

## **Town of Halfmoon Planning Board**

**September 27, 2010**

Those present at the September 27, 2010 Planning Board meeting were:

**Planning Board Members:** Steve Watts – Chairman  
Don Roberts – Vice Chairman  
Rich Berkowitz  
Marcel Nadeau  
Tom Ruchlicki  
John Higgins  
John Ouimet

**Planner:** Lindsay Zepko

**Town Attorney:** Lyn Murphy

**Town Board Liaisons:** Paul Hotaling  
Walt Polak

**CHA Representative:** Mike Blanchino

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Mr. Watts opened the September 27, 2010 Planning Board Meeting at 7:00 pm. Mr. Watts asked the Planning Board Members if they had reviewed the September 13, 2010 Planning Board Minutes. Mr. Roberts made a motion to approve the September 13, 2010 Planning Board Minutes. Mr. Higgins seconded. Motion carried. Mr. Nadeau abstained due to their absence from the September 13, 2010 Planning Board meeting.

### **Public Informational Meeting:**

#### **10.075 PIM      Koval Contracting LLC, 10 Guideboard Road – Change of Tenant**

Mr. Watts opened the Public Informational Meeting at 7:00 pm. Mr. Watts asked if anyone would like to have the public notice read. No one responded. Mr. Tom Koval, the applicant, stated the following: I'm the owner of Koval Electrical Contracting. Currently my business is located in Clifton Park. I have been a resident in Halfmoon for the past 15 years. I'm interested in purchasing the property located at 10 Guideboard Road to move my business from Clifton Park to Halfmoon. My business is very low impact, I have a total of 4 company trucks; three trucks would be staying at the location. I also would be moving my office to that location, which consists of one part-time secretary who works 32 hours a week and myself. My hours would be minimal at the office; I generally get in around 7:00 am and I leave by 3:30-4:00 pm. My secretary works from 8:00 am to 4:00 pm so there is no one at the office in the evenings or on the weekends. All of my business is done off-site. Being an electrical contractor in the contracting business, we cater mostly to National Grid and being in the construction business, we are building and refinishing things elsewhere at other locations. We have no shop work, there would be no construction on the premises and there would be no large equipment stored at the property. There would be a small amount of material stored inside the building, but we don't stock materials. We purchase everything as per what the job requires. The business operation would be 5 days a week, no weekends, very low impact

to the neighborhood and there would be no noise to speak of. I simply want to get my business back in the Town of Halfmoon because like I said I have been a resident of Halfmoon for 15 years located off of Lower Newtown Road on Button Road. I have been in business 23 years and I haven't had any issues with anyone. Mr. Watts asked if anyone from the public wished to speak. Mrs. Liza Milo, of 12 Guideboard Road, stated the following: My husband Jason is also present for tonight's meeting. We reside at 12 Guideboard Road, which borders 10 Guideboard Road. Just to refresh the Board's memory, I will reiterate on our last meeting. We currently have two children ages 2 and 8. I have been a lifelong resident of the Town of Halfmoon for the last 37 years. In 2004 my daughter was diagnosed with Asperger's Syndrome, which is a form of Autism and she requires a quiet and relaxed atmosphere where she can feel comfortable and be able to play outside. I'm hoping after today we can continue to get that at home. For 20 plus years my mother was employed as my uncle's (Mr. Art Chouiniere) secretary, I grew up with the business and saw how the operation worked. In the spring of 2002, my mother's job was dissolved and my uncle proceeded to sell all of his equipment to VanAuken who is a contractor. He began going to Florida for the winter with his girlfriend and returned home sometime in spring depending on the weather. My husband and I am very concerned for the wellbeing of our neighborhood and fear that this could open the door for worse things to come. As stated in Article 2 labeled Purposes of the Town of Halfmoon Comprehensive Plan, "the purpose of promoting the public health, safety, morals, convenience, order, prosperity and general welfare of the community": so, allowing a business of any sort into our quiet family-oriented residential neighborhood is going against all that the Board is here to uphold for us. A business that would be detrimental to the character of my neighborhood as well as my property value that I worked very hard to maintain. The Town of Halfmoon Law states, "no such structure or vehicle may be occupied until construction of the waste disposal system has been approved". It also states that the inspector is supposed to investigate promptly before and after installation as well as during construction waste disposal covered in such applications according to Town Law. When I requested the septic plans in my Freedom of Information Law (F.O.I.L.), I requested the plans, map and approval from the Town's Building Department. The Building Department then stated to me that they did not have anything on file. They have no idea of the size, the location, the nature or when the septic was put in. The system that is currently located at 10 Guideboard Road was installed without the Town's knowledge and could very well be located on my property. My home was built in 2000 and the residence at 10 Guideboard was built in 1997 with no permit, no plans and no inspections. There was no existing septic system at the time and I can only assume that it was installed at the time of the residence in 1997. There was no bathroom located in the 2-stall garage; therefore, no septic system was necessary. It was brought to my attention in 2002 during the installation of our aboveground pool that the leach lines for 10 Guideboard Road ran through our property. This was brought to my attention by my Uncle Art. He stated he never thought anyone would be building there so he never worried about the location of the septic. He was actually very concerned and he stayed for the entire installation of the pool. New York State Law states that a business has to be ceased to operate for one year and once that one-year is up, it reverts back to the zoning. The Town of Halfmoon gives businesses two years without activity. My uncle's passed in August of 2009 and prior to that the business ceased in 2002 as stated by Mr. Dan Chouiniere and many affidavits that I received. My uncle's ill health did not allow him to do much, let alone run a construction business. There was no equipment, no employees and he wintered in Florida. He spent afternoons at my grandmother's and sometimes he even helped getting my daughter off the bus. My grandmother is located at 4 Church Hill Road, which is directly across from the property at 10 Guideboard Road and my uncle had to drive there. He had to drive because he couldn't walk very well. He had to park 2 feet from the door. So, to say that he did any type of construction work is absolutely false. I'm trying to make the Board understand that everything points to this parcel being strictly residential as are the dwellings around it. It is not a pre-existing, non-conformity and you cannot claim residential Star, file, and receive residential building plans, building permits and have documentation that the past business was dissolved in 2002 and still consider

