DRAFT
Zoning Board of Appeals
Minutes
November 20, 2014

Present	**Absent**
Chairman John Dole	Michael Flavin
Dale Kellerson	
Diana Powell Keery	
Mark Unvericht	

Also Present

Zoning Board Attorney Eric Stowe
Building Inspector Patrick Smith
Zoning Board Secretary Pam Gilbert
Carol Nellis Ewell, Village Board Liaison

Glenn Granger
Doug Case
Jim Case
Harry Ewell
Linda & Bob Kuzmicki
Liz Venezky
John & Mary Ellen Peck
Craig Byham
Glynne & Kris Schultz
Richard McQuilkin
Terry & Robbie West
Barb Pittman
Richard Holtzberg
David Pelusio
Mike & Nancy Henneman
Jay & Alicia Diedreck
Jim & Candy White
John & Patricia Krywy
Gary Inzana
Tom Scoppr
Douglas & Susan Brown
Ron White
Jill & Christian Cordts
Ron Hartfield
Alice Sidoti
David Havens
Joan Quigley
Gary Penders

Chairman Dole led the Pledge of Allegiance.

At this time Chairman Dole stated that he wanted to set a few ground rules. Please direct all your questions to the board and we will decide if we answer it or who will answer it. We are not going to discuss building size, color, or anything like that. That is strictly the Planning Board. One other thing is we are not going to make a decision tonight. The Planning Board has declared them self's the lead agency and they must make a decision on SEQR before we can go any further. So there will be another meeting after this. We will close the public portion this evening and have a closed meeting next month. It will be open to the public but not comments will be heard.

Public Hearing

The application David Pelusio of Pelusio Spencerport, LLC 360 Jefferson Road, NY 14623 for a Special Permit to operate a Mavis Discount Tire business in an Industrial (C) district located at 26 Slayton Avenue, Spencerport, NY 14559, whereas, any other industrial use not prohibited by § 340-25 may be permitted upon the granting of a special permit therefor by the Zoning Board of Appeals pursuant to Chapter 340-24 R in an Industrial (C) district.

Attorney Richard Holtzberg stated that he is representing Pelusio Spencerport, LLC and further stated that we are here tonight because we believe that we really don't need a special use permit. The reason we say that is because the statue the way we interpret it allows retail uses in the commercial zone that we are in. We believe that Mavis Tire is such a retail use. As a result we don't feel there is a need for a special use permit. We are coming here hoping to get that same guidance from the board. The code clearly says retail. Obliviously, you can't have every conceivable use in the code or it would be as long as a telephone book. The uses that are in there are examples and that is all they are is examples. It's not that's all that is allowed and nothing else. We believe our particular use a retail sale of tires fits within the retail use of those particular requirements. But we wanted to be good neighbors so we are here. Also from the Planning Board meeting that this may be a possible requirement. So we wanted to make sure we didn't miss anything. We are here and if the board has any questions. We have our engineer here and we are prepared to do whatever we have to do. Keep in mind this is a retail use it is not a manufacturing use or a whole sale use or an industrial use. It is a retail use. It is a tire store, yes they put them on. But we feel we really don't need to be here. So with that we are here to answer any questions.

At this time Chairman Dole asked if anyone in the audience have any questions or concerns.

Glynne Schultz: I was just wondering how many jobs it will bring into Spencerport?

David Pelusio: Not exactly but my understanding is that at one giving time there might be seven people there but they might have a total of 15 employees.

Attorney Richard Holtzberg: It is not an enormous store, it is an eight bay store and I believe Mavis selected this location. They did a lot of research and they believe this location will be successful.

Barbara Pittman: Why did you pick this location? You know Country Max is moving out of Ridge Road to another location that is a nice big area. This is not a nice thing to have by our canal.

Attorney Richard Holtzberg: We are a developer we own the shopping plaza we didn't pick it per say. Mavis came to us. So we are not obviously going to tell them to go somewhere else.

