

TOWN OF CONCORD PLANNING BOARD
Town Hall Auditorium

October 6, 2020
7:00 p.m.

ITEM # 1:

The meeting was called to order by Planning Board Chairman Lawrence J. Kelly, Jr., at 7:00 p.m.

ITEM #2: Roll Call

Present:

Lawrence J. Kelly, Jr., Chairman
Bruce Luno
James Jozwiak
Joseph Edbauer
Julie Zybert
Karl R. Lux
Raymond Hilliker

Also Present:

Darlene Schweikert
Clyde Drake, Supervisor
Brian Attea, Town Attorney
Jeff Singleton, Code Enforcement Officer

Residents in Attendance: Jake Wirfel, MaryEllen Wirfel, Mary Kate Wirfel, Don Wirfel, Al Hauri, Cindy Orcutt, Mike Orcutt, Douglas Visnewsy, Karen O'Hara and Mark O'Hara.

ITEM #3: Citizen Participation

a) Karen O'Hara and Mark O'Hara addressed the Board. Mrs. O'Hara introduced herself and stated her address of 12777 Transit Line Road. They are here regarding the issue of Concord Detail. The operation of a car wash/detail shop next door to their home. She had prepared a written statement just to help guide her through.

First, ladies and gentlemen, she wanted to thank the Board for allowing them the opportunity to come here tonight to voice their concern over Concord Detail located at 12771 Transit Line Road. First, they did not want to file any type of lawsuit against the Town of Concord; it was not their objective from the beginning. They just felt that after last meeting, that is what they had to do to have their voices heard again. They were really left with no choice. What they are looking for, and what we know, what we want to acknowledge, is that our attorney is speaking positively and in meaningful talks with the Town of Concord Town Attorney and they are working together to resolve this issue on behalf of the Town and on behalf of the residents that live on Transit Line Road. Their request is that the Planning Board, pursuant to working together with the residents and both attorneys, is that the Home Occupation Permit be pulled until a resolution that they are working out can be resolved. With that being said, it is their goal as neighbors and community on Transit Line Road to respectfully request from the Board that the Home Occupation Permit previously granted Concord Detail and Jim Croft be pulled until a resolution can be resolved. As a neighbor and part of this community, they feel that the permit was granted in error, no fault of anybody, but without the necessary

information that was required to approve the Permit. There are procedures that are in place in approving a Home Occupation Permit and through their lawsuit they have pointed out what procedures were missed. The operation of Concord Detail, car wash/detail shop, should not have been approved under the limited rules of the Home Occupation Permit. They have heard time and again that the Home Occupation Permit for this car wash is no different than having a bookkeeper or notary. They know that a bookkeeper or a notary does not discharge waste water on somebody else's property so there is a big difference between a Special Use Permit and a Home Occupation Permit and they feel that they, as a community, were not afforded those rules to be looked at properly and the different types of permits that should have been used in this situation. The reasons that this type of business does not fit in the Residential Agricultural setting of their community on Transit Line Road is because it drastically changes the living atmosphere to all of them living there. That is one of the rules under the Home Occupation Permit that is called out because it must not change; that it should fit with the community that it is in and it does not. The increased traffic that is going up and down their road right now because of this business is a lot. It is not just one car that is pulling into Concord Detail. Sometimes there is a car that pulls in with that car because they are giving that person a ride home or to another place while the car is being detailed and then that car is bringing that person back to the home to pick up the car. So it is an increase in traffic, not just for the business but for the people that are commuting back and forth from the business. The increased water usage has affected their wells, pumps, filters, and water pressure on their road. The Village said that Concord Detail while in the Village operating was using between 3,000 and 4,000 gallons of water per month and when they talked to Doug Andrews, he concurred with that statement and said that the water bill was used in the Village; was used solely or almost all by Concord Detail. That is far more than the 15 to 20 gallons of water that Mr. Croft told the Board at the last Planning Board. He was specifically asked how much water he used and that is what his response was. That is not what the water meter said in town and per his own website it says that it is the same business just a different location. So if it is the same business at a different location, you can assume that the same water usage is being used. They are not on public water; they are on a well system. There is one body of water under their home that is being used. (She displayed a new water filter and a used water filter.) This is what a new filter looks like when they put it into their home; they change this filter four times a year. This is the filter (the used water filter) that they pulled from their water after six weeks. That is a big difference and that is what they are experiencing at their home and if anybody is on a water system, you would know how much these filters cost. They are not cheap. The increased noise from the traffic going up and down the road also is an increase. The power washer that was used all summer is an issue; the wax machine that is used is an issue. They had to endure that throughout the summer after they filed the complaint in June. Mr. Croft did not file a permit until August 31st. He was allowed to run after she had complained and some other people complained throughout the summer. That is not ok. That business should have been stopped when the complaint was issued. It should not have been allowed to run all summer until he legally obtained a permit. Before getting a permit, he was supposed to come before you and ask for a permit. That did not happen and we listen to it. That should not happen. That is why there are rules; that's why there are permits; that is why there are procedures. Also the known fact that