this a pre-existing, non-conformity. In conclusion, while I was getting my paperwork together, I was reviewing the minutes from a Zoning Board of Appeals (ZBA) meeting from April 7, 2008. There is a great deal of upset and concerned neighbors due to a commercial business adding unauthorized buildings and being poorly run with no respect to the neighbors surrounding it. One particular neighbor stated, "I do not want to live in a commercial zone. This building has decreased the value of my house and the neighbors homes surrounding me". He goes on to say that he and his family lived there and they will be there for the rest of their life. I sympathize with this man and I know how he feels. I feel that this man would agree with me and the neighbors that came out tonight who are trying to save our neighborhood. We are dealing with a similar issue. This man who was against the business and its dealings was the applicant's perspective tenant at 10 Guideboard Road, Mr. Tom Koval. Mr. Koval was against a commercial business being planted in the middle of his residential neighborhood that he calls home. What makes it right for him to come to our neighborhood and open a business next door? Referring to the map; that is a septic system, here is my pool and this is where he believes that the leach lines were. You can reference this map if you need to. Mr. Dennis Jensen, of 4 Grange Road, stated the following: I have heard Mr. Dan Chouiniere tell us his version of history. He has stated that he had records, but to this date, he has not provided any to this Board or the Town. I know this because I have F.O.I.L.'d all the information relating to 10 Guideboard Road. The most surprising information I have gathered from this F.O.I.L. request were some of Mr. Dan Chouiniere's own words. I must correct some false statements; for instance, the Town of Halfmoon has had zoning since 1969 not 1995 as he has stated in his deposition in a lawsuit against this Planning Board. The property at 10 Guideboard Road has a (R-1) Residential zoning since that time. He states in a letter to the Town of Halfmoon Planning Board that in 1970 his father built a two-stall garage behind the barn. This statement proves that this building is not pre-existing, non-conforming. I have a map that has a deed reference conveying this property to Art and Helen Chouiniere in 1994 so there is something wrong there. Also, in my F.O.I.L. request I have found a building permit for a residence and a garage issued in November 1997. These buildings also are not pre-existing, non-conforming. In the application it specifies the zoning as R-1 and the fee paid was \$80.00, which is the fee for residential property. On this permit it is checked new construction. I also have an inspection log with the issuance of a Certificate of Occupancy (C.O.) dated 12/4/97 with Mr. Bob Adams as the inspector. I also found a building permit for a garage issued on 10/26/01, which he had gone to the Planning Board on 12/11/00 and he stated to the Planning Board he was going to tear down and rebuild the garage that earlier was referred to as a barn. From conversations with family members, Art had done some renovations on the barn and had turned it into a garage. He also stated in the Planning Board minutes he was going to use the existing foundation and make it smaller. He obviously did not use the same foundation because I inspected the log where the footings and rebar are checked off as completed by the Building Inspector. To me this is obvious from looking at pictures from the dilapidated barn that didn't even have a foundation. Also, it is obvious that this barn is not in the same location and the 3-bay garage is turned 90 degrees from the footprint of the original old barn. This building would also not be pre-existing, non-conforming according to Town Law. Town Law 165-68 Reversion from Conforming Use Unlawful: once changed to a conforming use, no building or land shall be permitted to revert to a non-conforming use. A non-conforming use may be altered to a conforming use and it is obvious this is what happened at 10 Guideboard Road. He built a home in 1997 and he built a garage in 2001 for his personal vehicles. Town Law 165-66 Extension or Enlargement: no non-conforming use shall hereafter be extended or enlarged except following authorization by the Board of Appeals as a special extension and subject to site plan review and approval of Article 6. Town records that we have F.O.I.L.'d do not contain any such approval or site plan. Therefore, just as the building permit states; Art received these building permits under R-1 zoning classification. In regards to the vehicles that Dan Chouiniere refers to the large trailer showed up a few years ago when Art's girlfriend Joann Matthews sold her home on Hudson River Road in the Town of Halfmoon and brought her unregistered trailer full of personal belongings to 10 Guideboard Road. The red

dump truck was never registered according to the Department of Motor Vehicle (DMV). If I am wrong, I'm sure Dan Chouiniere would supply us with these records. These vehicles were in violation of Town Law 165-44, which states no parking of commercial vehicles outside in an R-1 zone. Dan Chouiniere has stated in his deposition that he was under extreme hardship because of this Board's last decision. This hardship is self-created. He has never attempted to rent, lease or sell this property as R-1 and there are many other uses that are permitted. I would like reiterate that Art Chouiniere applied for and received a Enhanced Senior Star tax exemption for at least the last 4 years. Town Law 149-2 Exemption, Real Property Tax Law 467 New York State is subject to the following conditions: no exemption shall be granted unless the property is used exclusively for residential purposes. I would also like to respectfully ask this Board to adhere to the Town's Comprehensive Plan and these Town Laws that I have quoted. Move forward not backwards; protect old neighborhoods like mine that are slowly improving. Incompatible uses cause nothing but problems. Mrs. Connie Ferro, 44 Halfmoon Drive, stated the following: Most of my neighbors have already said how I feel. I would also like to say that I know my uncle and in the last several years of his life he was in pain from all the years of machine work. Walking any distance was more than he could tolerate. As far as work done by my uncle in the last couple years of his life was impossible; to his regret. So, this so called pre-existing, non-conforming use does not exist. Mr. Matthew Hugg, Attorney, stated the following: I represent Mr. Dan Chouiniere. I would like to begin by making sure that the members of the public and the Board are aware of what exactly we're trying to determine here with respect to the pre-existing, non-conforming use. Star exemptions and so on; whether or not that was an issue while Mr. Art Chouiniere was alive. Mrs. Murphy stated the following: I have already advised the Board that the Star exemption is not only irrelevant but is also applicable as long as it is a primary residence even if it is being used commercially and they don't need legal advice. You can just explain to them the uses and what has been going on at that property and that would be very helpful. Mr. Hugg stated the following: Just to set the record straight, if I could enter into the record a business card and a CRWN newspaper's advertisement that the resident at 12 Guideboard Road operates a Family Tent business with the motto "no party is complete without the family" just to make sure there were complaints that this needed to be a quiet neighborhood and that any kind of business activity was going to be detrimental. In addition, I heard mention of a number of affidavits. We haven't reviewed them but based on the comments it sounds like the neighboring property owner's opposition is based upon their claim that Mr. Chouiniere was too infirm rendering it impossible for him to have conducted any work of any kind at least from 2007 to 2009 upon his death and possibly since 2002. We have gone through some of the records that were left in the estate of Art Chouiniere. I have an invoice dated 5/15/08 for 1 hour worth of labor to move a backhoe from Art's yard to Geyser Road on 4/29/08, 3 hours of labor and \$165.00 to move a backhoe from the Allstate Insurance Building Geyser Road to Waite Road on 5/5/08 and 2 hours of labor at jobsite Route 147 on 5/9/08 and that is Art Chouiniere. I have a second invoice dated 9/25/06 and I have similar invoice 9/5/07 and I have an invoice dated 6/13/08 that I would like to also enter into the record. In addition I have an insurance policy from National Grange Mutual Insurance Company for Arts Trucking, 10 Guideboard Road and the cancellation of that policy on October 14, 2009 evidencing that he had business equipment insured up through and including the time of his death. In addition to that, I have an affidavit here from a gentleman by the name of Richard Petuske who in his affidavit swears that from 2007 through 2009 he worked for Art Chouiniere and assisted him in the operation of his excavation and snow removal business located at 10 Guideboard Road, Town of Halfmoon. Between those years Mr. Petuske worked on the following types of jobs all of which were undertaken by Art's business operating at 10 Guideboard road: excavation for installation of drainage; placement of perforated pipe for drainage systems; driveway removals; excavation for placement of sewer pipe and other types of underground; repair of sewer pipes; excavation for construction; stump removal; residential and commercial snow removal and other similar jobs in a 3 page affidavit with 20 paragraphs. In short, aside from some generalizations that were based upon unsubstantiated accounts of Mr. Art Chouiniere's medical condition in

