TOWN OF PAWLING July 15, 2024

PLANNING BOARD Page 1

PRESENT: Aaron Cioppa, Chairman, Jay Erickson Vice Chairman Dr. Thomas Bloom, Gregory Bernard, and Mark Friedman.

EXCUSED: Steven Jobe and Jennifer Coleman.

ASO PRESENT: Ronald J. Gainer P.E, Mike Liquori Esq. and Brendan Liberati, Esq. from Hogan, Rossi and Liquori Law Firm.

CONTENTS: Escrow Reimbursement, Minutes and New Business.

Chairman Cioppa opened the meeting at 7:00p.m. and then led the salute to the flag.

SINGH CHHINA DBL Public Hearing/ Site Plan

851 NYS Route 22

Pawling, NY 12564

Grid Number: 134089-7058-00- 631821

Mr. Singh landowner and Mr. Curt Johnson from J Group Designs LLC were present.

Chairman Cioppa said the property consists of 1.2± acres, located at 851 NYS Route 22 in the Highway Business Zoning district. Chairman Cioppa said the Board will be holding a Public Hearing this evening.

Motion by Mr. Freidman to open the Public Hearing.

Second by Mr. Bernard. Chairman Cioppa asked for discussion.

All were in favor and the Motion carried.

Mrs. Daley read the public notice into the records.

Mr. Johnson began by giving a brief summary of the Singh Chinna DBL. The applicant was granted site plan approval in 2016, for the convenience store. Since, then the applicant have returned to the Board to amend their site plans. On May 28, 2024 the Zoning Board of Appeals granted setback area variances for, parking in the front yard setback, pump and a freestanding sign location. The additional items that are before the Board as part of an amended site plan are as follows:

* Placement of a 10’ x 28’ long prefabricated cooler element at the south sides of the existing building. The cooler would have a 9’ at east and south for screening.
* Placement of a 24’ x 32’ safety and weather protection canopy over each of the existing pump islands (two total).
* Land leased from New York State Department of Transportation.
* Three (3) curb cuts.
* Goose neck lamp for lighting on building.
* Intermittent gas changing pricing.
* Signage on the south side of the property and canopy.
* A freestanding road sign, which has been reduced to 50 sq. ft.

Mr. Gainer explained technical items that are outstanding that requires further discussion by the Board. The applicant has requested waivers by the Board, if they so choose, following the Public hearing, the Board can request these waivers be written into the resolution.

There were no comments from the audience.

Motion by Mr. Freidman to close the verbal portion of the Public Hearing.

Second by Mr. Bernard. Chairman Cioppa asked for discussion.

All were in favor and the Motion carried.

Motion by Mr. Freidman to keep the written portion of the Public Hearing opened until July 29, 2024.

Second by Dr. Bloom. Chairman Cioppa asked for discussion.

All were in favor and the Motion carried.

Chairman Cioppa placed the applicant on the August 05, 2024 agenda for reading of the Resolution.

JOHN AND DEEANN BLUMBERG Public Hearing/Lot Line Adjustment

63 River Road

Pawling, NY 12564

Grid Number: 134089-7057-00-170896

134089-7058-00-21703

Mr. and Mrs. Blumberg, landowner and John Kalin P.E. of DC Engineering were present.

Chairman Cioppa said the property is located at 63 River Road in a Residential - 2 zoning district. This application is for a Lot Line adjustment, Lot #1 is owned by Mountainview Pawling LLC., consisting of 39.436± acres, and Lot #2 is owned by Meadowview Pawling, LLC. Consisting of 32.837± acres. . Chairman Cioppa said the Board will be holding a Public Hearing this evening.

Motion by Mr. Freidman to open the Public Hearing

Second by Mr. Bernard. Chairman Cioppa asked for discussion.

All were in favor and the Motion carried.

Mrs. Daley read the public notice into the records.

Mrs. Kalin said the John and DeeAnn Blumberg are the owners of both lot(s). Their intent is to create road frontage for lot #2, with a permanent driveway and utility easement thru Lot#1 to Lot #2. The total area existing for lot #1 is 39.436± acres and will be reduced to 22.0± and Lot #2 is 32.837± acres and will be increased to 50.2 ± acres. Currently, a dwelling exists on Lot #1.

