RUSH PLANNING BOARD
REGULAR MEETING
MINUTES OF NOVEMBER 20, 2012

A regular meeting of the Rush Planning Board was held on November 20, 2012 at the Rush Town Hall, 5977 East Henrietta Road and was called to order at 7:30 PM.

MEMBERS PRESENT: John Felsen, Chairman
John Morelli, Vice Chairman
Don Sweet
Rick Wurzer
Scott Strock
Meribeth Palmer, Deputy Town Clerk

OTHERS PRESENT: Councilman Bill Riepe, Town Board Liaison
Gerry Kusse, Code Enforcement Officer (CEO)
Todd Ewell, Town Engineer
Kyle Stevens, Resident, Business Owner
Fred Calev, Resident
Nancy Calev, Resident
Henry Hanson, Land Owner
Robert Turner, Attendee
John Clark, Engineer DDS
John Kearney, Attendee
Ron LaMagna, Attendee

Chairman Felsen welcomed all to the November Planning Board meeting.

APPROVAL OF MINUTES:

The Minutes of October 16, 2012 were reviewed.

Corrections to the minutes: Page 1, last paragraph correct the word “sight” to “site”. Page 1 last paragraph the word “daily” was used in the wrong manner, change to “many”. Page 3 adjoiner is one word. Page 9, second paragraph add Kusse after the word Mr. Page 6, second paragraph add “same electric meter”. Board Member Sweet noted on page 6 MCWA water lines were installed approximately 10 years ago, add the words “and again” after 70’s.

PUBLIC HEARING:

Application 2012-06P by Kyle Stevens requesting a special permit for the outdoor storage of commercial vehicles as stated in Rush Town Code 120-7B(13) for property located at 2500 Rush Mendon Road. Property is in an R-30 zoning district.

Kyle Stevens stated that he is no longer able to continue the indoor use of the Mendon facility. Mr. Stevens is in the process of relocating his business. To date he has not been

able to secure a new suitable location. Mr. Stevens is asking for a change to the current Special Permit for horticultural nursery to include outdoor storage of commercial equipment. The use of the property will continue to be predominately agricultural and agriturism. Mr. Stevens plans to store winter equipment at the Mendon yard during the non-winter months. The snowplowing operations are all commercial and the staff direct reports so there will not be a lot of activity from that. The majority of activity will be in the summertime. Since the down sizing of the company Mr. Stevens will be able to fit the majority of his equipment inside the building. With summer groups coming in to use the farm and the building, equipment would have to be moved outside. Mr. Stevens stated that he does not want to create any problems and wants to follow appropriate procedures.

Chairman Felsen asked Mr. Stevens to explain to the audience exactly how many vehicles that he is requesting to store outside, what they are and the proposed outside location for storage.

Mr. Stevens stated that items not used on a regular basis would be parked in the designated area to the northeast. Other equipment would be placed in the designated area to the north behind the existing pole barn.

Chairman Felsen clarified that the permit was for outdoor storage of commercial vehicles only and that Mr. Stevens would not be running a retail business at that location. Mr. Stevens said that was correct; all commercial activity is off site. Mr. Felsen stated that the permit request needs to state that total maximum number of vehicles that might be placed outside at any given time and the vehicle locations all need to be indicated on the map.

Mr. Stevens is requesting to store a maximum of 4 small landscape trailers, 1 water seeder trailer, 6 small dump trucks and/or pick up trucks, 3 skid loaders, 2 small mini excavators, 1 backhoe that is currently kept at that farm all the time and 1 wheel loader. Mr. Stevens indicated that all 18 vehicles will fit behind the existing pole barn.

Vice Chairman Morelli stated that at the October informal it sounded as if Mr. Stevens was looking for a temporary solution. Mr. Stevens said that right now this is his best option. Realistically if the business grows he would outgrow the above said location. Mr. Stevens will continue to look for a suitable site for the equipment because he would prefer to have 2 separate operations.