Barbara Pittman: I understand that. I want to tell you that I started a petition and found out I didn't have enough hours in a day to get more than 49 signatures. Of every house that I went to that someone was home they signed because they do not want this in our village plaza. They were all against it. They were upset that they didn't know about it even though we have those ads in the paper. So what I think you might be facing is people are going to stop going to the Plaza, especially older people. Tops will end up closing and we will be without a grocery store again. They don't like the parking situation today and you are taking up all this room and it is going to make it worse.

Attorney Richard Holzberg: I would like to respond if I may.

Chairman Dole stated to go ahead.

Attorney Richard Holzberg: A question was asked at the Planning Board meeting about what the other tenants thought about this use and Mr. Pelusio responded that all the tenants that he was in contact with are in favor of that use. I would suspect as far as the business people are concerned they don't feel that it will jeopardize their business.

Barbara Pittman: No they do not. But the people that go and shop at the Dollar store or at Tops at the Drug store. They don't want to put up with extra traffic, noise that will be generated. You are going to find out given time that this is going to be another ghost plaza. I don't think you want that either then no one is paying rent.

Attorney Richard Holtzberg: May be I didn't make myself clear what I was trying to suggest was that Tops a pretty good retail business.

Barbara Pittman: Yes it is and they have done a lot for village and for that plaza. It is always busy. If you bring this in you are going to find out that their loyal customers who are so against having this in the village will go to Wegman's. If I have to park so far away I will go to Wegman's.

Attorney Richard Holtzberg: What I am trying to say is from their perspective I don't think they feel that is going to happen. If they thought if we have this tire store here all these people are going to be so upset and are not going to come to the plaza and therefore we would go out of business. They probably wouldn't be in favor of doing this yes.

Barbara Pittman: Well you don't if these people know about this they can't say they are for it or against it. This is what I learned when I talked to these 49 people from different areas of the village.

Chairman Dole said thank you and I think you made your point. I understand where you are coming from so if we could move on someone else.

Terry West: I want to talk a little bit about Mavis Tire. I have been on the internet looking at this company and from what I can gather Mavis does a lot of things right but they do a lot of things wrong. They have had 82 consumer complaints in the last year and the majority of the complaints have to do with product or service issues. Also some warranty and product guarantee issues. 92% of the people that had a problem with Mavis tire gave them a 1 star rating. Mavis Tire has a Better Business Bureau rating of "F". So that is just kind of a flavor of the type of business that we are looking at letting into the village plaza. Some of the top consumer complaints were lug nuts not being tight, poor customer service, promised time frames not being met, crooked employees. What they are saying about crooked employees is that they do a lot of up selling. In other words if you go in there for an oil change they want to sell you tires and brakes, change your power steering fluid and things of that nature. Again, this is all information that was on the internet. I would encourage all of you to look at the internet because there if a lot of information in there on Mavis Tire. I don't remember what part of New York this was in but a customer came in and they drained the oil out of his car but never put new oil back in his car. They called him up and said your vehicle is ready to go. He never got out of the parking lot and the engine seized up. Damage to wheels and lug nuts, customers were told they had dirty power steering fluid and needed to be changed and this was a two year old vehicle. This list gets better as it goes on. On November 4th a former manager quit due to shabby business practices at Mavis Tire. They practice up selling, check ever vehicle for additional sale for brakes, struts, front end, and power steering flushes. They keep turning over management until they meet the one sales rep that will meet all of their goals for sales. They have been sues by the EEOC, that lawsuit commenced in January 2012. They were sued because of their employment practices of females. They don't hire females. Between 2008 and 2010 out of 1,300 hired none of them were females. I think they have changed their practices. I was unable to find out if this lawsuit is still pending or if it has been closed and women with superior credentials where rejected and less qualified men were hired. So girls, ladies this place doesn't have a good track record for hiring females. The one question I have is I noticed in the little ad that was in the suburban news that this is currently in an industrial zone.

