

Zoning Board of Appeals

Minutes

(meeting recorded)

Monthly meeting: Thursday, July 21, 2016 in the City Hall.

The meeting was called to order at 6:10 p.m.

By roll call, members present: Richard Bartholomew, Sam Pollastro Jr., Earl Robinson, Ray Bowers and Jeffrey Bell. John Kowarik and Phyllis Sochrin were excused. It was noted that the alternates will be full voting members this evening making for the five member compliment.

Also present – Atty. Majorie Shansky and Building Official Carlo Sarmiento.

Without objection the agenda was accepted as presented.

Public portion: This public portion is to satisfy section 101 of the Charter of the City of Derby. No one came forward. Public portion was closed.

Approval of minutes: Motion was made by Sam Pollastro Jr. and second by Ray Bowers. Move to accept the minutes of the June 29, 2016 meeting, as written. Motion carried unanimously.

Application – Applicant: Fernando P. & Sally M. Guerra. Location of affected premises – 131 Dirienzo Heights, Derby, CT 06418. Appealing Section 195-13 E (2) of the Derby Zoning Regulations, requesting a lot area variance of 538 square feet in order to convert a one family house into a two family house in the R-5 zone. Atty. Eugene A. Skowronski, representing the applicant, asked to move the discussion to later in the meeting so he could communicate with his clients.

Motion made by Sam Pollastro Jr. and second by Ray Bowers. Move to discuss the application for 131 Dirienzo Heights later in the meeting. Motion carried unanimously.

Application – Applicant: Franchise Realty Interstate Group for McDonalds Drive Thru Restaurant. Location of affected premises – 44 Division St., Derby, CT 06418. Appealing Section 195-71 C (3), 195-69 B (3) and 195-69 B (4) of the Derby Zoning Regulations, requesting variances to sign area requirements.

Present this evening – Alan J. Micale, P.E. of Ayoub Engineering, representing the applicant. Mr. Micale reviewed the sign plans for the project. When the new design was reviewed and approved by the Derby Planning and Zoning Commission the ID (Golden Arcs) sign was discussed with the existing reader board, located under the main sign, being eliminated.

Counting both sides of the sign, the square foot of the sign is 366.8 sq. feet. This could be considered a continuation of the existing non-conformity with a reduction by the removal of the reader board. The two word mark "McDonalds" signs and the three "M" wall arc signs have a total square footage of 107.6 sq. feet. Regulations allow for 45.3 sq. feet so there is a need for a variance of 62.3 sq. feet. The menu boards and pre-sell signs have a total square footage of 90.4 sq. feet. There is a need for a variance of 58.3 sq. feet. The reconstruction will be a move from the iconic structure to a more traditional brick face façade and with this new look is the need to enhance the signage to identify the establishment. The design of the structure places the entrances toward the side of the building and the word marks and wall arcs provide visual attention to the entrances. The hardship presented is that the proposed design represents the least amount of signage for the establishment to effectively function as a fast food establishment with the new two lane drive-thru format and to provide a safe traffic flow for the patrons.

Members discussed all of the points raised by the applicant. It was noted that the parcel is located in a commercial district and the structure is a redesign of an existing use. Signage currently exists that predates the current zoning regulations so a portion of the square footage of the signage is a continuation of the existing non-conforming. There is a need for an additional menu board as the second lane concept of the drive-thru was approved by the Planning and Zoning Commission. Members weighed the explanation of hardship and this request is unique due to the circumstances that this is an existing non-conforming use and actions have been taken to reduce the non-conformity. They questioned whether any further changes to be made to the request. Mr. Micale indicated that the applicant would likely be agreeable to deleting the word mark "McDonalds" signs and with that the "M" arcs would fall within the allowed sign measurement. That still leaves the menu boards and pre-sell signs.

At this time the chair asked if there was anyone from the public to speak on this application. No one came forward.

Motion made by Richard Bartholomew and second by Sam Pollastro Jr. Move to approve the variance of 90.4 sq. feet for Franchise Realty Interstate Group for McDonalds Drive Thru Restaurant located at 44 Division St., Derby, CT 06418 for the placement of two menu boards at 80.2 total sq ft. and two pre-sell boards at 10.2 sq. ft. with the hardship cited that there is an overall reduction in the non-conforming existing use and it is understood that the word marks detailed in the presented plans prepared by Ayoub Engineering dated 12/23/15 for project no. 4621.115 will be deleted from said plans. Motion carried unanimously.

Application – Applicant: Fernando P. & Sally M. Guerra. Location of affected premises – 131 Dirienzo Heights, Derby, CT 06418. Appealing Section 195-13 E (2) of the Derby Zoning Regulations, requesting a lot area variance of 538 square feet in order to convert a one family house into a two family house in the R-5 zone. Atty. Eugene A. Skowronski, representing the applicant, presented the certified letter receipts to Mr. Sarmiento. He requested to have the

application continued to the next meeting scheduled for August 18, 2016 and he will submit written confirmation of this request for the extension of time.

Motion made by Richard Bartholomew and second by Ray Bowers. Move to accept the request from the applicant to extend the request to the next regular meeting on August 18, 2016. Motion carried unanimously.

Appeal of Cease and Desist Order for parcel Map Block No. 7-10 20B - B1 Zoning District – Complaint ID#1601 addressed to Mr. William Korolyshun, Tekla Vartelas, Maureen Miller, f/k/a Maureen Monaco (c/o Gregory J. Stamos, Esquire) and Eugene Micci, Esq., Trustee.

The appeal started at 6:49 pm. Present were Atty. George W. Boath, Jr. of Zanella, Boath and Associates, LLC., Mr. William Korolyshun and David Kopjanski.

Chair Bartholomew: **Appeal of Cease and Desist Order** for parcel Map Block No. 7-10 20B - B1 Zoning District – Complaint ID#1601 addressed to Mr. William Korolyshun, Tekla Vartelas, Maureen Miller, f/k/a Maureen Monaco (c/o Gregory J. Stamos, Esquire) and Eugene Micci, Esq., Trustee.

Atty. Boath: Good evening Mr. Chairman. Yes, I'm here for that. I am here on behalf of Mr. Korolyshun. I was just wondering if maybe I could set up at the end of the table. I have a bunch of exhibits I'd like to offer and I'm not sure, I've not appeared before this board before on this kind of a matter so I don't know what procedurally you would like me to proceed.

Chair Bartholomew: Okay, what I was going to do is ask you to present what you have, to give us your stance on this cease and desist order and when that was done I was going to ask Carlo and Atty. Welch if they have anything to present on the city's behalf and then at that time, depending on how much you give us, if we are going to make a decision tonight or take it home and read it and make a decision at the next meeting.

Atty. Boath: I was just wondering whether or not through that process I will be able to question the zoning enforcement officer as to his factual basis concerning the decision.

Chair Bartholomew: I don't know, I'll ask our

Atty. Shansky: Maybe. (laughter)

Chair Bartholomew: Maybe. It's a solid maybe.

Atty. Boath: I'd appreciate a response one way or another only because it may impact on what I have to present, how it is presented.

Atty. Shansky: Well, I would say that, um, I suppose to the extent necessary, yes.

Atty. Boath: Okay, in other matters that I have handled, similar to this, normally the zoning enforcement officer would get up and make his presentation and then I would submit evidence but I don't have a problem doing it the other way. I'm just wondering if I can set up at the end of the table.

Atty. Shansky: You may and if I may suggest if it is okay with the chairman that for purposes of getting the record started in an orderly way that I would designate Exhibit 1 to be the Cease and Desist Order dated March 21, 2016 which I have sitting here if you want to examine it and appended to it the certified letter receipt cards so that would be three pages for exhibit 1. Exhibit 2 would be your letter to the City on April 8, 2016 making the appeal of the cease and desist order, a one page letter dated April 8, 2016, exhibit 2. Exhibit 3, from you gentlemen, would be the letter dated June 13, 2016 seeking a continuance or postponement due to unavailability. So, that would be the first three exhibits.

Chair Bartholomew: The only other thing I need to do before we start so Karen has on the record is that you state your name for the record.

Atty. Boath: Yes, my name is Atty. George Boath. I practice law with the firm of Zanella, Boath & Associates, LLC. in Stratford. My office is located at 1129 Essex Place, Stratford, CT. 06615. Again, for the record, I'm here on behalf on my client William Korolyshun who is a tenant of the property. And, I have a number of exhibits I would like to offer. I just have one question, again for you Mr. Chairman, with respect to the minutes of the

meeting can I request that they be a verbatim transcript. If there is a charge for that I'd be happy to pay it.

Chair Bartholomew: Is that how you do it?

Secretary Kemmesies: I've never done it before so I don't know as far as costs. I'd presume that

Atty. Shansky: Marianne charges by the page. You could get the amount from her.

Chair Bartholomew: That's fine, we just don't know the cost per page. There is somebody who does it but that's something Karen has never done.

Atty. Boath: Okay, just so long as it's available, because I think it would be important if there is any further action that is required.

Chair Bartholomew: That's fine.

Atty. Boath: Okay, with respect to the exhibits, would you just like me to offer them so we can get them all identified for the record.

Chair Bartholomew: Yes, we will get a number on them and make sure everyone has a copy and we will go forward.