Mr. Gainer explained the e driveway and maintenance easement agreement that is an outstanding technical item to be reviewed and approved by the Planning Board’s attorney.

The Board clarified that the driveway and maintenance easement agreement would be included as a condition of the resolution, and procedurally is required to be approved before the Mylar is signed off by the Chairman of the Board.

Mr. Gainer responded yes, the driveway and maintenance agreement would be included as a condition in the resolution. If the Board so chooses following the Public hearing, the Board can request the resolution be prepared for August 05, 2024.

There were no comments from the audience.

Motion by Mr. Freidman to close the verbal portion of the Public Hearing and leave written comments opened until July 29, 2024.

Second by Dr. Bloom. Chairman Cioppa asked for discussion.

All were in favor and the Motion carried.

Chairman Cioppa placed the applicant on the August 05, 2024 agenda for reading of the Resolution.

TREMSON WOOD PRODUCTS Worksession/Site Plan

84 Libby Lane

Pawling, NY 12564

Grid Number: 134089-7057-00-190695

Mr. Tyler Tremblay, landowner, Ms. Samantha Ward Esq., and Todd Atkinson P.E. were present.

Chairman Cioppa said the property is located at 84 Libby Lane in the VRD Zoning district.

Ms. Ward introduced herself to the Board. She asked if a Public Hearing would be reconvene this evening.

Chairman Cioppa responded that this evening meeting is a Worksession to allow time for the Board and the applicant engineer to discuss site plan revisions.

Mr. Atkinson began by saying they are before the Board following Judge Rosa court order dated June 13, 2024. He presented a revised/updated Site Plan based on the court order. The general notes listed are as follows:

* The site operations state there will be no retail operations conducted at the property.
* There will be no first grinding of material onsite.
* Tremson Hours of Operation, not the tenants. Monday through Friday 7:00a.m. to 5:00p.m. Saturday 8:30a.m. to 1:00p.m. and no operations on Sundays.

The sites current tenants are as follows:

* MJD Trucking, Trucking terminal. Mike DeVito occupies the shop and yard label trucking terminal on the site plan.
* T&A parks equipment parks equipment on site.
* Tremson Wood Products: Mulch area for production of organic product. Wholesale trucking of mulch products.
* Tremson Land Clearing organic wood transfer area.
* Woodlawn Landscaping landscaper parks equipment on site.
* FAS landscaper, parks equipment (mowers, truck, snow plow and has a shed on site.

There are at least six (6) different uses on site.

Mr. Friedman asked for the applicant to summarize where the Board is in the process. He felt it is important for the Board to have an opportunity to fully review the revised site plan.

Mr. Liberati Esq. said the Board has the opportunity to review the site plan further. None of the presented general notes or tenants/business are locked in for approvals. The hours of operation are locked in until the next court date scheduled for August 26, 2024. If the Board so chooses they have the opportunity to change the hours of operation. Mr. Liquori Esq. and he met with the applicant’s attorney John Sarcone Esq. on July 03, 2024. The Board is in receipt of the outline for potential discussion point’s document to begin points for discussion at tonight’s meeting. These are not the opinion of the Board, simple overall documentation to begin dialog with the applicant.

Mr. Cioppa said the first item for discussion is the hour of operation. Is the Board discussing hours of operation for Tremson only or for all the tenants.

Mr. Atkinson said the hours of operations are for Tremson and all the tenants. If the Board wants to review detailed hours of operation for the individual business hours, then as discussed and approved they can be added to the Site Plan.

Mr. Cioppa said none of the tenants are allowed in until 7:00a.m.

Mr. Atkinson said that is correct. The hours of operation presented are for normal day to day operations. If an emergency occurs then a business could be onsite at an odd hour to pick up a piece of equipment.

Mr. Cioppa said if a business has to pick up a piece of equipment at 6:30 p.m. then they can return to the site at any given hour, meaning they could be equipment movement during the evening hours or early morning. The Board will further discuss and finalize the hour of operation moving forward. If the Board states hour of operation end at 5:00p.m. then no equipment can be moved or operation occur until the start of the day normal business hours. Is it possible that Tremson Wood products would begin grinding at 7:00a.m.? on a daily basis?

Mr. Atkinson said he does not believe the intention is for grinding to occur at 7:00a.m. Furthermore, the Towns Highway Garage is located behind the Tremson parcel, and the garage generates noise.