Vice Chairman Morelli asked about the previous storage of landscape materials such as mulch and soils on the site. Mr. Stevens stated that his landscaping materials are located at the Mendon site, however, it would be beneficial to have some mulch on the farm. Vice Chairman Morelli stated that materials are not an item that the Board can rule on. Vice Chairman Morelli read Rush Town Code section §120-55. Mr. Stevens stated that similar products that are trade related can be found at other businesses within the Town of Rush that are operating with special permits for outside storage of commercial vehicles. For instance, Mr. Hetrick has stone that is used when septic systems are

installed. Vice Chairman Morelli stated that they can't base their decision on what is occurring at other sites.

Vice Chairman Morelli stated that it is a residential area and landscaping is not an allowable business. Vice Chairman Morelli also informed Mr. Stevens that according to sections of §120-69D of the Rush Code, in issuing a Special Permit the Code requires the Planning Board to determine that the proposal is necessary and desirable for the general well-being of the neighborhood and in harmony with the probable future development of the community. Vice Chairman Morelli in no way sees that Mr. Steven's request corresponds with the intended use of the property. In addition Special Permits are permanent.

Board Member Strock suspects that the argument would have to be any business can be helpful to Rush, it provides local jobs where people reside and landscaping is a service used by people in Rush. Whether a landscaping business belongs in a residential area is another question. Board Member Strock does not have trouble stretching usefulness of that form.

Board Member Sweet asked how is it that the same Board previously approved the same type of permit for Chuck Wolcott for approximately 11 vehicles. Can the Board discriminate against one person while it was acceptable for another? The above mentioned permit also created complaints within a year of issuance. The Board stated that the Wolcott permit was granted because it was an allowable use at the time. In addition the business already existed at the time when Special Use Permit requirements were changed by the Town Board and turned over to the Planning Board under Special Permits.

Vice Chairman Morelli stated he has a sense of unease. Although Mr. Stevens has been truthful in telling the Board of his activities, there will likely be events at the site that take precedence over the use of the barn and will require the barn to be emptied. Mr. Stevens stated that is why he applying for the permit. Vice Chairman Morelli wants to look at what is enforceable, there is a possibility that there could be events every weekend.

Mr. Stevens stated again in order for the agricultural business to grow, at some point he will have to relocate his equipment to another site. Whatever is approved is what Mr. Stevens will comply with. Mr. Stevens stated that his property is essentially in a bowl, with berms on all sides. Placing equipment where it is accessible and not visible can be a challenge.

Mr. Strock inquired as to whether the skid loaders and their respective trailers are counted as one vehicle. The Board stated that the trailers are counted separately.

Mr. Stevens informed everyone that he wants to be a good neighbor and will comply with whatever the Board agrees to.

Chairman Felsen inquired of the 18 vehicles, how many could be stored inside while still allowing the barn to be utilized for events. Currently 2 thirds of the building gets sectioned off for events. During the summer months most of the equipment is not on his property, it is on location at people's homes. The staff directly reports to homes off site. Mr. Stevens hopes to build an additional building in the future for the agritourism events but needs to deal with the vehicle storage issue first. This would allow all vehicles to be stored inside.

Vice Chairman Morelli reviewed problems in the past such as marshaling activities for a commercial enterprise, service depot for landscape services, office, retail sales, stock piling of materials, distribution of landscape products, snowplowing and more. Vice Chairman Morelli asked if these activities have moved elsewhere. Mr. Stevens stated that an office will remain and has always been there for file keeping purposes. Staff reports directly to their job site locations and retail sales are done through the Mendon yard. The scope of services has changed dramatically. For instance, previously 6 staff cut grass, now there is a staff of 1, when he retires, Mr. Stevens will no longer offer that service.