Atty. Boath: Ah, one other perhaps housekeeping matter, ah, it's more of a question, is it the zoning enforcement officer's belief that the property at issue is located in a B-1 zone? Is that still an issue or

Mr. Sarmiento: That's what the zone is

Atty. Boath: Okay, then my first exhibit would be, which would be number 4, would be a copy of the, what I'm told, is the most recent available copy of the zoning map.

Mr. Sarmiento: I utilized the assessor's card when determining the zone.

Atty. Boath: Okay, well I'm offering the zoning map to point out, let me get this oriented, ah, here, here is Division Street, okay, here is BJ's property, the property at issue which has been identified as parcel B2 and I'll show you that on another map is that which is indicated right there and it appears to me that it is in an I-1 zone. Here's the railroad

tracks, just to orient you, here's the railroad obviously. According to the zoning map it is a B-1 that goes into an I-1. I-1, that's correct.

Chair Bartholomew: Where's that road that goes in

Atty. Boath: its right along side the (inaudible- multiple voices reviewing details of the map)

Chair Bartholomew: So the zoning map is exhibit 5

Atty. Shansky: Exhibit 4

Secretary: Is there a date on that.

Atty. Shansky: Yes, it's last amended October 3, 2008 by Milone and McBroom.

Atty. Boath: Does that conform with your understanding, I think that is the most current version

Mr. Sarmiento: We utilize the assessor's cards to determine where the property is located, not a 2008 map.

Chair Bartholomew: Okay, that him submit what he has and you will have a chance to talk. So, that's exhibit 4.

Atty. Boath: If you're ready, the next document that I have is a survey map, this is dated December 10, 1991 (*titled Land n/f Eugene Micci by Bennett & Smilas Engineering Inc. of Haddam, CT*) and this depicts both parcels, parcel A and parcel B, the one at issue and according to the surveyor in 91, this property is located in an I-1 zone. This is the parcel B which you see here, this was the access easement from Division Street. This became the road. Okay? And this is the area we are talking about here. There's easements along this border for the Army Corp of Engineers. Just to give you some orientation of the location of the property. Okay, the next I have is a lease between my client and Eugene Micci who was trustee of the trust for, let's see, this is dated the 29th of July 1997. This is number 6. Am I counting right?

Atty. Shansky: It is. What's the date on the lease?

Secretary: 7/29/97

Atty. Boath: Okay, and the next document is a recorded notice of the lease which bears that is recorded in Vol 265/ page 93 dated 7/29/97 and this is in conjunction with that lease.

Chair Bartholomew: These are ours, I can write exhibit number 6 on this.

Atty. Boath: Yes, you may. Are you ready Mr. Chairman.

Chair Bartholomew: Yes, go ahead.

Atty. Boath: The next document I have is meeting minutes from the Planning and Zoning Commission and it's the, it is dated January 17, 2012 and this is the minutes from the entire meeting but I just want to direct your attention to one particular application that was decided by that commission, I believe its application number 2011-12-2002 and not to keep you in suspense but this has to do with an application for a special exception filed by the City in connection with a rock crushing permit that was granted not only for the City but also granted for the property that Mr. Korolyshun occupies and its my understanding, I may be wrong but, its my understanding that a rock crushing permit can only be issued for a property that is zoned I-1.

Mr. Pollastro: That property used to be the old Beard property.

Atty. Boath: Yes.

Mr. Pollastro: Was it granted way back then or did he get the exception when he got it?

Atty. Boath: The City of Derby, when the road, when the City was putting in the road, the City had applied for the permit even though the City was exempt from applying for a permit. But they submitted the application for the permit and allowed Mr. Korolyshun to piggyback onto that application because he had the need to dispose of some materials on that property to be processed so they could be removed. So, that's what that application was. Last, I think it's the last document that I have is a letter from Atty. Stamos dated April 26, 1999 to David Dodes, who was the ZEO at that time apparently, with regard to complaints regarding the use of that property by Mr. Korolyshun.

Chair Bartholomew: This is number 9.

Atty. Shansky: Yes.

Chair Bartholomew: Okay, I just want to make sure.

Atty. Boath: And I don't know if the Commission has available to it a copy of the regulations, the zoning regulations that were in effect prior to 2000 when your current zoning regulations took effect. I have a copy here and if you don't have a copy I can offer you this copy as well. Kind of, in a nutshell, after you are done marking the exhibits, our contention is that the property at issue is located in an I-1 zone, uh, that portion of the cease and desist order that directs your attention to it being in a business zone I don't think applies and if my count is correct that would eliminate one, two, at least three of the code sections decided in the cease and desist order. Irrespective of the fact that the assessor's card contains incorrect information and we see that all the time. Ah, perhaps it was based upon an old assessor's map. What I can tell you that this parcel of property from where BJ's sits now, and I'll call this for ease of reference the property behind BJ's; this property has been utilized as a construction business probably since just after the 55 flood when Beard had a dredging operation there. The property changed hands a few times and when my client signed the official lease for the property he had occupied the property before the date of the lease. Ah, he had to do a considerable amount of clean up from old construction debris that was there and really it had turned into a town-wide dump. So, what I expect to do tonight is to present evidence, testimony from my client, as to his use and occupancy to the property and also I expect to present evidence from your former building inspector and zoning enforcement officer with regard to his understanding concerning the use and occupancy of that property during his tenure with the City of Derby. I know he is a reluctant witness so I had to issue a subpoena in order to get him here this evening. Ah, if the Board would like me to present that evidence formally by way of testimony I am happy to do that. Or, if the Board will accept my statements as fact for purposes of this portion of the presentation and then we can fill in perhaps some details with testimony from the witnesses later on.

Chair Bartholomew: Does it make a difference how you want to do it.

Atty. Shansky: Well, certainly Atty. Welch may have an opinion about it and I have a question about whether there are any topographical maps or site plans, historic.

Atty. Boath: Not that I'm aware of. My understanding is that all of the work that had been done in connection with this property was at one time for a residential development. For various reasons, the economy probably being the most important, the group that owned the property abandoned those plans. I think it was 151 or something like that but they couldn't get the funding or something like that and they found out that the portion of the property that my client occupies is actually contaminated with coal tar pits, which predate, probably go back to the dinosaurs, ah. They certainly predate his occupancy of that property. Ah, in fact when that decision was made to abandon the residential use, I know, apparently, as a matter of fact, environmental issues were much more stringent, stringently monitored with respect to those environmental conditions than they are now and obviously, there is now a road through there and I know the City of Derby would like to develop the property along that road and, uh, we are aware of some other litigation involving that property. My client's portion of the property he occupies was given to the City of Derby as part of that sale although he had not consented to it. So, I can certainly have Mr. Korolyshun testify, if that's the board's pleasure.

Chair Bartholomew: I don't know if we can do that.

Atty. Boath: Of course you can.

Atty. Shansky: Do you swear or affirm that the testimony you are about to give concerning the issue before this board is true to the best of your knowledge and belief.

Mr. Korolyshun: Yes.

Chair Bartholomew: Can you state your name.

Mr. Korolyshun: William Korolyshun

Chair Bartholomew: Thank you.

Atty. Boath: Mr. Korolyshun, if you wouldn't mind stepping forward a little bit so that we can hear

Atty. Shansky: So the verbatim transcriptionist can hear you.

Secretary: It was be easier to type inaudible. (laughter)

Atty. Boath: Given the political climate that we are in I'd be very careful about the timing of that, just so its not in an email. So, Mr. Korolyshun, you are involved in the construction business, is that correct?

Mr. Korolyshun: Yes

Atty. Boath: How long have you been so engaged?

Mr. Korolyshun: Thirty-five, forty years.

Atty. Boath: And, what type of construction business are you concerned with?

Mr. Korolyshun: All types, road construction, asphalt paving, sewers

Atty. Boath: And, is part of your activities in that business your necessarily have heavy equipment that you use?

Mr. Korolyshun: yes

Atty. Boath: Dump trucks?

Mr. Korolyshun: yes

Atty. Boath: Bulldozers?

Mr. Korolyshun: yes

Atty. Boath: Back hoe?

Mr. Korolyshun: yes

Atty. Boath: Excavators?

Mr. Korolyshun: yes

Atty. Boath: Rollers?

Mr. Korolyshun: yes

Atty. Boath: A variety of other heavy equipment?

Mr. Korolyshun: yes

Atty. Boath: And, there came a time when you were offered an opportunity to rent the property that is now behind BJ's. Is that right?

Mr. Korolyshun: yes

Atty. Boath: And, you signed a lease in 1997, is that correct?

Mr. Korolyshun: yes

Atty. Boath: But you had already occupied that property prior?

Mr. Korolyshun: yes

Atty. Boath: Can you describe for the members of the board what the property looked like when you first took occupancy.

Mr. Korolyshun: Well, it was just piles of debris, overgrown, tires, refrigerators, junk, old cars, abandoned stuff. It was used as a dumping site.

Atty. Boath: And did you undertake to clean that property?

Mr. Korolyshun: yes

Atty. Boath: Can you provide the board with an estimate as to how much, in terms of cubic yards, how much material and junk you removed from there?

Mr. Korolyshun: It's pretty hard to say but I'd say a couple thousand yards.

Atty. Boath: And then you began utilizing that property for your own construction business.