Concord Detail cannot contain the water that he is using within his garage or within even his property. He has no drainage. He admitted in this hearing that he did not have drains in his garage; he did not have drain tile in his driveway so if he is detailing and washing cars and using that much water, where is that water going? Ask yourself that question. It is running somewhere and they are downhill. Her property is downhill; it is 15 feet from his property line. When you walk on the side of their property, it is wet. The DEC came up and they saw that it was wet. The vehicles parked overnight in his garage he said would rarely occur. That happens on a nightly basis because now he is putting them in his garage. Many times, customers have come and knocked on their doors even after the sign that he has at his driveway was installed. There was one gentleman that came to their door with two vehicles at 9 o'clock at night and screamed in their window that he was looking for a car wash while her husband was sitting in their front office. That is not ok. That is not between the hours that Mr. Croft said he is operating his business. Why was the vehicle in their driveway at 9 o'clock at night? There are no street lights on their road. It is pitch black outside and they have people coming up to their doors that they don't know. That is not ok. It's scary. She does not like it and you would not like it either. Mr. Croft again told the Planning Board that he used 15 to 20 gallons per day and she believed that one of the Board asked him that question; it is in the meeting notes. Mr. Singleton, the Code Enforcement Officer, met with Savon (Thompson) from the DEC. Mr. Savon came to their home and walked their property. Savon said that Mr. Singleton advised him that he was using between 60 to 68 gallons of water per day to wash vehicles. So which is it? Is it 15 to 20 gallons? 60 to 68 gallons? Or is it the metered usage that the Village reports? She would look at the Village because that is recorded on what he uses and what Mr. Andrews says that he uses. This is a much bigger number that they previously thought. This is a real concern for them on a well system. They are not faulting anyone here. They just don't think that everyone had all the facts of what is really happening. She owns the property next door with her husband. It is a fact that the water usage, waste water is travelling on to her property because he can't contain it. She knows that Mr. Croft said that he was using biodegradable material for his cars. This does not matter to her. She does not care if he is using biodegradable materials to wash his cars or detail the engine. She says this because a lot of people have said oh he is using Dawn dish liquid and we use Dawn dish liquid when there is an oil spill to wash ducks and animals; and it is gentle on them. That is true but she really wants you to think about that statement. You are washing ducks to get rid of oil, grease and grime and then washing them in water. What are they doing with the water after they wash the ducks? Do you think they are dumping it back in the ocean? Or back on the beach? No, it is not going back into the environment; the dirty water that comes off the duck. It's going to a treatment facility; it is being treated. That is not happening here. He is washing vehicles with Dawn dish liquid and the grime, the dust and the road stuff coming off; the grime from the engine, the oil, transmission fluid, all of that stuff is going out of his garage, going on to his driveway and going through and coming on to their property. She does not have to tell you what happens to animals when they are involved in that type of environment. Dawn dish liquid doesn't matter. If this was next door to your house, would you want that dumped on your property? She wants you to think about that question. If you can sit in the back of your mind, and say it is ok for someone to bring 15 gallons of water, she will use what he says it is, of soapy, dirty dish water and they stand

on your front lawn and they dump it out. Biodegradable. Is that ok? Because that is what has been approved. He cannot contain that water. It is not ok. So they, as a community, are opposed. They are opposed to the permit that it is being used under. They think it is the wrong permit. If the right permit was used, a Special Use Permit, that would allow the public to voice its opinion. They would have a hearing and you would hear from more than the people that are in this room because if you approve this type of business to be in a Residential Agricultural area, you are approving it to be next door to your home. You are approving it for not a bookkeeping business, you are approving it not for an accountant or lawyer. You are approving it for a car wash. A detail shop. It is the wrong application and they respectfully ask the Board to please pull the permit in order for the proper procedures and proper permits to be used and for the residents in this community to properly voice their concerns. That is what they are asking and that is why they are here tonight. Mr. and Mrs. O'Hara thanked the Board for their time and Chairman Kelly thanked Mrs. O'Hara.

