

TOWN OF PATTERSON
PLANNING BOARD MEETING
January 31, 2013
Work Session



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**TOWN OF PATTERSON
PLANNING & ZONING OFFICE**

ZONING BOARD OF APPEALS

Lars Olenius, Chairman
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PLANNING BOARD

Shawn Rogan, Chairman
Thomas E. McNulty, Vice Chairman
Michael Montesano
Ron Taylor
Edward J. Brady, Jr.

**Planning Board
January 31, 2013 Work Session Meeting Minutes**

Held at the Patterson Town Hall
1142 Route 311
Patterson, NY 12563

APPROVED

Present were: Chairman Shawn Rogan, Board Member Thomas E. McNulty, Board Member Michael Montesano, Board Member Ron Taylor, Board Member Edward J. Brady, Jr., Town Councilman Charles Cook, Town Councilman Robert McCarthy, Rich Williams, Town Planner and Ted Kozlowski, Town of Patterson Environmental Conservation Inspector, Nicholas Lamberti, Code Enforcement Officer, David I. Raines, Fire Inspector, and Michael Liguori of the Town Attorney's office, Hogan & Rossi

The meeting began at 7:10 p.m.

There were approximately 4 members of the audience.

Michelle Lailer was the Secretary and transcribed the following minutes.

Chairman Rogan called the meeting order.

c. Code Violations Discussion

Chairman Rogan stated alright, good evening everyone, thanks for everyone taking the time to be here, at least for those who were able to make it. The Planning Board obviously thought it would be a great idea if we could get as many of you folks together tonight to talk about how we're going to proceed or not proceed as a Town with some long standing properties that have had violations that we've taken action on and we've have, obviously very little success for some of these cases, Rich took the time to put together a really nice summary and history on these properties. Charlie, when he was on the Planning Board would keep a nice file on all these and he was nice enough to pass it on to, we, it ended up with Tommy, he has the file now and so he was the one that actually brought some of these things up. Hey...

Board Member McNulty stated there's Bob.

Chairman Rogan stated how are you.

Rich Williams stated they didn't tell you about the flu huh?

Town Councilman McCarthy stated what flu.

Board Member McNulty stated hey Bob, how are you doing.

Chairman Rogan stated the flu that hit 50% of your Board.

Town Councilman McCarthy stated say that again.

Chairman Rogan stated the flu that hit 50% of your Board, you and Charlie notwithstanding.

Town Councilman Cook stated we're here, just the important ones.

Laughter.

Board Member Montesano stated the following page with an announcement.

Chairman Rogan stated so I think it would make sense and if anyone jump in, if we start right with the first one on Rich's memo and talk about some of the history, why we are where we are and this lack of, in this case, Justin's Auto having an approved site plan and maybe pull our together as to ideas to move them forward, whether the Town wants to take legal action or just maybe throw a lot of this stuff out in conversation.

Town Councilman Cook stated I would ask this Shawn, I'm glad Michael [Liguori] is here, is that basically on all of them, I mean what are our options here, you know like, do we send them a notice and fine them, do we bring them into court, you know what are some of the things that we can do and you know, without draconian measures to hurt them, you know but how do we get their attention, really get their attention.

Mr. Liguori stated okay well, let me just go down the list but, yeah, I want to go to the Kent Plumbing Supply, Kent Supply, it's hard to say there is one fix for every one of these particular issues because some of them are thorny, I would describe Justin's Automotive as particularly thorny, okay, the Kent Supply seems to me, I wanted to start there first because I think that's probably the one that's easiest to resolve in the sense of, you have a land owner that has a site plan approval that's not in compliance with the site plan. Getting compliance, the goal is to get compliance with the site plan and to make them make the improvements that are necessary to do that. The fastest way to get their attention is to revoke their Certificate of Occupancy, you're in violation of your site plan, we're hereby revoking your Certificate of Occupancy, you can no longer occupy the building. That's the, a very significant method of getting their attention at probably a very low cost to the Town. I presume that their argument would be that, that them completing these things on the site are not truly health safety issues, that they shouldn't be precluded from occupying their building but the person that would make that determination would be in court, so that by taking that move it forces them to litigate against us, that assumes that they pay a lawyer to commence a litigation over a, let's, they would argue that they've had to suffer an illegal revocation of their building permit, okay but short of removing or revoking the C.O., you just, go straight to issuing a violation and haul them into Justice Court and request a judge to order them to comply or face fines and violations and what not. I don't think that one needs to be any more complicated than that and from Rich's description and timeline of what's gone on, the Town has really done nothing but bend over backwards to help them, reducing their performance bond is a great measure of helping the landowner save money on their insurance premiums on the bonds...

Town Councilman Cook stated I'll tell you the kicker, we've used them, the Town has used them, right.

Rich Williams stated oh yeah.

Town Councilman Cook stated I mean we're a customer.

Mr. Liguori stated yeah, yeah, well it normal for you patronize businesses in your own Town and it's also normal for you to demand compliance with their site plan and the zoning code and in this case we have a non, they just haven't built out the things that are, my understanding is they haven't complied with their site plan by making improvements that were required of them by the Planning Board, which are health safety issues, those are, that's why we have a Planning Board, so we have a site that's developed safely and in accordance with all of our rules and regulations.

Board Member McNulty stated and then another option, wouldn't it be, maybe we just start with a face to face because these things have lingered around for so long, they've probably forgot about them long ago.

Mr. Liguori stated yeah.

Board Member McNulty stated so a face to face with the owner or the manager of the property and say listen, this needs to be dealt with or you're going to pay some fines and give them another two weeks or 30 days or whatever and say that's it...

Ted Kozlowski stated didn't that already happen.

Board Member Montesano stated yes.

Mr. Liguori stated yes.

Ted Kozlowski stated many times.

Board Member McNulty stated yes it's been how long now, you know with the Town, to be honest I hear it all the time, this Town has a bad rep for building, I hear it from people, I think it doesn't hurt to have some courtesy to a business to go out, reach out and say listen we're trying, there's a lot of people coming, there's a new business coming into Town, they're complying with the site plan, the Iron Works, M&S Iron Works, Patterson Auto Body, you see places that are doing it by the book and we can use that to say listen, it's working, there are nice businesses being built, there's nice properties, this is what we're looking to do to make the Town safe, to get the plans in compliance and you can either do it or you're going to face severe fines. That's just my take, to do it face to face.

Rich Williams stated I'm going to take exception to what you just said Tommy because yeah, you hear it all the time about the Town gets a bad rep about, you know...

Board Member McNulty stated and Rich it's not just this Town, it's a lot in Putnam County, I just pointed out this Town.

Rich Williams stated I understand, that we're not fair, we're not reasonable, we're tough on businesses and yet you can't really throw out specifics and when you start looking at the specifics...

Board Member McNulty stated I agree, I...

Rich Williams stated and here's four great ones that, you know, they were given every courtesy, every opportunity to comply with the Code and they've just basically not, I mean Kent Supply, 2009 sends us a letter saying the economy's bad, I'm just not going to do it, thanks guys, see you later.

Board Member McNulty stated no I agree Rich, believe me, I battle because I see, I see what's been done and we want business to be here, we don't want to fight with them but again people just thumb their nose at what we request, I'm just saying a courtesy call before action takes place.

Rich Williams stated and with that I agree, I mean, my take on this, if I was going to go in any direction and I agree every one of them is different...

Mr. Liguori stated yeah.

Rich Williams stated every one of them probably needs to be approached differently but at least for Kent Supply and Eurostyle Marble, the way I would approach it is I would take Nick, the two of us would go out...

Mr. Liguori stated yup.

Rich Williams stated we would sit down with the owner, we would say we've got these issues, we need you get into compliance, we're going to review the check list, we're going to come up with another list about what the outstanding issues are, we're going to ask you to sit down with the Planning Board and review them and I know one of them, I'll tell you right off the bat for Kent Supply, his big issue right from the get go was the bond, he couldn't pay the bond amount. Well, if we work with him and say okay, we're not going to make you pay the bond, you're going to have to pay the inspection fees and you're going to have to come up and do everything else that's been asked of you so we can get this resolved and then you know come up with this checklist and then let him sit down with the Planning Board and go through the checklist and say do we really need to do this or don't we need to do this, can we, you know, maybe let this one go but you've got to do that one, let him work that out with the Planning Board and let him come back with a schedule and a date certain to get it all complete and take that tact. We can do that with those two.

Mr. Liguori stated yeah, those two.

Board Member McNulty stated yeah, they're all different, there's certain...

Dave Raines stated well, we're going to need and I agree with you, which I hate saying but we need an intermediary step if we're going to take any, if we're going to attempt to adjudicate any of this...

Mr. Liguori stated yeah, I don't disagree because of the time.

Dave Raines stated because for me to walk in as an Enforcement person to court, whether it's County court or Town court, say yeah, you're in violation because you haven't done what you're supposed to do since 2009 and everybody will go what...

Mr. Liguori stated yeah, where have you been.

Dave Raines stated you know, that type of thing, it's the whole credibility piece too, so we do need this intermediary step that needs to be built into the entire process because it's, I'm sure it's more than just these four cases that we're looking at tonight and it has to be clear and not only with what the items are but

what the realistic schedule is because I can't walk in for example and tell somebody to blacktop and I can't walk in next week and say listen you have to blacktop this area, it's on the site plan...

Mr. Liguori stated right.

Dave Raines stated they're going to look at me like, okay, yeah talk to me in April or May or, you know so, we have to, that's got to be part of it, what's realistic if there's trenching that needs to be done or do we have snow covering and you know things like that but I agree that we should come up with a way to, a consistent way you know whether it's and I know it's applicable to all of them because Justin's is a whole other disaster, that's a whole other, you know, we can't get compliance from the property owner but yet we can get compliance from the renter, so to speak and that doesn't really help us under our current zoning but Kent Supply, Eurostyle Marble to me is very similar except that he did things outside of what the scope was when he finished the building, which kind of left me, when I was doing the final up there, like well aren't you supposed to have this or this or this and then it becomes hearsay, well no I was told I can do this and I was told, so it made it a little more foggy, you know.

Town Councilman Cook stated on Eurostyle, we went up there and he had made some changes and we had agreed with the changes and we said okay, we'll go along with them but we need you to come in with the updated plan, etcetera.

Chairman Rogan stated that's exactly it, an as built.

Rich Williams stated and he did come in with that as built and we reviewed the as built, there were ten items that needed to be addressed by him and the Board and he just never came back to the Board to deal with that.

Town Councilman Cook stated okay well I think, just to move this along, I agree with you and I think you have a timeline that you basically you look at and say when do we want Kent Supply, Eurostyle to come before the Planning Board with what we want. Tomorrow is February 1st, March, April 1st or April 15th whatever it might be or the Work Session in April and you say, and you go and you meet with them and you say here's what's still outstanding and we want you in on this particular, you're going to get invited to this meeting of the Planning Board and you know, you have to comply, you just have to comply, this has dragged on too long and you know, the last thing we want to do is you know, see each other in court and see what that produces.

Dave Raines stated how do we develop the list Rich, I mean it should be...

Nick Lamberti stated it's going to be a negotiation between us and them.

Dave Raines stated well I mean before we even negotiate, I think that, my feeling is and please jump in, from a standpoint of, let's say we don't get compliance, we want to make sure that the argument in court is not item 1, 3, 5, 7, and 9, it's the fact that they are all agreed to, it's the fact that he's not, he or she's not completing them, I think it's important that that list be, I don't know the correct term but true and accurate I guess for lack of a better term so that it should be signed off, I'm thinking by Planning Board and Town Planner, so it's not, that's not what I said to Rich, that's not what I said to Dave or Nick or whoever it was or Paul Piazza or whatever, that's one of my concerns because some of this stuff is so old, not that I'm questioning your memory but you know, he'll...

Rich Williams stated no, no, no...

Dave Raines stated say well I met with Charlie Cook 5 years ago and Charlie said he was really okay with the lights that I changed and that's what I want to make sure. So, if we don't get compliance it's not an argument over no, I never said I was going to, you know...

Town Councilman Cook stated the way you get around that is that a letter goes out whether it's from Rich or Shawn or both that just says to Kent Supply, hey this is what's outstanding...

Dave Raines stated right.

Town Councilman Cook stated boom, boom, boom, Eurostyle, this is what's outstanding...

Rich Williams stated let's back up...

Town Councilman Cook stated and we need to meet with you.

Rich Williams stated no...

Board Member McNulty stated well Rich might...

Rich Williams stated I've got the list, I've got the lists, I've got the lists.

Mr. Liguori stated yeah I didn't think that was in dispute, I thought that was undisputed.

Rich Williams stated so I've got the lists, the problem I have...

Dave Raines phone rings.

Dave Raines stated sorry.

Rich Williams stated is that the time has gone by...

Dave Raines stated sorry, I thought I turned that off.

Rich Williams stated so what, if I was, you know, if we're doing this, what I'd like to do is first approach the property owner, have a face to face with him, say listen, we've got to get this resolved, we've got to get compliance, we want to do it the easy way, if you don't want to do it the easy, then we can take the hard road but we want to do it the easy way and the first step is, you know I'd like to come out here with your permission and double check this list and then provide the property owner the list and the Planning Board the list, for the two of them to go through and say it's relevant, it's not relevant, it should be on, it should not be on. That's the way I would like to take care of it.

Town Councilman Cook stated okay I mean...

Board Member McNulty stated you have a pretty big job, the problems in front of us, Rich has documented well, he's got all the notes from past meetings and minutes, we know what the problems are, we just need to have them in a format that everybody can agree on.

Rich Williams stated yeah.

Nick Lamberti stated Rich and I had a discussion on some of these which may take a long period of time to complete, in terms of prioritizing each of the items, like Dave said before, some things may be okay, you want to resurface the parking lot, that can't happen until the summer, so you know you have the list but you also the list is, the list of priorities as well, we do this, now the property owner might have an opinion as to saying well this is an item that's too expensive for me to complete, so it might take more than what you want to me to complete it in, you want me to do all this within six months or so, you know...

Board Member McNulty stated well that's our priority, I think...

Nick Lamberti stated this item could have a year, so...

Board Member McNulty stated our goal here is to get a signed off site plan, which is the biggest issue with these.

Rich Williams stated sure.

Board Member McNulty stated and they've had years to do it, so I think we need to emphasize you're not going to get a year to do this, you're going to have...