Mr. Korolyshun: yes

Atty. Boath: And, as part of that construction business, you have some storage trailers and things of that nature.

Mr. Korolyshun: yes

Atty. Boath: And the vehicles that you use in the day to day operations of your business are not capable of being registered for road duty, is that correct?

Mr. Korolyshun: Some are

Atty. Boath: And of all the equipment that you have had on that property, are they all operable?

Mr. Korolyshun: yes

Atty. Boath: Are there any unregistered motor vehicles on there?

Mr. Korolyshun: Site vehicles, yes.

Atty. Boath: And those are used strictly off the road

Mr. Korolyshun: yes

Atty. Boath: And you use those how often in your business?

Mr. Korolyshun: It's hard to say. With the economy the way it is but there was a time when they were in and out all the time.

Atty. Boath: And there are times when pieces of equipment will remain there without being used depending upon the particular job or task

Mr. Korolyshun: correct

Atty. Boath: Have you ever not used that property for your business?

Mr. Korolyshun: No

Atty. Boath: And, in connection to your use of that property, do you store materials?

Mr. Korolyshun: yes

Atty. Boath: And, is there a value to storing those materials?

Mr. Korolyshun: yes

Atty. Boath: Can you describe for us what value those materials are to you.

Mr. Korolyshun: Well, when you go to remove asphalt concrete, I store it there and my intentions are to crush it and recycle it and use it on projects.

Atty. Boath: And is that the reason for getting or seeking the permit in 2011.

Mr. Korolyshun: yes

Atty. Boath: And that crushing permit would allow you to process all that material and put it in a sellable format and then use it or sell it.

Mr. Korolyshun: yes

Atty. Boath: Ah, with respect to the vehicles you maintain on the property, ah, do you sell parts from those vehicles?

Mr. Korolyshun: No

Atty. Boath: Do you use any parts of those vehicles for any kind of commercial purpose.
Sales, trading

Mr. Korolyshun: No

Atty. Boath: There are a number of things that were referenced in the cease and desist order that you have some propane tanks

Mr. Korolyshun: yes

Atty. Boath: Propane tanks are used in what portion of the asphalt paving business?

Mr. Korolyshun: Well, it's used to heat all the tools, its used to heat the screeds on the paving machines. Its also used in the concrete end when we work in the winter time for space heaters

Atty. Boath: And you have a number of industrial drums, what do you use them for?

Mr. Korolyshun: Um, there's really no drums on the property, there are some tanks that we use for fuel, off site fuel. There's no drums there.

Atty. Boath: And you have some storage trailers?

Mr. Korolyshun: yes

Atty. Boath: And can you tell us what those storage trailers are utilized for?

Mr. Korolyshun: Tools for the business.

Atty. Boath: Hand tools

Mr. Korolyshun: yes

Atty. Boath: And you need a secure location to place them

Mr. Korolyshun: yes

Atty. Boath: Now, there was a time when you had a number of vehicles that looked like they were junked vehicles on the property, is that right?

Mr. Korolyshun: yes

Atty. Boath: Okay. And, back in 2014 2015, can you describe to this board what efforts you undertook to get rid of those.

Mr. Korolyshun: Well, whatever, from sitting for a while that wears out a piece of equipment more than using it and when the construction industry slowed down we had some vehicles we didn't use anymore and those we had to get rid of them

Atty. Boath: And you scrapped a number of them

Mr. Korolyshun: yes, yes

Atty. Boath: And in order to scrap those you had to bring in cutting torches and piece things out

Mr. Korolyshun: yes

Atty. Boath: Remove them by truck

Mr. Korolyshun: yes, that's correct

Atty. Boath: To your knowledge, when was the property last inspected by the City, that you know.

Mr. Korolyshun: I don't know when they inspected it. I've never seen anyone down there

Atty. Boath: With respect to the vehicles that remain on the property, at this point in time, are they utilized in your business?

Mr. Korolyshun: yes

Atty. Boath: Had you ever been the subject of any complaints concerning your use of the property?

Mr. Korolyshun: You'll have to be more specific.

Atty. Boath: 1999, were you aware that there were complaints being made about how you were using the property.

Mr. Korolyshun: yes

Atty. Boath: And, do you know if there was any resolution to those complaints?

Mr. Korolyshun: No, I do not.

Atty. Boath: Were you cited by the City of Derby for those complaints?

Mr. Korolyshun: No, I was not.

Atty. Boath: Prior to Mr. Sarmiento's, ah, cease and desist order in March, had you ever been cited for zoning violations?

Mr. Korolyshun: Not that I'm aware of.

Atty. Boath: Is it your intention to continue to operate that business there?

Mr. Korolyshun: yes

Atty. Boath: I don't have anything further for Mr. Korolyshun at this time.

Chair Bartholomew: Can I just ask one quick question.

Atty. Boath: Sure

Chair Bartholomew: The leases before 97, you were using it before that time

Atty. Boath: Yes, the arrangement was formalized in 97

Chair Bartholomew: Okay. About what year.

Mr. Korolyshun: 92, I think.

Chair Bartholomew: Okay, so approximately five years before the lease.

Atty. Boath: Bill, Atty. Welch has a question for you.

Atty. Welch: For the record, Atty Tom Welch, Corporation Counsel for the City, on behalf of Mr. Sarmiento this evening. And we are going to utilize the, ah, new projector. So, Mr. Korolyshun, this first picture we have is a picture from 2010, evidence here to when it was taken and if we can slide it over, so it looks like the site that is the subject site, is that correct?

Mr. Korolyshun: Looks like it.

Atty. Shansky: Excuse me. I apologize for interrupting. Do we have a hard copy of that image for the record?

Atty. Welch: Yes

Atty. Shansky: And we will be calling it exhibit 11.

Atty. Welch: The series of photos, there's probably over 50 of them, I've got a copy. Do you want to mark them collectively?

Atty. Shansky: That's fine.

Atty. Welch: So it looks like it is a relatively, if I can see, we've got some tractor trailer or some type here but otherwise the site looks relatively clean. If I can ask then, we've got photos and you mentioned that there are no vehicles that are not in operation; and in subsequent testimony that

Mr. Sarmiento: I'm getting there

Atty. Welch: and here are the storage of tires, and that vehicle does not look operational to me

Mr. Korolyshun: It is

Atty. Welch: It is operational

Mr. Korolyshun: It is operational

Atty. Welch: Okay, and those vehicles operational?

Mr. Korolyshun: Yes, they are

Atty. Welch: That vehicle operational?

Mr. Korolyshun: No.

Atty. Welch: That vehicle operational?

Mr. Korolyshun: That vehicle is in for repairs.

Atty. Welch: That tractor, is that operational?

Mr. Korolyshun: No, that is one of the trucks we removed, it's gone.

Atty. Welch: All those are operational?

Mr. Korolyshun: Those are all gone.

Atty. Welch: And this berm, if I can ask you; what does that represent?

Mr. Korolyshun: I can't determine where the angle is coming from.

Mr. Sarmiento: From the front, from the road. Taken from the road between the walkway, greenway and your property.

Mr. Korolyshun: That's a pile of construction material that is going to be processed.

Atty. Welch: Did you have a permit, where did you bring that in from? Is that from the site, offsite?

Mr. Korolyshun: Offsite. From construction jobs.

Atty. Welch: It looks like the pit here and items in the back.

Mr. Korolyshun: Yes

Atty. Welch: And in the far back of that picture, it looks like there is tar, more debris.

Mr. Korolyshun: Yes, its piled up so we can make room to clean it up.

Atty. Welch: Now, along the side of the road, it appears now that there is a berm there. And that there is dirt being piled on top of the berm, is that accurate?

Mr. Korolyshun: We haul fill in there. We still haul fill in there.

Atty. Welch: But this has been there for quite some time.

Mr. Korolyshun: Yes.

Atty. Welch: So, this is not being used in the process of business.

Mr. Korolyshun: We hope to. When things pick up we are going to crush all that and use it for processed material.

Atty. Welch: Okay, so how long do you think that's been there?

Mr. Korolyshun: That berm or that material?

Atty. Welch: That berm

Mr. Korolyshun: That berm, we started putting that berm there three years ago, that particular part.

Atty. Welch: I have no other questions.

Atty. Boath: Just a couple of follow up. Mr. Korolyshun, with respect to the berm you've talked about; who is it that asked you to put it up.

Mr. Korolyshun: Well, the berm he was talking about, in the front by the road, Mayor Staffieri at the time said he was getting people walking by and they were offended by all the construction equipment there. He said, why don't you put the berm in the front and block everything on the other side.

Atty. Boath: And you did that?

Mr. Korolyshun: yes

Atty. Boath: And you still do that.

Mr. Korolyshun: yes

Atty. Boath: And the picture of the site taken in 2010 shows it being pretty open but that was just at a time when you had no equipment in the area, or were you out? How do you explain the openness.

Mr. Korolyshun: There was always equipment on there. I'm sure if you go back you'll see some equipment there. But back then, things were a lot better, a lot busier. Probably most of the equipment was out on a job.

Atty. Boath: And you would have several different jobs running at the same time.

Mr. Korolyshun: yes

Atty. Boath: And it would be your practice to deliver pieces of equipment to each particular job as you needed.