Chairman Kelly asked if anyone else had anything to say. Mr. and Mrs. Orcutt addressed the Board. Mr. and Mrs. Orcutt introduced themselves. They live north of Jim on the other side. Mrs. Orcutt said that they also did not want to hire a lawyer with the O'Haras to go through this but they felt their voices were not heard at the last meeting when the Board came to their decision. That is why they are going to hire a lawyer so that they would get their voices heard. She hopes tonight, she does not want to keep repeating because Mrs. O'Hara said it so well, she does not want to keep repeating things over and over again but she really wishes that the Board would look into their conscience and decide that this sort of business on their road is not good for their community. Mr. Orcutt heard Mrs. O'Hara mention of a proper permit; he wants no permit given to him for a business next to his house. He would never have bought the property there next to a business. The fact that they are even considering a car wash on a well system is to him just ridiculous. What is going to happen if it goes dry? Is the Town going to bring a water line up? If they did, it would not be for free. He does not think the neighbors should have to incur any of business like that next to, on a well system for the whole neighborhood. He thinks it was just a mistake and he hopes the Board withdraws or revokes his license to operate a business there. Mrs. Orcutt said that even though he has a sign at his business, on September 28th, they have security cameras now because of his business because they have activity in their own driveway; they have lost their privacy. On September 28th she had two cars in her driveway, sitting there; doors open, talking on the phone. They had went right past Concord Detail and pulled into her driveway. Then they called Concord Detail and then left. But they sat there for two minutes talking on the phone in her driveway, right in front of her bedroom. It is not nice to have your privacy invaded all the time now. Mrs. Orcutt said that she has proof on her phone right now of this if the Board would like to see it. Mr. Orcutt said that even if it is just a car wash that is being approved. There is a little hand car wash right down on Main Street and 219. It's not just cinder blocks and a roof and a machine. There is a water line and four sewer lines that go right to the Springville sewer. He has a contained unit underground; he has a water separator; that water has to be cleaned or treated before it is discharged into the sewer and the chemicals that are removed have to be contained in another to either be put in barrels and shipped away or a pumper truck comes to get it and

takes them to dispose of properly. Same situation, still a car wash but he has to go by all these rules and they were created probably by the EPA. There are rules for having a car wash. It is not like you are washing your own vehicle once a month or something like that. He is doing it daily and it is not one car a day like he said on his application. If you can make a living by washing one car a day, he would do it; he'd quit his job in a second. The whole application seems to be lie and he does not how it got passed and how it got through. Mr. Orcutt told the Board that he appreciated that time; thank you. Chairman Kelly thanked Mr. and Mrs. Orcutt.

Chairman Kelly asked if there was anybody else? Mr. and Mrs. Wirfel addressed the Board. Mr. Wirfel advised that they signed a paper form for him saying that he could have his thing down there but he came to his home to tell him about this, he told him that he only has one to two cars a week to wash and asked if he had a problem with that. Mr. Wirfel said that he didn't have a problem with that and asked what about the neighbors. Mr. Croft told him that the neighbors did not want to get involved. Mr. Wirfel said he lied to him. Mrs. Wirfel said that she did send a letter to Chairman Kelly, Supervisor Drake (Mr. Wirfel interrupted and she never finished her sentence). Mr. Wirfel said that his filter; he used to change it every two, three months; he has to change it weekly now. It has been over a month now since it has happened and he has no idea why but he put 2 and 2 together that he is sucking all the water and his filter is plugging up weekly now. He never had that before. They live on well water up there and that is how we survive. Without it, they don't survive. Mrs. Wirfel said like Mike (Mr. Orcutt) said if you run lines up Transit Line Road, it is not just going to cost them money, it's going to cost the whole town money. Mr. Wirfel said that he could rent a garage for a couple hundred bucks somewhere where they got water and go by the rules and put the filters in. Mrs. Wirfel said that they are not condemning him for starting a business or that but when it affects their home and the agriculture in that area, it has got to stop. He can't have it. Mr. Wirfel said that he also has people pulling in his driveway. He does not need that either; he does not need people coming to his home all the time. He has two dogs, electric fence; if they do something then his dogs will be in trouble. He does not need people there all the time. He moved to the country to live in the country; not to be in a business district. Mrs. Wirfel said that they did live in the Village for 11 years. They thanked the Board and Chairman Kelly thanked them.