Board Member Wurzer visited Mr. Stevens' property yesterday and walked the area. There is no visibility of Mr. Stevens site from the neighbor's property located directly to the east. Mr. Wurzer also indicated that the property has been cleaned up nicely. Mr. Wurzer and Mr. Stevens discussed possible fencing to the north to screen the proposed storage of vehicles from the linear trail. Mr. Stevens stated that his goal is to make the property look like a park.

Councilman Bill Riepe recalled a neighbor who had issues with the past activities, and asked if this neighbor is aware of the current Special Permit request? Mr. Fred Calev identified himself and stated that is the purpose of his attending the meeting.

Chairman Felsen opened the hearing up to the audience.

Resident Fred Calev stated the he lives next door to Mr. Stevens' property on the east side. Mr. Calev maintains that there is a reason that the town has zones. Landscaping and construction are not residential activities. Mr. Calev claims that Mr. Stevens is running a landscape and construction company and he has been fighting against it for 9 years. Mr. Calev submitted a screen shot of the web page associated with Mr. Stevens business. Mr. Calev also provided photos of the Mendon yard, stating that there is plenty of storage room there. Mr. Stevens pointed out on the photo the indoor storage building that he will no longer have use of. He will have use of the small outdoor yard. However, there is no security for his equipment. It is also where he keeps the bulk of his materials that are not permitted on the Rush property. Mr. Calev stated that security is irrelevant to the issue at hand.

Mr. Calev stated that 2 weeks ago as part of a bank mortgage service, his home was reassessed. Mr. Calev said he was told by this bank assessor that residing next to a construction company is a detriment to the value of the house, reducing the value of his home by $30,000.

Mr. Calev stated that the Stevens property is a garbage dump and submitted additional photos that he dated November 6th showing a bull dozer and debris piles. Mr. Calev claims that rats and vermin are living in the mulch and debris.

Mr. Calev referred back a few years to when Mr. Stevens was given a permit to build a pole barn. Once completed it contained an office with electricity, water and septic. He stated that Mr. Stevens did not have permits for all of the above items. Therefore Mr. Calev believes that Mr. Stevens says one thing and does another.

Mr. Calev informed the Board that a little over a year ago, as part of an agreement Mr. Stevens was to remove construction materials from the property. His photos show otherwise. In addition there are objectionable noises, smells and dust coming from the site.

Mr. Calev stated his house is 30 feet away from Mr. Stevens.

Mr. Strock asked for an explanation of the 30 feet. Mr. Calev's house is 30 feet from the property line. Mr. Steven's pole barn is actually much further away from the property line, down the berm and on the other side of some brush.

Mr. Strock inquired with Mr. Calev as to the source of the smells. Mr. Calev stated he was not sure, there may be chemicals in the building and perhaps he is burning debris.

Mr. Calev played a digital sound bite from Sunday morning inside his bedroom. The recording was a truck backup alarm and the release of airbrakes. Mr. Stevens believes that might have been recorded when a roll off dumpster was delivered to the site for clean up. He currently does not have any operating vehicles with air brakes.

Mr. Calev feels this Special Permit will be a repeat of years past and that the request is ambiguous.

Resident Nancy Calev does not feel that Mr. Stevens' activities are beautifying the area if additional equipment is going to be allowed to be stored on the property. Other neighbors have been told that their bus and boat cannot be stored in the front of their properties yet Mr. Stevens is proposing to store18 vehicles on his property. Mrs. Calev is seeing an increase in traffic going in and out. There is no protection or planning for the natural spring or the environment on that property. Homes should be in that location not a commercial business. Mrs. Calev feels that this is a form of harassment.

Board Member Sweet asked the Calevs why they chose to build their house next to a gravel pit. Mr. Calev said at the time the pit was abandoned and there was a pond. Mr. Sweet disagreed stating that for years there were old abandoned cars and junk prior to Calev building there. Mr. Calev thought that being residential area that maybe houses would be built there. At the time of building no commercial businesses were planned for that area. The Calevs stated that Mr. Stevens has destroyed the whole area and that he does not do any farming and everything that Mr. Stevens has said is untrue.