which it was claimed by neighbors and family members that he was so physically infirmed as to be unable to walk, I think those are all laid to rest by the documentary evidence that shows that this business was operated up through and until his death in 2009, which is well within 2 years of the current application. I would also like to reiterate, as was mentioned at the meeting previous to this meeting, that the proposed use by Mr. Koval has a far less impact than what Mr. Chouiniere's use has been for the past 40 years. Mr. Dennis Jensen, 4 Grange Road, stated I would like to object to the affidavit because that person could be here if he wanted to and there is no reason why he couldn't come here and say that. Mrs. Murphy stated the following: This isn't a hearing and it's not like a court of law where hearsay would not be allowed. The civil law, in what we're deciding today, is based on things such as: affidavits, etc. There would be no cross-examination. Mr. Jensen stated the following: All right. You stated earlier that the Star Program would have no impact; what about Town Law? Mrs. Murphy stated obviously Town Law is relevant. Mr. Jensen stated it is Senior Star not the Star Program. It's a different program; it's only for seniors by dollar amount, with 2 years in a residence where they have to live there and no commercial use and that's in the Town Law. Mrs. Murphy stated pursuant to our Town Assessor, he was granted his Star exemption with full knowledge that it was both primary residence and a commercial use and that is all that I can tell you. Mr. Jensen stated the following: That is the Star Program, not the Enhanced or Senior Star; it is two different items and a huge difference in money. It's like a 50% reduction in your taxes if you claim that. Mrs. Murphy stated the following: I hear what you are telling me and I'm telling you what our Assessor is advising me as to the status of that property. I will also tell you just to satisfy your concern; it is not relevant what he is claiming with regards to Star because that is not what this Board has to make their decisions based on. The Board has to look at the use, as it exists; not if they are lying on their taxes and not if they are claiming anything else that is not before this Board's purview. We do not have the opportunity to make a decision based on what may or may not be filed with the Internal Revenue Service (IRS). Mr. Jensen stated if it was filed with the State Program, an affidavit stating there was no commercial use, I think that would be relevant. Mrs. Murphy stated that would be up to the IRS. Mr. Jensen stated no it would be relevant to the State of New York because he ripped us off if he was running a business and if he signed an affidavit that is relevant. Mrs. Murphy stated I'm not going to argue with you. Mr. Thomas Koval, of Button Road/the applicant, stated the following: I just want to address the public's concerns about my use and about the concerns with the Milo's daughter. I firmly believe that if you converted that to a residence, it's going to have a lot higher impact than me being there from 7:00am to 4:00pm with no nighttime activity. If the property is used as residential, you are going to have a family there during the day, you are going to have cars coming and going, which doesn't happen at my business. My business is simply my secretary and myself. There would be no teenagers; no other traffic coming and going and the traffic would be much less. As far as the commercial use; compared to what I was in front of the Board for years ago, 150 tractor-trailers coming out of an 8,000 SF repair facility is a little different than a secretary and her boss coming and going twice a day. You really have to compare apples to apples. I'm not arguing any of your concerns and I understand your concerns with a business going in there. It has been a commercial business and there have been tractor-trailers in and out of there for years. I used to drive by it every single day, several times a day and I'm not here to argue the use or how long the business has been there. That is for the legal people and the seller's problem. I simply want to state the fact that he would be doing much worse having a residence there or a potential building like you have on the corner with multiple rentals with a much higher density of people in the building and usage coming and going than myself. You would not see my employees, we're not going to sit out in the parking lot and play our stereos loud and raise hell. I'm way past that stage. I'd love to be there again, but I'm not and you should not have any concerns about that. Mrs. Liza Milo, 12 Guideboard Road, stated the following: I would just like to say that as far as a business being run at 12 Guideboard Road, that is false. We don't have anything kept on our facility. We do rent tables, tents and chairs and that is it. Those items are kept off the property and my father and I work it. As far as that being a business next door,