Rich Williams stated well but I think that's part the negotiation between them and the Planning Board and I said it earlier, after we decided what the improvements are, is we're going to be looking for the property owner, the property owner should be giving us a schedule by which he's going to meet all the requirements to sign off on that plan that the Planning Board is going to agree to and the Planning Board may say no, you've got to get it done sooner, they may say fine, if it's going to take three years, it's going to take three years, whatever it is, it is.

Chairman Rogan stated hey if two years from now we have all these cleaned, we'll be better off than if we didn't take any action at all.

Board Member McNulty stated I agree, negotiation is key but I think it needs to know that the end result is, okay, you're going to have eleven months to finish this, if it's not done in eleven months, the Code Enforcement Officer is going to be knocking on your door.

Dave Raines stated right.

Rich Williams stated yeah.

Board Member McNulty stated that has to be stressed, there has to be some authority...

Dave Raines stated there has to be a stake in the ground because players change, you know the code is fairly constant but players change and we look at Eastern Jungle Gym and that whole site seems to morph, you know so, you can't even use the walk-thrus that we've done, it's like okay well that's not there, that's like you know...

Chairman Rogan stated yeah.

Dave Raines stated I'm out there every year trying to get compliance on it and I'm like Rich it changed again, you know, there's eleven trucks, there's two dumpsters...

Rich Williams stated and you know that's a great...

Dave Raines stated you know, he made more parking lot, he also...

Rich Williams stated that's a great example, I mean they came in to get site plan approval because they had morphed way beyond what they had ever been allowed to do, they changed the use and they never even made it to a conditional approval...

Dave Raines stated right.

Rich Williams stated they just stopped coming.

Dave Raines stated and it's a problem because we're trying to enforce site plan at the rest of those properties that are adjacent to that and it's like, you know, come on.

Chairman Rogan stated well go back to, I don't remember who said it but the point about looking at the outstanding issues and the relevance to safety, to public safety especially because when we're in a position of having to potentially take an action, whether it's an enforcement action or a legal action or revoke somebody's C of O, those issues better damn well be something that's going to effect the public, not that we didn't get you know barberry plants planted here and it's something else, they might be important but important and relevance and public safety are going to be and I think that's where you were starting Mike, was to say, you know make sure that our actions are commensurate with the impact because from the business owner's standpoint, he's saying well why do I need a site plan, I'm operating right now, I have my business open, I don't have the money to complete this but I'm not hurting anyone. So the point would be to look at the site and say well wait a minute, here are the issues you know to codify those, what are the liabilities for, what happens if there's an accident on a site because there wasn't an improvement done that was part of a site plan approval.

Mr. Liguori stated you know, that I researched, before we, I spent the last two hours from 5 to 7 p.m. or 5 to 6:30 researching municipal liability because you know we talk all the time about isn't the municipality liable, what are liable for and I, there are some really serious misconceptions about what the Building, you know what the Town is liable for and there is some really interesting case law out there. I was reading cases about Building Inspectors, in particular because this is where the interaction is, mostly is you know how sovereign is your Building Department, that's really what I was curious about and you know you heard about that fire in Rhode Island, you know a couple of years where everybody you know died in that nightclub and in New York we have a fairly significant amount of sovereignty when it comes to enforcing the or being liable for errors on the part of the Town, okay. So, liability only attaches when you have a special duty and that's a very important concept so we're talking negligence, that's really what the basis is for these types of situations and the example was, I was reading a Lore Review Article which is an article published by a law professor based on research that was done across the United States on different state liability standards for errors made by the Building Department and the case in point was a North Carolina litigation where a husband and wife paid a builder to build their dream house, the Building Department inspected it at various intervals that are consistent with what we do when we do our inspections, they had an electrical inspection, so they had at the time whatever North Carolina's version of Underwriters Laboratory or I forget exactly what the certificate is but they and the house was not built to standards and at some point in the future after the prior building inspectors were relieved of their duties, the new ones came in and condemned the house. So, these two people sued the municipality, they sued their builder for negligence and breach of contract and then they sued the municipality for breach of contract, for negligence. I wanted to take it a step further and see what their liability would be if the house burnt down or if, let's say it fell off its foundation, something you know that was even a little bit more drastic and what the case law says is that when you have a responsibility to a whole, such as a large group of people which

would be your citizens in your municipality you can, you don't have liability until a special duty attaches and the creation of that special duty is, there is a test that goes along with it and from all of the types of things that we're dealing with right now, we're not even close to the type of special duty that you need to have in order to have municipal liability attach. So the special duty cases, a lot of them, there are some building department ones in New York but the ones that are most common are police department cases, for instance Ted and I are next door neighbors and we don't get along and Ted's gone to the police department ten times in the last two weeks...

Ted Kozlowski stated twelve.

Mr. Liguori stated yeah, twelve and complained that I'm going to do something to him and the police department says hey look, you know, we can't help you and tomorrow he gets murdered by me, you know, there you have enough interaction to create this special duty. We don't have that in the building department so what you, what you do have though and this is very real, which is, it's not Eurostyle Marble that has the argument to say I'm up in business and I'm running and I'm not hurting anybody, it's Werlatone whose operating across the street who sues the Town because you're selectively enforcing your Zoning Code, that's...

Dave Raines stated and that's the argument that the people on Commerce Drive make that we're doing a very thorough job in making sure they're in compliance and whether they think know or they know partially that you know this guy's given us a ride for 7, 8, 10 years, whatever it is Rich, I know you've been on it forever with them and that's always been our you know and Werlatone is a perfect example because the marble guy across the street is an eyesore for Werlatone...

Mr. Liguori stated right.

Dave Raines stated I was in there to do a fire inspection, they're all over me, like what's this junk yard on the corner here...

Mr. Liguori stated yeah.

Dave Raines stated and they do have the means to jump on this and make it a, you know and...

Mr. Liguori stated well that's, to me that's where you know if there's a discussion with the landowner about hey you know but I'm doing fine, people come in and out of out here every day and the response is well that's fine for you but that's fine for everybody else and we're here to you know, not just to protect you but we're also here to protect the health, safety, and welfare of everybody around you and everybody in the Town, so with regard to the timeframes and the timeline that's, that's a really good thing as far as you know getting those things together, negotiating with the particular landowners...

Dave Raines stated do we need sign off though if Richie and the Planning Board Chairman reach a point with any of these property owners and they agree to 1 through 10, do we need a sign off knowing that potentially we're going to have to violate, they may not...

Mr. Liguori stated here's how, given the time that's gone by, these aren't fresh things you know, Justin's is probably the least fresh thing but since we're, for example Kent Supply, if we're talking about the difference between 2009 and now, right, I like the idea of going out there and stopping by, walking in, finding the owner, hopefully he'll be there, likely to not be but you know it's a reality, stopping by and then if he's not there, sending a certified letter to owner to say we'd like to set up a meeting with you within you know, you have 30 days to contact us or, let's say, some time period, okay. Anything that happens with the

people that violate the zoning code should be under the guise of the Building Department, if there's going to be some negotiation with the Planning Board, it's because you let them go to the Planning Board...

Dave Raines stated right.

Mr. Liguori stated okay and that's a really critical component here, it's kind of like when you're dealing with negotiations, when you're on top, you've got to stay on top, the second you give then you know, as far as working with them, if they're going to work with the Planning Board, then great and if they go to the Planning Board and say, you know, and if they say alright here's, Rich gives them the ten things that they need to comply with, I don't think it's a mystery for Kent Supply as to what needs to happen, the option for you guys or for them when dealing with you is, you can go to the Planning Board and have your site plan amended, you may and if the Board says we want new plans or whatever or the Board may say we can deal with it by resolution but there's got to be this paper trail connection between...

Dave Raines stated that's what I'm saying, that that's done because if we're ever going to get where you want to get to, it has to be crystal clear to any of the judges and the Town prosecutor that these are what was agreed upon by 2014 it was going to be done and we're now 6 months past that, we've violated them and because looking at 64-10 which is something I want you to take a look at as your, subsection i, the revocation of a C.O. that subsection doesn't give us latitude for that, it gives us latitude if we issue a C.O. in error or find that the documentation provided wasn't right so say, we, you know, get an as built and we go wow, that as built can't be right because the beam is starting fail, you know, then we can go back under 64-10 subsection i and say you know what we're revoking the C of O, it doesn't the language doesn't give us an latitude to revoke it for violation of the site plan approval, violation of the zoning regulations...

Rich Williams stated but...

Town Councilman Cook stated see I don't...

Rich Williams stated and let me direct this to Mike, our code also requires that all site improvements be completed before the issuance of a C.O.

Dave Raines stated correct.

Mr. Liguori stated right.

Rich Williams stated if a C.O. is issued before those site improvements are complete, the C.O. is issued in error.

Mr. Liguori stated right.

Chairman Rogan stated so in essence, there's not conditional issuance of a C of O it's supposed that it's...

Rich Williams stated I don't know what the building code says but our...

Nick Lamberti stated would that really negate the C.O.

Dave Raines stated yeah would it really and again I'm...

Rich Williams stated I asked that of Mike.

Dave Raines stated and that's why I just want him to look into it, I don't know what to put him in a position but I...

Mr. Liguori stated my understand is that if a C.O. is issued in error, then it's, there's a Latin term it called void ab initio, it's void right from the start, so that it's...

Nick Lamberti stated its like it never had been given.

Mr. Liguori stated it's as if it had never been issued. When I mention the revocation of a C.O. and I'm glad we're having this conversation about the code provision because if we need to amend it to be more illustrative as opposed to...

Nick Lamberti stated or more flexible.

Mr. Liguori stated or more flexible, the burden shift is what's really important because if you revoke a C.O., it's going to be them who is going to be challenging it and so pretend you're the judge now, you know I'm sitting in front of Judge King and I'm the guy whose had my C.O. revoked and I'm screaming up and down 64-10 says they can't revoke my C.O., well why'd they do it, well I didn't comply with my site plan for 3 years, well comply with your site plan and when you're done complying, then I'll give, you can have you C.O. back, it, even if we were wrong, it puts the burden on them to come out and when they do come out and respond, it's going to be in front of the court and so it's not the best way to get compliance...

Dave Raines stated right.

Mr. Liguori stated it's not really, you know, it's not the most ideal but to get it in front of a, it's a fast way to get it in front of and I'm not recommending we go do this okay...

Dave Raines stated we have a horrible past practice unfortunately, of doing this, we've issued a lot of C.O.'s in the 20 years I've been with the Building Department, when there wasn't complete and a lot of it was because they said okay, in the spring we'll do those things because we can't do them now but I really have to open and the Town Board agreed and bonds were released and a lot of the things are reduced, so it was a process, it wasn't just a shotgun approach...

Mr. Liguori stated right, right.

Dave Raines stated so we have a significant past practice of doing that.

Mr. Liguori stated and that's very tough especially with the bond reductions because it's almost, you have this complicit behavior, you know they're...

Dave Raines stated yup.

Mr. Liguori stated they may not be mutually, they should be mutually exclusive of each other but they're not...

Dave Raines stated right.

Mr. Liguori stated and as far as I'm concerned, once they open up, good luck shutting them down, it's...

Dave Raines stated right, well the first time Richie met with Kent Supply upon completion of their improvements, they were like no problem Rich, we're going to do that, I was there, I mean they were going to do all, no problem, it wasn't really an issue and then time went on and it became a bigger issue because business wasn't what it was and economy changed and blah, blah, blah and you know somebody gets divorced, somebody gets this, so...

Mr. Liguori stated I think we can, we can, these are 2 things that Rich's point is very good, which is that if the C.O. was issued in error, there is no estoppel against the municipality and if they want to sue us for some form of liability, they can but the public policy is against it. So they, essentially they'd be going to the judge to say hey, look, they gave me a C.O., they let me make money for twelve months and then they took away from me because I didn't do what I was supposed to do and if I was judge, I would say, yeah that's right, you just have a twelve month free pass, you know. It doesn't always go that way, it would be ideal if it did but you know...

Rich Williams stated but we're talking about pulling anybody's C.O. right now...

Mr. Liguori stated no, no, no, no, no, no.

Rich Williams stated and these two we're talking about a very soft approach...

Dave Raines stated but I want to understand the process Rich, again to get to because again if we don't have a means by, you know any bite to this, it's going to be a negotiation again and you've been negotiating in good faith on all of these for years.

Rich Williams stated but I would say if, the end result is if they don't comply this time, then it's not to pull the C.O. necessarily but...

Mr. Liguori stated commence...

Rich Williams stated commence a violation.

Dave Raines stated oh absolutely, violate them for the site plan, for no site plan and...

Rich Williams stated yeah, so...

Mr. Liguori stated but I will say that by you know, we've, good things have come out of the discussion which is that, if you, you know, if we need to clarify 64-10, to say to, you know, even just for the purpose of the next time it comes up to be able to hand the landowner and say see this, this says I can take away your C.O., I don't want to shut you down but I can and it's in my discretion to be able to do that. That's, and I'll tell you from, we just moved into our new building, right, we had our C.O. inspection last Thursday and this is the different between paying rent in two places for six different businesses or paying rent at 1 place or your mortgage at one place, I mean it was the difference between \$50,000 among all the people that were, you know, we were paying something \$9,000 a month in rent to Mahopac Bank for our space, when someone says to you, you know, it's your C.O. and again I'm not advocating the removal of it but that's, it means something, it really does.

Dave Raines stated I mean we're dropping the ball when you, it's really simply language, I mean it says Director of Code Enforcement or whoever issues the C.O. should make sure B through F is done and B is all the Planning Board stuff, the signed, seal, final plat, you know and again...

Rich Williams stated and the process, just to jump in, the process is within §154, you know they complete the site plan then the Planning Board does an inspection or has an inspection done and then certifies that the site plan improvements are complete, sends it over to the Building Department for an issuance of a C.O., and that satisfies B.

Dave Raines stated right, right, anyway, so...

Town Councilman Cook stated you know what you guys are, want to do from now on, Rich is there to help.

Mr. Liguori stated so these two particular issues, I think that...

Dave Raines stated but when it comes to a Justin's, it's a different story, there was no C.O. issued, there was no, that's that, you know...

Rich Williams stated well yeah, let's talk about...

Mr. Liguori stated well now, let's go to...

Town Councilman Cook stated let me make sure I understand this, so we have a game plan for Kent Supply and we have a game plan for Eurostyle, right, so now let's tackle who...

Chairman Rogan stated Justin's...

Town Councilman Cook stated the other guy there...

Town Councilman McCarthy stated the, just so there can be a time period on these two, because obviously like the pavement...

Nick Lamberti stated that's going to have to be negotiated.

Town Councilman Cook stated yeah, yeah.