Mr. Erickson said can we clarify if grinding is sinuous with chipping.

Mr. Atkinson responded that grinding is performed in a tub grinder piece of equipment.

Mr. Erickson said the site plan verbiage must be expanded to be very clear, that it is either grinding and/or chipping.

Mr. Cioppa said the Board would like to understand, how much grinding occurs within one week? What is the seasonal operations, time of year/months etc.? The Board would like a detailed narrative on the year round business operation.

Mr. Atkinson said these answer depends upon the time of the year. They will provide the Board accurate answer on the questions raised this evening.

Mr. Cioppa asked how many tenants are located on the Tremson property. He said that following a review of the Code of the Town of Pawling, none of the six (6) tenants meet the permitted use requirements under the Schedule of Permitted Uses.

Mr. Erickson said a more refined questions is, does these tenants meet the requirements under the Code of the Town of Pawling section for Schedule of Permitted Uses, Principal, Special Uses for a VRD Zoning district. He asked what uses Tremson wood Products and the subsidiary tenant is applying under.

Mr. Atkinson said they have to review the tenant’s uses and get back to the Board before the next meeting. They have to discern what a pre-existing non-conforming is since the time the applicant purchased the property versus what has been put in place for uses.

Mr. Erickson asked Mr. Liberati Esq. to provide some legal guidance. Specifically, where is the Board in terms of planning procedural process and is the Board bound by a pre-existing non-conforming uses.

Mr. Liberati Esq. reviewed specific code sections with the Board. He explained that there are code provisions for conforming and non-conforming uses.

Non-Conforming Uses *A building, structure or use of land existing at the time of enactment of this chapter and which does not conform to the regulation of the district or zone in which it is situated.*

Based on that reading the Zoning code was adopted in 1978. To determine what is pre-existing non-conforming the Board has to determine what the uses were in 1978, when the zoning code went into effect. Not necessarily when Tremson purchased the property.

Mr. Erickson said the Board needs to understand the use of this parcel in 1978. There had to be specific use activities that were happening in 1977- 1978, versus what is continues today.

Mr. Liberati Esq responded yes. He continued by reading Code provision:

§215-33 A. (3) *If use of land or any portion thereof ceases for any reason for any continuous period of more than one year or is changed to a conforming use, any future use of the land shall be in conformity with the provisos of this chapter.*

Mr. Liberati said from review of the minutes, there was a trucking activity in the early 1970’s. No one understands what was going on 1978, 1979, and 1980.

Mr. Friedman said at some point there has to be evidence of the uses documented. The parcel history from the Boards understanding is this parcel was a gravel pit in 1978 and beyond. The Town records, such as a tax property card would include a use, or a building permit etc. This is the core issue that were discussing this evening.

Mr. Bernard said any information submitted by the applicant would have to be verified by the Towns engineer. He asked how that would be accomplished.

Mr. Erickson said there is aerial photos that can illustrate the use of the property over years, as well as other google earth older maps that can be used to research the properties past history. What the Board needs to understand is the framework, if the property was a gravel yard in 1976 through 1980 and then when did the grinding start. He asked if this is consider a continuous industrial use. If they started grinding in 1980 would that allow for a permitted use?

Mr. Liberati said they need to check the Code of the Town of Pawling to understand the VRD Schedule of Permitted Uses and when the VRD was created and what those uses were at that time.

Mr. Erickson said if grinding began years ago and then stopped for one year, which would represent a non-continuous use. The end result would be this is no longer be consider a pre-existing non-conforming use.

Mr. Liberati Esq said a use that stop for one year falls under §215-33 A. (3) of the Code of the Town of Pawling.

Mr. Freidman said what constitutes evidence as stopping of an activity. At a prior Planning Board meeting a previous tenant, Mr. Parrino stated for public record his was sole tenant for a majority of time, before Tremson wood products purchased the property. Is his testimony evidence before the Planning Board or does it have to be on a Town document?

Mr. Liberati Esq. said what Mr. Parrino stated in terms of a sworn testimony/affidavit in the court case litigation paperwork before the court, which references what was on site in 2013. In these terms of sworn testimony those documents are not necessarily in front of the Board. Nonetheless, if Mr. Parrino speak before the Board then his public comment is in front of the Board as evidence.