Chairman Kelly asked if there was anybody else? Douglas Visnewski addressed the Board. Mr. Visnewski said that he lives at 12910 Transit Line Road, about three houses down from the car wash business. He is there to represent his wife and himself; they moved out there about three years ago. He read a little statement from his phone that his wife put together. "We strongly oppose our neighbors at 12771 Transit Line Road running their commercial business Concord Detail out of their home residence. There is much concern regarding the environmental and personal safety issues that come along with this type of business. Please reconsider allowing this business in our residential neighborhood, an agricultural neighborhood, for the safety of us all." Besides that Mr. Visnewski would also like to read real quick what he has on his facebook page about his using...it says he is using only environmentally safe products, Concord Detail is a full service auto, truck and motorcycle detail shop. From every nook and cranny of

the interior to the smallest of scratches of the exterior, Concord Detail has you covered. Services offered: Interior/Exterior detail, engine degreasing and detailing, scratch removal, paintless dent removal, custom pinstriping, headlight restoration and minor interior repairs. Reading from that and also another thing he would like to read. He says that he is currently into his summer hours which is 8:30 to 5:30 Monday through Friday and Saturday 9 to 2. The first thing that Mr. Visnewski wants to touch on is about the engine detailing. There is a lot of dirt, a lot of grime, a lot of oil in an engine. His brother is a certified GM technician and his other brother works (not decipherable words). He has been helping them work on cars for a lot of years. There is a lot of grease, oil, grime, brake fluid, and car steering fluid are hydraulic fluid. That can eat paint off of a car. Imagine what that is going to do to the ground or to the environment if it can eat paint off of a car. Besides that there is all the other antifreeze that can spill everywhere that can be toxic to the animals, that can be toxic to humans; that is also being poured into the ground since he does not have a system properly in place. Now getting into about his summer hours which leads him to believe that there will be winter hours. If there are winter hours, now you have all that extra salt that is going to be poured into their lawns, especially his neighbors, coming off the cars, all that extra dirt, the grime. Not just to mention all the dirt and grime that comes off the cars in the summer but if he is going to be doing this during the winter, there will be all that extra salt. That is going to kill the ground; the plants, and it will harm the animals. It's not just about us. It is about us but that he will touch on. They have seen an increase in traffic; cars slow down and park in front of his house for five to ten minutes; no clue. He goes out there and they take off. Why should he have to go out and investigate in front of his own home about what is going on about two cars, two motorcycles or anything pulling in front and stopping; constantly all summer. Not to mention, the other thing, his wife and him have noticed that throughout the summer their water pressure has dropped sporadically, not consistently, sporadically throughout the day. If it was consistent, he would say it was something with his well which he just had serviced Thursday. He forgot to bring his filter with him but the filter is caked with red iron which last year when he had it serviced, it did not have that red iron on it. Like he said, he will reiterate that they have had a lot of traffic come in, a lot of people stop in front, a lot of noise, plus they are concerned about what is being dumped on to the ground because he does not have a system in place like the other gentleman spoke about that most commercial car businesses have in place to treat and reuse the water. So he is spilling all that water, the dirt, the grime, the oil, the hydraulic fluid, and everything else onto the ground and it could seep into their wells, can seep into the creeks behind them and it could seep into his neighbors' property and kill their plants, their trees or anything else so they would highly recommend to think about continuing with this permit because it has affected his neighborhood severely. Mr. Visnewski thanked the Board for their time. Chairman Kelly thanked him.

Chairman Kelly asked if there was anybody else? There was none. Chairman Kelly said that so everybody knows this is in litigation; we will make no comments on this tonight. Town Attorney Attea said just to reiterate, like Mrs. O'Hara shared. He has had discussions with their attorney. We just got the papers a few days ago. There has been a number of constructive discussions. He can't tell them at this point in time where

those discussions are going to lead to yet. He is doing some research on it and working with them. He greatly appreciates everybody's comments tonight; they were all very well spoken in expressing themselves. He is sure that this body will take that into account in considering where it stands but because it is a litigation, they are not permitted at this point to comment on it; you shouldn't misinterpret that. Ok? So thank you for your time. Mrs. O'Hara asked if the tape could be preserved. It will be preserved. Yes. The residents left the meeting at 7:35 p.m.