that is false. I have one other question and please correct me if I am wrong because I'm trying to go over this in my head. Two years the Town of Halfmoon says that if an area that is a non-conforming use goes stagnant, if it goes stagnant for two years than it reverts back and asked am I right by thinking that way? If that is the case, then in my mind I see that my uncle passed away August of 2009, so two years prior to that there would have to be business activity. Mr. Chouiniere's lawyer stated he had invoices from 5/08 and 6/08 and to me that is two years of no activity at the business. So to me that property reverts back to R-1 Residential. I don't understand what the concern is, what the problem is and I understand that Mr. Koval might be a great guy and it's not personal against him. But once a business gets in there and it keeps on with a non-conforming use, who's to say once all you Board members are gone and we have new people and they want to sell it to Stewart's or a convenience; it's zoned commercial. Mr. Watts stated it is not zoned commercial. Mrs. Milo stated the following: Okay, well someone other than you might see the next business wanting to go in there is not an expansion and it might get through and there are worse things that can happen after this goes in. It is zoned a R-1 neighborhood. I would much rather have a house next to me with 15 teenagers than let a business go in next to me. I understand that may be apples to apples and the applicant being a low-key electrician and R.J. Valente with a 150 trucks; but still the applicant did not want a commercial business in his neighborhood. He is going to live there, he is going to live there the rest of his life with his family and so am I. Mr. Watts stated the following: That's really not an appropriate topic for debate. We're here to listen to the concerns of the neighbors. Mrs. Milo stated I'm just trying to explain that two years with no activity reverts back. Mr. Watts stated the following: If you want to state that; that is fine but the issues with Valente are something totally separate with a mining operation and New York State Department of Environmental Conservation regulations. As a matter of fact, numerous citations were issued for that use. Mrs. Milo stated I understand that and I'm just trying to make the Board understand that this is our neighborhood, in two years there has been no activity, there is an illegal septic system that is leaching onto my property and there are a lot of things that you guys need to think about and I appreciate your time. Mr. Watts closed the Public Informational Meeting at 7:30 pm. Mr. Higgins stated the following: There's a residence and then there is a 3-car garage and asked are there other buildings on the property? Mr. Chouiniere stated the following: There is a 2-stall garage that was built in 1970 and there is an addition to the 2-car garage with the apartment that my father lived in. Next to that is a 3-stall steel building and there is also a shed. Mr. Higgins asked is the original building the 2-car garage? Mr. Chouiniere stated correct, the original building is there and a building was added to it and next to that is a 3-stall steel building. Mr. Higgins asked is that the building that was put up when the barn was taken down? Mr. Chouiniere stated that is correct. Mr. Higgins asked is the building in between attached or a separate building? Mr. Chouiniere stated the following: Correct, it's attached. The aerial photo with the shadows makes it look like it is only partially connected but the roof line is connected. Mr. Higgins asked which building has the office? Mr. Chouiniere stated the following: We have kind of switched back and forth with terminology. My father lived in it; it had a bedroom in it, a front room and a bathroom; so it basically has 3 rooms in it. So, that is considered an office because he had an office in it and obviously Mr. Koval is going to use it strictly as office. Mr. Berkowitz asked where does the sewage go and what is the status on that? Mr. Chouiniere stated I'm not sure it got from the ZBA to the Planning Board; but the ZBA had copies of this. I have the most recent survey of the property that I believe was done a couple of months ago. There are 2 covers that are shown on the plans that are covers to the septic tank. My father wanted to leave those covers on there in case he had to clean out the septic tank and then he wouldn't have to dig them up and all he would have to do is take off the top. The entire area there is very wet. When he put in the septic services, he put in 2 leach lines. The 2 leach lines are 60 FT leach lines and they go just to where the braced metal fencepost is. I have a copy of the plans that were done by Mr. Harold Berger that were submitted to the Town, so they were there. I remember when my father completed that; he wanted to fill in the holes but he had to wait for the Town Inspector to arrive. So, I'm not sure why it is not on record, but I can remember my father

complaining that he had to wait for the inspector to arrive before he could fill in the holes. So, it was an inspected septic service. Over the last few years my father had problem with the neighbor in turning around on that septic service and he had many complaints to them to ask them not to turn around on the septic service because obviously it is a very wet area and the entire area is a wet area; so, if you were backing over that, you would sink down in. That is where septic service is and I'm sure of any other lines that go to any other place. That is the one that is on file, that's the one I have the copy for and that's the one that was inspected. If there are any other lines that are going on, they're not connected to that septic service. That is what is on file and that is what I have the paperwork for. My father was concerned when he was backfilling it so that he didn't get dirt everywhere and we didn't get it on any driveways or anything that was there. Mr. Berkowitz asked how long ago was that? Mr. Chouiniere stated I'm going to guess it was when we added the addition on, which was probably around the year of 2000. Mr. Berkowitz asked are there any records or maps? Mr. Chouiniere stated like I said, I don't know if I have one with me tonight but I do have a map and if I have the map then you guys have to have map. Harold Berger is the one that created it and certainly my father wouldn't have something done if he didn't have to file it with the Town and he wouldn't of had it drawn. My father had done septic services his entire life. Mr. Watts stated the following: I wouldn't speak to the fact that we have to have one, there may have been one here and I can't verify that we have it just because it might have been received at one point. So, if you have something that you want to submit, feel free. Mr. Chouiniere stated the following: I don't see where it's relevant at this point. This is where the septic service is and I'm telling you where it is. They are claiming that it is somewhere else. Not unless something was done on a different day that I'm not aware and if that wasn't inspected, certainly you would see that. Mr. Nadeau asked if it was stamped septic plan from Mr. Berger? Mr. Chouiniere stated the following: This is a stamped plan actually from VanGuilder but it is not the plan that has the septic on it. It says "grinder pumps", they're tops but they're not grinder pumps; they're just entrances to the septic service. Mr. Nadeau stated the following: So, we don't have a stamped plan with the actual septic? My question is who drew up the plan and whose stamp is on it? Mr. Chouiniere stated I can look through my material but I don't think so. Mr. Berkowitz asked is it proper to have somebody else's septic system leaching onto an adjacent property? Mr. Watts stated no. Mr. Ouimet asked what is hooked up to this septic system? Mr. Chouiniere stated one toilet, a sink and a shower. Mr. Ouimet asked that's it? Mr. Chouiniere stated that's it. Mr. Higgins asked is there a kitchen? Mr. Chouiniere stated the following: I'm sorry, I take that back; yes, there is a kitchen and the sink in the kitchen is also attached. Mr. Ouimet asked is it attached to the septic system or is it into a drywell? Mr. Chouiniere stated it is attached to the septic system. Mr. Ouimet stated so the most entry into this system would be one toilet, one shower, a bathroom sink and a kitchen sink. Mr. Chouiniere stated correct. Mr. Ouimet asked is the proposed use that is before this Board for that facility, not as an apartment but as an office? Mr. Chouiniere stated that is correct. Mr. Ouimet stated so I guess the question that I would have is how many showers are going to be taken in that office, how many dishes are going to be washed in that sink and how much would the toilet be utilized by two people? Mr. Chouiniere stated I can tell you that when my father put the septic system in, it was his main concern to put in a minimal amount of leach lines. Mr. Ouimet stated I think that is irrelevant to this discussion because what your father used that space for was to live in it and when you live in it you use the toilet, the shower and the sinks more and that is not necessarily the normal office use of the same facilities. Mr. Higgins asked are there 3 storage trailers that are shown on the aerial photo? Mr. Chouiniere stated yes, two of those trailers belong to Joann Matthews and one of those belonged to my father, but they are gone. Mr. Higgins stated okay because we want to know exactly what is on the site. Mr. Nadeau asked is the septic system on your property or the neighbor's property. Mr. Chouiniere stated the following: The septic system is on our property. It is not legal to have a septic system on your neighbors' property. Certainly if it was done at that time, why wouldn't they say something? Mrs. Milo, of 12 Guideboard Road, stated the following: When the septic was assumed to be installed in 1997, my house was not there. My grandmother owned