Correspondence:

Monroe County Department of Planning and Development have ruled **Application 2012-06P** by Kyle Stevens a local matter.

The Rush Fire District has no concerns regarding the application.

A letter from Robert and Patricia Kraus dated November 11, 2012 was submitted to the Planning Board stating that they are in favor of Mr. Stevens' request.

With no further comments Chairman Felsen declared the hearing closed.

INFORMAL DISCUSION:

1. 7566 West Henrietta Road

Bob Turner and property owner Henry Hansen would like to discuss uses for the property located at 7566 West Henrietta Road. The parcel is approximately 81 acres and Mr. Hansen has agreed to subdivide and sell a portion of the land to Mr. Turner. Mr. Turner is the owner of Turner Underground Installations.

DDS Engineer John Clark is representing the proposed project. Mr. Clark submitted a conceptual site plan indicating a 12,000 square foot building to house his directional drilling business. The parcel is zoned commercial and the applicants are willing to comply with all commercial zoning requirements. Office space will encompass 3000 feet of the 12,000 square foot building will and the remaining would accommodate the shop for operations for the business. All required parking would be provided. There would be a large gravel area in the back for truck maneuvering. Public utilities are available within the right of way of West Henrietta Road for water, gas, and electric. Sewers are not available and a leach field would need to be installed, this is shown on the proposed plan as well. There is currently a driveway cut onto West Henrietta Road. All New York State Department of Environmental Conservation (NYSDEC) storm water regulations would be adhered to. The exact location of the subdivision line has not been determined yet. Mr. Clark indicated their hope is to limit any potential obstacles by presenting a preliminary plan. Mr. Clark pointed out that there is a 100 year flood plain on the property and it has been shown on the map. Mr. Clark has already done the topo and boundaries.

Mr. Turner informed the Board that the building would have 10 bays for equipment and offices for consulting. Mr. Turner explained directional drilling. The company specializes in horizontal underground drilling for utility services. Mr. Hansen stated that the remaining lands would continue to be farmed. Vehicles will be stored both inside and outside. The building will be wide enough to take a truck and a trailer inside at the same

time. Mr. Turner has 4 flatbeds and 1 tractor that will all fit inside the building with the doors closed. The building will sit away from the road and the garage door will face the opposite direction from the road. There were no further comments or concerns from the Board.

2. 5970 East Henrietta Road

John Kearney appeared to discuss allowable uses for the property located at 5970 East Henrietta Road. Mr. Kearney explained that he is interested in the former Townline Garage building and is hoping to gain information regarding allowable activities for the site. Mr. Kearney stated that he contacted the NYSDEC and that there are no ongoing issues with that site. Mr. Kearney is hoping to lease with the option to buy. Again, Mr. Kearney has not had a lot of correspondence with the owners, only their attorney.

Mr. Kearney was advised to prepare a detailed plan of proposed activities for the site such as the sale of cars, tires, signage, lighting, location of stored cars, and hours of operation. This will further help the Board guide Mr. Kearney. Mr. Kearney was told that the overnight storage vehicles for public sale require a special permit. Fencing in the vehicles does not change the zoning requirements.

Mr. Kearney was also encouraged to view the Rush Town Code on line. Vice Chairman Morelli read portions of the general provisions listed in the Rush Town Code. Board Member Strock asked CEO Kusse to comment on previous issues at that location in hopes that it will further help Mr. Kearney. To operate a successful business, the required processes and permits would need to be utilized. CEO Kusse offered to review Mr. Kearney's proposal once he has the details worked out. In addition Board Member Strock informed Mr. Kearney that perhaps down the road business needs may change. It is best to be proactive and come to the town first for review and Code Compliance. Mr. Kearney also was encouraged to come back any time for an informal review as his business plan develops.