Rich Williams stated well I mean next week, I'll talk with Nick and we'll figure out a date and I'll make some calls and we'll make some appointments and you know, we'll keep everybody apprised of what's going on.

Nick Lamberti stated what about in situations like Ryder versus Rentoulis, we talked about this the other day.

Mr. Liguori stated yeah.

Nick Lamberti stated here you have a situation where...

Mr. Liguori stated this one is, alright, so here what we're dealing with, there Thunder Ridge, then there's the property that's across the street from Thunder Ridge, with the Alpine, former Alpine Restaurant, it's very unusual in the sense that there was a strip of land that runs down the center between the parking, between the grassed area and the Alpine that's owned by the Ryder's which is a method of access, I guess and alternative method of access to the, to the ski lodge...

Nick Lamberti stated right.

Mr. Liguori stated where there is a dispute between the people that operate the ski lodge and the people that own the Alpine property about parking and how the parking affects the access and how you know, basically it's a trespass, to me this is a very particular you know, it's a thorny situation because you have the landowner Rentoulis who has put enormous pressure on the Town to get the Town to interact in this litigation between the two parties. So, Rentoulis' argument is that they don't have a site plan to park on this access area and in addition to that, they're trespassing on my property and so there's this litigation that's been commenced between the two parties and what they're looking, what Rentoulis is looking to do is stimulate the municipality to get, I don't want to say on its side but as a method of protecting itself by getting the municipality to issue site plan violations to the people that are parking on its property...

Town Councilman McCarthy stated is that his property though, I know it looks like an hour glass.

Nick Lamberti stated well that's the question.

Dave Raines stated that's the question.

Town Councilman Cook stated that's what's been sitting in the courts.

Town Councilman McCarty stated they've been sharing it for 20 years, 30 years.

Board Member McNulty stated good example...

Mr. Liguori stated right, right.

Board Member McNulty stated does Rentoulis have a signed off site plan for his property.

Dave Raines stated close, right Rich.

Nick Lamberti stated they both have defects.

Rich Williams stated yeah no, he has a signed off site plan.

Dave Raines stated Rentoulis is done, Rentoulis done.

Rich Williams stated yeah.

Dave Raines stated but there's a property line dispute on top of that.

Rich Williams stated there are some issues about some improvements in the DOT right of way and I'm just going to let DOT deal with that.

Dave Raines stated right.

Nick Lamberti stated okay.

Rich Williams stated but everything on the site is done.

Nick Lamberti stated but Ryder does not have a fully approved site plan.

Rich Williams stated you know that's absolutely true however you know I mean, I'm also 60 years old and they've been parking there longer than I've been alive and if it wasn't Rentoulis it was Thunder Ridge or it was both of them.

Dave Raines stated right, somebody else.

Rich Williams stated so...

Mr. Liguori stated this is a case where the municipality is going to get a lot of crap but you just, you have to take the tact, you don't have a choice because of the disputes that are involved and it's in front of the courts where the municipality is well within its reasons to say I'm sorry but we are not going to get involved in the middle of this dispute that's in litigation because the underlying litigation is what the boundaries are, so how could you, you know, this is one you don't want to touch with a ten foot pole.

Dave Raines stated and that's what we've been explaining to them each weekend, being we're in season with Thunder Ridge, we've been telling them I'm sorry and even the State Police when they contact me and say am I towing these cars, I'm not authorized to tell you to tow the cars, I don't know who's property they're on, I don't know where the boundary is...

Mr. Liguori stated right.

Dave Raines stated you know, if it creates obviously a fire lane access issue, that's a different story.

Nick Lamberti stated and that we did put them on notice for, saying that they have been you know, their practices have been such that they are creating a fire lane issue and they need to cease doing that.

Dave Raines stated under the Fire Code specifically, not under zoning, not under property line management...

Mr. Liguori stated yeah, I mean you know, we can.

Dave Raines stated you know...

Mr. Liguori stated it's going to be a question of essentially the Town Board, I think it would be properly placed before the Town Board which is how much resource do you want to commit to dealing with this thing because it's not really, you know this is a little more complicated than going out and making, issuing compliance with the site plan, it would be like granting a site plan approval and then having a neighbor come in and say you just issued a site plan approval but that's not their property, that's my property, I own half their parking lot...

Chairman Rogan stated yeah.

Board Member McNulty stated yeah.

Mr. Liguori stated you know...

Board Member Brady stated you should the lines on their parking lot now.

Mr. Liguori stated so that, I wish there was an easy answer but there isn't.

Dave Raines stated yeah that's not.

Nick Lamberti stated there isn't.

Mr. Liguori stated there's not one for that one.

Nick Lamberti stated it's just illustrated what we have to deal with.

Mr. Liguori stated right these aren't, you know, they're not easy things. Alright, so let's go to Justin's, I've had an opportunity to take a look at the information that Rich has provided about what's gone on so, I don't know everyone's ready it or not, if everyone's read then we don't have to recap it, so this case was transferred to the Town of Southeast and then dismissed without prejudice. To me, I think the very important issue that needs to be dealt with and I don't have a particular plan, it's going to require us to do a little bit of homework and I don't know if the information is available but we go right back to day one, to 1965 when there's information in a letter from John Calbo...

Rich Williams stated 1965...

Mr. Liguori stated I'm sorry 1964...

Rich Williams stated okay.

Mr. Liguori stated this is the Calbo letter dated '91 to Jean Laluna, I don't know if she was a prior, predecessor in title but...

Rich Williams stated she was somebody I believe interested in the property and ultimately purchased the property a little bit further down the road.

Mr. Liguori stated so the letter says as per our conversation, the gas station in question has been an auto repair shop since 1964, Rich our first code was in the '70's for zoning or is it...

Rich Williams stated our first code was '42.

Mr. Liguori stated '42, okay.

Rich Williams stated up until '69, our code allowed public garages in this area as of right and it allowed gas stations, as of right...

Mr. Liguori stated okay, so...

Rich Williams stated in 1975 they changed it so that public garages were no longer permitted but gas stations were and public garage associated with the gas station...

Mr. Liguori stated accessory to it...

Rich Williams stated accessory to it, so it's fine.

Mr. Liguori stated and that had a special permit or site plan or...

Rich Williams stated no site plan, I can't, maybe it did but I can find a site plan nowhere until Ernie Wunner came in and got the site plan because he wanted to build a second building on the site.

Mr. Liguori stated right and then operate the welding...

Rich Williams stated correct.

Dave Raines stated he never did right; he never even started that right.

Rich Williams stated no, they tore the diner down that was there and then never did anything further.

Mr. Liguori stated okay so, you have to kind of look at the historical analysis of what's gone on here and then if you have everything in the right packing order, take the zoning code as it applied at that time and figure out if there was compliance.

Town Councilman Cook stated isn't the issue they don't have a site plan and they don't have an approved sign.

Mr. Liguori stated well the issue is much larger than that, it whether or not they're authorized to have...

Town Councilman Cook stated I thought that they were okay, no, am I missing something here.

Rich Williams stated no and I know where he's going, the issue really is whether it's a preexisting, nonconforming use of the property.

Mr. Liguori stated nonconforming use or not.

Town Councilman Cook stated okay.

Dave Raines stated and that was my, after doing the research that I could, I was in Nick's position when that, the last time this decision was made and that's the decision I made, I allowed him to not expand on the business but maintain it as it was when Downey was operating it prior to that and supposedly others prior to that...

Mr. Liguori stated okay.

Dave Raines stated because that's so I based it solely on was it a consistent and one of the, the latitude I gave them is it was closed for a considerable amount of time when Downey left and Justin started operating there and the decision was made at the time based on a discussion with the Town Board about do we want it empty or do we, what can it be...

Mr. Liguori stated right.

Dave Raines stated and we got a lot of it can't be this, can't be this, can't be this, can't be this, so they said you know what let's see, he was currently at that time operating in Putnam Lake and he was moving the operation over to and we thought it was the right fix...

Mr. Liguori stated gotcha.

Dave Raines stated was it the right decision, I'm not going to say it was or it wasn't but that is what it was based on...

Mr. Liguori stated okay.

Dave Raines stated based on the fact that the best information we had including Calbo's letter...

Mr. Liguori stated yeah, yeah.

Dave Raines stated was to say this is what this has been, it wasn't something else and I made it into or we made it into a repair shop...

Mr. Liguori stated right.

Dave Raines stated it was a repair shop, the best that we could recall.

Rich Williams stated okay...

Dave Raines stated you know.

Mr. Liguori stated yeah.

Rich Williams stated now I'm curious as to your opinion about whether it's preexisting and nonconforming.

Mr. Liguori stated well alright so, look, if I have to stand in front of a judge and argue whether or not it's preexisting, nonconforming, I have to look at everything the Town has done leading up to that point and make it, I have to make analysis of whether or not those decisions we legitimate because, there is no estoppel against the municipality...

Rich Williams stated right.

Mr. Liguori stated so if they were made in error, then they were made in error. The question, you know, we're going to be pressed as to whether or not this would be, whatever decision we come to is going to be equitable, that's what they're going to look at but alright so whether or not it's preexisting nonconforming, we have a letter here from the Building Department that indicates the Building Inspector has some knowledge that it was an automotive repair facility in 1960, from 1964...

Rich Williams stated in 1964 it was a gas station with an automotive repair, okay.

Mr. Liguori stated a gas station with automotive repair, let's fast forward all the way to the three year gap because that's a really critical point, preexisting nonconforming uses if they cease for a particular amount of time set forth in our zoning code, cease to exist, one year, right.

Nick Lamberti stated one year is correct Rich.

Rich Williams stated right.

Mr. Liguori stated so now here's what the courts look at when you seek to enforce that, they look to see if the landowner evidenced some intent to abandon the use, it's not just shutting the doors and the gas station

is a perfect example, okay, the case law on this, when you're dealing with gas stations and we'll leave it as gas stations as opposed to gas stations with the accessory garage uses because when they look at gas stations, they say did you remove the canopy, did you remove the pumps and did you take the tanks out of the ground, they are really looking to see what you did on that property to discontinue the use, how did you evidence your intent or did you evidence your intent to discontinue the use, that's really the questions because every landowner is going to say I didn't evidence any intent, I just didn't have a tenant for three years, that's what their argument is going to be, hey I just couldn't get a tenant, it doesn't mean I didn't want to operate a garage there, you know, would I have operated something different, yeah, if someone came along and offered me rent money to operate something different, maybe I would but otherwise I'm going to look to put a garage back in there. That's what would be litigated in court over whether or not the use has been discontinued okay, so now we have information, we have Rich whose familiar with the site, we have our building inspectors that have been around long enough now to have an idea, so that's what we'd look at, we'd look to see hey what have they done, I think in this case they probably shuttered their doors. You know, I don't know if they've, have they taken equipment out, have they taken lifts out, have they done things that would be consistent...

Rich Williams stated well with regard to the public garage, probably not, I think the lifts are still there.

Dave Raines stated yeah we actually, you know, failed to certify two of them and had him, once he started back up, we said these aren't going to meet you know, current code but it was all the same, the garage doors were the same full length...

Board Member Montesano stated when they had it back in, I guess it's somewhere around '78, '79 and they were still operating then, they had a front end alignment machine in their garage which has been taken down a long time ago because I was at Delta Auto Body at the time, he had a car go off, it was brand new, his first, he went off the ramp into the wall, into the machine and that machine was removed, I don't think it was ever replaced.

Rich Williams stated yeah but Michael we're really talking about that period when Downey Auto...

Board Member Montesano stated it was for years.

Rich Williams stated Downey Auto left and Justin's started.

Mr. Liguori stated right, that's a critical period and the one thing that...

Chairman Rogan stated right.

Board Member Montesano stated okay.

Mr. Liguori stated the one thing that I think is a benefit to the Town is if Wunner came in for that site plan because if that site plan was accurate at least we'd have a description of what was going on, on the property, outside of the building because I think that's really, at this point we, now knowing that we have some interaction between the landowner and the Town Board and the Building Department about being able to continue the use, I think now we get to Charlie's question is, well do we just want them to come in for site plan for improvements to the exterior of the site or you know, what's our goal, that's going to be the you know, the question and whatever our goal is, is going to direct us as to how we want to proceed.

Rich Williams stated so you were very good at tap dancing around, is it preexisting nonconforming.

Mr. Liguori stated well, it's hard...

Chairman Rogan stated I think based on what you said it would be considered preexisting nonconforming, is what I heard you say.

Rich Williams stated then let me say this, 1975...

Mr. Liguori stated if I didn't know what these guys just told me, I would say no, okay.

Rich Williams stated okay, 1975 it was a conforming use...

Mr. Liguori stated right but it stopped.

Rich Williams stated and it stopped being a conforming use...

Mr. Liguori stated it stopped being a conforming use...

Rich Williams stated right.

Mr. Liguori stated and then stopped being in operation for three years.

Rich Williams stated and so, how could you say that he vests any rights to having a preexisting nonconforming use.

Mr. Liguori stated how could he vest to have a preexisting non, we...

Board Member McNulty stated because he just shuttered the doors, did he show that he was going to cancel...

Mr. Liguori stated right.

Rich Williams stated forget about just shutting the doors, my question to you, so I understand what this is, he had in 1975 a conforming use on the site...

Mr. Liguori stated right.

Rich Williams stated he turned it to a use that was not permitted by our zoning code...

Chairman Rogan stated as a standalone because the gas was the primary with the repair.

Rich Williams stated right, so and I've got a ZBA decision, I mean this isn't just Rich's decision, I mean I've got a ZBA decision that says if you take the gas pumps off of the site, you are no longer conforming with the zoning.

Mr. Liguori stated you are just operating an accessory use.

Rich Williams stated yes.

Mr. Liguori stated then he cannot have a preexisting nonconforming use.

Rich Williams stated so.

Nick Lamberti stated so then the test is not what you said before, what you were indicating before.

Dave Raines stated the test that was never the test that you put before us in the last 20 years, so I don't know where that came from.

Board Member McNulty stated he changed it for a gas station.

Mr. Liguori stated I didn't recollect the...

Dave Raines stated that's the first time I heard that, that it had anything to do with the gas pumps...

Rich Williams stated no, well let's...

Dave Raines stated let me put the argument on the table about the, one second about the perfect argument here, I was just up at Maxwell's, for years we didn't have, they stopped doing the auction and all that for years but you had said nope, that's what it's zoned for, that's what he can do. It's the same exact argument, they stopped doing the thing there for years and now we're supporting and allowing them to do that, how is that different though.

Rich Williams stated my statement that it is allowed on that site is one that was given to me by the Town Attorney in writing, so that's where I...