the property and you could not see behind the buildings with what was going on. My uncle did whatever he wanted to do. That septic was put in and the Town has no record of it. I F.O.I.L.'d it and "no record of the map" came right out the Building Departments mouth. Secondly, when I handed those pictures to you, you should see a white pipe that is similar to a candy cane and that is a clean out. Several times that cap has been taken off when my uncle and his girlfriend lived there. There were feces all over the ground. I had Hickok there, they had Odorless there and they couldn't find the problem. So, if this is such a great septic system that my uncle had put in and the plans were stamped, how come there are constant problems with human feces and toilet paper all over the yard? I don't want to live next door to that. An office with 13 employees; okay there is 1 part-time secretary and the owner. Who is to say once they get in there that all 13 employees aren't in and out. Mr. Watts stated the following: I would like to respond to that and your previous question about a Stewart's going in there. If we do approve this, it would be with conditions and it would not be a carte blanche to do whatever you want. Mrs. Milo stated I just don't think that it's helpful to the neighborhood. Mr. Watts stated the following: I would like to address your concern which you raised before about a Stewart's going in there or whatever. If we were to approve this it would be with very strict conditions and that's how we do things now. Mrs. Milo stated I understand that but I can see how many times I've been here for this one issue and I can see how long it has taken and progressed and if there are problems and concerns with the neighbor if you let another business go in there after it has been stagnant for more than 2 years, I can see how much longer it is going to take to get resolved. Mr. Watts stated the whole reason that it took so long, if you were at the meetings, was because this Board did it's due diligence and questioned those uses that weren't going to be approved. Mrs. Milo stated I appreciate that and I hope tonight we can put it to rest. Mr. Nadeau asked Mrs. Murphy for verification of the lapse time or the application time and the last supposedly invoices that have been submitted and what is the time frame? Mrs. Murphy stated the following: There are two different issues; Mrs. Milo brought up the 2008 date verses now it is 2010. The application process did start previously with the other applications that were denied. I would encourage the Board though not to rely heavily with regards to these invoices in that you have an affidavit of someone who says they were employed and actively working at a business engaging in what appears to be a much more intense use up until 2009 together with insurance policies for business vehicles, not personal vehicles, business vehicles that was in affect again up and through 2009. At this point I do not have a concern with this Board deciding based on what they have heard whether or not this is a proper use for this site. There is nothing in the Town Law that would prohibit you to go forward; in English, this would not be an expansion of a pre-existing, non-conforming use so you could go forward with approval or disapproval of the site based on the other factors that you have looked at. Mr. Berkowitz stated my only question is regarding the septic system; if it's not on an adjoining persons property. Mrs. Murphy stated the following: That is something that should be addressed obviously, but it is not relevant with regards to the use, that is separate and apart. If it were used as residential, it would frankly be a more intense use on the septic system, which would exacerbate the problem. So, either way it would be something that would have to be taken up between the parties, more of a civil issue than an issue for the Town. The Town's time period with regards to when we would involve has expired except for if they are actively discharging on somebody else's property, obviously there are regulations in place that the Town would in fact enforce. We have not had any reports of that. Mr. Berkowitz stated until now. Mrs. Murphy stated the following: We haven't actually had a report of that, we can send inspectors over. What they'll do when they get there and if they determine that the septic system is either not operating properly or that it is discharging improperly on somebody's property, they will red tag the building and you won't be able to use it for any use. Mr. Berkowitz asked if this were approved prior to their use, would that system have to be inspected and approved? Mrs. Murphy stated the following: I don't want to say that. I'm saying if somebody filed a complaint with the Board, our people would go over and look at it and make a determination as to whether or not there is a problem there but that hasn't occurred and they would have to do that with the Building Department. If there were