BOARD BUSINESS:

Don Sweet – preliminary discussion for establishing a right to farm law.

Board Member Sweet works in many communities that currently have right to farm laws. Board Member Sweet informed the Board frankly that legally these laws do not have a lot of teeth. Right to farm laws reaffirm the agricultural district laws already in place. In addition it will show the community that the town stands behind agriculture. Board Member Sweet provided the Board with an example of a right to farm law from the Town of Gorham.

The Planning Board members stated that it had already been recommended to the Town Board and that the recommendation was part of the Farmland Protection Plan package. Board Member Strock stated that the Town of Gorham was referenced as part of the recommendation that was included in the Farmland Protection Plan.

Board Member Sweet would like to initiate a move forward and request that the Town Board approve a right to farm law. Board Member Sweet also indicated that it would be an additional step for the Town of Rush to show their support of agriculture activities.

Chairman Felsen stated that he questioned number 1 Under the Right to Undertake Agricultural Practices in the Town of Gorham's Right to Farm Law. How would that statement work for Rush? Board Member Sweet stated that may be for land that is perhaps not in an agricultural district yet still covered by agricultural laws. Board Member Sweet explained that Rush can develop or format a right to farm law to suit Rush. It does not have to be identical to Town of Gorham's right to farm law. Vice Chairman Morelli also stated that there are still some concerns for residential zones. Board Member Strock understands the intent of the New York Agriculture and Markets Laws are for protecting agriculture. In a town like Rush where residential zones are mixed with agricultural zones, a concern would be for the extreme such as residential housing or a house in which the neighbor decides to build a calf hold and feedlot operation. It was said that would be an area of the right to farm law that would have to be looked at carefully. Board Member Sweet reiterated that it's important to protect agriculture that has already been established in Rush.

Vice Chairman Morelli questioned if there ever were complaints who is responsible for responding to them. Board members stated that initially it would be the Code Enforcement Officer. Depending on the complaint it may be a matter for the DEC.

Mrs. Calev suggested that perhaps the town should look at how other towns are handling similar situations.

Code Enforcement Officer Gerry Kusse stated that he has received complaints in the past and in turn he had interface with the Town Attorney, NYSDEC and the Agricultural Protective Unit in Albany New York. Monroe County Department of Planning and Development (MCDP&D) provides a note on all site plan projects that come within 500 feet of agricultural land. The right to farm law will further advise the community of agricultural rights and will specify enforcement. Vice Chairman Morelli reviewed the 1992 Master Plan and found that adding a right to farm law was listed as an action item.

The Planning Board agreed to start working on a right to farm law proposal to present to the Town Board for their review.

Todd Ewell stated that he would contact Walt Kalina to let him know that the Planning Board would like to move forward on creating a right to farm law for Rush. Board Member Strock stated that this will show a substantial commitment to agriculture.

Deputy Town Clerk Palmer will redistribute the Farmland Protection Plan via email and it is also available on the town web site.

Easements – review of 2005 drainage easement form

Deputy Town Clerk Palmer located an easement document dated 2005. Todd Ewell reviewed it for appropriate engineering language. With Planning Board approval, the next step is to have the Town Attorney review the document for future use.

There was a recent inquiry that spurred the thought of better informing site plan applicants of their responsibility as owner to maintain the drainage easement areas and that the Highway Department has access the easement area only if it is under duress and is absolutely necessary. The question to the Planning Board is, could this be added to the general notes section on the plan?

Chairman Felsen recalled that when the town moved to the townwide drainage district, part of the Planning Boards responsibility in reviewing site plans was to receive an easement for areas that contained a drainage way. The townwide drainage district has set priorities as to what will be worked on every year.

The easement in no way indicates that the town is obligated to maintain those areas. The requested easements are only for defined or classified NYSDEC streams or water ways.

