

APRIL 12, 2012 – PUBLIC HEARING

Minutes of a Public Hearing of the Town Board of the Town of Somers held on Thursday evening April 12, 2012 at 7:35 PM at the Town House, 335 Route 202, Somers, New York.

ROLL CALL:

PRESENT:           Supervisor           Mary Beth Murphy  
                  Councilman         Richard G. Clinchy  
                  Councilman         Frederick J. Morrissey  
                  Councilman         Thomas A. Garrity, Jr.

ABSENT:

Also present were Kathleen R. Pacella, Town Clerk, Patricia Kalba, Deputy Town Clerk and Roland A. Baroni, Jr., Town Attorney.

The Supervisor said that this was a continuation of a public hearing with regard to an unsafe and dangerous structure located at 133 Mahopac Avenue, Somers known as Tax ID 26.08-1-11. She explained that at the last hearing Mr. Lieto indicated that he would secure the property, put a fence up and get back on track to make the building safe. She said that she asked that he come back to the Board with a specific plan in place. The Supervisor said that he had also indicated that the property was zoned commercial and she believed that it was residentially zoned and she had followed up on that.

The Supervisor declared the hearing open and asked for comments from the public.

Mr. Dominick Lieto, the property owner, said that the Building Department told him before he did anything he needed to have a sketch of what was being done. He said that he was going to give them a plan of exactly what he was going to do. He said that he was going to put the wall back and try to make the building safer and the Building Inspector told him before he did that he wanted a plan.

Councilman Garrity asked Mr. Lieto when was the first time he went to talk to the Building Department. Mr. Lieto said that he spoke to them a couple of weeks ago. Councilman Clinchy asked if he talked to them within a week of the meeting. Mr. Lieto said that due to his illness he was not able to go right back to them and with the holidays the person was unable to do the plan.

The Supervisor asked Mr. Lieto who he had retained to do his plans, was it an Architect or an Engineer? Mr. Lieto said that he was going to have someone draw the plans, to show the repair of the wall. The Supervisor asked who was going to make the plans. Mr. Lieto said that Alfredo Di Pietro was going to make the sketch to repair the roof and the wall. The Supervisor asked if Mr. Di Pietro was an Architect or an Engineer. Mr. Lieto said that he was not. The Supervisor asked if Mr. Di Pietro was a Contractor. Mr. Lieto said that he was not; he was just going to do some drawings. The Supervisor asked Mr. Lieto what Mr. Di Pietro's profession was. Mr. Lieto said that he was a drafter.

Councilman Garrity said from a month ago when they met they were no further along. Mr. Lieto said that he thought that he could go there and put some boards up and try to fix it. He said that the Building Inspector told him not to do that because if he did that he would be in violation. He said that the Building Inspector told him that he had to have a permit before he did anything. Mr. Lieto said that he did not think that he needed a permit to fix an unsafe building. Councilman Garrity said that meant that they were in the same boat that they were in a month ago. Mr. Lieto said that he had a plan so that he could show it to the Building Inspector. Councilman Garrity said that they were in the same place they were a month ago. Mr. Lieto said apparently. Mr. Lieto said that he did not realize, the building was built in the 1900's and there were 2x8's used for the roof and when the wall was pushed out the roof came down. Councilman Garrity said that he saw the building. Mr. Lieto said that he had to put that wall back.

Councilman Garrity said that the property was on a Scenic Road and he was not aware that a non-operational vehicle was allowed on the property although on a Scenic Road that vehicle needed to be 30 feet off of the road. Mr. Lieto asked where it said that. He said that he paid taxes and his deed went to the center of road. Councilman Garrity asked the Town Attorney if

he was correct. The Town Attorney said that he was, it was 30 feet from the setback. Councilman Garrity said that the 30 foot setback included dilapidated vehicles, trash or old wood and anything in that needed to be moved back.