Dave Raines stated it seems like the same thing, I mean that's, it's changed they, you know...

Rich Williams stated but no that's the argument, wait that's the argument I've made all along about this site, that's the argument I made to Rich Goldsands at the time, now you know, when it comes to that...

Dave Raines stated and I don't think I made the right decision or did not, I'm not saying, I made it based on the preponderance of the evidence I had, I had the evidence...

Rich Williams stated nobody is saying you made a good or...

Dave Raines stated if I had let him put gas tanks in, I'd say wow no, that was not okay.

Rich Williams stated this isn't about what you did or what you...

Dave Raines stated no, no, I understand that, I'm just trying to...

Rich Williams stated this is about where we want to go with this and what hook we have to get there.

Dave Raines stated exactly but the argument is either he's doing something he's not supposed to be doing or he's doing something that we could try to gain compliance on...

Rich Williams stated sure.

Dave Raines stated by having a site plan that meets the Planning Board's...

Chairman Rogan stated isn't he only...

Rich Williams stated I get the three year period and I agree with you, we would be on real shaky ground if we tried to go after him just for that three year because I'm sure he wanted to rent it as a garage, his intent was to continue the use, he never...

Chairman Rogan stated yeah, you had people calling you to ask about it.

Dave Raines stated yeah.

Rich Williams stated he never stopped that, so I know that's a shaky argument and that was it.

Mr. Liguori stated I just wanted to point that out because we could have a judge that says hey you closed for three years and there is evidence that you closed for three years, then hey you know, I'm, you know, they, judges make decisions all the time that are contrary to case law.

Chairman Rogan stated isn't our whole goal here, I mean this business is open, it's been a garage, I don't, gas pumps, not gas pumps, I'm probably at this point don't really even care about that, what I care about is we don't have a site plan that shows what is allowed on the site and not allowed...

Dave Raines stated right.

Chairman Rogan stated right because it tends to spill out...

Dave Raines stated it does.

Chairman Rogan stated we want to at least put it on paper to say, now Justin came in and said I'd be happy to do that but then we couldn't get the owner to support that, so it sounds like the end result here is getting, pushing the owner to support the tenant filing a site plan to codify and to clean up what he's doing, isn't that at the end of day...

Dave Raines stated and again, I agree with you and but knowing unfortunately the fact that we can't even get this property owner to comply...

Chairman Rogan stated yeah.

Dave Raines stated with a building permit on another piece of property, at all...

Chairman Rogan stated oh okay.

Dave Raines stated and knowing the history that you've had and many others have had with noncompliance with him, this is going to be a tricky one as far as okay, where do we go because this...

Rich Williams stated this isn't going to be a tricky one, this is going to be an out and out slugfest war.

Dave Raines stated that's what I'm saying, what's stick here, you know what's our stick with this and the only loser is really Justin because whatever...

Chairman Rogan stated right.

Board Member McNulty stated yeah.

Dave Raines stated whatever enforcement action we have to take as the Town Board, as the Planning Board, as the Zoning Enforcement...

Nick Lamberti stated yeah, him.

Dave Raines stated is going to impact, granted it's going to impact the rent check coming into Wunner but more so it's going to impact, we're going to lose the business, we're going to lose the business from Patterson because there was a struggle at the time to try to find another location within the Town because he wanted to maintain his business within the Town, he had outgrown Putnam Lake and there were other issues there with that property owner but again I want to think about and I don't know we're going to solve it tonight but what's the penalty on this, you know what's the, because I don't think no matter what kind of negotiation you do, no matter how soft or hard you come in we're going to get that so do we shut it down, do we you know, just something to keep in the back of minds, we'll put our best foot forward but we've got to think about what do you do in this case because it's not where we issued a C.O. in error or even that I allowed him operate x number of years ago in error, I think it's more so, I'm not coming in, I'm not meeting with Rich, you know, that's what we're going to get and when you do...

Rich Williams stated I don't think we want to shut Justin down, I mean he's a viable business...

Dave Raines stated no, no, no.

Nick Lamberti stated no, none of us want to do that.

Rich Williams stated and I'm not so sure that Mitch would drive him off of the site, if we gave Mitch a hard time because he's not going to give up the rent check.

Dave Raines stated no, I meant if we shut him down, if we did, if we said you can no longer operate and you know.

Rich Williams stated but the issue is and it's unfortunate he's operating in what appears to be a manner that's not consistent with our code but the issue really isn't Justin...

Dave Raines stated right.

Rich Williams stated he was more than willing to comply.

Dave Raines stated I understand that.

Rich Williams stated it always comes back to Mitch and I don't think anybody wants to shut him down or pull the C.O.

Dave Raines stated no, no, no, what I'm saying is we need to have some sort of leverage to get any kind of compliance with him.

Nick Lamberti stated you have to get to Mitch.

Mr. Liguori stated if I didn't have my attorney hat on, draw a picture of what you want the site to look like, landscaping and everything, just hand it to Justin and say hey, could you get this done.

Rich Williams stated he did.

Board Member McNulty stated he would do that.

Mr. Liguori stated oh yeah, yeah.

Rich Williams stated he did, Mitch refused to let him make the application...

Mr. Liguori stated wow.

Rich Williams stated we can't take an application from Justin, he's the...

Mr. Liguori stated no, you can't.

Rich Williams stated all we wanted was for Mitch to sign the paper, Mitch refused.

Nick Lamberti stated yeah.

Rich Williams stated Justin was paying for everything.

Nick Lamberti stated this is an unreasonable property owner.

Mr. Liguori stated this guy his M.O. is hey, F you, I'm doing a damn thing that you want.

Dave Raines stated right.

Chairman Rogan stated right.

Rich Williams stated and they've got the same issue over in the Lake with him on a house with a building permit.

Dave Raines stated trying to build a...

Chairman Rogan stated that doesn't preclude the Fire Inspector or the Building Inspector from doing site visits to ensure compliance with safety, whether they have a site plan or not, I mean the site plan...

Dave Raines stated correct.

Chairman Rogan stated you know, if there is something going on out there that is unsafe, then we are obligated to at least take an action somehow aren't we.

Dave Raines stated absolutely.

Board Member McNulty stated do those type of vioaltions go to the tenant or to the owner.

Chairman Rogan stated regardless of the approved site plan.

Dave Raines stated they go to the owner of the property but...

Rich Williams stated just, on our zoning code, we structured our zoning code so they issue the violation to whoever they feel is in violation, they can do the owner, the tenant, the contractor...

Dave Raines stated the responsible party.

Rich Williams stated whoever.

Dave Raines stated right and then it becomes a civil thing, which it has like the glass, the glass that's been broken for years...

Nick Lamberti stated there you go.

Dave Raines stated that's Mitch's problem, no that's your problem Justin, no its Mitch's problem, I have a document here that says he's responsible for the shell of the building. So, we're back with Mitch, Mitch you're in violation for the glass, I ain't fixing the glass, he puts a piece of duct tape over it and tells me to go pound salt. He goes to court and the judge says yeah, Mitch I know you're mom's sick, you know, sorry and when you get a chance fix the glass...

Nick Lamberti stated and he never gets it fixed.

Dave Raines stated so that's a challenge but...

Board Member McNulty stated that's a challenge.

Dave Raines stated but we have parking issues that you know we've talked to him, Richie's talked to him, you know your cars for sale there that have been questionable, you know are you bringing cars in, how many tow trucks are you allowed to park there, how far are you going to push back on the south site of the site because it keeps growing but he did put shrubbery in and he did put fencing it, he put lighting, he did things but he also put a sign up that he wasn't supposed to put up, so, you know, you know, going back to what you said, in a perfect world, here's what we really want...

Mr. Liguori stated yeah, it's almost cheaper.

Chairman Rogan stated yeah.

Dave Raines stated you know can you get $\frac{3}{4}$ of it done.

Board Member Taylor stated it sounds like you need to separate your issues, for one thing, if I read this right, he's no longer nonconforming, he conforms now, the code changed to permit repairs...

Rich Williams stated code, we changed the code in 2005, so it would allow him to be on the site if he met certain requirements, if he had a site plan, if he had a special use permit.

Board Member Taylor stated so that's not an issue, it's just...

Nick Lamberti stated well he doesn't have a site plan.

Rich Williams stated he has an out, he has a way he could become conforming.

Board Member Taylor stated okay, that's not a problem but you've got, I don't know if you can do this legally but can you go after the owner for some things and Justin for other things, say to Justin, look you want to be in compliance, then comply with the site plan you wanted to file with us, while we're working on trying to get Mitch sign the damn thing.

Rich Williams stated he did.

Nick Lamberti stated but how can we do that, it's a non-existent site plan.

Mr. Liguori stated I don't think the Planning Board has jurisdiction until the owner consents to a tenant appearing before the Planning Board, there's just, anything the Planning Board does would be done without any jurisdiction.

Rich Williams stated Justin gave us a site plan.

Chairman Rogan stated I remember starting...

Board Member Taylor stated they were saying he was changing to what he committed to in the site plan.

The Secretary stated and the sign application.

Board Member Taylor stated should they deal with...

Chairman Rogan stated it's adding...

Dave Raines stated well I think one of the problems is the use seems to vary out there, whether we have cars for sale, that he said he's not going to sell cars out there, there's other things, there's been construction equipment out there, there's been other things...

Rich Williams stated but they can't enforce that because there's no site plan by which to enforce it.

Nick Lamberti stated yeah.

Town Councilman Cook stated well can we go back again to what we talked about earlier and meeting with the owner, not the tenant.

Rich Williams stated I will tell you, I've known Mitch a long time, you pick somebody else than Mitch.

Town Councilman Cook stated so, alright, he doesn't meet or whatever but then he gets a notice of violation or whatever and goes to, with you know, a fine or whatever this is, a heavy fine and you know we get him into court and...

Nick Lamberti stated okay well I'll tell you, getting him into court now, we actually have to serve him...

Town Councilman Cook stated alright.

Nick Lamberti stated either Dave or myself have to physically serve him, he's never available to serve.

Dave Raines stated I mean, in all honesty Nick, there's enough out there on a given day, on a given week, on a given month that we can write specific violations to violate, forget, I mean the site plan has to be part of it but specific things that are happening out there that aren't to code, whether it's building, existing building code or fire code and that's a ven, that's maybe a vehicle to get the process rolling, you know and attach the lack of site plan to the violation but again I would have to consult counsel to find out who am I violating, am I violating, because if Justin's putting the construction equipment out there...

Nick Lamberti stated here we go again.

Dave Raines stated you know Mr. Wunner say Justin's parking the construction equipment out there because he is, it's not Mitch parking the construction equipment out there but with...

Rich Williams stated I have to be honest with you, I don't see this as a problem with Justin because he's always been reasonable, willing to talk...

Dave Raines stated oh I don't...

Rich Williams stated I see this as a problem with an individual, who has dug his heels in, who said I'm not going to comply with anything.

Dave Raines stated so why don't we just violate him for lack of site plan, we'll serve him for violating not having a site...

Nick Lamberti stated but the mass effect of that is still to penalize Justin.

Mr. Liguori stated I think this is a particular, this is one where you know, you sit, we talk to our Town Board Members and we say how much resources are you guys willing to commit to this because it seems to me like you've got to hit this guy with a hammer, you know, you don't just, you know the petty violation, this that, whatever, you'll spend more time, it will jeopardize more of your time when...

Dave Raines stated you're right, he's right.

Nick Lamberti stated we'll be spinning...

Town Councilman Cook stated they have to issue a notice of violation right, first, how do you get this guy's attention.

Mr. Liguori stated well we issue a violation and then we commence an action in Supreme Court, okay, you know that's...

Town Councilman Cook stated okay, let's take it step by step and get the notice of violation, personally, certified mail, whatever it might take and see what the next step is, be very clear, he's got to come in and do what he's got to do.

Rich Williams stated but I think before you do that, you want your Town Attorney to go through the whole record, everybody's record...

Mr. Liguori stated right, right, every...

Rich Williams stated write up an opinion to the Town Board, give us an approximate cost and a strategy for dealing with this, if that's the direction you're going.

Mr. Liguori stated right.

Board Member McNulty stated yeah because if we write up...

Town Councilman Cook stated I think the thing here is, not to put anybody out of business by yanking their C.O., the idea is to get whose ever responsible to get a site plan in here or any other things that need to be approved and that's where we want to be, not to go after C.O.'s, to get them to...

Mr. Liguori stated Charlie, their argument is going to be we are preexisting we have a preexisting nonconforming use and we don't need a site plan that is the essence of their argument...

Dave Raines stated that's been an argument from minute one, from minute one.

Mr. Liguori stated from day one, we...

Board Member McNulty stated but that three year gap doesn't start an issue.

Rich Williams stated I think it would add into our argument but I don't think, if it was just our argument...

Mr. Liguori stated yeah, we wouldn't go to court just on that.

Rich Williams stated yeah, we wouldn't win on that one.

Mr. Liguori stated yeah and then, you know, they're going to look at the fact that the and I don't think this is a negative thing, I you know, the Town Board made a decision with the Building Department to treat them as a preexisting nonconforming use, so...

Rich Williams stated yeah but with all due respect, I know the discussions that went on, alright but I bet you, you find anybody to admit that, they will admit that yeah we think it's a good idea, let's move Justin over...

Mr. Liguori stated okay.

Rich Williams stated but not one of them will say yeah we think he's...

Dave Raines stated no, you're not going to find a motion and a second and five ayes on that.

Mr. Liguori stated alright gotcha, so look, just like Rich said we have to take all of that information and put in a memo to you guys and give you a, and give you a cost of what's involved.

Chairman Rogan stated is there a point in this process where we look at a site, we look at hey, if you went to Justin and said you know, Justin I know you don't have a site plan and I know this is a bigger issue but you've got these things that we really need you to cleanup when we get you, and we write this one off because eventually this property is going to change hands and I mean, in other words...

Mr. Liguori stated that's...

Chairman Rogan stated at some point at we really spinning our, I go back the site...

Dave Raines stated I think...

Chairman Rogan stated if the site problems aren't so drastic then it, I know it, you look at it from a layperson's term, you talk to somebody on the street and you explain it to them and they go yeah but it's just a piece of paper. That's not my opinion and that's not our opinion but at the end of the day it has to be because there's use of the site that's hurting the community in some way I mean, it would be great if the site looked better, you drive up and down [Route] 22 it's not the most appealing site...

Nick Lamberti stated but that's where you're going to run into a problem Shawn...

Chairman Rogan stated yeah.