a problem, I would encourage people to notify the Town. Mr. Ouimet asked is it the purview of this Board to make a determination tonight or any other night as to whether or not a pre-existing, non-conforming use has been abandoned? Mrs. Murphy stated the following: No. That is a legal determination. If I'm telling you, based on my advice, that you're okay to go forward, that's because legally I've already made a determination that there has not been an abandonment nor is this an expansion of a pre-existing, non-conforming use. If I were to say that this would be, which is what I did in the prior 2 applications, this Board would be unable to hear and would have to deny the application because you do not have the authority to expand a pre-existing, non-conforming use. You're not making a determination with regards to that ground. I'm making a legal determination and saying that this is the proper Board before which this matter should be heard. Mr. Ouimet asked so a commercial enterprise going into this particular piece of property is in your opinion legally permissible. Mrs. Murphy stated the following: Correct. A commercial enterprise of this size and scope as we heard put forth by the applicant. Mr. Higgins asked so if this project is approved they would not require any kind of Certificate of Occupancy (C.O.) prior to beginning operation, is that correct? Mrs. Murphy stated the building already has a C.O. so they would not need an additional C.O. Mr. Higgins asked would it be within this Board's authority to require our inspectors to do an inspection? Mrs. Murphy stated the following: You could request that they do it and the Chairman, as head of that department, is telling you that they will do it. Technically no, but the Chairman is saying yes they will do it. Mr. Watts stated the following: Based upon the information that was brought forth tonight about the septic system, that should be looked at. If somebody said their neighbors septic systems was discharging onto their property, then we would go look and we would do inspections to see what is going on. There are properties in Town that we have removed the C.O.'s from residences and have been to court stating that no one can live in there until the septic system is brought up to standard. So, there is information to certainly look at that aspect. Mr. Roberts stated the following: I can see the concern of the neighbors and I share their concerns. Also, based on the rulings that we've heard her, Mr. Chouiniere has a right to make use of that property. As I said at the last meeting, this proposed use that I see here is much less intense than the past uses we've seen come before us. Mr. Koval stated the following: I would request that my office hours be from 7:00 am to 5:00 pm Monday through Friday just to be safe so that I'm not creating a problem with phone calls to the Board. Regarding the septic system; I will be removing the washer and dryer, I won't be showering there and we would not be doing dishes there. Mr. Roberts asked if there would be any weekend work? Mr. Koval stated not unless I have an emergency call, but I wouldn't go to the office because I would directly to the job. I may have to stop there to pick up a piece of paper or use the telephone, but there won't be any activity or any work being performed on the property after hours. Mr. Roberts stated I do believe that our Building Department should go and inspect the site. Mr. Higgins stated the following: There should be a condition on no residential use on the property. In other words, you can't sub-lease or one of your guys can't move in there because he has no place else to stay. It would be strictly an office. Mr. Koval stated the following: The entire square footage of living space is going to be utilized for office space. The current 1-bedroom would be used for my office and a blueprint room that I do my bids in and the front room would be used for the secretary's office and the reception area with office equipment. There would not be any extra space for a bed or for someone to live there. Regarding the septic; I have done a lot of buildings with septic systems for a 1-bedroom unit and it is required to have two 55 FT leach lines per bedroom and it sounds like there were two 60 FT leach lines that were put in. Mr. Berkowitz asked would there be any tractor-trailers, flat panel trucks or anything like that? Mr. Koval stated I don't own any tractor-trailers and I don't even have a license to drive a tractor-trailer. Mr. Berkowitz stated I'm not talking about you; I'm talking about delivery trucks. Mr. Koval stated there might be a UPS truck once in a while if I get a set of blueprints dropped off or something. There would be no tractor-trailer deliveries. Materials are delivered to the jobsites. Mr. Berkowitz asked would there be any on-loading, off-loading or noise? Mr. Koval stated the following: No, but if there are any additional materials that are left in the van, I may take them out

because I'm not going to throw them away. The company owns 2 small Ford econoline vans and I have a white sort of a cube truck with compartments on the side, which I currently drive home and leave it on my own property. I'm going to leave it inside over at these garages because in the wintertime it takes forever to get thawed out. I have a Ford pickup truck that I drive to work everyday and there is a Ford pickup truck that the company owns that would also be left inside the garage. This was the whole idea of purchasing a place with 5 garages bays so that I don't have to leave my equipment outside. Mr. Berkowitz asked would there be any repair of your equipment or trucks on-site? Mr. Koval stated no. Mr. Roberts stated in my opinion the applicant has heard all the concerns of the neighbors so it is up to him to make sure things go right. Mr. Ouimet stated the following: I have a couple more conditions that I would like the Board to consider. First one is no gas or fuel storage on site, no evening or weekend hours, no assembly or shop work being done on site, no equipment assemblies, no electrical assemblies; all of which is what you said in your original presentation. Mr. Koval stated absolutely. Mr. Ouimet stated and that you will adhere to a minimum storage of equipment on site and that there would be no more than 3 vehicles stored on site overnight. Mr. Koval stated I currently have 4 vehicles. Mr. Ouimet stated but you said you would only have 3 on-site. Mr. Koval stated the following: Correct, I drive one vehicle home at night. There is nothing that would be stored outside. If there were a fourth vehicle, it would be inside the garage. Mr. Ouimet stated so there would be no vehicles parked outside the buildings at night. Mr. Koval stated not on a day-to-day basis. Mr. Watts asked what is your definition of a day-to-day basis. Mr. Koval stated the following: If I have to unload a truck; the guys come back at 3:30 pm and they take whatever out of the van and they put it on the floor and they can't pull the van in for one night and the van would be left out in front of the door. Mr. Berkowitz asked where were the vans going to be parked to begin with? Mr. Koval stated the following: Like I told you originally the first time I came in front of the Board; I have two vans and now I have the pickup. Ninety-nine percent of the time all my guys go right to the jobsite. Occasionally, if it is a new job and we need to bring ladders to the job or whatever, one employee would stop at the shop, leaves their car there, take the van for the day and brings the ladders to the job. It is not an everyday thing because it puts overhead on me with fuel and everything else. We minimize the amount the time that the vans are being used and that's how you keep costs down. Currently, 95% of my work is for National Grid, everything is done offsite to the buildings and National Grid delivers materials directly to the jobsite and I have nothing to do with that. Mr. Watts stated pick a number to set the number of vehicles that would be allowed at the site. Mr. Higgins stated I think as far as outside storage, we have the right to set a number but as far as inside storage, it depends on the size of his vehicles. If he can get 5 vehicles inside, as far as I'm concerned, that's up to the applicant. If it is inside that's one thing and I don't think we should set a number on that and as far as outside we should a maximum number outside for overnight storage. Mr. Ouimet stated the following: I would offer no more than 3 overnight vehicles outside at any point in time.

Mr. Roberts made a motion to approve the change of tenant application for Koval Contracting LLC condition on no tractor-trailer deliveries, no outside storage, no assembly of product, no equipment repair, no residential use, no fuel storage, no evening or weekend hours, no more than three vehicles parked on-site over night and proof that the existing septic system is working adequately. Mr. Ouimet seconded. Motion carried.