Vice Chairman Morelli also stated that if any changes are to be made, the sentence referring to the “men, materials and machinery” should be change to “authorized personnel of staff”. Vice Chairman Morelli stated that the Board could verbally inform applicants that the town is not obligated to maintain easements. Board Member Strock noted that the Board should utilize an easement agreement form to help better explain the easement to applicants. The owner is also required to sign the agreement. In addition, does this agreement convey the correct meaning?

Deputy Town Clerk Palmer will have the Town Attorney review the easement template for future use.

BOARD DISCUSSION:

The Planning Board further discussed Mr. Stevens’ Special Permit request. The request is for the outside storage of commercial equipment and vehicles under 120-7B(13) of the Rush Town Code. Mr. Stevens’ request is for 18 vehicles consisting of 6 road vehicles and the remaining 12 are equipment vehicles.

The Board asked Mr. Stevens what other items are stored on the site. Mr. Steven’s did have some left over pallets and soil. At Mr. Calvev’s request those items were moved to the north side of the building. Mr. Steven’s has since converted the soil into a children’s slide hill. The brick that was shown in one of the photos is being eliminated and is almost gone. Board Member Wurzer stated that he did not see any when he visited the site recently. The other items in the photo are storage bins used to hold up temporary snow fencing due to the fact that having all gravel underneath makes it impossible to get a post into the ground. All brick and top soil will all be removed. Mr. Stevens stated that Mr. Calev gets his photos by walking around his property along the trail, none of the

photos are taken from his property because you can't see anything from there. The old stacking elevator is now gone.

Vice Chairman Morelli asked why it took so long to clean up; it seems that the majority of the clean up is coinciding with the application to the Board. Mr. Stevens stated that he has been working on the clean up right along when personal time allows. Mr. Steven's stated that all the scrap metal has to be recycled and all that material will be salvaged. It also requires equipment for Mr. Steven's to be able move and clean up the items on the property and this time of year his equipment is available. Mr. Steven's stated that by spring he will definitely have it all cleaned up. Much of the area is now all park area for people visiting the farm. Mr. Steven stated that he does use manure for the gardens because the soil is so poor there. He uses no chemicals and does not store chemicals. He does not do any burning. On occasion he will bring his camper over and his family will use that and have a small camp fire.

Board Member Wurzer informed the Board when he viewed and walked the property, Mr. Calev's house has to be a good 150 to 200 feet from the pole barn area of Mr. Steven's property.

CEO Kusse made a prediction, if Mr. Steven's request is granted for 18 vehicles and one day 19 vehicles show up that will be a problem and complaints. If any dispatching occurs or if employee cars appear that too will cause complaints.

Mr. Stevens stated that he always tried to maintain a good relationship with the neighbors. Mr. Stevens stated that if he is granted the permit there will be employees entering the property and parking there. Mr. Stevens stated that the office has always had phones.

Chairman Felsen asked Mr. Stevens if he will be taking orders for landscaping projects over the phone and having customer come to the office there.

CEO Kusse stated that complaints could get very specific right down to who owns the vehicles and why are they there?

Vice Chairman Morelli stated that currently the activity has been agricultural. Clearly running a landscaping business is not allowable. A large part of running a landscaping business is commercial equipment and if granted that will be there. Vice Chairman Morelli feels that is a direction that is not suitable long term. Although the request is allowable by code with a special permit, there is no explanation in the code as to what the intent of that provision is. There was at one time a debate that the code was for small businesses and where do you draw the line?

Chairman Felsen stated that it may have been a way to grandfather operations that were already in existence at the time. The code also allows it for future requests. Board Member Strock indicated that one would never store commercial vehicles if they were not intended to take them out to use and bring them back.

Vice Chairman Morelli stated that to some 18 vehicles may not be a lot, however, it sounds like a lot of vehicles to him. Other Board members stated that the scale of the property needs to be taken into consideration.

CEO Kusse informed the Board that it was not just one party complaining in the past, there were several from around the area. Mr. Steven's stated that at that time, the entrance was in a different location.