Nick Lamberti stated Justin is going to say hey, it's Mitch Wunner's responsibility to do this like the broken window, a busted door...

Chairman Rogan stated sure.

Nick Lamberti stated and he's not willing to do any of that, I have to lay out my money and without ever having any you know, possibility of...

Chairman Rogan stated so the site looking good doesn't help Justin's business.

Nick Lamberti stated it doesn't, he says I'll never have a possibility of recovering that from Wunner either in you know, reduced rent or reimbursement so why should I do it, you know it just hurts my business.

Chairman Rogan stated yeah.

Rich Williams stated but there's two reasons we do site plan, two fundamental, one is to make sure that all the improvements are there, that are necessary to protect the health safety and character of the community and the other is to give them a, you know a plan so that they can say jeez there's got to be this drive aisle, he's blocking the drive aisle, he doesn't have his no parking signs up that are required to give them something to say hey, now you're not using the site safely...

Chairman Rogan stated right.

Rich Williams stated and if we don't have that signed off, signed site plan...

Mr. Liguori stated predicate.

Chairman Rogan stated yeah.

Rich Williams stated we don't have the ability to go out there right now...

Dave Raines stated and the third piece being the Jimmy Byron rule where Jimmy is saying I'm complying with everything you want me to do and what's going on two miles down the road, this is bullshit.

Nick Lamberti stated yeah.

Chairman Rogan stated yeah but I'll be the first one to stand up and say that we did a lot of work for Jimmy, we really, you know, practically made his plan for him also...

Dave Raines stated I know, again I'm just saying it goes back to what counsel said about Werlau, the same thing, you know we're not enforcing the other guy so we're you know...

Chairman Rogan stated yeah.

Nick Lamberti stated can I get a little clarification from the attorney here on something was sort of brought up and it's giving me a little bit of difficulty, it's that three year period that's in question here and it just makes me think again about Rentoulis, the Zoning Board said you know, you can't have that rental apartment anymore because the preexisting nonconforming nature of it elapsed when you left it vacant for more than a year and we said okay, no to it, now I'm hearing a little bit that maybe that's not enough to set that aside.

Mr. Liguori stated let me, I don't want to, okay, those zoning code provisions have been upheld, okay, so our zoning code, for instance, the you know, the provision of if the use stops for a year...

Nick Lamberti stated right.

Mr. Liguori stated they've also been challenged and the challenges have been upheld in court to require the intent, so with Justin's the argument that I would make is just that if we're going to go into court and that's just going to be our argument, then...

Nick Lamberti stated that's not enough.

Mr. Liguori stated not enough, not for this particular one, anyone else I would take it to the mat but this thing is so hairy.

Rich Williams stated this is one of those grey areas in zoning...

Nick Lamberti stated but you know where I'm getting...

Mr. Liguori stated yeah, yeah definitely.

Rich Williams stated no, I know exactly where you're going but in that case, you know we all did the proper thing, there was a question, it got sent to the ZBA, they reviewed all the facts, they made a decision, that's what it is, was it the right decision, well it's not always that's why there's article 78's...

Mr. Liguori stated yeah.

Rich Williams stated but in this case, that whole thing where you're abandoning the use of the property for one year or more, I mean there's a lot of case law on it...

Mr. Liguori stated yeah it goes...

Rich Williams stated and it is so back and forth, so grey, you really, you've got to walk a very fine line when you're doing something like that.

Mr. Liguori stated it hasn't been overturned enough for us to remove it from the zoning code.

Nick Lamberti stated okay, I only brought it up because I have Dino in my office just the day before yesterday, still crying...

Rich Williams stated Gino...

Dave Raines stated Dino, Dino Rentoulis.

Rich Williams stated oh, Dino.

Nick Lamberti stated John Rentoulis' son.

Dave Raines stated the restaurant's been closed for, you know we have five businesses in Put Lake, same thing, they've all been closed for, you know, even the deli that we're ready to issue an operating certificate to, I mean we would be you know remiss in our due diligence you know running, operating the town to say no you can't open this deli, they've made every improvement, it's all up to 2010 code but yet it's been closed for, I don't know the exact number of years but it's been closed.

Board Member McNulty stated but is it in an area where a deli is allowed.

Nick Lamberti stated well the sign issue.

Dave Raines stated well no, no, I know the sign issue is separate.

Rich Williams stated yeah it is.

Board Member McNulty stated so then that's not a nonconforming use then.

Rich Williams stated no I know its conforming use and it was a deli and they're just going to continue so...

Dave Raines stated right.

Board Member McNulty stated that's a different issue.

Rich Williams stated we're looking at a sign, we're not looking a site plan.

Dave Raines stated no, I'm saying it's been, if you look at the code it's been closed, it hasn't been use, it was a deli but it hasn't been in operation for an excess of a year.

Mr. Liguori stated but hold on, is it permitted in the district.

Rich Williams stated yes.

Dave Raines stated it's permitted in the district.

Board Member McNulty stated that's not an issue.

Mr. Liguori stated oh it's not an issue, this is just economic.

Dave Raines stated so you're saying to me the way our code reads that...

Nick Lamberti stated you get a nonconforming use...

Dave Raines stated only nonconforming uses that are closed.

Mr. Liguori stated oh yeah, yeah, for instance, if I have a site plan approval...

Dave Raines stated because I had a little concern where the GB changed in Putnam Lake...

Rich Williams stated yeah it changed, it was NS-2, no, it was NS-1, it changed to GB but the uses, I mean it basically...

Dave Raines stated so it carried over.

Rich Williams stated yeah, the uses are still the same.

Dave Raines stated okay, I misunderstood, I didn't realize it carried over when the zoning changed.

Board Member McNulty stated yeah, so that could sit vacant for 10 years and still be fine.

Dave Raines stated okay.

Mr. Liguori stated as long as the use is approved, then...

Nick Lamberti stated yeah.

Mr. Liguori stated you know in the most ideal situation is let's say you get a site plan approval, you building the building, all the uses are permitted, let's say you know, some of the uses go out, there could be 10 years that go, as long as the zoning didn't change, I can still come into the Building Department and get...

Dave Raines stated I was confused because we changed the...

Mr. Liguori stated oh the zoning, okay.

Dave Raines stated the zoning there but that doesn't factor in there.

Rich Williams stated well this is the problem, we're going to talk about this in a minute just, is Patterson Flea Market, I mean he had a barn, it burned down but you know it was okay to rebuild that barn because even though he didn't have a site plan at the time, it was still a use that was permitted on the site, that's the opinion of our attorney, the flea market was still a use permitted on the site, so that and that all...

Dave Raines stated but I always thought the barn was ancillary, secondary to the, it was to support the flea market...

Rich Williams stated the flea market, right.

Nick Lamberti stated the flea market.

Dave Raines stated not to be contractor rental space.

Rich Williams stated right and that all came about because Paul pulled that building permit...

Dave Raines stated right.

Rich Williams stated and then there was this big meeting with Paul and Jay Maxwell and Tim and myself and at that point Tim issued an opinion that the flea market was still a permitted use on that site.

Dave Raines stated but now we're dealing with a totally different use that he's trying to...

Rich Williams stated right, so we'll get to that.

Dave Raines stated okay.

Town Councilman Cook stated the, take these four owners, is there anything that's, that we can do if they go to sell the property, can they sell it without satisfying what's outstanding.

Mr. Liguori stated yeah as long as they, there's not prohibition against the sale of the property.

Town Councilman Cook stated and none that we can...

Mr. Liguori stated no.

Town Councilman Cook stated come up with.

Rich Williams stated but, but the hook in all that is generally when you go to sell, there's going to be a title search...

Mr. Liguori stated right.

Rich Williams stated and the title search is going to trigger that there are some outstanding issues.

Mr. Liguori stated a municipal search.

Town Councilman Cook stated okay.

Nick Lamberti stated yeah so the new purchaser...

Board Member McNulty stated if those issues are on record.

Dave Raines stated and that's when we tell the buyer, in the last two years we've done a much better job at this...

Board Member McNulty stated well would a title search uncover these types of records or code violations.

Rich Williams stated they send a request into the Building Department and other...

Dave Raines stated the way we're doing it now, yes, the way we were doing it prior to the last couple of years, no. We're doing a much better job at actually physically going out, verifying what's there, what's not there, what's supposed to be...

Nick Lamberti stated especially residential properties.

Dave Raines stated what, not just what it says in the file because yeah, in the file a lot of times you know, it's not there, it doesn't jump out but we're going out and actually verifying it, especially on the commercial properties...

Mr. Liguori stated yeah.

Dave Raines stated to say that okay, this is a, there's a problem here, you know, plus this is broken, that's broken, that doesn't work, you know the sign is in the wrong place so, it's all out there and then usually the...

Mr. Liguori stated I have to say the brokers have become exceptionally sophisticated especially when dealing with commercial properties because they're going to invest a lot of time and they want to get paid, so in order to make the deal happen. They know now that commercial lenders, it used to not be the case, it's actually pretty interesting but it's over the last three or four years, the commercial lenders have gotten very involved in the, especially with existing buildings, if you were starting from scratch then they'd want your site plan, your site plan approval and you're building permit before you can close the loan but now if you have a, you want to buy a commercial building, they're getting to that point as well, they want a letter from the Building Inspector or at least to see the Certificate of Occupancy to make sure that your use, what you intend to use it for, for your purchase is consistent so that when they lend the money, you're going to be able to get into business and pay them back.

Dave Raines stated and Nick's was a perfect example, when Zegarelli bought Nick's because there was no C of O on that building and we laid it out with the title, the municipal search that the building was built in 1928, whatever year it was and it is not up to code and the buyer is going to have to do this, this, this, this, this, this...

Mr. Liguori stated right.

Dave Raines stated according to these twelve sections of code and it was all understood...

Mr. Liguori stated yup.

Dave Raines stated and in this case we obviously got compliance, he's going to have a C.O. because he took a building permit out, he gutted the building, he's bringing it up and I assume he's got some sort of...

Nick Lamberti stated waiver and...

Rich Williams stated yeah he's submitted an application for site plan waiver...

Dave Raines stated site plan...

Nick Lamberti stated right.

Rich Williams stated we're going to have to talk about that when, he's going through the process.

Dave Raines stated so, but at least there's a process whether you grant the waiver or he gets a site plan, we're going to have, the process will be completed one way or another.

Rich Williams stated right.

Dave Raines stated whether the Planning Board determines a waiver is appropriate or not, that's been our practice now...

Mr. Liguori stated that's good and that works.

Dave Raines stated unfortunately you know, it hasn't always been that way but we're and again with Kent Supply it was something else, it was something else, he came in, he says I want to gut the building, I want to do this, that was all good but when it came to the external, the site plan pieces...

Rich Williams stated well you remember the history on that because I had a good time going through it, you went out there one day and he was making improvements...

Dave Raines stated right.

Rich Williams stated you called me to go out, you know and he was already making improvements outside, inside to the building, that's when you stopped him.

Dave Raines stated right, we stopped him and you know, there's two pieces to it, no you can't do this inside because it wasn't meeting fire life safety code and I said Rich I don't know what he's digging out there but he seems to be expanding the parking lot and I think that was the piece that you know, so but again unfortunately the process broke down because the Building Department gave him a C of O, in violation of subsection b of 64-10 and he didn't meet all the and I don't remember the particulars but he didn't meet, whether he said hey I'll be done in three months, can we do this, yeah, no problem here, you know but three months turned into five years or whatever it's been three years so, we need to do a better job with that.

Mr. Liguori stated those are, yeah, you know, look, those are tough judgment calls, they really are, I'll tell you with our own building, just recently we had our C.O. inspection on Thursday and the Building Inspector, last Thursday, we were set to move in on Friday, us and four other, Bruen Deldin Didio, which had a huge space over in Clocktower, us and two other business and we were cited for the fact that the building was missing certain architectural fenestrations.

Nick Lamberti stated really...

Mr. Liguori stated we didn't notice, they were like vents on the top of the peaks and you know, when you look at the pictures and you look at the plan, I mean I looked at them and I didn't realize it until the, you know until someone told me that they weren't there and the Building Inspector refused to issue the C.O.

Board Member McNulty stated on an aesthetic problem.

Mr. Liguori stated on an aesthetic issue.

Board Member McNulty stated and Patterson's gotten a bad rep, I know it's crazy.

Dave Raines stated and again that's where we have to close the gap, like on Eurostyle Marble, the issues were finish, some of the issues were specific to finishes and what he agreed to with the Planning Board after thorough negotiations and it was all above board, it was clear but again we didn't, from the Building

Department side, he met code, he had finished this, finished that and was all done and we're like crap, he was supposed to have this here and that there and the copula was supposed to be different, whatever it was, the outside lights were changed and that's something again, moving forward so we don't have to do this you know, ten more times over the history of these groups, we need to have that checklist and almost have that secondary signature before that final signature is made on the C of O, to protect because...

Mr. Liguori stated yeah it's very tough because you, you know, there are people who will burn you and not think twice and there are people that will do the right thing and how can you tell, you can't see, there's not crystal ball, so it's almost as if you cannot be flexible whatsoever, you know, it's the only way to gain 100% compliance and you'll never get it but is to just be totally inflexible and that's not realistic, you know, it's just, it's not reflective of reality.

Rich Williams stated you want to talk real quick about the last one.

Mr. Liguori stated yeah.

Rich Williams stated because I'm not sure...

Chairman Rogan stated did we ever figure out, before we move on to the last one, what we were doing with Justin's, did we because it sounded like we didn't...

Mr. Liguori stated yeah, I have to give information to the Town Board about what's...

Chairman Rogan stated oh okay.

Mr. Liguori stated what the...

Board Member McNulty stated what the cost it.

Mr. Liguori stated not just that but what's the...

Chairman Rogan stated what's the likelihood of...

Mr. Liguori stated what's the real argument.

Dave Raines stated what are the options here, do we violate him on site plan approval, is the argument he doesn't need a site plan, is there...

Board Member Brady stated if you go out and issue a violation and the Town Board doesn't want to give the money to pay for a lawsuit, it just makes the whole Building Department look like nothing and if there's no backup and no support, you're better off not even giving the violation until you know that there's some cash behind there.

Nick Lamberti stated yeah you want to make your decision before you go ahead.

Rich Williams stated but there's two parts to that, we have an attorney over there, they issue a violation, there's an attorney over there that's going to process that...

Mr. Liguori stated right, right, that's right.

Rich Williams stated independent of the Town Board, the Town Board can't not process a Building Department violation.

Mr. Liguori stated it's the Supreme Court aspect.