Chairman Dole stated that this is correct.

Terry West: I will tell you what I thought it was in a B-1 district maybe B-2. I am confused as to where the B-1 and B-2 districts, commercial and industrial districts are. Because all of the business in that plaza fit into the B-1 scope but then you have this Mavis Tire on a plot of land that is zoned industrial. I don't understand that. Where does the B-1 stop and the commercial start and where does the industrial take over?

Chairman Dole referred this question to Building Inspector Patrick Smith.

Building Inspector Smith: Mr. Schultz might be better at that but anything that is allowed in a commercial districts are allowed in and industrial district. I believe the majority of the plaza is industrial.

Kris Schultz: Right now almost the entire plaza is zoned industrial. If you look a village zoning map it shows that. The way that the code works is if you are zoned industrial then commercial uses are allowed. Industrial is usually more intensive and less desirable so they normally allow commercial uses in them. So all the business' that are in there including Tops were developed with this industrial zoning with the understanding the way the code reads you can operate a commercial within industrial.

Terry West: I am sure that makes sense to you. But when I read the code industrial use it doesn't say anything about grocery stores. B-1 and B-2 talk about grocery stores.

Diana Powell Keery: If I may in the Village Code Article 340-24 which states permitted uses. You can go from A to U and you can see what the specific uses are and if you refer back to and this is where it gets confusing. Under prohibited uses "340-25" refers you back to "340-20" so you kind of have to flip back and forth. But they are specific for our village for industrial uses.

Terry West: In the code I read off the Spencerport village website it talks in these codes and I am referring to "340-21" right now about the preserving and enhancing the "Canal Town Theme". I look at this box that they want to build down there with these 8 bays.

Chairman Dole stated that as I said we are not talking about the building size or color.

Terry West: Well it doesn't fit the "canal Town Theme".

Building Inspector Smith: if I could make one statement you said in "340-21" that's a B-1 district and this is an industrial district. Even though you can do in an industrial district what you can do in a B-1 you can't do the opposite.

Terry West: Well they all intermingle. It stated in the code book that the B-1 district starts from the Canal Bridge and West Avenue but how wide is it? Or is it just the Main Street corridor.

Building Inspector Smith stated mostly the corridor.

Terry West: it doesn't state that so are you assuming that.

Building Inspector Smith: I am noting assuming anything. It is an industrial District. So anything you can do in any "B" district you can do in industrial.

Attorney Richard Holtberg: I don't represent Mavis. Mavis has 250 stores national. So if you had 89 complaints in a year on 250 stores that's not bad.

Terry West: These are the ones documented with the Better Business Bureau. These people were made enough to complain to the Better Business Bureau. Most complaints probable never went any further than the store manager.

Attorney Richard Holtzberg: It is still not that bad; it shows that they have a fairly decent record and I am not here to justify what they do.

Terry West: That's 89 in New York, they have 250 stores national.

Diane Powell Keery to Attorney Stowe: Could you clarify something for me. Their attorney keeps mentioning Special Use Permit but they are here for a Special Permit.

Attorney Stowe: We don't call it a Special Use Permit our Village Code calls it a Special Permit.

Terry West: So unless they are violating a code I could sit here and say I don't want this store in our downtown plaza because I don't think it fits. I don't think it will care any weight with any of the boards. But 340-59 deals with grounds for grant or denial and approval of special permits. Item "C" of that code states "Whether the proposed use will be in harmony with the existing and probable future development of the neighborhood in which the premises are situated." As Chairman Dole has already told me he doesn't want me talking about the building. It is an ugly building that doesn't belong where it is planning on going. Item "D" "The number and proximity of the same or similar uses in the neighborhood of the premises". Now that ad that I had a hand in, in the Suburban News dealt with the fact that within a 10 mile radius there is 15 tire repair business'. So I don't know why we need another one. I don't understand for the life of me why Mavis wants to tuck this thing down in that plaza instead of up on Route 31 or 259 where it belongs. I am not there marking person so I don't know. I am all done now.