Mr. Freidman asked based upon public comment relating to the site uses in 1978, can the Board take verbal testimony as evidence that could be considered sustaining or not sustaining before making a decision.

Mr. Liberati Esq said the Board can take listen to all public and the applicant’s comments as testimony to make a creditability determination, based on these facts.

Mr. Bernard said even if this was a preexisting use, where a previous landscaper use was limited to chipping a few branches/trees onsite versus a business operation of mulch grinding. He asked can the Board restrict an expansion of a pre-existing use. How can a Board go about an expansion of a pre-existing use? Does that type of limited chipping run with the same use as expanded grinding?

Mr. Liberati Esq. said under the Code of the Town of Pawling. Section §215-33

**§**215-33 A. (1) *such nonconforming use shall not be enlarged or increase, nor shall it be extended to occupy a greater area of land than that occupied by such use at the time of the adoption of this chapter, unless specifically allowed by other provisions in this chapter.*

The answer based upon that provision is no. The Board has aerial photos as evidence of the usage over years.

Mr. Erickson reviewed the 2003 aerial photos, he explained the left uses of the property to the right of the driveway and towards the left there is only woodland on the parcel.

Mr. Freidman said the photographs clearly illustrate breaking of the chain (12 months) of continuous use over years.

Mr. Erickson asked where the Board in terms of the procedural steps is.

Mr. Liberati Esq if the Board is comfortable, then they can reconvene the Public Hearing at the next meeting.

There was discussion on the why the Public Hearing was opened, before all the tenants’ uses were determined.

Mr. Liberati Esq. said this evening meeting was dedicated for a Worksession. The Board did not have adequate information for fact finding, which requires specific additional information (i.e. tenants, no retail operation NYSDEC grinding operation etc.) and review of the revised/updated site plans.

Mr. Freidman asked when the last time the applicant appeared before the Board was.

Mr. Liberati Esq. said February 2023.

Dr. Bloom said he attended several meetings held with the previous Chairman, George Brehm and the applicant to move this application forward. The updated noise and traffic studies took over six months for the applicant to schedule. Chairman Brehm had written several letters requesting Tremson move forward to complete these studies.

Mr. Liberati Esq. explained the next steps for the Board. If the Board is comfortable the public hearing can be reconvened at the next meeting. If not, the Board should provide guidance on statutory and technical issues that remain to be resolved before reconvening the public hearing. On August 26, 2024 the Court is expecting an updates/answers as to the direction the site plan application is going.

Mr. Gainer said the Board has been requesting additional information from the applicant. The applicant was before the board February 2023. The Board worked with the applicant to move forward to schedule noise and traffic studies, which were completed in November 2023. The Board is in receipt of these studies. The Public Hearing comments were transmitted to the applicant and they have responded to them. The application has been in progress since 2022. The Board has been asking for information and the applicant has attempted to provide said information. It just a matter to move forward, the next step is to reconvene the public hearing, when the Board is prepared. The Board should consider where they are in the Planning process.

Mr. Bernard asked if the outline for discussion this evening answers were adequately addressed.

Mr. Liberati Esq. said he recommends the Board go through the individual questions, to identify if the questions are satisfactorily answered and then decide if they want these questions addressed prior to reconvening the Public Hearing.

Mr. Erickson said it appears there has been clean up going on site, as well as with the documentation by the level of detail submitted on the site plan. What the Board cannot get past is the lack of tenant information, and does these tenants use legally fit into Schedule of Uses, Permitted Use, and Special Use per the Code of the Town of Pawling.

Let’s not waste time, and get the tenants specific use data submitted. The Board needs a detail narrative of all the tenants on site. If the tenants do not conform to code, “what is the use” and decision would be forthcoming on how the site is used. The applicant has to review the tenants businesses on whether or not they conform into the VRD Zoning district. Once the documentation for all business located on 84 Libby Lane are submitted, the Planning Board will seek a written determination on an opinion from the Code Enforcement Officer and reviewed by our Attorney that they tenants uses fall within the Code of the Town of Pawling. If they do not conform to Schedule of Permitted Uses, then the applicant would be referred to the Zoning Board of Appeals. Let’s get all of these tenants uses cleaned up as step one.

Mr. Freidman said it is not fair to the Public to reconvene the Public Hearing when the Board does not understand if the uses are conforming to the site. The Board should have all documentation/data/information before reopening the Public Hearing. There is obviously a true concern from the local community/neighbors surrounding Tremson Wood Products site.