Town Attorney Attea asked the Board if they would like to further discuss this this evening or wait until he finishes his research. Chairman Kelly interrupted and said no; he does not want to talk about it. Town Attorney Attea advised that they are working on it. He has been speaking to their attorney and has had some constructive discussions. Obviously, the pleadings had several causes of actions and he is researching each of them with Town Code, state law. He said he will get back with this body either through the Supervisor directly or through the Town Board after their research and hopefully an educated decision as to how they will proceed. The Board thanked Town Attorney Attea. Town Attorney Attea advised that if any of the members has any individual, they can reach out to him. Supervisor Drake noted that Mrs. O'Hara wanted this group to believe that you were in more agreement than what it was. Town Attorney Attea said that he is still doing some fact finding. There are two very, and this is often the case, dramatically different versions of what is actually taking place so at some point, as a finder of fact as they say, a judge or a juror; and he hopes it never gets to that but in the meantime, the Board should rest assured that you have done your duty to the best of your ability with the information provided. He will do some research; we will keep digging so they will have all the support on the legal side and then this can move on. Ok. Chairman Kelly said very good. Town Attorney Attea noted that he did not believe he would be needed for the rest of the meeting and excused himself. The Board thanked him. B. Luno questioned that if this Board approved it, then it stands; a Special Use Permit would be renewed every year. Chairman Kelly advised that a Special Use Permit would be but this is a Home Occupation Permit. This stays with the owner; if someone else comes in the permit is gone; but as long as he is there, it's his.

ITEM #4: Comments from Liaison Supervisor Drake

Supervisor Drake advised the Board that he applied to Erie County for a grant to update the Town's Comprehensive Plan and the Solar Law. Both of these were updated in 2018 but neither of them addresses large scale solar. He is requesting \$10,000. He is hopeful that the Town will get approved for the grant and will ask Wendel Companies to work with the Town again. At this time, he is not sure if there will be a need for volunteers to participate in the process. J. Jozwiak asked Supervisor Drake about the State of Emergency Declaration notice on the Town Hall door. Supervisor Drake advised that the State of Emergency Declaration has been going on since March, every 30 days it is renewed. This is in case there is a serious outbreak of COVID in our area and the Town may need assistance. The doors to the Town Hall are locked. One reason is that there a lot of people who walk in the Village who come into Town Hall to use the restrooms. With the CDC guidelines to clean restrooms three times daily, the Town

cannot do that with a parttime custodian who works two days/week. Supervisor Drake advised that the doors are locked to keep the employees safe.

ITEM #5: Approval of Minutes

a) September 1, 2020 – Secretary Schweikert had noticed an error in the Minutes and corrected that error prior to tonight’s meeting. Page 7, third line from the bottom it had stated “Townsend Road” and should have been “Transit Line Road.” J. Jozwiak made the motion, seconded by J. Edbauer, to approve the Minutes as corrected. All in favor. Carried.

ITEM #6: Review of Zoning Districts

Chairman Kelly asked the members if anyone had had time to further review the zoning code. K. Lux advised that he has reviewed the code but can only find two R districts that could possibly be combined. There was no further input at tonight’s meeting.

ITEM #7: Business from the Members

(1) Chairman Kelly recalled that at the August meeting there was discussion about noise and decibel levels and asked J. Edbauer if he had had an opportunity to look into this more. He had not. Chairman Kelly advised that he had and that there are pluses and minuses for the Town to get involved. He found that some municipalities have a 7 a.m. to 7 p.m. noise ordinance. Chairman Kelly believed that doing this would open up a pandora’s box. J. Edbauer agreed; the reason that this was being discussed in August was because of the Hogarosa event at Grottanelli’s property. R. Hilliker does not think there is a problem. J. Edbauer asked Supervisor Drake if he had received complaints about the music. Supervisor Drake had received complaints from a resident on Moore Road multiple times over the years since the lawsuit. The Special Use Permit process could impose restrictions on noise. K. Lux advised that they could call the Sheriff.

(2) Supervisor Drake advised the Board that the annual sexual harassment training will take place on Monday, October 19th at 9 a.m. If anyone receives this training through their employer, they should provide Supervisor Drake with a copy of that training verification. K. Lux noted that the sound is not good in the Town Hall Auditorium; discussed possibly changing the location to the Senior Center. Supervisor Drake will check with Senior Center Director Eschborn. J. Zybert noted that she conducts these trainings at their business and she volunteered to train the Board at their November meeting. Last year Supervisor Drake was certified to do these trainings for some of the Town employees who could not attend the scheduled training day. The members agreed to do the training at their next meeting and thanked J. Zybert.

(3) Chairman Kelly announced that the Southtowns Planning Committee will be

having a meeting on Tuesday, October 27th at 6 p.m. at the Holland Willows. At this time no email has been received advising of this meeting but once it is received, Secretary Schweikert will forward the email to the Board.

ITEM #8: Motion of Adjourn

J. Jozwiak made the motion, seconded by J. Edbauer, to adjourn the meeting at approximately 7:47 p.m. All in favor. Carried. Chairman Kelly advised that the next meeting is November 3rd and that it will be their training night.



Darlene G. Schweikert
Planning Board Secretary