Dave Raines stated right.

Board Member Brady stated right.

Rich Williams stated right.

Board Member Brady stated but you know that's where you're going.

Mr. Liguori stated yeah, to me, you know you just want to bring this thing...

Dave Raines stated without injunctive power across the street, yeah it's something like this is going to have to go...

Nick Lamberti stated then try to collect the daily fees.

Board Member Taylor stated just to define the burden of proof.

Rich Williams stated yeah and honestly I wouldn't be surprised if, I mean, my recommendation to the Town Board is get ready to go to Brooklyn.

Mr. Liguori stated right, right, exactly.

Rich Williams stated yeah because we're not going to get anything in Putnam County, we're going to lose in Putnam County and...

Dave Raines stated and again it goes back to Shawn's argument, what's the win...

Chairman Rogan stated yeah, at the end of the day, what do we want.

Dave Raines stated okay, some judge in Brooklyn says yes sir, you need to do this, this and this, what you know...

Rich Williams stated I think the win, you know and we've talked about this, you know unfortunately there are many people out there who are not in compliance with the requirements of the code and they feel as Mitch does that so what, what are you going to do about.

Mr. Liguori stated right.

Rich Williams stated well you give them a body, they know they may end up dead, you know, I mean to be blunt about it and that's what you do...

Board Member McNulty stated make that an example.

Rich Williams stated you give them a Supreme Court action that we're willing to go to the mat on and the next guy that comes in...

Dave Raines stated right.

Rich Williams stated listen, I'm just not going to comply, okay well please go talk to Mitch Wunner.

Dave Raines stated I think the challenge for the Town Board and Town Counsel is, is it property A, B, C, D, E or all of the above because...

Rich Williams stated yeah, absolutely.

Dave Raines stated I can think of, we're not going to get to them tonight, a dozen more that, you know they, there's issues and...

Chairman Rogan stated that's right.

Dave Raines stated we've got to weigh fire life safety piece, we've got to weigh the aesthetics piece...

Rich Williams stated sure.

Dave Raines stated what's the win, you know...

Chairman Rogan stated you want to win to prove your point but it's got to be with the backing.

Dave Raines stated is Boniello a bigger issue, on a given day Boniello might be a bigger issue...

Nick Lamberti stated yeah, how does the Town want...

Dave Raines stated should we throw our resources at...

Rich Williams stated Boniello is already going.

Dave Raines stated well, okay, I'm just as an example...

Rich Williams stated yeah.

Dave Raines stated when I drive by there and he's got 8,000 pounds of crap outside that might be a bigger issue.

Nick Lamberti stated at the same time the Town loses on that one, he owes us all kinds of money that we'll probably never see.

Rich Williams stated that's where we're going, that's where they're heading.

Chairman Rogan stated when you go, though, to that length, you want to make sure that you're doing so on a property that you can justify to a layperson, outside, somebody asks the Town board, why are you picking this guy, well because there's these health and safety or life safety issues not just well because he's not in compliance, that alone doesn't mean much to most people.

Dave Raines stated because if Mitch knows in the end, if Mitch knows in the end that he's got to put \$50,000 into that site and he's only getting x dollars from Justin...

Chairman Rogan stated right.

Dave Raines stated and we're sitting there with a building, we'll violate it and he'll have to raise it or we'll raise it and lien and...

Chairman Rogan stated right.

Dave Raines stated so we've got to look at and you know just as an example, I mean I'm not happy about the decision I made or that the net of it because I thought that the two of them would have made some improvements, not none and...

Rich Williams stated but you know I think the bottom line in this is way back when the Planning Board pretty much told Justin they'll take an as built...

Dave Raines stated right.

Chairman Rogan stated yeah.

Rich Williams stated just show us what's out there, we're going to stamp it and you're good to go.

Chairman Rogan stated just codify it and tweak things a little bit.

Rich Williams stated and we have the plan.

Chairman Rogan stated we also and this was when Charlie was still on the Planning Board, there was a time when we requested of the Town Board some action on a lot of these different things and we were kind of said whoa let's slow down, maybe we pick like two a year because we have to budget for these things, you know so we made a little bit of headway but we were also trying, so a couple of years have gone by but it wasn't for complete lack of thinking about these things, you remember that right, that we kind of said well wait a minute, these things, they take time and we need to maybe figure out let's prioritize them, let's look at what our worst ones are, maybe the ones that easiest to win and you know, close...

Mr. Liguori stated yeah well that's always...

Chairman Rogan stated sometimes cleaning up...

Mr. Liguori stated that's always the thought, you know, this one is particularly difficult, I think it's only difficult because you're dealing with somebody who is difficult, okay, if it was a thorny issue with the person on the other side wasn't so difficult, I don't think we'd have the trouble...

Chairman Rogan stated yeah.

Mr. Liguori stated you know this is a personality that that, you know...

Chairman Rogan stated and what you just said, if you laid out to a rational person and said look, we don't want to go through you spending a lot money, we were looking to work with the guy with and as built sketch to just codify and cleanup and make sure everybody's clear on what's going on, at the end of day now we're done and you haven't lost, other than maybe the fact that he felt like he gave in to, I got to sign and those commie bastards are making me go through...

Mr. Liguori stated right, right.

Chairman Rogan stated but the fact of the matter is at the end of the day, he has what he wants which he believes he has right now and we have what we want, so it's kind of like going through all these motions for somebody that's difficult...

Mr. Liguori stated yeah.

Chairman Rogan stated and that's, that's the tough point.

Mr. Liguori stated that's really the heart of it because...

Chairman Rogan stated yeah.

Mr. Liguori stated by the time we're done, you know you can build a beautiful site for that guy, you know.

Chairman Rogan stated right, right.

Mr. Liguori stated you can have \$10,000 in landscaping and it will be the most beautiful automotive garage you've ever seen, you know but why would you do that to somebody who is being difficult.

Chairman Rogan stated right.

Mr. Liguori stated you know, that's the benefit of being, it just serves the, it just proves the point, the more difficult you are, the more you're going to get.

Chairman Rogan stated and sometimes that's the reality too because you see it when you work with some people.

Mr. Liguori stated yeah, yeah, right and then you've got you know, Tom, Tom you know in front of, here's our own guy in front of the Planning Board trying to building something, you're talking to...

Board Member McNulty stated you're giving me some ideas.

Mr. Liguori stated yeah, shame on you.

Chairman Rogan stated you're too nice.

Nick Lamberti stated maybe you should recuse yourself Tom, I mean...

Board Member Brady stated after you put, after you do the landscaping down at Justin's you can come back.

Mr. Liguori stated no but really...

Chairman Rogan stated yeah.

Mr. Liguori stated when you, what you were saying before about what do you say to the layperson, I'll tell you what, that's what I would say to the layperson, to say hey, look, would you rather we kowtow to

somebody who is difficult and set an example for everyone else in Town that because you're difficult, we're not going to mess with you and not that we're messing, we're not going to enforce our laws...

Chairman Rogan stated yeah.

Mr. Liguori stated because you're difficult, give me a break, come on.

Board Member Montesano stated gee, I've got a howitzer.

Chairman Rogan stated you're absolutely right.

Board Member McNulty stated that's the wrong example.

Board Member Taylor stated right.

Chairman Rogan stated okay.

Rich Williams stated the last one on the list, we've touched on that is Jay Maxwell rebuilt that barn and now using it for other purposes, he threw a sign up and then was told to take the sign down and took the sign down, so the other sign that's up that shouldn't be up is now visible...

Nick Lamberti stated layers, it's like an onion.

Rich Williams stated yeah, he recognizes he needs a site plan, he recognizes he needs to get into compliance, he's moving about as fast a molasses on a cold day, so he's just...

Nick Lamberti stated and that's actually after having done a lot to get him moving, right.

Rich Williams stated yeah.

Nick Lamberti stated a lot of inertia there.

Rich Williams stated he has got Harry to develop a site plan, then it came he had to show topo, we didn't know how to get the topo on the thing, Harry wanted Terry Bergendorff, asked for a lot of money, so I gave him a company that does aerial, topography by aerial photos, that's worked out for him, he's down in Florida right now, he gave that information to Harry but they are slowly working on this and I think eventually we're going to get there with this and we don't really want to spend a lot of time and resources on this simply because we are slowly getting there and if my recommendation, if we could just do anything, is maybe to encourage and incentivize his moving as quickly as possible, maybe just another notice of violation saying you have...

Nick Lamberti stated yeah, well you know, I'm happy to do that and I've done that in the past.

Rich Williams stated so many days to comply and let him scream a little with the site...

Dave Raines stated with site plan approval, to gain site plan or to file, I mean has he filed or is he...

Rich Williams stated he hasn't even filed.

Dave Raines stated okay, so he's gathering information supposedly.

Board Member McNulty stated does the site as a whole have a site plan established already.

Rich Williams stated no.

Board Member McNulty stated so what exactly are we looking for, just the barn site plan.

Rich Williams stated well initially the direction has been just the barn yes.

Dave Raines stated as a new use.

Rich Williams stated as a new use.

Dave Raines stated as a new use, something that you guys will have to decide is this...

Mr. Liguori stated how big is the property.

Rich Williams stated 5, 10 acres.

Dave Raines stated consistent with, you know.

Nick Lamberti stated I'd say at least.

Rich Williams stated and I'm waiting, you know, side track this, I pulled up the aerials the other day and it looks likes...

Nick Lamberti stated yeah, all those trees...

Rich Williams stated half the barn is on somebody else's property, so I can't wait to get the survey in, you know the aerials don't accurately, always represent where things are but...

Chairman Rogan stated that's true.

Rich Williams stated but sometimes they're close.

Mr. Liguori stated is there a survey to go along with the building permit or was it built within the former compound, confines of the...

Rich Williams stated I don't believe there is a survey in the file.

Dave Raines stated no, there was a foot print, there was an existing structure out there that burnt to the ground, one of the previous building inspectors issued a permit to rebuild it...

Rich Williams stated twice its footprint size.

Dave Raines stated yeah, well, that's where I was going, twice its footprint, so you know I don't know which way you're moving it, it evidently moved west because right, that's the encroachment potentially that there is there.

Rich Williams stated it actually I think moved north and south...

Dave Raines stated oh, so it's the other way.

Rich Williams stated it stayed the same length but it was...

Dave Raines stated oh okay, so...

Nick Lamberti stated oh really.

Rich Williams stated maybe, I could be wrong.

Dave Raines stated so yeah, I mean that's the history there...

Nick Lamberti stated so north is where he's encroaching.

Dave Raines stated and again, what was the argument, was there a legal argument when whether we should reissue or not or there was no argument, the building permit, when it burnt down because I said no, I was holding my gun, I said no, no, no and somebody else said yes.

Rich Williams stated I don't know, yeah well, somebody else said yes and issued the building permit and issued it for twice the size and then Paul Piazza came along and took a look at it and said no way, no how, Jack Stewart was out there and said this is the size of the building, the building permit was issued in error, so he rescinded it...

Dave Raines stated because they hadn't started construction, it sat forever.

Rich Williams stated no, he had bought and he was doing a metal building...

Dave Raines stated he bought somebody else's building.

Rich Williams stated right and he bought the metal building and it was all sitting there in pieces on the site ready to be erected.

Dave Raines stated right.

Rich Williams stated yeah.

Dave Raines stated okay but the use was supposed to be part of the storage for stuff that you were auctioning off at the existing...

Rich Williams stated that's what's on there...

Dave Raines stated now is that an existing nonconforming use...

Nick Lamberti stated it was supposed to be a barn.

Dave Raines stated the flea market or is that an existing conforming use.

Rich Williams stated the attorney said it was an existing conforming use.

Dave Raines stated okay, I just, so regardless, this will be a new use if it gets to you as a site plan...

Board Member Montesano stated that way.

Dave Raines stated you'll be evaluating a new use.

Chairman Rogan stated correct.

Dave Raines stated so we're just violating him on no site plan for that structure on that property, forget about flea market or whatever they're doing out there.

Rich Williams stated right, yeah I'm not, I wasn't going to go near it.

Dave Raines stated okay, okay, so you're going to look at this on the merit of the building and how it ties into that property and adjacent properties.

Chairman Rogan stated yeah, access and safe use of that part of the site.

Dave Raines stated okay, so in the end we may end up with contractor's storage and whatever he's...

Nick Lamberti stated well actually...

Rich Williams stated well he's going to have a tough time doing that because that's not a permitted use out there.

Dave Raines stated right, that's why I'm say, I just, we're only violating him on not filing for site plan approval.

Rich Williams stated right.

Dave Raines stated that's really the violation.

Nick Lamberti stated but let me ask you something.

Dave Raines stated even though, excuse me, even though he's got an established, he's established a use out there with this granite guy...

Nick Lamberti stated exactly, that's what I was going to say...

Dave Raines stated we're not violating him on that, oh I'm sorry.

Nick Lamberti stated is that going to be allowed in that, is that a use that's permitted in that building.

Dave Raines stated should be violate him on that I guess is my question.

Nick Lamberti stated I thought that was an industrial use.

Rich Williams stated no...

Nick Lamberti stated no.

Rich Williams stated it's a use that, well the retail operation is a permitted use in the C-1 zoning district...

Nick Lamberti stated okay.

Rich Williams stated the fabrication operation is a use permitted in the C-1 zoning district by special use permit.

Nick Lamberti stated okay, so he has to get a special use permit.

Rich Williams stated he may have to get a special use permit.

Dave Raines stated but at this point it's everybody's thought to violate him on just the site plan piece and not violate him for operating the marble place with a or violate him for operating the marble place without site plan.

Nick Lamberti stated well...

Rich Williams stated well, you know I'm going to leave that up to you because...

Dave Raines stated I'm just throwing it out there because...

Rich Williams stated I will tell you I've got the letter that he sent to Nick that says the marble guy is not there anymore, he's vacated the site and the sign is down.

Dave Raines stated oh, okay.

Nick Lamberti stated which is not entirely true.

Rich Williams stated no, we know that.

Mr. Liguori stated I would do both, I, you know...

Dave Raines stated let him prove that the marble guy is gone.

Mr. Liguori stated one or the other.

Dave Raines stated because the sign says no trespassing, I abided by it and stayed on the other side of the...

Mr. Liguori stated just worry about the, you only bring one enforcement action and then 5 years from now we're sitting around the table at the same meeting you know, and we're saying shit, 5 years ago I should have brought them both...

Rich Williams stated yeah but if you're going to go down that road on this site, I don't know that they'd ever find the end.

Mr. Liguori stated okay.