Deputy Town Clerk Palmer stated that all area residents within the 500 foot radius were notified by letter dated November 2, 2012.

Vice Chairman Morelli noted that the equipment vehicles will be starting up and leaving first thing in the mornings and there is a potential noise concern. It does not seem appropriate for a neighbor in a residential zone to have to hear that from inside the home.

Mr. Stevens stated that he does not have a vehicle on site with air brakes. His vehicles do have back-up alarms. Mr. Stevens stated that years ago he put switches in his vehicles so he could silence the alarms while on his property. Mr. Stevens stated that he does not start up the vehicles at 7:30 am. Years ago the equipment barn was designed to allow the trucks to load up in the evening when it was not a disturbance, park inside over night ready to go in the morning. The trucks would be started up in the building and directly leave the site.

Mr. Stevens explained that in the past, his staff would directly report to his Rush site. Now his staff directly reports to the job site, two thirds of his staff never even report to the Rush site. Occasionally an employee will pick up a plan. Equipment is delivered during the day or staged on the job site. The flow of equipment would not even be daily. Mr. Stevens even worries about cutting the grass on the property because he knows that Mr. Calev is always watching.

CEO Kusse recalls the daily phone calls from Mr. Calev about certain components of the business and why were they allowed.

Mr. Stevens stated that he runs a business from his home also. If you search Google it shows his home address and phone number. CEO Kusse stated that the Fire Marshall did visit the Calev property and never found anything. Mr. Steven maintains that whether CEO Kusse found anything or not his business is still run from that location.

Board Member Strock stated that due to the nature of the site and his opinion of the equipment, he does not feel that 18 pieces of equipment would make the site look any better or worse. It's already a disturbed site. Board Member Strock can't deny the potential for noise, however he questions the smell issue.

Board Member Sweet has no problem with the request as long as it only addresses the storage of equipment vehicles. If any other activities begin it will become a real problem.

Board Member Sweet is only voting on the vehicles to be stored. Not a landscape business, secretary, multiple cars, picking up of plant material or retail sales.

Mr. Stevens asked if that eliminates the ability for staff to park on site during the day. It was stated that it was not part of the Special Permit request. Mr. Stevens did not bring up employee parking prior to now. It was explained that the Board only votes on what's listed on the application. There will be the potential for complaints if employees start parking there and CEO Kusse will be required to act on it. Mr. Stevens stated that he was under the impression based on the code and his previously granted permits that the terms of employee vehicles would be dictated by the Board. Mr. Stevens asked if he should withdraw and reapply. Currently Mr. Stevens has a Special Permit that allows him to run a commercial enterprise consisting of a horticultural nursery which allows him to have an office, employees and on site activities. All Mr. Stevens wants to do is include the outdoor storage of equipment. He has volunteers that show up at the site to work on the trail.

Chairman Felsen asked CEO Kusse if the employee's vehicles are considered commercial vehicles. CEO Kusse stated that Mr. Stevens does not need permission to park employee's vehicles at the site. He can have as many licensed, registered employee vehicles as he wants, there are no restrictions and it is not a violation. CEO Kusse said he will get it as a complaint.

Chairman Felsen suggested the Board could say no commercial retail operation is allowed as a condition of approval for the granting of outside storage of commercial vehicles. There could be no selling of rock, brick or materials from that site and the commercial activity would be off site.

Vice Chairman Morelli replied that it's inescapable, there would have to be some business occurring there such as managing employees. CEO Kusse said that is a viable complaint and enforceable issue. Long term this must be difficult for Mr. Stevens. A commercial property would be more suitable.

The Board determined based on Mr. Kusses information that Mr. Stevens does not need to reapply to include employees parking.

Vice Chairman Morelli asked about section 120-57F of the Rush Town Code, called Required off Street Parking. This code states permitted uses with out a permit. Mr. Stevens discussed some of the history of the temporary permits that were issued by the Zoning Board at that time.