Mr. Korolyshun: yes

Mr. Pollastro: For that berm, did you obtain a permit for that berm?

Mr. Korolyshun: No, I didn't think it was required.

Atty. Boath: Now, I would like to call Mr. Kojanski up to the front.

Atty. Boath: Oh, did you have questions, oh, I'm sorry, I should have asked.

Mr. Pollastro: One of the things you said, back in 2014, 2015 you detitled some vehicles that you got rid of.

Mr. Korolyshun: yes

Mr. Pollastro: Who detitled them and got rid of them and who took care of all the fluids and all that stuff.

Mr. Korolyshun: We drain all the fluids out of everything. We dismantle them ourselves. We don't hire that out and we dispose of them to scrap yards.

Mr. Pollastro: Okay, that was my question.

Atty. Boath: Anybody else?

Chair Bartholomew: I have one thing for Carlo or Atty Welch, what is the date on these pictures:

Mr. Sarmiento: I can provide you with the dates. There are all date stamps on the pictures so I can provide you with the dates.

Atty. Shansky: I have a question about the fluids. Can you describe what the process were and the kind of container they were emptied into, and what happened to the container after.

Mr. Korolyshun: All the oil, the fluids on the trucks that were, that I removed; all the oil is used for a furnace, its used oil and we burn it. The antifreeze we save out of there we recycle and use it.

Atty. Shansky: And, are any of those fluids still on the site in any of those drums.

Mr. Korolyshun: All those drums are gone. I do have a tank for used oil on the property which I use for changing oil and stuff like that.

Atty. Shansky: So you service your vehicles on the site.

Mr. Korolyshun: Yes, I do.

Chair Bartholomew: I have one other quick question, that rock crushing permit you showed from that, was that a temporary

Atty. Boath: It's temporary and I'll call it out for you but it doesn't expire until two years after he starts the crushing operation and by the terms of that permit he's to notify the zoning enforcement officer 30 days prior to initiating crushing. That would then start the clock ticking.

Chair Bartholomew: Start the two years.

Atty. Shansky: So you're suggesting that it has never commenced?

Atty. Boath: Correct.

Atty. Shansky: Seriously. Huh.

Atty. Boath: Yes, that was the way it was stated.

Atty. Shansky: I know how it was stated, but there was no rock crushing done in connection with the creation of road B?

Atty. Boath: Parcel B had no crushing on it what's so ever.

Chair Bartholomew: So that is the intention with those piles is to crush that and use that for fill at other jobs.

Mr. Korolyshun: yes

Chair Bartholomew: But you haven't started. The permit is still valid.

Atty. Boath: Right.

Chair Bartholomew: Until its activated and then its two years after that.

Atty. Boath: Let me explain why there's been some level of delay. Ah, the property that is subject to another lawsuit was sold in 2012. Or was it before 2012. I think it was before 2012 which becomes the road now that runs down along side the river and bisects that property. That lawsuit started because my client is a tenant to that property. That lawsuit has been ongoing, I caught wind of it and said, "Hey folks, we have an issue here". I have a client who had rights to that property. It was sold, no one secured a release from him. You've got to let me into this suit, otherwise, I'll just wait until its all done and then I'll knock on the door and say wait a minute, you forgot about us. We haven't done anything with respect to crushing or removing material from that site until the litigation gets resolved. Then, we have also asked for a certificate of zoning compliance and we took the position that we'd take no further action with respect to the site except for cleaning up unused materials and unused vehicles until all of this matter is resolved. Now, we have filed for a certificate of zoning compliance in 2014, here we are two years later, so. We have not decided to initiate the time clicking on that permit because its going to take a while to remove that kind of material, process it, separate it, pile it, and then you'll have to have a place, a use, a place to put it. Right now construction, road construction is a little bit on the slow side in the State of Connecticut. So, there hasn't been a great demand for it.

Atty. Shansky: Was it not the predicate for the request for and obtaining the special permit to you to use that activity in connection to the construction of road B. I'm asking this from a position of my understanding at

Atty. Boath: No, my understanding was that the City needed to do it on its own in order to construct the road. My client had a need to do it and we thought that we could

piggyback, as did ultimately happen, onto the request submitted by the City. Some things happened, namely a couple of lawsuits, and other matters that just prevented us from moving forward. They were, what they were doing on the road was independent to what my client was doing. So, he kind of ended up in a good position getting the permit, something he can certainly use, and it would go a great way in cleaning up and leveling that site.

Chair Bartholomew: Anybody else. Okay, thank you Mr. Korolyshun.

Atty. Boath: Okay, Mr. Kopjanski. Please raise your right hand and be sworn, please.

Atty. Shansky: Do you swear or affirm that the testimony you are about to give concerning the case before this board will be the true to the best of your knowledge and belief.

Mr. Kopjanski: Yes, I do.

Atty. Shansky: Thank you.

Atty. Boath: Okay, Mr. Kopjanski, you are here by virtue of a subpoena I had served upon you, is that correct?

Mr. Kopjanski: Correct.

Atty. Shansky: Mr. Kopjanski, will you please speak loudly enough for the recorder to pick you up.

Mr. Kopjanski: Certainly.

Atty. Shansky: Thank you.

Atty. Boath: You are currently employed by the State of Connecticut.

Mr. Kopjanski: That's correct.

Atty. Boath: And at what capacity, sir.

Mr. Kopjanski: Building official for the State of Connecticut building inspectors office.

Atty. Boath: And when did you assume that employment?

Mr. Kopjanski: 2013.

Atty. Boath: And prior to 2013, you were employed by the City of Derby in a variety of capacities, were you not.

Mr. Kopjanski: Correct.

Atty. Boath: And can you describe to us what those capacities were.

Mr. Kopjanski: In 1979 I was hired as Assistant Community Development Director, in 2012, I'm sorry. In 1992, I was appointed Building Official for the City of Derby and I served actively in that capacity until 2000 at which time I was appointed Building Official, Zoning Enforcement Officer, Inland Wetlands Officer and Blight Officer. I assumed that until 2013.

Atty. Boath: Okay, prior to 2000 when you assumed the official responsibility as the Zoning Enforcement Officer, you performed those duties in conjunction with the Zoning Enforcement Officer that was there.

Mr. Kopjanski: The Zoning Enforcement Officer back then was part-time and worked in our office and I was full-time so obviously we worked closely together and helped each other out.

Atty. Boath: And you are a resident of Derby, right?.

Mr. Kopjanski: Yes, I am.

Atty. Boath: And you are familiar with the property behind BJ;s.

Mr. Kopjanski: Very familiar.

Atty. Boath: And being that you are probably a pinch older than I am, your memory probably goes back a bit farther than mine. You remember the Beard operation that was down there.

Mr. Kopjanski: I remember the Beard asphalt operation that was down there in the early 60's.

Atty. Boath: And that was prior to the installation by the Army Corp of Engineers of the dikes, is that correct?

Mr. Kopjanski: Well not quite that far back. I'm not quite that old.

Atty. Boath: In any event, that property had been used as a construction yard of some sort as far back as you can remember.

Mr. Kopjanski: As long as I can remember.

Atty. Boath: You're aware that Mr. Korolyshun occupied that property prior to 2000.

Mr. Kopjanski: Yes.

Atty. Boath: Okay, Had there been any complaints made with respect to Mr. Korolyshun's use of that property prior to 2000.

Mr. Kopjanski: Not that I know of.

Atty. Boath: Ah, had you ever issued or are you aware of anyone issuing any kind of a cease and desist order with respect to Mr. Korolyshun's use of that property.

Mr. Kopjanski: Not that I'm aware

Atty. Boath: You're familiar with the zoning regulations as they were in place 1997.

Mr. Kopjanski: Yes

Atty. Boath: Ah, can you tell me whether or not you recall there being any regulations or definitions of what constitutes a contractors, a construction contractors business.

Mr. Kopjanski: There was no definition in the zoning regulations for that.

Atty. Boath: There was a definition of a junk yard in the earlier version.

Mr. Kopjanski: Yes.

Atty. Boath: And there is a definition of a junk yard in the current regulations, is that correct?

Mr. Kopjanski: Yes.

Atty. Boath: As I understand it, the difference between those two definitions hinges on whether or not vehicles are registered or unregistered.

Mr. Kopjanski: That's correct.

Atty. Boath: So, if now vehicles are unregistered under the current zoning regulations they would not be permitted on the property if they exceeded more than one. Is that correct?

Mr. Kopjanski: Correct.

Atty. Boath: Ah, in your capacity as a building official and a zoning enforcement officer, do you know what the classification of this particular piece of property is?

Mr. Kopjanski: It's I-1 after 2008, October 2008. Prior to that, it was B-1 but prior to it being assigned as B-1 it was I-1. The B-1 designation came about only because BJ's was

coming into that property and they painted that property with a wide brush. And then in 2008

Atty. Shansky: What does that mean.

Mr. Kopjanski: Well, they took a number of parcels of property which were previously I-1 and turned them into B-1 to accommodate BJ's.

Atty. Boath: And during the period of time when Mr. Korolyshun first occupied the property, do you have an understanding of what the zoning classification for that property was?

Mr. Kopjanski: It was I-1

Atty. Boath: To your knowledge, do either the current regulations or the regulations that pre-existed 2000 changes regulated the types of materials that could be placed in a contractor's construction business?