Rich Williams stated you've got the logs, you got Parenti...

Dave Raines stated I know, you got the trailer, you got this and that, you got the dumping.

Rich Williams stated yeah.

Board Member Montesano stated if they would have left the damn thing as a race track, it would have been fantastic...

Rich Williams stated yeah well...

Board Member Montesano stated all approvals were made, the State approved it, everybody approved it, all one man had to do was sign a piece of paper and you know what he does at the meeting, I think I should get more money, everybody just got up and walked out and that ended the race track, they got clearance from the...

Nick Lamberti stated this was the previous owner.

Rich Williams stated no, this was years ago.

Board Member Montesano stated 60-something.

Town Councilman Cook stated Rich can I ask that you summarize the action plan that's happened, this was a great discussion but now so we don't regroup in 6 months and Shawn looks at me and I look at him...

Rich Williams stated you want a memo.

Town Councilman Cook stated I'm just saying though that you know, I think it would be a good idea as a follow-up that just says these guys are going to do this, these guys are going to do that...

Chairman Rogan stated just like your review memos, who's doing what.

Rich Williams stated yeah, I'll memorialize the whole discussion...

Chairman Rogan stated I mean like...

Town Councilman Cook stated you don't have to, just the action plan part that who's going to go after who, like a one pager, you know.

Rich Williams stated yeah, if I'm going to do something like that, what I'd like to do is put it before the Planning Board at their next meeting and they can sign off on it...

Town Councilman Cook stated sure, sure.

Rich Williams stated and we can distribute.

Board Member McNulty stated recommend it to the Town Board.

Rich Williams stated in the meantime, you know, we've got some steps we're just going to go do.

Mr. Liguori stated right.

Rich Williams stated you've got your job, I've got mine, he's got his, he's got his...

Nick Lamberti stated yeah, nothing's changed.

Rich Williams stated we'll see where this goes.

Dave Raines stated yeah and again the two that I think we'll get some movement on are the Kent Supply and the Eurostyle Marble and I think that with that list, that has to exist moving forward for all these projects that will enable us to make sure that we meet subsection b in 64-10 and that you know, it's not what we think was said or what we think was amended or we think and again we've been pretty lucky because you're team has been pretty consistent as far as you haven't changed players, we've had four or five building inspectors, four buildings in the last you know, couple years...

Nick Lamberti stated yeah and next year you might have another one.

Town Councilman Cook stated they only get better.

Dave Raines stated well you know but that's good we've had you know...

Rich Williams stated or sooner if you have to go serve Mitch.

Dave Raines stated because all these go back, all of these go back to early, you know pre-2000, some of them, these guys actually stated the...

Nick Lamberti stated (*inaudible*) illegal occupant.

Dave Raines stated you know ten years plus, the guy actually started ten years plus ago when you actually started...

Mr. Liguori stated we'll get you a vest.

Nick Lamberti stated thank you.

Board Member Montesano stated get to (*inaudible*).

Mr. Liguori stated we'll get you a vest.

Board Member McNulty stated a little Kevlar.

Board Member Montesano stated get it done.

Chairman Rogan stated want to take a 5 minute break in the minutes here because I'm sure, we still have a work session to do, right, we're still going to go through some of this stuff.

Rich Williams stated whatever you want to do.

Chairman Rogan stated yeah.

Rich Williams stated I'm good until tomorrow morning 9:30, so is Michelle.

Nick Lamberti stated Michelle says no way.

5 minute break ensues. Dave Raines and Nick Lamberti depart the meeting.

1) EAST PUTNAM DEVELOPMENT CORP. – Public Hearing

Board Member McNulty has recused himself from the application.

Rich Williams stated okay first on the regular agenda, you've got a public hearing schedule for East Putnam Development Corporation, we received a...

Board Member McNulty stated which I am going to recuse myself.

Rich Williams stated we received a memo in tonight from DEP, we'll review those comments, no other materials have been submitted at this time and where's Michael, boy do I need Michael on this one.

Board Member Montesano stated he already went home.

Rich Williams stated did he.

The Secretary stated yeah, he left.

Ted Kozlowski stated no, he's talking with Dave out there.

The Secretary stated oh.

Ted Kozlowski stated here he is.

Mr. Liguori stated sorry Rich.

2) WATCHTOWER BIBLE & TRACT SOCIETY – Sign Application

Rich Williams stated Watchtower sign application, we have an application in for Watchtower's sign to replace the two existing signs on either side of Route 22, it's pretty straight forward, both signs are 25 square feet where I'm having a bit of a problem is one side of the road is the Watchtower Education Center, the other side is the farm...

Mr. Liguori stated I have to go get my packet, is there one, if not, I don't...

Board Member Taylor stated you can look at my packet.

Rich Williams stated alright well, you don't really need to see anything to hear this...

Mr. Liguori stated oh, I'm sorry.

Rich Williams stated because where I'm still struggling with this, one side of the road is agricultural, the other side is the Education Center, they've got a special use permit, pursuant to a special use permit they

can have a free standing side, our code says that businesses can have a free standing sign to advertise the use of the premises. Well, they've got the one sign on one side and now they've got an equal sign on the other side, I don't know, I'm struggling with this because typically if it was a typical business they'd be entitled to one sign, not two signs.

Chairman Rogan stated there are two different uses so you're struggling with...

Rich Williams stated and typically we're not going to permit a commercial sign for an agricultural use but when I read the code from 1975 when this first was put in, I'm not so sure that it wouldn't allow something like that, so, I'm doing some research, I'm looking through, I'm going to talk to Mike a little bit, other than the signs are fairly straight forward.

3) MAMA JO'S LAKESIDE DELI – Sign Application

Rich Williams stated Mama Jo's Deli, it's a new sign for a business that has been in Putnam Lake for a very long time, meets all the code requirements, the only thing I do want to point out to you is that they are lighting the sign up by two flood lights sitting over the top of the sign and I would bet nickels to doughnuts if I went out there right now...

Chairman Rogan stated they're not shielded.

Rich Williams stated yeah the lights were lit, they would be shining out into the road.

Chairman Rogan stated alright, so we need shields on the...

Rich Williams stated so we need shielding.

Chairman Rogan stated the lakeside deli, that was the J&J's that was only open for...

The Secretary stated yes.

Chairman Rogan stated boy they did a great job when they rebuilt that place from what it was prior...

The Secretary stated I don't even think they opened.

Chairman Rogan stated and then it sat empty for a number of years, okay. Zegarelli...

4) ZEGARELLI'S PIZZERIA – Site Plan Waiver & Sign Application

Rich Williams stated right, Zegarelli is in for two issues, one is he's got a sign application in for the two signs he's proposing for the site, similar issue to Mama Jo's, both sign are conforming in size and location, however he's proposing to light the building mounted sign by the existing lights and there are no existing lights but there's a whole line of wires down the side of the building hanging out, for what I'm assuming is going to be a line of building mounted lights. So, I don't know what he's going to propose for lighting but other than that they are plain signs, fairly straight forward. The second issue with Mr. Zegarelli is he's got, he's occupying a building that traditionally was a restaurant, a pizza parlor/bar, he has completely renovated the building, if leaves the. Yeah you can, oh shit man, we're three past you, forgot he was gone...

Board Member McNulty stated always forgotten, forgotten child.

Chairman Rogan stated you know, it's funny, you said you were going to recuse yourself when we were talking about next week and you left the room and I didn't realize you didn't come back.

Town Councilman McCarthy stated he excused himself, he had to...

Board Member McNulty stated am I approved.

Chairman Rogan stated start over.

Rich Williams stated alright, Zegarelli's site plan, it's a use that's permitted within that zoning district, the GB zoning district, so that's all fine and good, the problem that we encountered, why he's before you is because the Building Department has found that he added a substantial patio off the side which is a new improvement to the site without site plan approval, so he came in initially not knowing a lot about what was going on, I suggested that he simply submit for a waiver of site plan approval, now having taken a look at the site and having been out there and you all may want to take a drive by, he has done considerable outside improvements and it seems like he has to do a few more yet which are shown on the plan, including guiderail, stockade fence and some other things, so you may want to take a look at this.

Chairman Rogan stated when we talk about site plan waivers and I've still, you know over the years, have had difficulties wrapping my brain around when we do waivers versus when we actually do a site plan, especially when a site plan doesn't exist. There have been times in the past where we've done site plan waivers where we've accepted something like this, a survey or an as built type document, in lieu of a full blown site plan when the improvements are, you know, minimal. If we were to, let's just say for the sake argument, if we were to accept something like this, if it showed all the improvements and they were acceptable to the Board, that doesn't constitute a site plan but yet it does constitute something that documents what's on the site, right.

Rich Williams stated that's true but...

Chairman Rogan stated why wouldn't we just do a site plan, I mean what's, I guess we always ask what is the additional...

Rich Williams stated when it was initially explained to me and why I initially sent him down the direction of an amended site plan, it was a very minor...

Chairman Rogan stated a waiver, you mean.

The Secretary stated site plan waiver.

Rich Williams stated site plan waiver, it was a very minor improvement to the site...

Chairman Rogan stated okay.

Rich Williams stated you know, does it need a site plan, full blown site plan for just one little improvement, no not really but then when I opened this up and took a look at it, it was substantially more.

Chairman Rogan stated well like for instance, he shows proposed parking but isn't this a gravel lot.

Rich Williams stated part of it is still gravel and it looks like the intent is to pave it all.

Chairman Rogan stated oh okay, he'll pave it, strip it, so what would the additional work be for a site plan, in other words a simple site plan for this.

Rich Williams stated if you wanted to take this from being simply an as built to a full blown site plan, you know we'd have to go through and identify the elements of the site plan that are required that are not on the plan, you'd have to waive those, you'd have to have a public hearing on this...

Board Member McNulty stated do you have to do SEQRA on a waived plan.

Rich Williams stated no, if you're waiving the requirements for a site plan, that's like saying jeez, you just don't need it, so you don't have to do SEQRA but you know in this case you'd have to do SEQRA, you certainly could do an uncoordinated review and not worry about the other agencies, so you could do this whole thing in 2 months.

Board Member Taylor stated so what's your recommendation at this point.

Rich Williams stated my recommendation is you take this to a full site plan.

Board Member Taylor stated are we talking about significant cost differences.

Rich Williams stated well again, if we're just taking the plan and we're just identifying what improvements are out there and what are lacking, you know then it's all an administrative chase, you know my time on this is going to be minimal, so there's going to be that cost for him.

Chairman Rogan stated can Terry Collins update this plan with the notation to be utilized as a site plan.

Rich Williams stated sure.

Chairman Rogan stated so, I mean they've done a bulk of the work already.

Rich Williams stated but we also have a stamp that we could just stamp it, saying site plan approved by the Planning Board.

Chairman Rogan stated yeah, no I mean, I got that part, I meant more, are there docu, are there things that a licensed surveyor cannot add to the plans that you need an engineer or an architect for, as part of the site plan.

Rich Williams stated if you're going to be designing new improvements, what she did and I don't know how she did this, she did a survey for Angelo showing the parking layout, even though there is no parking layout, out there right now...

Chairman Rogan stated right, that's what I was thinking.

Rich Williams stated yeah, so she did that, yeah if she's going to do a structural improvement that needs to be engineered, then it has to be done by an engineer but there's a lot back and, you know, there's a lot of overlap between surveyors, engineers, and architects, so you know unless you know, you're going after some big structural improvement out there like a stormwater pond...

Chairman Rogan stated right.

Rich Williams stated or drainage then I'd say Terry is going to be fine finishing this off.

Chairman Rogan stated okay and the patio you talked about, that's not yet shown on this or am I just missing it.

Rich Williams stated it is shown on this, this is the patio with a new ADA ramp.

Chairman Rogan stated okay, okay so it's just not labeled, I wasn't sure if that was just a, okay and is the, do you know what the intent of the patio is, is it outdoor dining...

The Secretary stated yes.

Rich Williams stated yes.

My. Liguori stated Rich, what are the little boxes that appear to be on the patio, are those lights...

Board Member McNulty stated railing.

Mr. Liguori stated railing.

Rich Williams stated well no, there's a wood guardrail that goes across the front, that's...

Board Member McNulty stated that patio is parking lot level...

The Secretary stated no.

Rich Williams stated its slight raised.

Board Member McNulty stated Unilock or, is there a picture of it here.

Rich Williams stated blacktop.

Board Member McNulty stated blacktop...

Mr. Liguori stated oh so those are for instance the posts for let's say a wooden guardrail.

Rich Williams stated yes.

Chairman Rogan stated oh okay.

Mr. Liguori stated I didn't know what they were.

Rich Williams stated I wasn't sure until I went out there.

Mr. Liguori stated took a look, yeah.

Rich Williams stated yeah.

Chairman Rogan stated well I mean we were just having all this conversation about a business opening up without a site plan and then all this back and forth, I mean I'm trying to think in terms of prevention, he's gutting this place, he's not ready to open tomorrow, right.

Rich Williams stated he's very close to being ready to open.

Chairman Rogan stated so us doing this is going potentially say you can't open for 2 months.

Rich Williams stated I don't know that we're going to slow him down...

The Secretary stated but he's already got his existing business, so all he'd be doing is moving his existing business into the new building which is across the street, so you're not really stopping him from opening, he's already open in an existing site across the street.

Chairman Rogan stated no, no, stopping him from opening business at this new location, right, is that the...

Mr. Liguori stated here.

The Secretary stated well he should have come to us before he did the improvements, if he...

Chairman Rogan stated I'm just, it's like a...

Rich Williams stated you would be preventing him from opening but I've got to have the conversation with him about where he is, how soon he thinks he can open and where he is with this liquor license which always takes a long time.

Chairman Rogan stated well a lot of places open for food business without their liquor license.

Rich Williams stated this is a perfect example...

Mr. Liguori stated you have to now.

Chairman Rogan stated oh okay.

Mr. Liguori stated yeah.

Rich Williams stated we're not going to slow him down as far as constructing the improvements because...

Chairman Rogan stated right.

Rich Williams stated everything is pretty much done I think except a little blacktop and...

Chairman Rogan stated okay.

Rich Williams stated really I mean he should have come in for this site plan a long time ago and he should have been sent in for this site plan a long time and so it wasn't our fault that we're just now trying to catch up.

Chairman Rogan stated right, okay.

Board Member Brady stated this is going to be, this is going to wind up being another one of the ones that we're talking about five years later.

Chairman Rogan stated exactly, the guys been open for five years and we still don't have a site plan on it but we have a pretty good start...

Rich Williams stated oh yeah, I mean he's more than willing to comply.