Barbara Pittman: I was going to ask why he needs a Special Permit. Is it because that area is not zoned to put something like that it in?

Chairman Dole stated it is a zoned Industrial District and there are certain permitted uses for an industrial zone and anything that is not on the permitted uses need a special permit.

Barbara Pittman: So why would you grant one if it is obvious that most of the people don't want it?

Chairman Dole stated we are not answering any questions or going any farther. It is going back to the Planning Board and maybe next month we will have a chance to make a decision. We do have by law 62 days to make a decision once we close the public hearing.

Barbara Pittman: What would the residents have to do to stop this?

Chairman Dole stated you are doing it. You are voicing you opinion.

Barbara Pittman: Yes we are but how many people have to voice their opinion for the Planning Board to look at it and say you know are folks really don't want this. So let's put something in there that they would like to see.

Chairman Dole stated that you only need one person.

Barbara Pittman: Well we have lots here so we should be in good shape then.

Jim White: Gave the board a handout which is attached. I would just like to share some opinions why I don't think that we should be approving this special request permit. Some of it is redundant giving what Mr. West was mentioning a couple minutes ago. Those of you who went to the Planning Board meeting remember me getting up and talking about the type of business that we would like to get into the village that would grow and enhance the village experience. I think all of us the live in the village enjoy the fact that this village tries to present itself ongoing basis. Not only that value business gave provide but the

Jim White continues: support that they can get from the community at the same time. I think as these boards meet and discuss whether they are good or bad for the village that we ask them to keep in perspective that the attractiveness and reputation of the village is a very important thing for all of us. When I look at a business like Mavis Discount Tire I don't feel that this type of business enters into that type of a presentation that we should have in the village that would enhance the experience of all of us that live here and those people that we try to attract here from other areas. I think it is really cool when someone goes through the village and I run into them and they find out I live in the village you know I really like your village. I like the main street I like the lift bridge; I like the business' that are down there. People feel good about coming to the village. So because of that I am looking at the reasons not to approve this request. I am the guilty guy who took the ten mile trip around the Village of Spencerport and found the 15 business. That was just a sampling there is more than that who provide the same type of service that Mavis Discount tire provides. I am not trying to evaluate whether Mavis does a better job or a worse job in their services. I am just looking at in the redundancy perspective and where does that fall in to the scheme of this. Does in integrate with what our village plan is. I don't think I have ever seen the overall village plan. I would like to see and maybe one of you could help me with that. But I don't think Mavis Discount Tire fits in the master plan and the use of the plaza. I am not looking at the plaza from how we create more business' I am looking at from the values that they provide. I am looking for facts for why we should do this. When we talked about code under 340-25 under prohibited uses it talks about any use that provides any noxious use from dust, smoke, odor, gas, fumes, noise. All of which this particular facility would provide in itself. When I look through the code in 340-59 I looked at the type of reasons why we should not be approving it. It went from the proposed use on the orderly development and character of the neighborhood. What would Mavis provide and I don't think it would it. This proposed use is not in harmony with future plaza development. The number in proximity of same or similar businesses near neighborhood as I a stated the adventure that I went on to find a number of places that provide it. Referencing back to 340-25 I think there is a proposed nuisance section is another reason not to approve this. The last one is that any proposed use that may create a hazard or danger to the public caused by fire, explosion, traffic congestion and intermittent crowding is yet another reason why we should be approving this in the first place. So at the end of the day what is it going to come down to. It comes down to a combination of some objective thinking of the board and some subjective thinking by the board and whatever that is going to result in. If it is a favorable result I think I and the people in this room would like to have a better understanding rather than just see it approved. If there is a way we can understand your logic, your rationale why it is a good thing to have it in the village we would be interested in that. Thank you very much for your time.