Mr. Kopjanski: I believe that the old regulations talked about non-uses, I don't believe it defines uses. (inaudible)

Atty. Boath: And under the current regulations, are there any provisions in an I-1 industrial zone that limit the height of piles, of materials, the amount of materials that can be stored on a particular piece of property?

Mr. Kopjanski: No, the main difference that I see with the permitted use sections in the I-1 zone concerning contractors businesses has to do with screening

Atty. Shansky: Pardon me.

Mr. Kopjanski: It has to do with screening, it doesn't talk about heights.

Atty. Boath: And that was

Mr. Kopjanski: And those were adopted in the year 2000.

Atty. Boath: Right, uh, you had a number of occasions to investigate, uh, other properties where similar businesses are constructed.

Mr. Kopjanski: You know, while I served as Building Official and as Zoning Enforcement Officer we would occasionally receive complaints from people about contractors outdoor businesses such as Mr. Korolyshun's and there were a number of other locations, and

there are still a number of other locations in town that have outdoor equipment, contractor trucking companies; Field View Farms, places like that. So there's, I don't if the complaints still come in , but I'd get them on occasion.

Atty. Boath: Uh, for example, there is a construction and excavation contractor located on Roosevelt Drive right by the Recreation Camp, is that correct?

Mr. Kopjanski: Correct.

Atty. Boath: That's not an I-1 zone.

Mr. Kopjanski: That's an R-5 zone.

Atty. Boath: Uh, on Commerce Street there are a number of excavation contractor's businesses, is that correct?

Mr. Kopjanski: Yes.

Atty. Boath: Sodom Lane.

Mr. Kopjanski: Oh, Field View Farms.

Atty. Boath: Uh, Derby Avenue

Mr. Kopjanski: Yup, Park Trucking

Atty. Shansky: So, what are you saying Field View Farms is?

Mr. Kopjanski: Field View Farms Trucking, a large trucking company

Mr. Robinson: Hines Farm

Atty. Boath: Hines Farm

Mr. Robinson: Hines Farm

Atty. Boath: And, uh, Hawkins Street.

Mr. Kopjanski: Oh, behind the Lafayette building, yes

Atty. Boath: Those are considered what type of use?

Mr. Kopjanski: What type of use or what type of zone?

Atty. Boath: Well, first of all, what type of use are they.

Mr. Kopjanski: Well, it outdoor equipment storage, contractors construction business

Atty. Boath: And what's the zone?

Mr. Kopjanski: The zone

Atty. Shansky: With respect to which property?

Mr. Kopjanski: Yeah,

Atty. Boath: All of the ones we mentioned. All, other than Mr. Korolyshun's.

Mr. Kopjanski: What is it, I think its R-5.

Atty. Boath: And last question, Mr. Kopjanski. Do you know whether or not this particular piece of property is located between a flood plain and is subject to any sediment or erosion control measures.

Mr. Kopjanski: Flood zones were changed in 2011, there should be a map somewhere here that shows that but I recall that that whole area was taken out of the flood zone A in anticipation that we were going to do an industrial park down there.

Atty. Boath: And do you recall when the, ah, well. When did the concept of developing an industrial park down in that section come about?

Mr. Kopjanski: Oh, it came about, a long time ago, It came about probably, early 2000's but it really didn't take hold until around 2006 or 2007.

Atty. Boath: Okay. Now, your personally familiar with Mr. Korolyshun's property?

Mr. Kopjanski: I've been by there now and then.

Atty. Boath: Has the character of his use of that property changed, to your knowledge.

Mr. Kopjanski: You know, sometimes there's more material and equipment than at sometimes than at other times. Which is fairly typical of a contractors yard.

Atty. Boath: And, with respect to Mr. Korolyshun's use of that property, would you say that the zoning regulations in place prior to 2000 are more applicable to this use of the property than the current regulations?

Mr. Kopjanski: I think this is a classic case of existing non-conforming use.

Atty. Boath: Thank you Mr. Kopjanski.

Atty. Shansky: I have a question, though. The question to you sir was whether the flood zone, I'm sorry, I don't know what the question really was but it had, the question linked soil

erosion and sediment control to the flood plain, or the question of the flood plain. But, soil erosion and sediment control is not limited to areas of flood plain.

Mr. Kopjanski: No, its not.

Atty. Shansky: What are the rules about soil erosion and sediment control

Mr. Kopjanski: You need site plan approval, soil erosion control approval with any disturbance over a half an acre.

Atty. Boath: That's under the current regulations.

Mr. Kopjanski: Under the current regulations and I think that's state statutes too. But, the flood plain question is a different question.

Atty. Shansky: It's a different question.

Mr. Kopjanski: Previously, it was in the flood zone.

Atty. Shansky: They were conflated, I simply wanted to establish that.

Atty. Boath: Point well taken.

Atty. Welch: Mr. Kopjanski, if I may, I believe you recalled your experience and knowledge of the property and your knowledge of the zoning rules and regulations over the years. Part of your testimony and Carlo's going to bring up those photos, I just want to go through a couple of those with you. So,

Atty. Boath: Technical difficulties?

Atty. Welch: Papers a lot easier

Atty. Shansky: and more reliable

Mr. Sarmiento: That's it that should do it

Atty. Boath: Maybe you want to reboot it

Mr. Sarmiento: It's the AV system, I'm just plugging in my I-Pad into it and it should respond to it

Atty. Welch: So, what we had, you saw the picture from 2010 which showed a relatively clean site with it looked like two or three pieces of equipment and you were able to see the pictures of the current site location and what was on the property. And, referring to a

contractors yard and in your experience, and my experience as well in looking at contractors yards, this to me does not look like a contractors yard; it looks like a junk site.

Mr. Kopjanski: It looks like a messy contractors yard.

Atty. Welch: All right. So, those unregistered vehicles

Mr. Kopjanski: Yes

Atty. Welch: Contractors yard?

Mr. Kopjanski: (inaudible)

Atty. Welch: Inoperable vehicles, contractors yard?

Mr. Kopjanski: Contractors typically save everything. There are some contractors who are more pack rats than others, that's for sure. I suppose you could say, I don't know.

Atty. Welch: In your experience, do you think that's a contractor's yard?

Mr. Kopjanski: I've seen worse than that.

Atty. Welch: And the excess tires that are stored there?

Mr. Kopjanski: Again, the same answer, I have to say I've seen worse than that. You know, contractors yards tend to be very fluid. What's located there gets removed

Atty. Welch: It moves quickly.

Mr. Kopjanski: Well, it can. It can move quickly.

Atty. Welch: So, in your experience, the berm that we have talked about appears to be large piles of bricks and other material and then filled in with dirt and Mr. Korolyshun testified that he was instructed to build that berm, that's not something that looks like something that's going to be moved. If its been there for two to three years. Is that part of a contractors yard, in your experience?

Mr. Kopjanski: I think he said his intention was to process that material.

Atty. Welch: He did and in your experience in watching contractors yards, to fill dirt on top of bricks and have it there for two or three years, is that a contractors yard?

Mr. Kopjanski: Yes, yes it is a contractors yard whether or not you'll say it's a well maintained contractors yard is a different horse entirely.

Atty. Welch: I have no further questions Mr. Kopjanski, thank you.

Atty. Boath: Just one quick follow-up question. All of the earth material, that you see there, the rock, the concrete, all of those are capable of being processed. Is that correct?

Mr. Kopjanski: Yeah.

Atty. Boath: Does any member of the board have any questions for Mr. Kopjanski?

Chair Bartholomew: No, I don't.

Atty. Boath: Okay, that concludes my presentation.

Chair Bartholomew: Dave, thanks for coming, it was good to see you.

Mr. Kopjanski: Thank you.

Chair Bartholomew: Okay, so you're all set. I have a question for you though. At the beginning when you said that this was an I-1 and several of the things that were listed in the cease and desist order wouldn't be applicable

Atty. Boath: Right

Chair Bartholomew: Can you just tell which ones those are so I can look them up

Atty. Boath: What I'm looking at is section 195-15 B, do you have the cease and desist order.

Chair Bartholomew: Wait a minute here, I have a thousand pieces of paper. Oh, here

Atty. Boath: I believe that section is titled Permitted uses. Permitted uses in the B-1 Zone

Chair Bartholomew: All right, say that one again.

Atty. Boath: The first section he has listed, 195-15 B, 195-25 and that includes A, C (1) and (2), and then section 195-26 CC (1) and then the other sections just deal with general permitting but I don't think they necessarily have application for some of the reasons we stated before because of the occupancy of use of that property prior to the adoption of these regulations.

Atty. Shansky: Are you disputing the soil erosion and sediment control?

Atty. Boath: I am. I don't think we fit, I don't think his activities fit within the current definition of what you have in your current zoning regulations.

Atty. Shansky: Even if it is state law?

Atty. Boath: I do, largely because this tracks very closely with what the State law is.

Atty. Shansky: I'm sorry, say that again.

Atty. Boath: This tracks very closely with what the State law is for requirements for erosion and sediment control.

Atty. Shansky: What is the size of the site?

Atty. Boath: Ah, two plus acres.

Chair Bartholomew: Parcel B, right? It says

Atty. Boath: Parcel B minus whatever was taken for the road.