### **Public Hearings:**

**10.076 PH**

#### **Murray Storage Building, 425 Route 146 – Special Use Permit**

Mr. Watts opened the Public Hearing at 8:01 pm. Mr. Watts asked if anyone would like to have the public notice read. No one responded. Mr. Robert Murray, the applicant, stated the following: I reside at 164 Harris Road in the Town of Halfmoon. I own a piece of property on 425 Route 146 and I am proposing a storage building. The proposed storage building would be used for the restoration of tractors and old cars.

I would like to get those vehicles out of the weather. Currently on my property I have a 3 vehicles sitting outside my garage because I can't fit them in it. I would like to get them out of the weather so that when I bring them in to restore them I will have a place to put them out of the weather when they are done. The proposed building would be located in the back end of the property with 15 FT off the back line and 12 FT foot of the side line. The proposed building would be in a two-tone clay color with burgundy and we are going to do burgundy half way up the building and blend the gutters into it. There would also be a copula on top of the rooster, one door on the gable end which would be 12 x 10 FT and an entrance door that I believe is 32 inches. There would be no windows on the garage door and no window in the entrance door. Mr. Watts asked if anyone from the public wished to speak. No one responded. Mr. Watts closed the public hearing at 8:04 pm. Mr. Nadeau asked is this the house where throughout the summer and the fall there has been tractors or yard equipment for sale? Mr. Murray stated yes, there was just one piece of equipment out there that I have removed. Mr. Nadeau asked would you be doing sales there as well? Mr. Murray stated the following: No. What I did when I bought the place, I'm worked on it and now my daughter is living there. I had a couple of my buddies who asked to put a trailer out there. Mr. Nadeau stated there was quite a bit of stuff out there throughout the year because I stopped to look at it and asked is that going to keep going on? Mr. Murray stated the following: If I get a car or something like that I want to sell or something that I want to move. I checked and I didn't know that I was breaking any laws to put an object out there with a for sale sign on it. Am I going to have a yard full of it? Well no, my daughter wouldn't tolerate that. A couple of the trailers that were out there belong to buddies of mine and they asked if they could sell something there because of the volume of traffic that is going by there. At the time, I didn't really care because they were helping me. So, I was kind of like paying them back a favor for helping me out. I believe those trailers were registered. Mr. Watts stated we have to keep an eye on people having things for sale. Mr. Murray stated right, I understand. Mr. Higgins stated the rear yard setback that is shown on the drawing is 12 FT, is that appropriate? Mr. Murray stated I believe they told me 5 FT and then they told me 10 FT. Mr. Higgins asked so are 10 FT and 12 Ft appropriate setbacks. Mrs. Zepko stated the following: Yes, they meet the setback requirements in the C-1 Commercial zoning. The residence is actually in a commercial zone and asked Mr. Murray to meet the setback requirements just in case that property ever resorts back to a commercial use. Mr. Murray stated my first drawing said 5 FT and 5 FT and they told me to change them. So, then I had Mr. Brian Holbriiter come in and survey it and do the drawings. Mr. Higgins asked regarding the house next door, even though it is in a commercial zone, it is a residential house, correct? Mrs. Zepko stated yes. Mr. Higgins stated you might want to check that because I had a similar situation down on my road with our antique shop and the house next door was zoned commercial and was being used as residential and the setbacks were 15 FT on the side yard setback. Mrs. Zepko stated it is a commercial lot next door as well. Mr. Higgins stated the following: It is the same thing on my road but it is a residence. Mr. Bob Chauvin was at the hearing that I went to and like I said, I'm just trying to protect the neighbors. Mr. Murray stated I believe the neighbors were notified of this public hearing. Mr. Watts stated we will look at that and if there is an issue, we will notify Mr. Murray. Mr. Murray stated if I have to move it, I have room to move it. I asked the surveyor to work off of your numbers. Mr. Higgins stated I drove by the site today to take a look at it and I see that you filled quite a bit in the back and I assume that you're not concerned about drainage going off onto your neighbors property and I assume all of that has been taken care of. Mr. Murray stated right and with all the rains that we have had, I have spoke to my neighbors and they put a trench in that used to be wet there and with what I did it benefited Mr. Michael Deets' house. Mr. Higgins stated I know that you described that you're going to have a driveway going to the left of the house going to your proposed building and that wasn't shown on the drawing. Mr. Murray stated the following: That's because I'm not putting the driveway in yet. The only thing I'm going to do is just run them right across the back yard and in. Mr. Higgins asked so, you're not going to put a paved driveway in? Mr. Murray stated there used to be a porch on the back of the house that I have removed and I'm going to bring my

pavement up to the side so that I have more parking on the side of my house but as far as going back and through; I'm not paving the driveway back to the proposed building. Mr. Ouimet stated it is my understanding that Code Enforcement did a site visit and determined that a fire truck can get access to the building once it is constructed. Mr. Murray stated that's correct.

Mr. Nadeau made a motion to approve the special use permit application for the Murray Storage Building. Mr. Berkowitz seconded. Motion carried.

**10.079 PH      Brookview Court Subdivision, 8 & 10 Brookview Court – Lot Line Adjustment**

Mr. Roberts opened the Public Hearing at 8:11 pm. Mr. Roberts asked if anyone would like to have the public notice read. No one responded. Mr. Tom McMahon, the applicant, stated the following: I am before the Board to request a lot line adjustment between my property located at 10 Brookview Court and my neighbor's lot located at 8 Brookview Court. The proposed adjustment will convey a .413-acre strip of land to be conveyed from 8 Brookview Court to 10 Brookview Court. Mr. Roberts asked if anyone from the public wished to speak. No one responded. Mr. Roberts closed the Public Hearing at 8:11 pm. Mr. Higgins asked are there any wells located on the sites? Mr. McMahon stated no.

Mr. Berkowitz made a motion to approve the minor subdivision application for a lot line adjustment for the Brookview Court Subdivision. Mr. Ruchlicki seconded. Motion carried.