Attorney Richard Holtzberg: Mr. White I just wanted to respond to a couple things you said. Again, I think one of the things you said is that the project will create a nuisance. As you probable are all aware that auto use business are looked upon by government agencies because we all know that they can be banned if they go bad. So Mavis Discount Tire has 250 stores are always in total full compliance with various environmental agencies in order that there is no noxious fumes. There are no fire hazards and the other items that you suggested. Number two I am sure the Village of Spencerport has its own local laws addressing those kinds of things and if they were violated they would have to fix. The fact that you say it is a nuisance a danger I don't think that is an issue. These 250 stores all over and I didn't hear mentioned here tonight any complaints giving off fumes or noise. I am assuming that if there was it would have been there. As far as fitting into the area we are not putting it out in the middle of a field. This is a shopping plaza these are retail stores. Mavis tire store is a retail store it fits. The only

Attorney Richard Holtzberg continues: difference is the product that it is selling it tires rather than food, pizza but it is a retail operation. It knows that it has to be a good neighbor because if it is not a good neighbor it won't get its business. It will go broke. They will put a lot of money into this place and will make sure what they do doesn't make a lot of noise and that everything works. That is why they have 250 stores. I think if you are looking for a use for this plaza you would rather see this type business from a proven company then I would some localized outfit that who knows what it may or may not due. Mavis is a very good business, they have systems, and they have protocols. They just don't put people in there and say sell tires it is very nicely operated. That is what you are going to get from Mavis. So the first thing I thought about when David came to me was what were these people really contesting? You don't have a discount tire store nearby. When someone in this town needs tires they want to get them as cheap as possible. So why not have Mavis. Other village have tires stores in their village I am told. Churchville has a Goodyear store in the middle of the village and no one complains about to my knowledge. Pleasantville another village has the same thing. So it is not unusual situation and it's back in the plaza. Mavis has done everything to protect the environment back where it is. Really I think is that some of the fears about have a loud and obnoxious tire store in the village but it just isn't going to happen.

Ronald Hartfield: I own the shop across the street. I had a customer in the shop today that went to Mavis Tire on Ridge Road and he needed half the repairs that they tried to sell him. So there is an example of what Mavis is all about.

Candy White: I know it was not mentioned a lot here but what I fear is the noise. It has 8 bays. I am sitting outside the Galley Restaurant or sitting in Slayton Place. That business will be close to Slayton Place you are going to hear the noise all the time. The people who come in off their boats and sitting at the Galley Restaurant. Why would I want to sit outside there because you will hear it. It will be that close to the canal that you will hear it. Noise is going to be an issue.

Attorney Richard Hertzberg: All I can do to address that is we had noise studies done and it doesn't show that it will be. I was just over in plaza and heard Tops loud speaker was much louder than that of a drill but now seems to be bothered by that. Mavis has and will continue to do everything within their power to be a good neighbor and not offensive.

Candy White: How often does that go off.

Jim White: I understand that your role is certainly one for your client and I respect that. On the other hand part of your feedback was even more subjective than mine giving that your assumption of not having fume issues, not having noise issues. You didn't present me with any facts that demonstrate that in fact true or false. I could stand outside Firestone on the ridge waiting for my car to get serviced there is noise, there is fumes. They run the cars not only when they take them in and out of the garage but sometimes they run them on the hoist when they are trying diagnosing problems. This isn't just a discount tire store; this is a discount tire car repair store. So in reality there is going to be noise and fumes as there are things going on that are just part of that business.

Attorney Richard Hertzberg: Again, Mavis running cars is low in comparison to the 75 cars coming in and out of the plaza.

Jim White: At the end of the day is a good business for the village or not. Not the pros and cons of will it or won't it when it's there. Is it a good fit for the village? Is it a type of business that we want to have in the village. That is ultimately the responsibility of these ladies and gentleman here and sometime that does become subjective and their decisions do not always have to be fact based. It can be a combination of objective and subjective items taken into consideration.