Chair Bartholomew: Okay, because here it was 2.9 plus or minus

Atty. Boath: Call it 2 plus 8

Chair Bartholomew: Yeah, one hundred and twenty five thousand three hundred square feet. Okay, now, Atty. Welch.

Atty. Welch: Thank you. For the record, Tom Welch on behalf of the zoning enforcement officer. I believe that Mr. Sarmiento passed out certain documents today and one was the zoning rules and regs. If I could have that marked as an exhibit. I've gotten mine from Mr. Sarmiento so

Atty. Shansky: Yes, thank you, that will be marked exhibit 12. The zoning regulations excerpt

Atty. Boath: Okay, yes, thank you.

Atty. Welch: Thank you. So, the zoning enforcement officer's case and the information that he has provided, you have the cease and desist order, the response, you now have the photographs, which were shown in slides in excess of fifty or sixty of the site. Uh, and I'd like to just first address the issue of the industrial zone verses the business zone. And I think this board can take judicial notice as to it is what it is. If its I-1 or B 1 and so I believe that you and your experts can just identify what that is. I know that Atty. Boath

has submitted certain documentation from the zoning maps saying this is the final zoning map but I think its clear that whatever your zoning maps show and whether its B-1 or I-1, Mr. Sarmiento has put it on the record that he has gotten it from the assessors records but the zone is what it is, we can't change it. So whatever the Planning and Zoning Commission has said that zone is, that's what it is. So, ah, that's what we are all stuck with. So, I also wanted to address the, some of the issues and I will go through those with Mr. Sarmiento but I disagree with Atty. Boath in those things in the cease and desist regardless of the zone that do not apply, specifically 195-25 which Mr. Sarmiento has provided and has highlighted that are not specific to a specific zone, they are general use requirements and miscellaneous provisions. It says prohibited uses in all districts; any use which is noxious and junk yards as well. There's also as part of that, is provided in the design section, Miscellaneous design and use regulations – outside storage. If you read that – in business districts there shall be no outside storage areas in business districts; sub-paragraph 2 talks about industrial districts. So, regardless of the district, in an industrial district outside storage areas shall not extend into the area required for setback from a property line, street line or residence district boundary line. We have seen from the pictures and as the testimony has provided, there has been a berm built along the road which is obviously a violation as you read the rest of it and as to one shall not exceed 15% of the lot area and shall be enclosed by buildings and/or by fences, walls, embankments or evergreen shrubs or trees so as to screen the storage area so, regardless of the district of what we are in; this cease and desist order is valid and enforceable and I just ask Mr. Sarmiento with those pictures to express to the board specifically from that of what the violations, why he issued this order, and cited these specific provisions of your regs.

Mr. Sarmiento: So, if we go through a few pictures,

Atty. Welch: I don't want to bore you with it as it is some of the same that you've seen but just

so

Mr. Sarmiento: The main concern is the abandon vehicles, the large amount of storage of different containers, tanks, all different types of propane tanks. I mean, its got to be

Chair Bartholomew: Those are fuel tanks,

Mr. Sarmiento: This right here

Chair Bartholomew: No, the next one up.

Mr. Sarmiento: This could be anything, water, oil, anything you want it to be. Hold on, let me show. The vehicles, Mr. Korolyshun say they are working. I'll take his word for it, I know he said the ones that are there that obviously do not work, several of them, I can see three of them, they are right there. More tanks, more vehicles and I don't know what this, this was a concern. It could be seeping into the ground with all this stockpiled Trailers, more vehicles, tires, tons of tires, hundreds of tires, more tanks more tankards,

Atty. Welch: Mr. Sarmiento, what is that right there?

Mr. Sarmiento: It looks like it might be something for a conveyor belt.

: That's a crusher, screener

Mr. Sarmiento: That's definitely a screener right there. That's a screener, that's another one.

Atty. Welch: Can you scroll down to the berm. Is that berm, based upon your investigation of the property, has that

Mr. Sarmiento: If you look at the last picture that I have here, that's a surveyor's mark, Fred D'Amico did a survey, that's city property going straight back so that's clearly on city property. A lot of the stuff, I also have a report from him that I received today.

Atty. Welch: But on the berm, the berm is located adjacent to the road, correct?

Mr. Sarmiento: In front and runs to the side, you can see the road right there. Now, it's covered with dirt and grass is growing on it and actually, there's trees growing on it.

Atty. Welch: So, currently, your past investigation is that that berm is now filled with dirt on top and has vegetation.

Mr. Sarmiento: That's correct. There's evidence of rebar and some asphalt that's in there. Which, I don't know if that's crushing materials. It's not something you can process.

Atty. Welch: And now, these pictures, are these pictures you took?

Mr. Sarmiento: Some of them I took and some my facilities inspectors took, Mr. Cota and then Mr. Watson.

Atty. Welch: And they're kept in your normal course.

Mr. Sarmiento: Correct.

Atty. Welch: And based upon your investigation of the property, they are a fair and accurate representation of the property.

Mr. Sarmiento: Yes.

Atty. Welch: Is there anything else you'd like to provide to the board, in terms to provide them your cease and desist which evidenced those items which you feel violate the zoning regulations and these photographs as the evidentiary support

Mr. Sarmiento: And the report from the engineer, if we can enter it into the record. The surveyor, the last surveyor that we had it done and the last picture that shows that it is city property up to there. That's it.

Atty. Boath: May I, may I address Mr. Sarmiento. Mr. Sarmiento, one of your criticisms is that the berm is too close to the road?

Mr. Sarmiento: No, I never said that.

Atty. Boath: No? Okay. Did you say that Mr. Welch. Do you know if that is an accepted road?

Mr. Sarmiento: I could get back to you with an answer for that, I don't know that.

Atty. Boath: You don't know that. Can you tell me which regulation that we are dealing with here addresses the location, the height, the size or the composition of the berm.

Mr. Sarmiento: It has to do with earth moving, there's considerable amounts of dirt that they are moving. That's subject to a cease and desist on the spot. So, that's state statute, correct me if I'm wrong.

Atty. Boath: Okay, well, I'm asking you to point me to the specific regulation that you used

Mr. Sarmiento: I think its cited, I believe its cited on the document. I'd have to review it.

Atty. Boath: You know, I took a look at the March 21, 2016 cease and desist order and you say stockpiled and covered with dirt and a berm type wall around the property.

Mr. Sarmiento: Yes.

Atty. Boath: Can you tell me which section is violated, or sections are violated by the construction of that berm.

Mr. Sarmiento: Well, I think I'm being pretty clear on what's being violated. My description of the property doesn't necessarily describe the violation, I'm describing the property to show what's going on but the violation are cited on this document, exhibit #, can you help me here I wasn't keeping track.

: Exhibit #1

Chair Bartholomew: Your letter, the March 21

Mr. Sarmiento: No. The explanation that clearly indicates
: this one, that's exhibit #12.

Atty. Boath: Okay, and do you know what a pre-existing, non- conforming use is?

Mr. Sarmiento: Yes.

Atty. Boath: Okay. Can you describe for me what your understanding or what criteria must be maintained by the owner in order to satisfy that.

Mr. Sarmiento: I'm not comfortable answering that question but I'd be more than happy to answer that at a further time when I do more research. From the top of my head, no.

Atty. Boath: Um, do you believe that Mr. Korolyshun's use of the property constitutes a pre-existing, non-conforming use?

Mr. Sarmiento: What I believe right now doesn't really matter, it's what I'm putting on this letter that really matters, the violations.

Atty. Boath: Okay. So, your violations are with respect to the current regulations

Mr. Sarmiento: Correct

Atty. Boath: That are in effect right now.

Mr. Sarmiento: Correct

Atty. Boath: Did you give any thought or consideration to the regulations that were in effect when Mr. Korolyshun

Mr. Sarmiento: Yes

Atty. Boath: Let me finish, when Mr. Korolyshun starting using the property.

Mr. Sarmiento: Yes

Atty. Boath: And can you tell me which sections of those regulations did you review in coming to the determination that the current regulations applied and not those.

Mr. Sarmiento: A picture is worth a thousand words. I'm going by the pictures. So, if we can see clear violations, abandoned cars, tanks, tires, a berm built around the property, so

Atty. Boath: And that was in, what year were those pictures taken?

Mr. Sarmiento: I can give you the day of each picture and I will provide that for you.

Atty. Boath: Okay, well it's kind of important that we have that information tonight

Mr. Sarmiento: Okay, its been taken in the last year and a half since we were generalizing a lot of the questions you are asking. So, they were taken in the last year and a half. How's that.

Atty. Boath: That's fine with me but have you gone out to inspect the property since those pictures were taken?

Mr. Sarmiento: I have, I have

Atty. Boath: Please let me finish,

Mr. Sarmiento: Yes

Atty. Boath: Have you been out there to inspect the property since those photographs, that you are offering, were taken?

Mr. Sarmiento: Yes.

Atty. Boath: Okay, do you have any photographs of the property as it exists today?

Mr. Sarmiento: I believe these pictures are accurate to the way the property exists today.

Atty. Boath: Okay, well then, I would suggest that we make an on-site inspection.

Chair Bartholomew: Field trip.

Atty. Boath: Wouldn't that be keen.