Dr. Bloom said he does not understand how the Board can mitigate all the problems relating to this site, before reopening the Public Hearing. He agrees with Mr. Erickson that the Board has to make a determination on permitted uses before moving forward. The Board has to go step by step.

Mr. Bernard said the Board should provide direction to the applicant if we do not it will be another year before the Board sees them again.

Mr. Liberati Esq. said the Court order stipulation states both parties must move the Tremson Wood Product’s LLC. site Plan forward.

Mr. Atkinson asked if the court stipulation requires the Board to reconvene the Public hearing.

Mr. Liberati Esq. said the court documents do not stipulate that the Public Hearing has to be reconvened. He presented the site plans to the Board, to illustrate the plans as shown are not accurate.

Mr. Erickson reviewed the illustrated site plan. He asked since this application has been before the Board, has the applicant continued land clearing in 2023.

Mr. Liberati Esq responded, yes. They expanded an area to dump logs. This is important for the Board to understand. The applicant cleared the land to create a log deposit area. Additionally, there is consideration to add a berm.

Mr. Atkinson said they pulled back some of the wood berms on the right side of the property.

Chairman Cioppa asked if six (6) tenants have always been onsite.

Mr. Atkinson said no, they broke up Tremson Wood Products into two sections (grinding and log deposit) on the parcel, totaling six (6).

Mr. Freidman asked if there is a limit to the number of tenants in the VRD Zoning district.

Mr. Liberati Esq. said they will have to review the Code of the Town of Pawling.

Mr. Erickson said the Boards initial step is to obtain clarification by submittal of a list of all tenants, and then showing if they conform to the VRD Zoning district. Additionally, the Board requires documentation of the use of this property over the past fifty years, and when the expansion of uses occurred. A narrative/evidence must be submitted with documentation, not by word on the street, that this was happening in 1977 and continued for fifty years, with no twelve (12) months stop of continuous use. The burden is on the applicant, and then will be reviewed/ proved out by the Board and Engineer.

Mr. Bernard said clearly this is an expansion of a pre-existing use. How does the Board deal with an expansion of use?

Mr. Erickson said that will be a determination by the Code Enforcement Officer and Attorney. Once the uses are clear the Planning Board can do their job to move forward.

Mr. Liberati Esq said the tenants and Tremson wood products determination is also part of the court proceedings.

Dr. Bloom said how the board mitigates these uses, if not allowed.

Mr. Erickson said the applicant or tenants would have to stop what they’re doing. The Planning Board has an option to refer them to the Zoning Board of Appeal. First, the Board can request Mr. Liberati Esq to review the Code of the town of Pawling to verify if multi use by Special Permit is allowed in the VRD zoning district. .

Mr. Atkinson said that question would have come up over the past eleven (11) years.

Mr. Bernard said violation have been issued for the past eleven (11) years by the Towns Code Enforcement Officer.

Mr. Erickson said the Board cannot process an application without knowing first “what are the uses” being applied for, that is step one.

Mr. Freidman said the tenant’s uses must be very clear in the narrative. .

Mr. Atkinson asked for the Board to provide clear directions so they can make necessary revisions for a resubmission to the Board.

Mr. Bernard said under the current application submitted, the applicant has to first amend the tenants uses.

Dr. Bloom said that no additional land clearing should occur by Tremson or any other entity at this site. All future land clearing must be documented as part of the Site Plan revisions.

Following discussion, the Board listed topic to be provided for the next meeting as follows: This list possible could not be all inclusive.

* Tremson Wood Products uses and subsidiary uses of the tenant.
* Business perspective, hours of operation, which includes days, start and end time of grinding operations. Clear on margins of flexibility and then mapped to public concern.
* Seasonal grinding.
* Tenants uses/continuous use. A narrative/evidence be submitted with documentation, that these uses were ongoing in 1977 and continued for fifty years, with no stop greater than twelve (12) months
* Hours of operation for tenants, which conform to the VRD Zoning district.
* Letter to NYSDOT.
* Movement of trucks and equipment within and off site (includes all tenants).
* Permeant area for grinding equipment.
* NYSDEC Register Mulch Processing facility.
* Noise- potential mitigation.
* Environmental issue to an ecological sensitive area for a mulch industrial processing site.
* Traffic safety
* Environmental assessment.
* Research the Code of the Town of Pawling, to identify if a multi-use, special use permit is allowable in the VRD Zoning district.