Board Member Taylor stated do we need a resolution to change this one application to another.

Rich Williams stated no, he's got to come in and file an actual site plan.

The Secretary stated he'll have to do another application and a new plan.

Rich Williams stated and I'm going to have to get a hold of him tomorrow, get him going.

Chairman Rogan stated alright and I think that makes sense, if you can get a hold him tomorrow and tell him that given the significance, the substantial improvements that he's made, the Board wants to codify this all by doing a site plan but we want to fast track this and you know, put it back on him, we just need to get everything shown accurately.

Mr. Liguori stated do we have less than 4,000 square feet of improvements.

Board Member McNulty stated it will definitely be nice to see that building have some activity.

Rich Williams stated yeah, probably, so it's type II.

Chairman Rogan stated yeah.

Mr. Liguori stated I know that's a big part of it.

Chairman Rogan stated yeah, okay.

Board Member McNulty stated here's a good chance to show an example we will work with people.

Mr. Liguori stated I wonder how wide his stalls are and long.

Rich Williams stated they are 9 by 18.

Board Member Montesano stated it depends on the size of the horse.

Rich Williams stated and not enough of them.

Mr. Liguori stated he'll have to demo this thing.

Rich Williams stated alright, so I'll get a hold of him tomorrow and we'll get this going.

Chairman Rogan stated alright.

Rich Williams stated alright...

5) RIMALDI SITE PLAN – Continued Review

Rich Williams stated Rimaldi, Panino's Deli, south end of Town, they are back in looking to finish up their site plan.

Board Member Taylor stated can we back up a minute.

Rich Williams stated no.

Board Member Taylor stated are we at a point where we can say Mama Jo's we can approve it tonight and...

Rich Williams stated I, listen, if you're ready to approve, you know feel free but my recommendation would be to have them come in and talk to them about the lights...

Board Member Taylor stated because sometimes we do, with a set condition.

Chairman Rogan stated yeah, we were when we were really busy too when we were trying to lighten up the agenda for the actual meeting but I haven't even had a chance to look at it.

Board Member McNulty stated and I missed the conversation.

Board Member Taylor stated it's a matter of telling...

Rich Williams stated you walk out of the room, you walk out on your own peril...

Board Member Taylor stated lights the sign and it's got to be approved by the...

Board Member McNulty stated everybody else gets called back.

Board Member Taylor stated okay, I don't know, it seems like it saves them having to come in.

Ted Kozlowski stated I think you want them in to fix the lights.

Chairman Rogan stated you know only because I haven't even opened the application yet.

Board Member Taylor stated alright, I read it so...

Chairman Rogan stated alright so Rimaldi is coming in to finish up.

Rich Williams stated yeah, they've submitted their stormwater pollution prevention plan, you do a memo already completed by Andrew on his opinion on where they stand, I haven't had a chance to take a look at it yet but we'll get there by the next meeting.

Chairman Rogan stated okay

6) FARESE SUBDIVISION – Driveway Waiver

Chairman Rogan stated Farese Subdivision.

Rich Williams stated Farese Subdivision, Mr. Farese...

Chairman Rogan stated Ballyhack...

Rich Williams stated Ballyhack Road, all the way on the end, Mr. Farese has constructed a lot, a house on one of the lots up there and he wishes to construct the driveway not of blacktop but of cobblestone.

Chairman Rogan stated wow.

Rich Williams stated it's a fairly high end house and the property owner is looking for something other than blacktop, it's a relatively level site, so we don't have a slope issue with changing the driveway surface and he did give you a sketch.

Board Member Montesano stated yup.

Board Member McNulty stated in a situation like that Rich...

The Secretary stated you have two of them.

Board Member McNulty stated do we still look for a blacktop apron for x amount of feet up to the cobblestone.

Rich Williams stated I'm going to have to reach out to Russ to see what he wants to do but yeah there's going to be a transition between our road and the cobblestone.

Chairman Rogan stated yeah, otherwise the plows will hook those cobbles and they'll come right out.

Board Member Montesano stated yeah, they can do that.

Mr. Liguori stated the Romans didn't have plows right.

Chairman Rogan stated right and shovels.

Board Member Montesano stated they had shovels, they had some guys attached to them.

Rich Williams stated I've got a meeting next Wednesday to go through a lot of stuff with Russ so this is on that.

Mr. Liguori stated Egyptians...

7) OTHER BUSINESS

a. Paddock View Estates Subdivision – Request for Bond Reduction

Chairman Rogan stated Paddock View, we have a bond reduction.

Rich Williams stated right, Andrew's made a recommendation you know, I think it's, you know, pretty much right on the money, the only thing I want to caution everybody is within our code for site plan, there is a provision that says you can't go more than 50%, we never got around to codifying that within the subdivision code and we tried to stick to 50% because of our experience with other subdivisions, including Steinbeck Hill, Quaker Manor where the builder comes in and he builds the improvements and based on the improvements that are built, we reduce the bond and then all of a sudden we get it down to 10, 15, \$20,000 and then the builder stops maintaining the road and just you know, builds the houses up for the next 5 years and then comes back in, Meadowbrook Farms is one we're going to have a real tough time wrestling. Builder comes back in and says well now it's time for you to take the road and everything is in such poor condition when we do our punch list, there's \$80,000 worth of work to be complete, the builder says yeah but I did it all, I'm not paying anymore and you've got the bond for \$20,000, bye, see you later.

Chairman Rogan stated is that because of the changeover in cost of doing things over the length of time that the construction occurs.

Rich Williams stated it is to some degree but it is more a function of the fact that, you know you put your curbing down and then five years of a snow plowing on it, you tear the curbing up so it needs to be replaced or things settle and the roads start to crack and you don't patch the crack when the crack occurs so water gets in underneath and damages the base, so then you've got to saw cut it and replace all that or you know, catch basin lids, they get all chewed up by the plow, things like that, so you know, there's wear and tear.

Chairman Rogan stated but those things though, that wear and tear, is all stuff that's happening on a subdivision after all the C of O's are issued but that's at that point, it's a town road, is what you're saying, it's a different scenario.

Rich Williams stated no, what I'm saying is that's happening before it's a town road...

Chairman Rogan stated right, okay.

Rich Williams stated so before we will accept it in the town road system, we want it brought up so it's like new and...

Chairman Rogan stated that happened right at my office, the road the goes down to NYSEG, Milan Road, the Town of Southeast has never accepted as a town road because it was never completed to town road specs, that was 30 years ago, 25 years ago, the town won't go near plowing it, so it's no man's land, maintenance of it, it's starting to fall apart now, people are patching it and you know anyway, it's that kind of an issue where the town said we're not accepting it until you bring it up to town road specs and the developer said we've got all our C.O.'s, we're not doing anything with it, you know and so, I understand having those bonds in place until such time, so you can say well okay, you don't want to do it but we've got the bond in place, we can enforce it...

Rich Williams stated right, so I think after this we're still holding a substantial amount of money but we are definitely dipping below that 50% mark, we are going to be holding a third of what we originally had.

Chairman Rogan stated okay.

Board Member McNulty stated but if I heard you right, you said within the subdivision code there is no 50% limit.

Rich Williams stated there is no 50% limit, it's more been a policy.

Board Member Taylor stated now is there a way to quickly figure out what those might be that would deteriorate, can you refigure the bond amount or you just, you're going to go to 50%, it seems like 50% is an awfully large amount.

Rich Williams stated what I'm saying is that generally we try to do that as a guideline within the subdivision that is codified within the site plan, it's not a requirement, you certainly have, you know completely capable with a subdivision in this case, a drop below that 50% mark but you know I'm just advising the Board that there are other issues that you need to be cognizant of.

Board Member Taylor stated I understand that, I'm asking could you look, create an approximate idea of what those items would be...

Rich Williams stated no because I can't tell you when he's going to build that out, how long it's going to be sitting out there, what the damages are that are going to occur, you know, is he going to have to replace all the curbing or just 50 feet of it, is you know, does he still need a retaining wall out there, you know, I don't know until the time comes...

Chairman Rogan stated yeah is there a way to change the process for future subdivision that the building permits are issued on a progressive, on a, you know how we do phasing on certain projects...

Rich Williams stated sure.

Chairman Rogan stated well let's say you get to a subdivision and your 80% of your lots have been built but 20% haven't and a few years go by, now you're looking to build out those last 20% but the road has deteriorated and you do the assessment and realize hey you know, you're going to need a bunch of things and we don't have the bond for it, before we're going to issue building permits for the last 20% of lots, you have to make sure this subdivision is going to be ready to be turned over to the town, I mean the carrot is hey we're not issuing anymore building permit because now there you know, I mean that a difficult thing to do...

Rich Williams stated we're on the record here so while the suggestion has merit, I'm going to reserve my comments.

Chairman Rogan stated okay, fair enough.

Mr. Liguori stated it's tough, it's tough, what you're seeing is the small developers and the small developments with the economy the way it is, just get weeded right out, people just aren't doing them.

Chairman Rogan stated sure.

Mr. Liguori stated you know but for instance, even Toll Brothers, Toll Brothers, they'll get a subdivision approval and until they get 30 or 40% of the lots in contract, they're not going to put a shovel in the ground and it's precisely those are one of the precise reasons why they do that because they don't want to build the roads and then 3 years later re-do the roads...

Chairman Rogan stated yeah.

Mr. Liguori stated you know, it costs so much money to do they.

Rich Williams stated more on issue with what you're suggesting, the question becomes if you've got a 20 lot subdivision and a 1,000 foot road, that's great if they do lot 1, 2, 3, 4, right in progression...

Mr. Liguori stated in, yeah.

Rich Williams stated what if they start in the back.

Chairman Rogan stated that's right.

Mr. Liguori stated yeah.

Chairman Rogan stated and also you wouldn't want them to put the finish on the course on the road until everything is all done anyway, they're tearing it all up with all the construction traffic, so you want to put down your you know, binder course...

Rich Williams stated yeah, what if the subdivider is just doing that and then selling the lots and he sells all the lots off to builders...

Mr. Liguori stated right, right.

Chairman Rogan stated yeah, that's a good point.

Mr. Liguori stated that happens.

Board Member Taylor stated so are you making a recommendation that we change this.

Rich Williams stated no I'm not, I'm just.

Board Member Taylor stated you think there is enough there to cover.

Rich Williams stated I'm just giving you some information I think that, you know, you should be aware of.

b. NRA - Birch Hill Road – Deviation from Driveway Plan

Chairman Rogan stated alright, NRA, the deviation...

Rich Williams stated NRA Realty, you know we need to come to some conclusion on that, they've submitted new plans; Andrew has submitted a memo to you and also kind of a sketch of what he was looking for.

Chairman Rogan stated and okay and code violations...

Mr. Liguori stated so they still have the boulders.

Rich Williams stated yeah they still have the boulders.

Mr. Liguori stated boy they didn't get the hint, huh Jesus.

Rich Williams stated not at all, oh no, they came right back.

Board Member Taylor stated they added more of them.

Board Member Montesano stated yeah.

Mr. Liguori stated I see the details, it's just, it doesn't really address anything that you guys said, I know at least back them up and put cement on them, you might as well just do it, just build a stone wall.

Chairman Rogan stated right.

Rich Williams stated well that's where this plan started, then the stonewall went away and they put a wood guiderail in there.

Ted Kozlowski stated Birch Hill Road.

Board Member Brady stated before you start up the hill...

Chairman Rogan stated that's right.

Board Member Montesano stated then that got approved.

Inaudible – too many speaking

Mr. Liguori stated a couple more appearances then they could have a beautiful wooden guiderail.

Board Member Montesano stated they got the trees, all you got to do is cut them up and stick them in.

Ted Kozlowski stated Thunder Ridge site.

Mr. Liguori stated there's enough mills, I can see that.

Chairman Rogan stated anybody have anything else before you...

Ted Kozlowski stated I do.

The Secretary stated no you don't.

Ted Kozlowski stated just an update on the Danial case.

Chairman Rogan stated oh the Put Lake one...

Ted Kozlowski stated the wetland in Put Lake...

Chairman Rogan stated yeah.

Ted Kozlowski stated we went to court on the 22nd and he's supposed to pay restitution to the Town, \$7,000 for the violations, he was supposed to go to ZBA and he was supposed to do some things for the wetlands permit, claims he did and had no proof of it, so we're going back to court, I see I got a notice for a

date in February, I think the judge gave him 60 days to pay the fine and then while we were at court we found out that DEC is going to press felony charges.

Mr. Liguori stated can they do that after he pays.

Ted Kozlowski stated well that's what we're trying to do, we want to get paid, we want to get paid to reimburse for what he did.

Board Member Brady stated yeah that way he'll have the money to pay the lawyers.

Mr. Liguori stated get it now.

Board Member Montesano stated you're going to get it, don't worry about.

Ted Kozlowski stated so they also, they also went back behind the house and dug out all that stuff that I asked them to because it was still leaching oil out into the wetland.

Board Member Montesano stated was he the former engineer.

Chairman Rogan stated Rich, have you heard anything on Levine...

Board Member McNulty stated oh you read my mind.

Rich Williams stated no, I have not, other than I believe it's been set for court for the middle of February but I have to call court to confirm that. They gave him a long date for when they wanted him back.

Chairman Rogan stated because you know, we got a letter from the attorney to us basically saying we plead our case for you know, I don't know, I don't even want to say any wrong words and basically and, you know we were pretty straight forward, we worked hard on all of this on what we're looking to do, you were given direction, let's move forward, so we'll see what happens with that with the next court case.

Board Member Montesano stated one question, what times does construction start in the Town of Patterson, legally.

Rich Williams stated I believe it's 7 o'clock.

Board Member McNulty stated 7:30 I think.

Rich Williams stated 7:30.

Ted Kozlowski stated and 10 on Sundays, right.

The Secretary stated no, I don't think you can on Sundays or holidays but Saturdays.

Rich Williams stated except for Big Elm Road.

Ted Kozlowski stated except for Amos Noach.

Board Member Montesano stated unless nobody's around.

Rich Williams stated well that's a wetlands issue, that's your problem.

Board Member Montesano stated I'm just curious, rock breakers going off between 6 and 7 in the morning...

Ted Kozlowski stated no, something else though.

Chairman Rogan stated anything else for the record.

Board Member Taylor stated we've got somebody shooting guns continually in our neighborhood.

Chairman Rogan stated no, motion to adjourn.

Board Member McNulty seconded the motion.

Chairman Rogan asked for all in favor. Motion carried by a vote of 5 to 0.

The meeting adjourned at 9:08 p.m.