The Supervisor said that there was one thing she thought that Mr. Lieto needed to understand about the property and that was that the property was zoned R-40; it was a residentially zoned property. Mr. Lieto said that at one time it was zoned General Business. The Supervisor said that it might have been. Mr. Lieto said when he bought the property it was General Business. The Supervisor said that may had been but now it was zoned Residential and had not been used for business for 20 to 30 years. She said that they had documentation in the Building file that documented that. She said that the building was not a commercial building and she wanted Mr. Lieto to understand that from the start. Mr. Lieto said that he would have to go before the Planning Board. The Town Attorney corrected him, that it was the Zoning Board of Appeals. Mr. Lieto said that at one time it was commercial. He said that on Route 118 there was a deli that was closed for a long time and from what they were telling him that building should had been treated the same way. He said that should have become residential because they did not use it for a long time. The Supervisor said that Route 118 was not zoned residential in the area. Mr. Lieto said that she was telling him that his building turned residential because he did not use the building. The Town Attorney explained that it turned residential because the Town Board rezoned it residential at some point. He said that Mr. Lieto's building became legal non-conforming so long as he continued to use it for commercial purposes, not as storage. He said that once the commercial activity ceased for twelve months he lost that legal status and now it was only residential unless the Zoning Board of Appeals gave him back something. Mr. Lieto said that the previous Supervisor when they had the meeting at the High School, he went there and it was part of the record and he made it like a warehouse. The Supervisor said that there was zoning near Mr. Lieto's that was Office Light Industry, where the Jilco property was located. She said that Mr. Lieto's property was not included in that zoning, his was included in the R-40 zoning, which was residential. Mr. Lieto asked who judged that the back of the property was commercial and his in the front became residential. The Supervisor said that was done by a previous Town Board. Mr. Lieto said that the Supervisor prior to Supervisor Murphy had a meeting about that and at that time he said it was a storage place, warehouse. The Supervisor said that she did not know what was said, she was looking at the Zoning Map and spoke to the Town's Professionals about the Zoning Maps in the Towns to ascertain what zoning Mr. Lieto's property was in and that was the R-40 zone, the residential zone. Mr. Lieto said that now it was the question was prior to, how did it get into that zone. The Supervisor explained that in the 1980's the property was changed from a commercial zone to a residential zone and that would have been done by the Town Board at that time. Mr. Lieto asked when that was done, did she remember. The Supervisor said that she did not have exact dates. Mr. Lieto asked if he could have a copy of the changes. The Supervisor said that she was sure that it would be in the Town Code. Mr. Lieto asked who he could ask for that. Councilman Morrissey said that it was available at the Town House.

Councilman Clinchy said that where they were now was it was declared an unsafe building; Mr. Lieto came to the Town Board and asked for more time. He said that they granted more time and the question was where they were at this point because he was now asking for more time. Mr. Lieto said that he was getting the person to draw something up. Councilman Clinchy asked when that would be done, when they will be in the Building Department. Mr. Lieto said that he was guessing next week. Councilman Clinchy asked on what day. Mr. Lieto said by next Friday. Councilman Clinchy asked if they were not there by next Friday Mr. Lieto would have no objection to the Town declaring it an unsafe building. Mr. Lieto said that they said that the building was unsafe; he wanted to make it safe. He said that he wanted to get the papers so that he could fix the building, put the wall back and replace what was there. Councilman Clinchy said that Mr. Lieto has to understand that this could not continue the way it was. He said that he did not realize that he needed a permit to replace a wall that already existed, he was not changing anything.

The Supervisor said that at the last meeting he was asked to come back with a specific plan in place. She said that he also indicated that he was going to place a fence around the property. She asked him if that had been done. Mr. Lieto said that it had not. The Supervisor said that they asked for a plan in writing as to how the building was going to be fixed. Mr. Lieto said that was what Mr. Di Pietro intended to do, make the building safe. He said that because of the Holiday he was away and could not do that for him. Councilman Clinchy asked if Mr. Di Pietro

was back. Mr. Lieto said that he was back and he met with him, they spoke to the Building Inspector. The Supervisor asked if they could get a letter from Mr. Di Pietro indicating that he had been retained by Mr. Lieto to repair the building. Mr. Lieto said that he would ask him for a letter, he was making the plans to show to the Building Inspector. He said that he never thought that he needed any papers; he was just replacing the wall and fixing the roof.

The Supervisor said that she was looking at pictures of the property; it was not just replacing a wall. She said that the roof was falling down, there looked to be old windows piled up around the building, there was an old car that looked to be about five feet off the road, there was all kinds of cinder blocks and things all over the property, the windows were boarded up, the exterior shingled looked to be falling off, the roof looked to be caving in and there was a gap that looked to be two to three feet between the roof and the wall. Mr. Lieto said that was going to be replaced.

The Town Attorney asked if it would make some sense for Mr. Lieto to speak to an Attorney before he spent money fixing up a building that could not be used for commercial purposes. He said that it would make sense if Mr. Lieto's own Attorney explained to him how he lost his legal status. Mr. Lieto said that he did not know how it was lost. The Town Attorney said that was why he wanted him to speak to his own Attorney. He said that he was urging Mr. Lieto to sit down with an Attorney and have it explained to him before he spent money trying to save this structure that could not be used. He said that maybe they could advise him on what to do. Mr. Lieto said that if he fixed the structure he could use it. Councilman Morrissey said not for business. The Town Attorney said that Mr. Lieto could not use the structure for commercial purposes, it did not have that status, it was in a residential zone. Mr. Lieto said than he would have to bring some legal action. The Town Attorney said that was why he was urging Mr. Lieto to go speak to an Attorney so that they could explain to him. Mr. Lieto said that when the time came he would, what he was concerned about was making it safe for the Town Board. The Town Attorney said as long as he understood that they were telling him there that it could not be used for commercial purposes. Mr. Lieto said that they agreed one way; he had a different view of the whole thing. He said that he knew when he bought the property and he needed to look at the papers as to how it changed. He said that he was never told that there was going to be a meeting that his property was going to be changed to residential. Mr. Lieto said that they had to show him a letter that they sent to him stating that his property was going from General Business going into Residential. He asked they to show him that letter and stated that he never received anything. The Supervisor said that when zoning changes were made public hearings were held and Mr. Lieto talked about the public hearing. Mr. Lieto said that if they changed his piece of property from Commercial to Residential he should have be notified. Councilman Clinchy said that he was at the High School and spoke to the Supervisor. Mr. Lieto said that he did speak to Supervisor Harding and he said the he was going to be commercial but they were going to make it a warehouse. Councilman Clinchy asked if Supervisor Harding gave him a letter. Mr. Lieto said that he did not, he told him and there were minutes of that meeting. Councilman Garrity said that they would look for the minutes. Mr. Lieto said that they would find out that he was at that school meeting at the High School and there were a lot of people there. The Supervisor said that may have been, the property front was zoned residential. She said that what the Town Attorney was trying to convey to Mr. Lieto was that it was not a commercial property and any grandfathering right that he may have had initially when the change was made was lost because it had not been used in some time. Mr. Lieto said that as he said to them he was never notified of that change. He said why did the property on Route 118 not change when it was not used in so many years. The Supervisor said because this was not for all properties, only properties in a residential zone. She said that the property was not zoned residential, it was zoned commercial. She said that they had a Zoning Map that shows the different zoning in the Town. Mr. Lieto said that he knew that and his property was zoned General Business. The Supervisor said that it was changed, zoning changes over years. Mr. Lieto said that he understood that, he asked if he could have a letter stating when this was done. The Supervisor said that the changes would be in the Town Code.