Chair Bartholomew: I have a couple of other questions before we get to that. If you're done with your questions for Carlo.

Atty. Welch: If I can just follow up on my questions.

Chair Bartholomew: Yes follow up and I'll remember my questions.

Atty. Welch: Mr. Sarmiento, can you just go to the first picture again.

Mr. Sarmiento: Yes

Atty. Welch: Ah, you don't have to go back, everyone remembers that first picture

Mr. Sarmiento: Yeah, I'll go back

Atty. Welch: Atty. Boath asked you whether pre-existing, non-conforming condition; so, that's not how the property looks today.

Mr. Sarmiento: No. Absolutely not.

Atty. Welch: And there's far greater material on the property on site.

Mr. Sarmiento: Yes, very accurate

Atty. Welch: Okay, on page 64 of the zoning regs that you provided to the board, on the outside storage, outside storage is defined as the storage or display of supplies, machinery and other materials and/or the outside manufacture, processing or assembling of goods, and it can't be within any setback from a property line, a street line. So, if the street is not an accepted street, it's a property line.

Mr. Sarmiento: Correct. And if I may, we saw the last property marker that they are on somebody's else's property. They are on city property.

Atty. Welch: And it shall not exceed 15% of the total lot area.

Mr. Sarmiento: Correct.

Atty. Welch: Is the use of outside storage in excess of 15%?

Mr. Sarmiento: Yes.

Atty. Welch: I have nothing further at this time.

Atty. Boath: Mr. Sarmiento, you are claiming that's how the property looked in 2010?

Mr. Sarmiento: Yes. According to the date on that picture stamped by (VCOG?) Yes.

Atty. Boath: Okay, funny, when I look at that time period on Google earth, it doesn't look like that.

Mr. Sarmiento: That's what I got from our records, that's what we use. So, I don't have the ability to doctor up a picture like that. I don't know that.

Atty. Boath: Well, maybe VCOG does. Maybe they made it look a little better than it is. But I can tell you, I can guarantee you that I can pull it up on my computer if I could get an internet connection and I can show you the property in 2004. It looks exactly the way it does right now.

Mr. Sarmiento: That's six years, between this and the 2004.

Atty. Boath: My math's a little fuzzy, I calculate more than six years but.

Mr. Sarmiento: From 2004 to 2010, that's six years. From 2004 to 2010, that's six. My math is pretty good, I think.

Atty. Boath: Okay. Then I would simply ask that we hold the record open so that I can submit contrary photo documentary evidence depicting the property from 1991 to March, of 2016. Thank you.

Mr. Robinson: An outside inspection.

Atty. Boath: If you guys need that to assist in your determination, then I would support that.

Chair Bartholomew: What did you ask Earl?

Mr. Robinson: An outside inspection.

Chair Bartholomew: Uh, that's fine. The, when was that road but in there, what year? Do we know?

: I defer to Mr. Kopjanski.

Mr. Kopjanski: 2014

Chair Bartholomew: And,

Mr. Sarmiento: Are we all set?

Chair Bartholomew: Hang on, I may have another question. Let's see when that road was there. And see if that

Mr. Sarmiento: On the picture, the road doesn't show.

Atty. Shansky: 2011

Chair Bartholomew: Okay, 2011, the road was put in there. So, the road doesn't show there. Now, that picture that we were just shown,

Mr. Sarmiento: Yes

Chair Bartholomew: does that have, even on here I can't tell. So, the lower part of the picture. So, is that a berm there, the lower part with the rocks and stuff.

Mr. Sarmiento: No, there is no pile of rocks there.

Chair Bartholomew: No, there's no pile of rocks there.

: Right between the h and the o on Housatonic?.

Chair Bartholomew: Yeah.

Mr. Sarmiento: It's plowed. It looks like clean dirt.

Chair Bartholomew: Is that what it looks like:

Mr. Sarmiento: Yes.

(multiple discussions, question about BJ's with response, probably around 2000)

Mr. Sarmiento: I just talked to Rick Dunne and he has a picture from 2013 that he can provide me too.

Atty. Shansky: We pretty much agree that the edge of the property in the picture is at grade

Chair Bartholomew: Yeah, well in the testimony he said that Mayor had asked him to put that pile of dirt there.

Atty. Shansky: Is it possible, among other exhibits that you want to provide, in the continued hearing; that, if anyone has a site plan from the special permit activities of 2012.

Atty. Welch: No, but I'd certainly would like to look at the background in that as it seems unusual, from my perspective; obviously not being here; that the City of Derby would make an application for temporary special exception for rock crushing for someone else.

And then, not have control of it if they don't need it. If you follow me. So, I think that if the hearing stays open, that's one issue I

Atty. Boath: That's fine.

Chair Bartholomew: All right.

Atty. Shansky: You had some other questions, Mr. Chairman.

Chair Bartholomew: I wanted to get a timeframe of the pictures. I haven't seen it lately so I open to going down there, I don't know if we need to set up a time to do that. When everybody can make it. Or, if we can do it on our own. We can probably see if from the walkway.

Atty. Shansky: I'm not sure the property owner, well, from the roadway. I have a question, Counsel. Would it be

Atty. Boath: Yes

Atty. Shansky: Oh, that was Counsel in the plural. Would anybody object to the notion that this collection of photos be emailed to the board and counsel; so everyone can look at them as color photos instead of these reproductions.

Atty. Boath: Sure, absolutely.

Atty Welch:

Mr. Sarmiento: If you provide me with an email. Which, I'm sure I have your email Counselor.

Atty. Boath: I think you do

Mr. Sarmiento: Yeah, I do.

: That means your email has to color capabilities.

Chair Bartholomew: All right. And then, these are probably high resolution so they are going to be huge.

Mr. Bowers: Yes, that was my concern.

Mr. Sarmiento: I emailed them to myself today, that's how I have them in front of me.

Chair Bartholomew: In one email you have all of them?

Mr. Sarmiento: Yes.

Atty. Shansky: Or a drop box.

Mr. Sarmiento: We can do drop box. I have the ability to

Atty. Shansky: But the same sequence, the same

Mr. Sarmiento: Absolutely.

Atty. Shansky: The same sequences as seen tonight

Mr. Sarmiento: Absolutely. I will forward that to everyone here. I'll do it from my computer, I don't think I can do it from my I-pad.

Chair Bartholomew: So, all right. So we would definitely, its my opinion that we continue this for additional information. And Atty. Welch, you want me to look up and then

Mr. Sarmiento: And I'll provide you with the dates of the pictures.

Atty. Shansky: Excuse me Mr. Chairman, it would be desirable if Lisa could scan and email or perhaps drop box; the exhibits to the board so the board can see the minutes. And if I may say a word or two about process, this is an appeal of a cease and desist order and it is conducted as a de novo hearing in front of this board so that you are not here to determine if Carlo was correct or not. You are here to determine, based on the evidence presented, whether by interpretation of your zoning regulations there are violations or not. So, its not up or down on the cease and desist; its an evaluation of the facts as have been presented under the regulations. Does Counsel have any objections to that description?

Atty. Boath: I'm going to reserve judgment on that. Largely because it is my understanding that the board has to either uphold partly in whole or in part, the decision of the Zoning Enforcement Officer. I agree that in the sense it is a trial de novo but ultimately, they are either upholding or denying

Atty. Shansky: Yes, but based on their own findings

Atty. Boath: Based on their own findings, I would agree to that

Atty. Shansky: Yes, that's correct. So, now are you happy with that?

Atty. Boath: Happier

Atty. Shansky: Are you happy Atty. Welch?

Atty. Welch: Not as happy but. (laughter)

Chair Bartholomew: Now Atty. Boath, you were going to provide aerial pictures dated over several years?

Atty. Boath: Yes, their pretty neat. I was just able to pull them up now.

Chair Bartholomew: Okay. Now,

Atty. Boath: I will have these somehow printed.

Chair Bartholomew: Okay, the only other question I had was, once we see those we will see how much the property has changed over the years. What precipitated this? Your cease and desist. Was it that somebody called and complained about it? You walked by there when you were on the walkway. I want to see how much it has changed from

Mr. Sarmiento: There were blight complaints, that's how the whole thing started.

Chair Bartholomew: And that was reported to the Blight Enforcement officer. Okay

Mr. Sarmiento: That's correct.

Chair Bartholomew: Okay

Mr. Sarmiento: Correct, correct.

Atty. Shansky: Is it currently in the blight process?

Mr. Sarmiento: Yes, and they have requested an appeal because they are currently on the blight list, yes.

Chair Bartholomew: Okay, because I didn't know how this came up.

Mr. Sarmiento: yes.

Chair Bartholomew: Anything else we need to request?

Atty. Shansky: Well, Mr. Chairman, the hearing is being continued and the record is being left open so it is not being left limited to the exhibits that Counsel referred to based on what everyone has heard here tonight. There could be scads of new evidence or just what they said. The record is open.

Chair Bartholomew: Okay. So, do we need to make a motion to continue it

Mr. Sarmiento: Are you going to do a site inspection, if I may ask.

Mr. Bowers: I don't think we agreed whether to go together or individually.

Atty. Shansky: If you do it together you have to do, you have to notice it.

Mr. Bowers: You have to what?