CEO Kusse gave an example of how carried away the situation could get. He sat for over 2 hours after receiving a complaint that tractor trailer loads of "stuff" or mulch was being delivered there. Mr. Kusse could find no trace of any such activity. Another example was when the Sheriff's Department asked Mr. Kusse to accompany a deputy on the property because there had been a report that marijuana was being grown on the site.

CEO Kusse indicated that from an enforcement aspect the number of vehicles is the issue. The complaints will continue to be that there is a business being run from there. For example there is a receptionist answering the phone and someone power washing equipment. Mr. Stevens stated that he will be doing that.

Mr. Stevens stated that if that's the case the town would have to go back and revisit all current permits that are in place. CEO Kusse said that would not be required according to the Town Attorney. Mr. Stevens stated that he could subpoena all the businesses engaged in commercial activities in Rush and testify as to where they conduct their business such as where the phones ring, who answers them, thus showing discrimination against his own request.

The Board reviewed the application map to determine the best area for vehicles to be stored and screened. Mr. Stevens hours of operation have been listed in the application.

CEO Kusse is recommending that Mr. Stevens amended his application to include everything he intends to do at the property. This will spell out and perhaps eliminate some enforcements issues.

Mr. Stevens in complete honesty stated that he is applying for a permit to store commercial vehicles for a commercial enterprise (off site). Under the recommendation of the Planning Board he included the maximum number of vehicles in his permit application. His intent is to continue to develop the agricultural site and minimize the activity and continue to look for an appropriate site to relocate the equipment in the future. Mr. Stevens does not want to sell the property, it has been in the family for generations. The sale value is not there either due to the trail and the water line that runs through the property. Agriculture is the only real viable use for the property at this time.

The Board discussed being able to add a condition of time limitation. The Board is unsure if that would be allowable.

Mr. Wurzer asked if there was access to the property from another direction. Mr. Stevens stated that there is access from Pinnacle Road.

The Board discused businesses run from residential homes or zones and the use of employees, deliveries, storage, displays, advertising, offices and enforcement issues. A civil suit could cause the town to take enforcement action against all of the current businesses.
Mr. Kusse suggested that it might be a good idea to seek legal advice.

Vice Chairman Morelli stated for the record, that the permit will inevitably result in running a landscaping business at the above said site location, therefore he will be voting against the permit as it violates the intent of what the code says can and can't be done.

DECISSIONS:

John Felsen made a Motion **WHEREAS;** this Board has examined **Application 2012-06P** by Kyle Stevens requesting a Special Permit for the outdoor storage of commercial vehicles on the premises of 2500 Rush Mendon Road. Property is located in an R-30 zoning district, and the maps and other materials which were filed with the Application, including the Environmental Assessment form and **WHEREAS,** the proposed action is a Type II action under the State of New York SEQR laws requiring no further action by this Board.

John Morelli seconded the motion and the Board Members polled:

Roll:	John Felsen	aye	
	John Morelli	aye	
	Don Sweet	aye	
	Rick Wurzer	aye	
	Scott Strock	aye	carried.

John Felsen made a motion to grant a Special Permit to Kyle Stevens for the outside storage of up to and not to exceed 18 vehicles. Of the 18 vehicles, 12 are equipment vehicles and 6 are road vehicles. All vehicles are to be stored on the east side and behind the existing pole barn. On the southeast side of the pole barn, Mr. Stevens will be allowed an additional 12 spaces designated for employee parking.

Don Sweet seconded the motion and the Board members polled:

Roll:	John Felsen	aye	
	John Morelli	nay	
	Don Sweet	aye	
	Rick Wurzer	aye	
	Scott Strock	aye	carried

With no further business, a motion was made by John Felsen and agreed by common consent that the meeting be adjourned at 11:02 PM.

Respectfully Submitted,

Meribeth Palmer
Deputy Town Clerk