Mr. Erickson said Mr. Liberati Esq. shall research the Code of the Town of Pawling to identify if the VRD Zoning district allows for multi-use to allow for additional tenants.

Mr. Freidman said the applicant must submit evidence of the continuous uses for a pre-existing non-conforming use. The narrative is to include all tenants onsite as well as Tremson Wood Products.

Ms. Ward Esq. came up to the podium to make a Motion to reconvene the Public Hearing.

Chairman Cioppa explained that only members of the Planning Board can make Motions. Chairman Cioppa said the consensus of the Board felt that they are not prepared to reconvene the Public Hearing. He then placed the applicant on the August 05, 2024 Planning Board agenda.

Mr. Liberati Esq recommends a letter be drafted to the applicant on the items to be submitted for the August 05, 2024 meeting.

ESCROW REIMBURSEMENT

Town of Pawling Planning Board Recommendation for Escrow Balances

Reimbursement Town Code Chapter 95

Resolution #14 of 2024

Motion by Mr. Bernard.

Second by Mr. Freidman.

Estate of Karin Kaufman Site Plan $276.15

Estate of Karin Kaufman Site Plan $486.15

Estate of Ludwig Engelhard Subdivision $2,013.60

MINUTES

Motion by Mr. Friedman to approve the Minutes of July 01, 2024 as read.

Second by Dr. Bloom. Chairman Cioppa asked for discussion.

All were in favor and the Motion carried.

NEW BUSINESS

i. 158 NYS Route 22- Four Space LLC.

Mr. Bernard said it is his understanding the Planning Board will be accepting a letter from landowners stating they will clean up the site, after Tilcon leaves. In his opinion he is not in favor of the Board accepting a letter by the landowner. The Board works on site plan application for many months following NYS and own laws, to enhance the NYS Route corridor for all residents living in the Town. Mr. Bernard said the landowner expanded the area of asphalt milling in the back of the building, as well as along the south side of the property. The amount of asphalt milling that has been dump onsite, will result in a major project land disturbance to remove.

Mr. Erickson said these are the same applicants that clear cut all trees while before the Board. The Board specifically asked them not to remove the trees, and to mark 8 inch trees or greater for preservation of the Route 22 corridor view shed. It is a fact that if any ambiguities are ongoing at this site, the Chair/Vice Chair do not want to sign off on the site plans.

Mr. Freidman said the Board should not sign off the site plans until the site is cleaned up.

Mr. Bernard said Mr. White CEO performed a site inspection of the asphalt milling behind the site, and now the landowner has expanded the asphalt milling to the south side of the parcel.

Mr. Liberati Esq said the CEO, Mr. White should perform another site inspection. Once the inspection is completed, he should notify the Board in writing.

The Board agreed on the fact that if any ambiguities are ongoing at this site, the Chair/Vice Chair do not want to sign off on the site plans, and that the full Board was in support of this decision.  Mr. Erickson said the Board requires a written determination from CEO or other enforcement authority that there are no current violations on the property before sign off on the site plans. The members of the Board were in agreement that they would appreciate this project completed. This has always been the direction of the Board.

ii. Zoom Meetings/Live Streaming

Mr. Erickson said he has been researched livestreaming and how to allow an applicant to illustrate documents on the large screen TV’s. The use of a computer could allow the members of the Board to zoom in to a Board meeting and these meeting would be recorded on zoom to maintain voting records. The objective to project Planning Board on the TVs would benefit the Board to enhanced communication during meeting with the applicant and public viewing.

Mr. Mygan was in the audience He is researching changing the live streaming to YouTube. He was not prepared to discuss this evening.

The Board discuss the state code to allow for members of the Board to zoom and participate as a voting member.

Mr. Liberati Esq said he would have to research how to allow members of the Board to attend via zoom, by adoption of a resolution or policy.

ADJOURNMENT

On a Motion by Mr. Bernard and seconded by Mr. Freidman to adjourn the meeting at 9:00 p.m. All were in favor and the Motion carried.

Respectfully submitted,

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JoAnne Daley Recording Secretary

non-approved minutes