.

MICHAEL NYHAN: Okay. Sorry. We went so long, my computer has died.

So to make sure I have this right and make sure I understand this correctly, so what we'll be voting on tonight is the request to vote on modification to the original site plan that was approved on April 4th [sic] of 2019 to extend the installation of the raised curb islands and -- islands and then parking aisles Building A, eastward to the south side of the east/west drive aisle. Islands to conform to the size of plantings approved by the Conservation Board with the approved Monro Muffler site plan. Install raised curb islands in the parking aisles for Building B eastward on -- by the Conservation Board for approved Monro Muffler site plan.

Per the Town Engineer's correspondence dated April 19th, 2017, lighting study submitted 9/20 of '17 is deficient. This must be corrected and resubmitted to the Town Engineer for approval.

Once approved, the plan is to be implemented and then the reinstalled and placed in working order all non-working or fallen light poles, specifically the pole to the east of Suite C8, Ferrari's Auto Detailing.

Are those the four items we're asking for relief to -- to approve on a revised site plan?

ERIC STOWE: No. We're just -- we're just removing the condition.

MICHAEL NYHAN: Right. But those four conditions.

ERIC STOWE: Well, was -- wasn't condition 3 on the site plan approval that all prior conditions are in effect?

MICHAEL NYHAN: I'm sorry. Say that again.

ERIC STOWE: The condition on the site plan --

MICHAEL NYHAN: Right.

ERIC STOWE: -- for those particular suites, wasn't that all prior conditions? Or were they each individually spelled out?

MICHAEL NYHAN: It was all outstanding conditions of prior approvals including but not limited to -- to preliminary site plan.

ERIC STOWE: So I believe the request is to remove that condition, which brought the rest in as it pertains to that parcel.

MICHAEL NYHAN: I see.

ERIC STOWE: That is why I say I don't believe we're granting exemptions or relief. It's removing a condition.

MICHAEL NYHAN: That you're stating -- I believe you said we can't place a time limit on or we can?

ERIC STOWE: If you remove the condition, we can't place a timeline on the underlying. It would be a removal.

MATT EMENS: It has to do with this current application and these tenants.

JOHN HELLABY: We can't deny anything in the future.

ERIC STOWE: You can impose reasonable conditions related to the site.

JOHN HELLABY: Thank you.

MICHAEL NYHAN: So then the application before us is to remove a previously imposed condition which is prior to the issuance of any building permits and/or Certificates of Occupancy, the applicant and owner shall remedy all outstanding conditions of prior approvals including, but not limited to, preliminary site plan approval dated April 11th, 2017, and March 13th, 2018.

ERIC STOWE: Your motion -- a motion in the affirmative would be to -- to grant revised site plan application to Suites B12, B13, B14/15 subject to the following conditions. It would be 1 and 2 presumably for each and if there were more than -- if there were conditions subsequent to the third condition -- there are nine conditions. So it would be 1, 2 and then conditions 4 through 9 for each and they would be renumbered.

I think you just -- the cleanest way is to revise it in its entirety and eliminate just one condition or remove it from the conditions imposed.

MICHAEL NYHAN: So basically cross off 3 and reread it.

ERIC STOWE: Cross off 3 and that is the revised.

MICHAEL NYHAN: That is much easier.

ERIC STOWE: Lawyers have a way.

MICHAEL NYHAN: Will this be preliminary?

JOHN HELLABY: They had final waived on all these.

MICHAEL NYHAN: He mentioned they had to go through -- get preliminary and final. I want to double check with him.

Eric (Stowe), the application is to remove prior issuance of the building permits, that condition from the previously approved site plan for those suites? I'm not quite following you what I need to do with that.

ERIC STOWE: Motion for revised site plan -- can I -- I will just come up for a minute if that is okay to get my work?

MICHAEL NYHAN: That would be quicker.

There was a discussion at the dais.

MICHAEL NYHAN: So before I read this, what we'll we doing is looking for a revised final site plan approval for application of Stonewood Builders to include all of the conditions of the original except the condition Number 3. That is going to be the motion that will be made and it will be for each of the suites that are named in the application that is on hand.

All right. Thank you for your patience while we worked through the legal wording on this motion and condition.

So for application of Chili Plaza Properties, LLC, owner; 349 West Commercial Street, Suite 3300, East Rochester, NY 14445 for revised site plan approval placed on applications granted on 4/9/19 for suites B12, B13, which is the children's play area and B14/15, which is the professional office located at property 3240 Chili Avenue in GB Zone.

And that change is from the April 9th of 2019 meeting. The application of Stonewood Builders, LLC, 3240 Chili Avenue, Suite B14/15, Rochester, New York 14624; property owner, Chili Plaza Properties, LLC for revised site plan approval for change of use for portion of Building suite 14/15 to allow a professional office (formerly fitness center) at property located at 3240 Chili Avenue in GB zone.

Also for application of Stonewood Builders to change of use for portion of the building at Suite B 12 and also for the application of Stonewood Builders, LLC for an application for change in portion of the building B13.

The conditions of this approval would be no neon sign lighting allowed in the windows. Work with the Town of Chili Department of -- for acceptable open sign if required.

No outside displays or sales.

Add additional planters as recommended by the Conservation Board.

Town Engineer and Commissioner of Public Works should get a copy of any correspondence with approving agencies.

All previous conditions imposed by this Board are still pertinent to the application and remain in effect.

Application is subject to all required permits, inspections and code compliance regulations.

Subject to approval by the Town Fire Marshal.

Any signage change shall comply with the Town Code including sign permits.

Does everybody understand what we're proposing or what is being proposed?

No time limit. Just the removal of the condition on the conditions that were placed by this Board to have those items completed, that they be completed.

Any further discussion on that motion? So with that motion?

JOHN HELLABY: Second.

DECISION: Approved by a vote of 6 yes to 1 no (Michael Nyhan) with the following condition:

1. All previous conditions imposed by this Board that are still pertinent to the application remain in effect with the exception of condition #3 on the final site plan approval dated 4/9/19, which reads as follows: Prior to the issuance of any building permits and/or certificates of occupancy, applicant and/or owner shall remedy all outstanding conditions of prior approvals including but not limited to preliminary site plan approvals dated 4/11/17 and 3/13/18.

Michael Nyhan made a motion to approve the Chili Planning Board May 14, 2019 minutes, and John Hellaby seconded the motion. All Board members were in favor of the motion.

The meeting ended at 8:46 p.m.