Councilman Morrissey said at this point in time they had expected him to come back with some type of plan to make the building safe. He said that they were not doing their job if they did not keep moving forward. He said that they were not talking about zoning anymore, if Mr. Lieto was not back at the next meeting with a plan in place that were going to condemn and knock down the structure that was there because it was unsafe. He said that they were working with him. Mr. Lieto said that he was there once he found out but he had been unwell and financially

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he was like everyone else. He said that if he could have had someone do it right away he would have. He said that right now he was having plans drawn so that he could make it safe to the satisfaction of the Building Inspector. Councilman Morrissey said that they had an agreement that by next Friday plans would be drawn. Mr. Lieto said that he would have them. He said that they were giving Mr. Lieto this opportunity and asked him to take it.

The Supervisor said that when she went back in the file for the property she saw it had a long history of violations with regard to similar types of issues. She said that it had been in Court, before of the Building Inspector for those kinds of violations. She said that she did not want to keep going in circles with this. The Supervisor said that they did not want to see him spend money on a building that he believed was commercial and it was not under the Town Code. Mr. Lieto said that if he went before the Zoning Board he had a point to prove to them to have the zoning changed.

Councilman Garrity said that he wanted to see a fence around the property; Mr. Lieto said that he was going to do it and did not. He said that way at least no one could get to it and there was not a dangerous situation. He said that he wanted some sort of safety fence by the end of the week. Councilman Garrity said that he also wanted the trucks and all the debris that was within 30 feet of the road moved. Mr. Lieto said that he paid taxes on 30 feet and he cannot use them. Councilman Garrity said that he lived on a scenic road and that was the Code for a scenic road. Mr. Lieto said that the scenic road came later on into effect. Councilman Garrity said that they were trying to ensure the health and safety of the Town. He asked Mr. Lieto when he would have a fence up. Mr. Lieto said that he would put “Keep Out” posters up and put a temporary fence around so one could go in there. He said that the posted sign would state no trespassing.

Councilman Morrissey said that they need to continue the public hearing. The Town Attorney said that the Board needed to make sure that it was reflected in the minutes that they had explained what they had to Mr. Lieto. He said that Mr. Lieto was going to continue down the path of shoring up the building and there was an understanding that there will be a use variance before the Zoning Board of Appeals to try and create a commercial use. He said that he thought that the record was clear and the Board should give Mr. Lieto the opportunity to come back with a plan. Councilman Garrity said that the wanted the plan by next Friday and a fence around the property within a couple of days, the Board would see him at the next meeting.

The Supervisor said that the hearing would continue to the May 17, 2012 Regular Meeting. Mr. Lieto said that if the permit was secured there should not be a meeting. The Supervisor said that the public hearing was not being closed; the proceeding was going to be continued to the next meeting. She explained that it will be continued until the work is done. The Supervisor asked Mr. Lieto after Mr. Di Pietro drew up the plans how long did he anticipate it would take to complete the restoration. Mr. Lieto said at this point he could not answer that. The Supervisor said that when Mr. Lieto came back next month the Board would want an answer to that. She said that they will want to know what the plan was and the time frame in which the plan was going to be executed. She said that they were not going to close the hearing out, if he says the plan would take three months they would adjourn the hearing for three months. She continued that when the three months is up and they saw that he did everything he said he would do according to the plan that was when the hearing would be closed. The Supervisor said that they might even have hearings on a monthly basis just to observe the progress that was being made.

There being no one else to be heard on motion by Supervisor Murphy, seconded by Councilman Garrity, the public hearing was adjourned at 8:05 PM to the May 17, 2012 meeting.

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Town Clerk