**10.081 PH      Dudek's Dairy Farm, Brookwood Road – Major Subdivision**

Mr. Watts opened the Public Hearing at 8:12 pm. Mr. Watts asked if anyone would like to have the public notice read. No one responded. Ms. Kathy Suchocki stated the following: I am here on behalf of the Dudek's Dairy Farm to subdivide a 9.26-acre parcel from the larger 41.24-acre parcel leaving the larger parcel at 31.98-acres. Both parcels are currently zoned R-1 Residential. The proposed 9.26-acre parcel would be used for a single-family home to be built in the next few years. Mr. Watts asked if anyone from the public wished to speak. No one responded. Mr. Watts closed the Public Hearing at 8:13 pm. Mr. Higgins asked are there any wells located on the property? Ms. Suchocki stated the well is located on the remaining 31.98-acre parcel and it is next to the silo, which is shown as the round circle on the map. Mr. Higgins stated I assume that there is Town water on that road. Ms. Suchocki stated yes. Mr. Higgins asked do the other two adjoining parcels have wells on the property. Ms. Suchocki stated no.

Mr. Roberts made a motion to approve the major subdivision for the Dudek's Dairy Farm. Mr. Higgins seconded. Motion carried.

**New Business:**

**10.080 NB      Continental Motors, 213 Fellows Road – Change of Tenant**

Mr. Michael Nazarian, the applicant, stated the following: I live at 94 Fellows Road in the Town of Halfmoon. Currently I'm a heavy equipment operator and I'm getting ready to retire and I would like to get into sales of used motor vehicles. My family has been in this business all of my life and I'm going to get my dealers license. My mom owns some property on Fellows Road behind New Country Pontiac and it is commercially zoned. I just need some office space for the car dealership and I'm not going to display any vehicles. I will still be working construction for another couple of years and right now I would just buy one or two cars at a time just to get my feet into it. I would sell the cars on line and advertise them in the newspaper. There would be no storage of any vehicles. Mr. Watts asked do you have your dealer's plaque and would you have to show that? Mr. Nazarian stated I have a retail dealer's sign that is 2 FT x 3 FT and the Motor Vehicle Department does want that displayed on the building somewhere it can be seen.

Mr. Higgins asked did you say that typically you would not have any vehicles there. Mr. Nazarian stated there would be no display of vehicles at all. Mr. Higgins asked Mr. Watts if the Board should put a condition a number of displayed vehicles? Mr. Nazarian stated if I could have one vehicle sit there overnight with plates that would be great, if not, its no big deal. Mr. Watts stated there is plenty of room. Mr. Nazarian stated yes there is plenty of room and I have a big lot. Mr. Ouimet stated how are you planning on delivering the vehicles. Mr. Nazarian stated I have dealer plates. Mr. Ouimet asked so would you be driving the vehicle to whoever purchases it and you wouldn't leave it at your site for them to come and pick it up? Mr. Nazarian stated when the vehicle is sold; yes they can come to pick it up. Mr. Ouimet stated so you are saying that there would be a vehicle there for delivery purposes? Mr. Nazarian stated the following: Yes, one at a time. As a matter of fact, I'll probably even drive it being that I have a dealer plates. Mr. Ouimet stated I guess it gets a bit confusing for me, if you're going to sell on the internet, then that means that you're not going to have a display area for the vehicles. Mr. Nazarian stated there is no display. Mr. Ouimet stated the following: But you're going to have a vehicle somewhere and you're going to have to deliver it somehow. So, I'm just trying to connect it up. Mr. Nazarian stated I would be driving the vehicle because I have dealer plates and I would be driving the vehicle that I would be selling. Mr. Ouimet stated I'm having difficulty understanding where the vehicle is coming from? Mrs. Murphy stated for clarification purposes; you're saying that there would be no display and a vehicle wouldn't sit there for weeks on end. Mr. Nazarian stated right. Mrs. Murphy stated the reality is you should have the ability to have a car there off and on. Mr. Nazarian stated I would like to if I could.

Mr. Higgins made a motion to approve the change of tenant application for Continental Motors condition on only one vehicle on display at the site at any one time. Mr. Berkowitz seconded. Motion carried.

**10.082 NB      R J Carignan & Company, 1396 Crescent-Vischer Ferry Road – Sign**

Mr. Matt Petro, the applicant, stated the following: We are nearing completion of our new office building at 1396 Crescent-Vischer Ferry Road and we need to put up a sign. I am proposing a 10 SF sign on a stone covered pedestal in the front of our office building. Mr. Roberts asked are there two signs? Mr. Petro stated it is one sign that is two-sided. Mr. Roberts asked is the sign going to be 4 FT high? Mr. Petro stated the pedestal is 36 inches and the sign sits 20 inches above that. Mr. Roberts asked is the sign going to be flood lit? Mr. Petro stated it is going to be backlit. Mr. Roberts stated make sure the sign does not have any exposed neon. Mr. Petro stated the sign would have no exposed neon. Mr. Roberts stated the sign is going to be located awful close to the property line. Mr. Petro stated I think it is 15 FT from the measured line.

Mr. Roberts made a motion to approve the sign application for R J Carignan & Company contingent the sign would be located on private property and not in the State's right-of-way. Mr. Nadeau seconded. Motion carried.

**Old Business:**

**08.059 OB      Werner & Searles Subdivision, Werner Road – SEQR Determination**

Mrs. Murphy stated the following: The Board has already reviewed this application and you made a determination based on this being an unlisted State Environmental Quality Review (SEQR) action. Basically, they have changed their regulations and this is actually a Type I listing. You have already done all of the due diligence that you needed to. We just need to put out lead agency notices and our Town Engineer has done so on our behalf. None of the interested agencies had any comments so this Board is free to pass an additional Negative Declaration on a Type I action as opposed to the unlisted action. Absolutely nothing has changed except for the law.

Mr. Roberts made a motion to grant a Negative Declaration to the Type I action as related to the SEQRA requirements. Mr. Higgins seconded. Motion carried.

Mr. Ruchlicki made a motion to adjourn the September 27, 2010 Planning Board Meeting at 8:21 pm. Mr. Berkowitz seconded. Motion carried.

Respectfully submitted,  
Milly Pascuzzi  
Planning Department Secretary