Atty. Shansky: If you have a quorum, you have to notice it.

Chair Bartholomew: So if we went as a group

Atty. Shansky: Which is okay

Secretary: Do you have to take minutes?

Atty. Shansky: Ideally, its visual and not conversational. You're just there to see.

Chair Bartholomew: Can we see enough without going on the property?

Mr. Sarmiento: Yes, from the top of the walkway you can absolutely see the general property

Atty. Shansky: I appreciate what the Zoning Enforcement Officer has said, but; I think this is an opportunity to see what's on the site.

Chair Bartholomew: You want to go on.

Atty. Shansky: Yes.

Chair Bartholomew: Okay.

Mr. Korolyshun: I'd like to be there when you go on.

Chair Bartholomew: Yes, we have to schedule that. And if we do it all together we have to notice as a meeting because if you have a quorum, now it's a meeting of the Zoning Board of Appeals. If we could do it in more than one group, then it's not necessary to notice, correct?

Atty. Shansky: Correct.

Mr. Bowers: How many to fall under the minimum for a meeting?

Chair Bartholomew: Four, so if we did two and three we are good. And Ideally next month on the August 18th meeting I need everybody here because

Atty. Shansky: Yes, we need the same individuals. Is everyone good for August 18th?

Mr. Pollastro: I'm on vacation.

Mr. Sarmiento: I'm on vacation as well. I'm in Cape Cod from the 12th to the 24th.

Atty. Shansky: Do we need a special meeting in August?

(many voices talking)

Secretary: Do we need a legal notice for the meeting?

Atty. Shansky: No, for a continuation, no legal notice, just notice to the town clerk.

Atty. Shansky: If we stay on the 18th, the some other member will have to listen to that recording.

Chair Bartholomew: All right. The 25th, is everyone available the 25th?
: Of August?

Mr. Robinson: I'm assuming I am, I don't have my calendar with me.

Chair Bartholomew: Carlo, you'll be back

Atty. Shansky: Is everyone available on the 25th?

Atty. Boath: Yes, the 25th works for me.

Chair Bartholomew: Now, is that the Board of Alderman meeting?

Mr. Sarmiento: Yes.

Atty. Boath: Do you have another meeting room/

Mr. Sarmiento: Yes, it's the last Thursday of the month. We can go down stairs.

Chair Bartholomew: We will probably have the 18th for the other application

Mr. Robinson: So we will have two meetings for the month.

Atty. Welch: We'll start at 6 because the Board of Alderman is at 7.

Chair Bartholomew: Either way it will be a special meeting because we told all those other people that it is the 18th. It's not a big deal if you're not here because they didn't present.

Atty. Shansky: So,

Atty. Boath: If you want to move it to the 18th its all right with me.

Atty. Shansky: We can't. Because they are not here. So, the 18th will be a regular meeting of the ZBA for everything but this.

Chair Bartholomew: Right.

Atty. Shansky: And on the 25th it will be a special meeting for the continuance of this hearing,
Karen.

Atty. Welch: From 6 to 7.

Chair Bartholomew: Yes, he is going to have to leave for the Board of Alderman meeting.

Atty. Boath: In the interim, can we check on what's going to be necessary for a transcription? I
want the transcript tomorrow.

Secretary: I'll work on it all night.

Atty. Boath: I'll pay expedited. (laughter)

Chair Bartholomew: All right. The only other thing is site visits.

Member: Go on our own?

Chair Bartholomew: Nope, because Mr. Korolyshun, we don't want to be going on his property
without him there. He doesn't want us there either, it just makes sense.

Mr. Korolyshun: Just call me and I will meet anybody anytime there.

Atty. Boath: I'd prefer if we did it in a group so everybody is looking at the same thing.

Chair Bartholomew: But, then it has to be a special meeting.

Atty. Shansky: And that's okay, just don't talk during it.

Atty. Boath: That's right. You can schedule the visit and notice it and no talking.

Chair Bartholomew: Okay.

Atty. Shansky: No talking.

Mr. Sarmiento: You're going to have 3 lawyers there, no talking. (laughter)

Chair Bartholomew: So, lets set up a date for that being that we are all here.

Member: We should do it as soon as possible.

Atty. Shansky: No, you need 24 hour notice.

Chair Bartholomew: Monday, the 25th, July 25th and it can be in the evening because it is still
light until 8 o'clock. We can do it in the evening, 6, 6:30, 7. I'd go as late as 7:30 but, I
wouldn't push it pass that.

Mr. Korolyshun: Nope, the mosquitoes are this big down there.

Multiple voices concurring on July 25th.

Atty. Shansky: 6:00 pm July 25th, special meeting, site visit

Chair Bartholomew: And, if somebody doesn't make it then we will arrange for them to do it on their own coordinating with Mr. Korolyshun, but try to be there at 6 o'clock.

Atty. Boath: Try to be there at 6 o'clock, I'll hand out the visitor badges.

Atty. Shansky: Bring ID.

Chair Bartholomew: So we are going to need a motion to continue the hearing, we are going to leave it open

Atty. Shansky: Wait, is there anyone from the public who wants to speak on this.

Mr. Sarmiento: There is one gentleman here.

Public: I was just concerned about the environmental impact with that much material on the property for an extended period of time.

Chair Bartholomew: Yes, we will open the public portion and leave that open as well. So, if you can just state your name for the record.

Public: My name is Drew Wolfe, I was just concerned about the debris, the material that was being put on the property for an extended period of time. Coming from other sites, the environmental integrity of the product, the material, that's sitting on the property through the weather, inclement weather; rain, washing it to whatever water sewer sources may be there and how it will impact the community.

Secretary: Do you have an address for the record.

Public: Yes, 96 Bronson Rd, Stratford

Mr. Robinson: Do you have any piece of property adjoining that?

Public: I do have a piece of property in Derby at 208 Seymour Avenue, near Hawkins Street that we have been very conscious about cleaning up and any type of blight issues that might have been in the past. We've been very conscious of keeping it, maintaining it and keeping it clean. We just wanted to be sure we if there's any dispensing, that it be regulated by an agency that is licensed (inaudible) So, it would be nice for everybody

else that is liable who is exposed, for that type of exposure, that they abide by the regulations set by the state to maintain their properties. Thank you.

Mr. Robinson: Maybe you can answer this quickly. Your property abuts other properties, is that correct? Does your property abut the State property, the old Beard's Concrete; who owns that?

Mr. Korolyshun: The City of Derby.

Mr. Robinson: The City of Derby allows the contractors to park who are doing all the work on the bridge.

Mr. Korolyshun: Yes.

Mr. Robinson: So, basically, the City of Derby is allowing a functional piece of property, that's next to you, to park all their equipment and everything so they can build the 34 bridge, correct?

Mr. Korolyshun: As far as I know, yes.

Mr. Robinson: Okay, I was just curious because it abuts your property but if you look on the side, you've got 34 there, they are building the bridge, that contractor has all the equipment and everything there and they leave the gate open and they store stuff there and they unload there and just for the record, that, so, other people are aware of that. Its another adjoining piece of property that the City of Derby owns that is almost doing the same work similar to Mr. Korolyshun. It's a fine line

Atty. Shansky: It's a broad characterization but your point is taken. The State of Connecticut is doing the

Mr. Robinson: Yes, the State of Connecticut but we are the City, the City is giving the State

Mr. Sarmiento: I'm not sure if that's City property, it may be State property where they are parking their vehicles.

Atty. Shansky: Well, we can talk about that next time but I would like, but I have a question about exhibits because there was a photograph of the surveyor's flag and you said you had a letter. Is any of that coming in?

Atty. Boath: I think that is all part of the submission, isn't that right?

Mr. Sarmiento: I emailed the letter and the picture today to Corporation Counsel and to you.

That's the only people I emailed that picture.

Atty. Shansky: And there's no survey?

Mr. Sarmiento: Ah, it was staked, the survey was taken. I can get the report from Engineer D'Amico. I'll see if he has a survey.

Atty. Shansky: Okay. So, he was just finding the line.

Mr. Sarmiento: Yes, he was just finding the line.

Mr. Korolyshun: If I could reference the point that was brought up; that is the City of Derby property and also, the City of Derby is piling material next to me too. They have huge piles of asphalt millings. They have taken all the stone and debris from where they built the Italian Pavilion and they are storing it down there on the property next to me. And they are storing wood chips, there's a mountain of wood chips as big as this building down there. Right next to me. And you want to talk about erosion control.

Chair Bartholomew: Well, I'm sure we will see that when we are down there on Monday.

Atty. Boath: Yes, I just want to give you my card. Who is keeping track of the exhibits?

Atty. Shansky: Oh god, is somebody supposed to do that?

Atty. Boath: Yeah, I kinda thought so. (laughter)

Atty. Shansky: The list will be in the minutes.

(multiple voices)

Motion made by Sam Pollastro, Jr. and second by Earl Robinson. Move to continue the hearing to August 25th at 6 p.m. Motion carried unanimously.

Motion was made by Sam Pollastro Jr. and second by Jeffrey Bell. Move to adjourn the meeting at 8:25 p.m. Motion carried unanimously.

Respectfully prepared,

Karen Kemmesies

Karen Kemmesies, secretary

These minutes are subject to Board approval at their next scheduled meeting.