Attorney Richard Holtzberg: I live in Penfield, and I understand what everyone here is coming from. The reality is that we live in a free country. So if you have a business and it is a permitted use business unless there is some compelling reason not to allow them to run that business then they have to let them run that business.

Doug Case: Is this building going in the current traffic flow? Will we be losing parking spots?

Kris Schultz: What ends up happening is that we will end up with the same number of spots. It was a concern early on and the village engineer spent a lot of time reviewing everything. They even looked at each use of the businesses. For example Top's would need a certain number of parking spaces. We provided the Planning Board a color coded map showing that. That board has spent a lot of time making sure that we didn't lose any parking spaces. I don't want to get into a lot of the Planning issues but I can tell you that there is a lot of parking on the east end of the plaza.

Ron White: I was wondering if there is a set criteria for the board to make a decision; what is it that you have to meet in order to qualify for giving the permit or denying the permit?

Chairman Dole stated yes it is section 340-59 of the village code.

Doug Case: Just a follow up to the east end parking area you were just mentioning. My wife is a teacher at that plaza and buses come through there. That east end is pretty busy from the bus traffic going by this building. Has that been considered?

Kris Schultz: Yes, that was a big thing that the Planning Board looked at. It was the placement of building they wanted to make sure it would be safe. The parking lot in front of that building is being reconfigured. The drive isle is being moved away from the face of the building to provide safety.

Terry West: I was just done there the other day and a small school bus was parked kind of sloppy taking up 4 parking spaces. I am sure you are a smart man and have considered all that.

Kris Schultz: Yes, when we looked at the parking we looked at each business and what would be potential needed. What we show is that every business there running full blast with maximum parking all at the same time we had enough parking. Realistically it never happens that way. Children are dropped off in the morning the plaza has very few businesses open. So when they take their break and park their busses and take up three or four spots it is because there are no other cars there. They are sloppy it doesn't matter there is no need to be careful. So yes your point is well taken. When we had a different proposal for the plaza we had a traffic engineer look into what is needed and we are well with in what we need.

Terry West: I noticed on the plan that you have parking in the back of the store as well.

Kris Schultz: Yes, right now what you are considering the back of the store is used for accessing the park. If you wanted to go to the village park and not have to park at the galley and walk all the way down you can park in these spaces. Those spaces were also shown on the originally plans approved by the village when Tops came in. The same issues that are with this application were looked at back then.

Chairman Dole stated that the bottom line is that there will be plenty of parking there and is not really why we are here.

Barbara Pittman: I have to ask has anyone let Mavis know that people who live here in the Village of Spencerport aren't welcoming them with open arms. Do they think we want them here?

Chairman Dole stated that is not really this board's duty.

Bob Kuzmicki: You have Hartfield and O'Leary right here in Spencerport. If I want my oil changed I go there. If I want tires I go there. I am afraid of an impact on their business because I certainly wouldn't want them to go away. It is just a consideration on the existing businesses.

Attorney Richard Holtzberg: I would just like to summarize that our position as I stated in the beginning that I don't think we need a special use permit only because under 340-19 "including but not limited to the following. We feel that this is not a prohibited use. But I am glad you are here to understand where we are coming from Mavis is to get some feedback from you is all part of the process. We feel that once this is in you probable will all take advantage of it. So this board is kind enough to give us the permit or tell us we don't need a permit.

Ron White: What happens if the permit is not granted?

Chairman Dole stated that then they can't do it.

At this time Chairman Dole closed the Public Hearing at 7:50 p.m. and stated that because of the SEQR requirement that has been laid out by the Planning Board we can't make any decisions tonight and we are not going to discuss this any further until the next Zoning Board meeting. We do have 62 days to make a decision. Thank you all very much for your comments.

Approval of Minutes

Motion made by Mark Unvericht seconded by Dale Kellerson and carried unanimously to approve the September 18, 2014 minutes as written.

Adjournment

Motion made by Diana Powell Keery seconded by Mark Unvericht and carried unanimously to adjourn the meeting at 7: 55 pm.